

A G E N D A

600 NORTHEAST GRAND AVENUE PORTLAND, OREGON 97232-2736



METRO

TEL 503-797-1540 FAX 503-797-1793

MEETING: METRO POLICY ADVISORY COMMITTEE

DATE: October 13, 2004
DAY: Wednesday, 5:00-7:00 p.m.
PLACE: Metro Council Chamber/Annex

NO	AGENDA ITEM	PRESENTER	ACTION	TIME
	CALL TO ORDER	Becker		
1	INTRODUCTIONS	All		5 min.
2	ANNOUNCEMENTS	Becker		3 min.
3	CITIZEN COMMUNICATIONS FOR NON-AGENDA ITEMS			3 min.
4	CONSENT AGENDA • Meeting Summary for September 8, 2004	Becker	Decision	5 min.
5	COUNCIL UPDATE	Bragdon		5 min.
6	GOAL 5	Bragdon	Discussion	30 min.
7	EXCEPTIONS PROCESS	Benner	Information	30 min.
8	ANNEXATION PROCESS	Benner	Information/ Discussion	20 min.
9	HEALTHY CENTERS FORUM	Webb/Ocken	Information	15 min.

UPCOMING MEETINGS:

October 27, 2004 & November 10, 2004

For agenda and schedule information, call Kim Bardes at 503-797-1537. e-mail: bardes@metro.dst.or.us
MPAC normally meets the second and fourth Wednesday of the month.

To receive assistance per the Americans with Disabilities Act,
call the number above, or Metro teletype 503-797-1804.

To check on closure or cancellations during inclement weather please call 503-797-1700.

METRO POLICY ADVISORY COMMITTEE MEETING RECORD

September 8, 2004 – 5:00 p.m.

Metro Regional Center, Council Chambers

Committee Members Present: Charles Becker, Nathalie Darcy, Rob Drake, Andy Duyck, Dave Fuller, John Hartsock, Tom Hughes, Richard Kidd, Deanna Mueller-Crispin, Lisa Naito, Doug Neeley, Wilda Parks, Ted Wheeler

Alternates Present: Larry Cooper, Jack Hoffman, Laura Hudson, Charlotte Lehan

Also Present: Ron Bunch, City of Gresham; Hal Bergsma, City of Beaverton; Danielle Cowan, City of Wilsonville; Brent Curtis, Washington County; Stephan Lashbrook, City of Lake Oswego; Pat Ribellia, City of Hillsboro; Jonathan Schlueter, Westside Economic Alliance; David Zagel, TriMet

Metro Elected Officials Present:

Metro Staff Present: Kim Bardes, Dick Benner, Dan Cooper, Andy Cotugno, Paul Garrahan

INTRODUCTIONS

Mayor Charles Becker, MPAC Chair, called the meeting to order 5:10 p.m. Those present introduced themselves.

1. ANNOUNCEMENTS

There were none.

3. CITIZEN COMMUNICATIONS

There were none.

4. CONSENT AGENDA

Meeting Summaries for July 14 & 28, 2004.

Motion:	Rob Drake, Mayor of Beaverton, with a second from Nathalie Darcy, Citizen for Washington County, moved to adopt the consent agendas without revision.
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Vote:	The motion passed with one abstention from Deanna Mueller-Crispin.
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5. COUNCIL UPDATE

As there were no councilors present, this was deferred to the next meeting.

6. GOAL 5: TUALATIN BASIN APPROACH/REGIONAL PROGRAM ELEMENTS

Chris Deffebach gave a brief presentation to the MPAC members.

Rob Drake asked if she intended to map backyards and exempt them by definition.

Chris Deffebach said that they still intended to map backyards and exempt them through the program itself, because if there were a major land-use decision action on a property it would still be subject to the regulatory elements of the program. The program was not about run-of-the-mill activities for people's yards.

Doug Neeley said that the benefit of mapping backyards was that if Metro wanted to attain conservation easements or something else of that nature, then the cities would have that capability. They might want to opt into a Goal 5 effort, so including those residences in the mapping was a good idea.

Rob Drake said that he still had concern about having those backyards included because of how it would/could be enforced or not enforced in the future. He said that people felt confusion and concern over including it even though it might not be strictly enforced now. The worry was related to future enforcement, when the regulation was still on the books, but the people at MPAC or Metro had changed and possibly their policies or politics might change. What would protect the citizens from future restrictions?

Doug Neeley said that Metro might want to include a page in the document to clarify this issue.

Chris Deffebach reviewed the second resolution, she handed out a list of members for the Implementation Work Group Regional Fish and Wildlife Habitat Program, which is attached and forms part of the record. She said that they would have an updated map on the Fish and Wildlife Inventory at the next meeting for their review.

Chair Becker asked how the group of people for the Work Group was selected.

Andy Cotugno said that the members of the work group were selected based upon their experience in doing the actual permitting on an actual development project, either on the application side, or the approval side. They were chosen specifically for their expertise. They were not, however, the ultimate approving body. MPAC and MTAC would be the approval bodies from a jurisdictional point-of-view, and the Goal 5 TAC group would provide input from the various natural resource agencies, and WRPAC would represent the utilities agencies' views. All these bodies would be working on the process, giving input, and then MPAC and MTAC would work on it and forward their conclusions to Metro Council.

Jack Hoffman asked if he and the interested members of MPAC could be added to the email list for the Work Group.

Chris Deffebach said she would have Paulette Copperstone add them (all of MPAC) to the distribution list.

Brent Curtis reviewed the Tualatin Basin portion of this topic.

Rob Drake thanked Brent Curtis and all the people who worked on the Tualatin Basin Approach.

Richard Kidd added his appreciation for the professional contributions of those who participated in the Tualatin Basin Approach work.

7. PERFORMANCE MEASURE REVIEW

Gerry Uba gave a PowerPoint presentation and passed out copies of the slides for the members to follow along. Slides of the handout, Preview of the Draft 2004 Performance Measures Report: Selected Sections, are attached and form part of the record.

Rob Drake asked if it would be helpful to chart the overall numbers and jobs for the region.

Gerry Uba said they would try to do that.

Doug Neeley asked if the increase in the mixed-use consumed land, if it was due primarily to zoning, would have some affect in reducing some of the other uses.

Gerry Uba said it was primarily a shift from industrial to commercial. He said that it would be more informational to keep track of the shifts in zoning, but they were not yet able to do that.

Andy Cotugno said that the table showed how much land was consumed according to the zoning. There was definitely a drop in residential with an increase in mixed-use residential/commercial. He said that there was a drop in commercial with an increase in both mixed-use commercial and mixed-use industrial/commercial, so both the mixed-use components were up and the two single use, commercial and residential, were down.

Charlotte Lehan said that the tenth slide, Change in Population Per Acre in Sample Neighborhoods 1990-2002, might be more helpful if it indicated the age of the people who live in the study neighborhoods. She said it might help if some of the information was mapped. She asked if the final document would be a book of data or would there also be some analysis provided?

Gerry Uba said that there would be mostly data, but also some analysis included.

Charlotte Lehan said that it was disturbing to note that the middle gap on performance for high school, the slide titled Quality Education Measure of Benefits and Burdens of Growth, was narrowing while the two ends were getting wider; meaning that more people were either doing better or doing worse, but not as many people were doing satisfactorily. She said the high school sample would make for a very good example of mapping the impacts.

Andy Cotugno said that there would be a Performance Measures document that would be full of facts, but mainly it would serve as a platform for broader discussion about the trends.

Charlotte Lehan wanted to know how and when that would be presented.

Andy Cotugno said that they had not laid out all the steps, but the intent of the project was to use the document for a longer-term dialogue over the course of the next year.

Tom Hughes said that the school issue was almost out of context because there was no congruity between what was measured in the districts and the Metro region. The Hillsboro School district, for example, was 50 miles north or south and a significant percentage of the population lived in the City of Hillsboro, but the majority of properties were actually outside the city. He said that the trend from the data presented by Gerry Uba looked like schools were moving out of the average category and in most cases moving into the exceptional or strong category, which seemed to be a good thing. He said that they would rather not

see a strong middle class for the schools, but rather see all schools move towards the strong or exceptional categories. He also pointed out that a two-year picture was not really a trend-setting example, and it would need to be followed further in order to really determine if there was a trend.

Andy Cotugno said that when Metro staff had discussed what the indicators should be they had decided that some kind of education indicator was important because it related to the economy. There was an interest in understanding better whether or not the growth policies currently utilized had a disproportionate impact on tax bases around the region. He said that they needed to figure out if some of the places where the quality of education was declining was equal to those places where the tax base was not getting better.

Richard Kidd said that less than half the students that attended Forest Grove schools did not live in Forest Grove. He said that he thought the school data should be included in the performance measures because it said something about the economy and what was happening in the jurisdiction. Education was important to the economy, and those students that lived outside the district and their families still contributed to the local economy.

Doug Neeley referred to the issue of lot size distribution and changes over time. He wondered if the changes were due to Metro requirements for density or whether factors had changed in lot size preferences. Perhaps less large lots were available. He wondered how to separate out policy versus demographic change.

Andy Cotugno said that when they started the process back in the early 90's they found that there was no zoning outside the City of Portland that allowed lot sizes smaller than 7,500 square feet. Now there was zoning all over the place that allowed smaller lot sizes, and once it became available the market responded. This was one criterion that they wanted to track because growth policies impact the region.

Chair Becker said staff should add the cost of land and lots as an indicator.

Andy Cotugno said that the cost of land would be a good indicator to include. He said that Metro affected the assessed value going into jurisdictions, but did not affect the tax rate and the ability of the cities to tap into that tax value. The measure was intended to count the value and not the tax collected because Metro affected growth patterns but not collected tax rates. He said that the performance measures were to introduce the differences across the landscape, and mapping those differences would better showcase patterns. It was also a good place to start a sub-regional analysis in order to understand some of the distribution differences. He also said that how the population was educated was the "cause" that would "affect" the economy, and that was the relationship that they needed to stay focused on.

There being no further business, Chair Becker adjourned the meeting at 6:45 p.m.

Respectfully submitted,

Kim Bardes
MPAC Coordinator

ATTACHMENTS TO THE RECORD FOR SEPTEMBER 8, 2004

The following have been included as part of the official public record:

AGENDA ITEM	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NO.
#6 Goal 5: Tualatin Basin Approach/Regional Program Elements	9/8/04	Implementation Work Group for the Regional Fish & Wildlife Habitat Program – list of members for this workgroup	090804-MPAC-01
#7 Performance Measure Review	9/8/04	Slides of the PowerPoint Presentation: Preview of the Draft 2004 Performance Measures Report: Selected Sections	090804-MPAC-02



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C O U N C I L P R E S I D E N T D A V I D B R A G D O N

M E M O R A N D U M

DATE: October 8, 2004
TO: Metro Policy Advisory Committee
FROM: David Bragdon, Metro Council President
SUBJECT: Proposed Resolution 04-3506 on Fish and Wildlife Habitat

I am attaching Resolution 04-3506, which Councilor Rod Park and I are introducing before the Metro Council. This proposal is submitted on behalf of only Councilor Park and myself at this time. We would welcome your comments at your October 13 meeting.

For over eight years, the Council has engaged MPAC and the public in an exhaustive discussion of fish and wildlife habitat protection. Certainly, no other issue before our Council has undergone this extent of public involvement. Yet despite this expenditure of time and resources, we never seem to reach effective programmatic outcomes at the regional level. We believe this lack of certainty has become both a problem unto itself, and a symptom that we have been emphasizing the wrong tools to get the job done.

Councilor Park and I believe the time is now overdue to direct this regional effort to a workable and effective conclusion that will have the highest prospects for achieving environmental protection and the other objectives that the residents of the region want to achieve. We also believe it is appropriate to consciously reposition our agency in its proper relationship to local governments, all of whom have Goal 5 obligations which have been addressed only to varying extents. Given the existence of this statewide goal, we believe the best relationship between a regional body and local bodies is a relationship of partners rather than purely a relationship of regulator and regulated.

Therefore, we have drafted Resolution 04-3506, which redirects Metro's fish and wildlife protection effort to identify regional outcomes in terms of clean water, wooded areas, healthy ecosystems, and fish and wildlife protection and to set performance standards with latitude for local implementation. Under this proposal, Metro would work with local governments, environmental groups, developers, homeowners and others to achieve the outcomes through regional programs that engage voluntary action, such as encouraging implementation of environmentally friendly site design and development, habitat rehabilitation, transfer of development rights programs and tax incentives. We would also express our intent to sponsor a ballot measure that would enable some acquisition of valuable habitat areas from willing sellers. As with other aspects of our proposal, a strengthened working relationship with our local government partners would be a new cornerstone.

This resolution would delay any additional region-wide regulation, in favor of these broader performance standards (and an array of best management practices) that local governments would have latitude in meeting – in part, of course, by their own existing and/or enhanced local regulations. We believe regulation has an important place as one tool of environmental protection, and we recognize the strides that have been made in some localities during the many years that this matter has been pending before the Metro Council. We do not believe, however, that additional regional land use regulation, as the centerpiece of a program, will solve the on-going degradation of fish and wildlife habitat.

To reserve that option should local regulations and enhanced non-regulatory measures fail to meet performance standards, this resolution provides that Metro would assess progress in the year 2010, and impose regional regulatory measures by 2012. This “regulatory backstop” would provide added impetus for governments and the development industry to make voluntary approaches and locally-adopted regulatory programs a success.

Under this proposal, Metro will continue to provide support to local governments as they comply with the state’s planning Goal 5. Metro would also develop program performance standards to certify local Goal 5 programs and would develop a model ordinance that can be adopted by localities that do not have the resources to develop a program on their own. We believe these types of services put the Metro Council in the proper position of adding value to real local efforts on the ground, rather than simply policing their codes or duplicating work that has already been done.

We recognize that this redirection will be controversial. Councilor Park and I reiterate that we write today on behalf of ourselves rather than on behalf of the Council. But we also recognize that the approach we seem to have been on has its limitations in terms of effectiveness and clarity. When a particular path continually leads to inconclusiveness, it is the role of leadership to seek a new path that will reach the desired destination expressed in the vision statements of the past. We believe the approach we are suggesting has the best prospects for engaging the citizenry in a most positive way and yielding the best overall results. We would welcome your comments.

Thank you.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DIRECTING THE) RESOLUTION NO. 04-3506
CHIEF OPERATING OFFICER TO DEVELOP A)
FISH AND WILDLIFE HABITAT PROGRAM)
THAT RELIES ON A NON-REGULATORY)
EFFORT TO IMPROVE HABITAT PRIOR TO)
ANY IMPLEMENTATION OF NEW REGIONAL,) Introduced by Metro President David Bragdon
PERFORMANCE-BASED REGULATIONS) and Metro Councilor Rod Park

WHEREAS, Oregonians have a long tradition of understanding the interdependent values of economic prosperity and environmental quality, both of which constitute important elements of the livability that distinguishes this state and the Portland metropolitan region; and

WHEREAS, citizens of the Metro region value living in a place that, within the built environment, provides access to greenspaces and habitat for fish and wildlife species; and

WHEREAS, citizens representing a range of economic and environmental interests have stated that wildlife habitat and water quality need to be more consistently protected and improved across the region, as part of an ongoing regional commitment to planning for the future; and

WHEREAS, the Metro Policy Advisory Committee (MPAC), comprised of elected officials representing the region's cities and counties, adopted a "Vision Statement" in 2000 to enunciate the region's commitment to improve the ecological health and functionality of the region's fish and wildlife habitat; and

WHEREAS, that Vision Statement set an overall goal "to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with the surrounding urban landscape . . . [to be] achieved through conservation, protection and appropriate restoration of streamside corridors through time;" and

WHEREAS, Metro has pursued the development of a regional fish and wildlife habitat and water quality protection program consistent with Statewide Planning Goal 5, one of 19 state land use planning goals, thereby producing a region-wide inventory of habitat comprising over 80,000 acres that has been located and classified for its ecosystem values and mapped to provide an information system for developing the region-wide program; and

WHEREAS, by developing the habitat inventory, Metro now has extensive and comprehensive information on the ecological health of the region's fish and wildlife habitat, and an important role for Metro to play in the future will be to keep the inventory up to date, to continue to monitor the state of habitat in the region, and to share such information with local governments in the region to help them develop effective habitat protection and restoration programs; and

WHEREAS, fish and wildlife habitat depends on healthy functioning watersheds and follows the natural contours of the landscape, while political boundaries frequently split watersheds and divide the natural landscape, and Metro, as a regional government, can play an important role to help ensure a

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consistent level of habitat protection and restoration across the region's political boundaries, in an ecologically-based manner that respects watersheds and the natural landscape; and

WHEREAS, access to resources for protecting and conserving habitat varies widely among the region's communities and Metro also can provide technical assistance to communities with fewer resources to help them develop protection and conservation approaches that are appropriate for their communities, such as tools to allow and encourage lowest impact development or the conservation of critical wildlife habitat through purchase or the use of creative land-trust instruments; and

WHEREAS, the rights of private property owners and their commitments to community goals and environmental protection should be recognized and honored, and that doing so will help us attain and sustain a high quality of life for both humans and wildlife; and

WHEREAS, the types of actions that affect the quality and quantity of the region's fish and wildlife habitat vary widely, including thousands of small decisions made each day by individuals, such as whether to use pesticides on their lawns, as well as bigger decisions, such as how development of these properties occurs; and

WHEREAS, to produce desired, measurable outcomes of cumulative improvements to fish and wildlife habitat throughout the region, the fish and wildlife habitat protection and restoration program must enlist the broad support of hundreds of thousands of people across the region, making habitat property owners participants in a regional program that includes education and incentives for lowest-impact development practices, restoration initiatives directed by watershed councils, and purchase of the most ecologically valuable habitat areas from willing sellers through the funds generated by a bond measure; and

WHEREAS, by making a concerted effort to provide the region's citizens with additional fish and wildlife habitat education, incentive, restoration and willing-seller property acquisition programs the region can potentially make substantial progress toward improving the quality and quantity of its fish and wildlife habitat; and

WHEREAS, Metro, local governments, and the citizens of the region should make such a concerted effort to meet the goals of the Vision Statement using non-regulatory strategies, and our progress toward meeting those goals should be measured, before local governments are required to comply with any new rules or regulations; now therefore,

BE IT RESOLVED that the Metro Council hereby directs the Chief Operating Officer to develop a fish and wildlife habitat protection and restoration program consistent with the following provisions:

1. Metro's Program Shall Rely Primarily on Education, Incentive, Restoration and Acquisition Programs

Metro, other government agencies and volunteer-based non-governmental organizations across the region already have in place extensive education, restoration and acquisition programs designed to protect and enhance the quality and quantity of well-functioning fish and wildlife habitat. Metro's parks and solid waste and recycling departments and the Oregon Zoo, for example, have already developed education programs to teach individuals about fish and wildlife habitat, water quality, natural gardening, and what we all can do to improve fish and wildlife habitat. Many local governments (e.g. Portland's Bureau of Environmental Services), special districts (e.g. Clean Water Services in the Tualatin Basin), and non-governmental organizations (e.g. Friends of Trees) already engage in extensive natural area restoration programs and

neighborhood tree planting programs that improve habitat. Metro, local governments, and non-governmental organizations (e.g. the Wetlands Conservancy) are all engaged in willing-seller land acquisition programs designed to purchase, preserve, and restore the region's highest-quality fish and wildlife habitat. Many of these efforts only take place thanks to the strong support of the region's private businesses and the efforts of many individuals. The region's vision of protecting and restoring a "continuous ecologically viable streamside corridor system" will only be achieved by harnessing the collective power of regional and local governments, non-profits, citizen volunteers, and private business to expand these programs. Such an effort should include:

a. Education and Incentive Programs

Metro's program shall be focused, first and foremost, on creating citizen education and incentive programs to help the citizens of the region voluntarily make the best choices for the protection and enhancement of fish and wildlife habitat. In addition, existing incentive programs that have not yet been implemented at the local level, such as Oregon's riparian and wildlife habitat property tax incentive programs that are ready for use by local governments, shall be identified and efforts made to ensure that such programs are available to, and used by, the citizens of the region.

b. A Regional Habitat Acquisition and Restoration Program

The Metro Council intends to develop, and take before the voters for approval, a fish and wildlife property acquisition and restoration bond measure to purchase from willing sellers those properties, or conservation easements on those properties, that are deemed to be of the greatest ecological importance for fish and wildlife habitat, and to fund habitat restoration efforts that could provide even higher quality habitat.

2. Development of Local Program Performance Standards and Timeline for Compliance

The regional fish and wildlife habitat protection and restoration program shall establish local program performance standards to be achieved by the local fish and wildlife habitat protection and restoration efforts adopted by local jurisdictions in the region. Local jurisdictions will be required to show that their programs will meet the local program performance standards, and Metro shall make such local program performance standards as clear and objective as possible to provide local governments with a clear understanding of what programs will be sufficient to meet such standards. For example, such standards could include calculations of the amount of habitat that is protected through public ownership, a tree protection ordinance, regulatory buffers, easements, or other tools, and an assessment of the potential to minimize or mitigate impacts to fish and wildlife habitat through the use of low-impact, habitat friendly design approaches. Local governments will have the option of retaining their existing programs, developing their own new programs, or using a model program approach to be developed by Metro. Local program performance standards will be broad and flexible enough to allow for local programs to take very different approaches, and Metro shall review and give equal credence to all approaches when determining whether local governments are in substantial compliance with those standards. The model program developed by Metro shall be based on the use of best management practices for low-impact, habitat-friendly, environmentally sensitive land development. Local governments shall be required to be in compliance with the local program performance standards no later than June 1, 2012, subject to the provisions of paragraph 4 of this resolution.

3. Regional Outcome Measures and Metro Monitoring of Habitat Conditions

Metro shall develop regional outcome measures to evaluate the region's progress toward meeting the vision of conserving, protecting and restoring fish and wildlife habitat in the region. Upon Metro's adoption of a fish and wildlife habitat protection and restoration program, Metro shall begin immediate implementation of the non-regulatory program components described in paragraph 2, above, and paragraph 5, below. The Chief Operating Officer shall periodically assess the region's progress toward meeting the regional outcome measures. Not later than March 1, 2010, the Chief Operating Officer shall prepare and present to the Metro Council a written report on the region's progress toward meeting the regional outcome measures. Such report shall include a new analysis of habitat inventory in the region, using the same methodological approaches used to create the habitat inventory adopted by the Metro Council in Resolution No. 02-3218A, but allowing for the use of analytic and data improvements developed in the interim. The Metro Council shall hold at least three public hearings to review and consider the Chief Operating Officer's report. Not later than June 1, 2010, the Metro Council may adopt an ordinance to extend the time by which local governments are required to comply with the local program performance standards if the Metro Council concludes that the region has made substantial progress toward achieving the regional outcome measures described above.

4. Metro Technical Assistance to Local Governments

To help the region meet the regional outcome measures, as Metro implements the non-regulatory approaches described in paragraph 2, above, it shall provide technical assistance to local governments to help them develop and improve their local fish and wildlife habitat protection and restoration programs. Such technical assistance may include providing information about alternative low impact development practices, scientific analysis of local habitat conditions, the collection, organization and use of geographic information system data and mapping technologies, development of educational information and curricula, and review of local land use codes to identify current barriers to development approaches that benefit fish and wildlife habitat and potential modifications to benefit fish and wildlife habitat.

5. This Resolution is Not a Final Action

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 OAR 660-023-0050 (Programs to Achieve Goal 5).

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

David Bragdon, Council President

Approved as to Form:

DRAFT 10/7/04 5pm

Daniel B. Cooper, Metro Attorney

Metro Code
January 2004 Edition
Urban Growth Management Functional Plan

3.07.860 Exception from Compliance

A. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided for that purpose by the Chief Operating Officer. An application for an exception to the requirement in subsection 3.07.150D to increase dwelling unit and job capacity to the targets set forth in Table 3.07-1 must be filed between March 1 and March 31 of each calendar year in order to allow the Metro Council to consider the application concurrently with other such applications. Upon receipt of an application, the Council President shall set the matter for a public hearing before the Metro Council and shall notify MPAC, the Department of Land Conservation and Development and those persons who request notification of requests for exceptions.

B. The Metro Council shall hold a public hearing to determine whether the exception meets the following criteria:

1. Except as provided in paragraph (2) of this subsection, the Council may grant an exception if it finds:

- a. it is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
- b. this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;
- c. the exception will not reduce the ability of another city or county to comply with the requirement; and
- d. the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

2. The Council may grant an exception to the requirement in subsection 3.07.150D to increase dwelling unit and job capacity to the targets set forth in Table 3.07-1 if it finds:

- a. the city or county has completed the analysis of capacity for dwelling units and jobs required by subsections 3.07.150A, B and C;
- b. it is not possible to achieve the targets due to topographic or other physical constraints, an (Effective 9/22/04) 3.07 - 55 SEPTEMBER 2004 EDITION existing development pattern that precludes achievement of the 2040 Growth Concept, or protection of environmentally sensitive land; and
- c. this exception and other exceptions to the targets will not render the targets unachievable region-wide.

C. The Council may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. A term or condition must relate to the requirement of the functional plan to which the Council grants the exception. The Council shall incorporate the terms and conditions into its order on the exception.

D. The Council shall issue an order with its conclusion and analysis and send a copy to the city or county, MPAC, the Department of Land Conservation and those persons who

have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A). (Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 01-925E, Sec. 1; Ordinance No. 02-972A, Sec. 1.)

M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
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METRO

DATE: October 7, 2004
TO: MPAC
FROM: Dick Benner
RE: *Annexation*

Last year, the Metro legal and planning staffs, MPAC and MTAC began work on the section of the Metro Code (Chapter 3.09) on annexation of territory to cities, special districts and Metro and the incorporation of new cities to bring the code up to date and to improve it. During the course of the work, MTAC advised, and MPAC and the Metro Council agreed, that the effort be divided into two parts.

First Part:

Following review by MPAC, the Council adopted revisions to Chapter 309 to make it easier to add land to the Metro district and to clarify the process and criteria for incorporation of new cities (Ordinance No. 04-1033A, March 4, 2004). The Council acted on these provisions quickly in order to facilitate the urbanization of lands newly added to the UGB.

Second Part:

Following the advice of MTAC and MPAC, the Council postponed other revisions to Chapter 3.09 in order to take more time with the complexities of annexation law.

Proposed Action:

Re-commence the effort to improve the rest of the code on annexation. MTAC formed a subcommittee that worked on the changes made by Ordinance No. 04-1033A. The Metro legal and planning departments would like to work with the subcommittee on revisions to the rest of Chapter 3.09.

Attachment: Draft Code Revisions

Exhibit A to Ordinance No. 04-_____
Amendments to Chapter 3.09
Local Government Boundary Changes

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS 268.354. This chapter applies to all boundary changes within the boundaries of Metro **[or] and** any **[urban reserve designated by Metro prior to June 30, 1997] annexation of territory to the Metro boundary**. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (**UGB**).

3.09.020 Definitions

As used in this chapter, unless the context requires otherwise:

- (a) "Affected entity" means a county, city, or **[special]** district for which a boundary change is proposed or is ordered.
- (b) "Affected territory" means territory described in a petition.
- (c) "Approving entity" means the governing body of a city, county, city-county or district authorized to make a decision on a boundary change, or its designee.
- (d) "Boundary change" means a major or minor boundary change, involving affected territory lying within the jurisdictional boundaries of Metro and the urban reserves designated by Metro prior to June 30, 1997.
- (e) "Contested case" means a boundary change decision by a city, county or district that is contested or otherwise challenged by a necessary party.
- (f) "District" means a district defined by ORS 198.710 or any district subject to Metro boundary procedure act under state law.
- (g) "Final decision" means the action by an approving entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with all applicable criteria and which requires no further discretionary decision or action by the approving entity other than any required referral to electors. "Final decision" does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors or to declare the results of an election.
- (h) "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.
- (i) "Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district.
- (j) "Necessary party" means: any county, city or district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory, Metro, and any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

(k) “Petition” means a petition, resolution or other form of initiatory action for a boundary change.

(l) “Uncontested case” means a boundary change decision by an approving entity that is not challenged by a necessary party to that decision.

(m) “Urban services” means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

3.09.030 Uniform Notice Requirements for Final Decisions

(a) The following minimum requirements apply to all boundary change decisions by an approving entity. Approving entities may choose to provide more notice than required. These procedures are in addition to and do not supersede the applicable requirements of ORS Chapters 197, 198, 221 and 222 and any city or county charter for boundary changes. Each approving entity shall provide for the manner of notice of boundary change decisions to affected persons.

(b) An approving entity shall set a time for deliberations on a boundary change within 30 days after the petition is completed. The approving entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 45 days prior to the date of decision for major boundary changes and for those minor boundary changes which are not within the scope of adopted urban service provider agreements and for which a shorter notice period has not been agreed to by all necessary parties. However, notice of minor boundary changes to **[special]** districts may be mailed and posted at least 40 days prior to the proposed date of decision. Notice shall be published as required by state law.

(c) The notice of the date of deliberations shall: describe the affected territory in a manner that allows certainty; state the date, time and place where the approving entity will consider the boundary change; and state the means by which any interested person may obtain a copy of the approving entity’s report on the proposal. The notice shall state whether the approving entity intends to decide the boundary change without a public hearing unless a necessary party requests a public hearing.

(d) An approving entity may adjourn or continue its final decision on a proposed boundary change to another time. For a continuance later than 31 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least 15 days prior to the continued date of decision. For a continuance scheduled within 31 days of the previous date for decision, notice shall be adequate if it contains the date, time and place of the continued date of decision.

(e) An approving entity’s final decision shall be reduced to writing and authenticated as its official act within **[5] five** working days following the decision and mailed to Metro and to all necessary parties to the decision. The mailing to Metro shall include payment to Metro of the filing fee required pursuant to Section 3.09.110. The date of mailing shall constitute the date from which the time for appeal runs for appeal of the decision to the Metro Boundary Appeals Commission.

(f) Each county shall maintain a current map and list showing all necessary parties entitled to receive notice of proposed boundary changes. A county shall provide copies of the map, list, and any changes thereto, to Metro.

3.09.040 Minimum Requirements for Petitions

(a) A petition for a boundary change shall be deemed complete if it includes the following information:

- (1) The jurisdiction of the approving entity to act on the petition;
- (2) A narrative, legal and graphical description of the affected territory in the form prescribed by the Metro Chief Operating Officer;
- (3) For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk;
- (4) A listing of the present providers of urban services to the affected territory;
- (5) A listing of the proposed providers of urban services to the affected territory following the proposed boundary change;
- (6) The current tax assessed value of the affected territory; and
- (7) Any other information required by state or local law.

(b) A city, **[or] county or** Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

(a) Approving entities may establish an expedited decision process that does not require a public hearing **[consistent with this section]**. Expedited decisions are not subject to the requirements of Sections 3.09.030(b) and 3.09.050(a), (b), (c),(e) or (f). The expedited decision process may be utilized for minor boundary changes where the petition initiating the minor boundary change is accompanied by the written consent of one hundred percent (100%) of the property owners and at least fifty percent (50%) of the electors, if any, within the affected territory.

(b) **[T] Notwithstanding the notice requirements in subsection (b) of section 3.09.030,** the expedited decision process must provide for a minimum of 20 days notice to all interested parties. The notice shall state that the petition is subject to the expedited process. The expedited process may not be utilized if a necessary party gives written notice of its intent to contest the decision prior to the date of the decision. A necessary party may not contest a minor boundary change where the minor boundary change is explicitly authorized by an urban service[s] agreement adopted pursuant to ORS 195.065.

(c) At least seven days prior to the date of decision the approving entity shall make available to the public a brief report that **[addresses the factors listed in] complies with** Section 3.09.050(b). The decision record shall demonstrate compliance with the criteria **[contained] in [Sections] subsections [3.09.050](d)and (g) of Section 3.09.050.**

(d) Decisions made pursuant to an expedited process are not subject to appeal **[by a necessary party]** pursuant to Section 3.09.070.

3.09.050 Uniform Hearing and Decision Requirements for Final Decisions Other Than Expedited Decisions

(a) The following minimum requirements for hearings on **[boundary change decisions] petitions** operate in addition to all procedural requirements for boundary changes provided for under ORS chapters 198, 221 and 222. Nothing in this chapter allows an approving entity to dispense with a public hearing on a proposed boundary change when the public hearing is required by applicable state statutes or is required by the approving entity's charter, ordinances or resolutions.

(b) Not later than 15 days prior to the date set for a **[boundary change decision] hearing**, the approving entity shall make available to the public a report that addresses the criteria in subsections (d) and (g) **[below,] of this section** and **[that] includes [at a minimum] the following information:**

- (1) The extent to which urban services presently are available to serve the affected territory, including any extra territorial extensions of service;
- (2) **[A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;**
- (3) **A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;**
- (4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- ~~(5)~~ The proposed effective date of the decision.

(c) In order to have standing to appeal a boundary change decision pursuant to Section 3.09.070 a necessary party must appear at the hearing in person or in writing and state reasons why **[the necessary party believes]** the boundary change is inconsistent with the approval criteria. A necessary party may not contest a boundary change where the boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065. At any public hearing, the persons or entities proposing the boundary change shall have the burden to prove that the **[petition] proposal** meets the criteria for a boundary change.

(d) An approving entity's final decision on a boundary change shall include findings and conclusions **[addressing the following criteria] to demonstrate that the affected territory lies within the UGB and that the proposal is consistent with:**

- (1) **[Consistency with directly a]Applicable provisions in an urban service [provider] agreement [or annexation plan] adopted pursuant to ORS 195.065 or an annexation plan adopted pursuant to ORS 195.205;**
- (2) **[Consistency with directly a]Applicable provisions of any [urban] cooperative planning [or other agreements, other than agreements adopted pursuant to ORS 195.065,] agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;**

- (3) **[Consistency with specific directly applicable] Clear and objective** standards or criteria for boundary changes contained in **applicable** comprehensive land use plans and public facility plans;
- (4) **[Consistency with specific directly applicable] Clear and objective** standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;
- (5) **[Whether the proposed change will promote or not interfere with t]The** timely, orderly and economic provisions of public facilities and services; **and**
- (6) **[The territory lies within the Urban Growth Boundary; and**
- (7) **Consistency with other applicable] Clear and objective** criteria **[for] applicable to** the boundary change in **[question under] other** state and local laws.

(e) **[When] If** there is no urban service agreement **[adopted pursuant to ORS 195.065]** that **[is applicable] applies to the affected territory**, and a boundary change decision is contested by a necessary party, the approving entity shall **[also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of subsections (d) and (g) of section 3.09.050. The findings and conclusions adopted by the approving entity shall explain how these factors have been considered] demonstrate that[.];**

- (1) The **[relative financial, operational and managerial capacities of alternative]likely** providers of **[the disputed] urban services to the affected [area] territory have the financial, operational and managerial capacity to provide the services;**
- (2) The **[quality and quantity of the urban services at issue with alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers] likely providers of urban services to the affected territory can provide the necessary quality and quantity of service at a reasonable cost;**
- (3) **There are no [P]physical factors [related to the] that would prevent feasible** provision of urban services by **[alternative] likely** providers;
- (4) **[For proposals to create a new entity the feasibility of creating the new entity.**
- (5) **Plans to provide urban services to the affected territory will [The elimination or avoidance of] eliminate or avoid** unnecessary duplication of facilities;
- (6) **Economic, demographic and sociological trends and projections relevant to the provision of the urban services indicate that services are feasible [to] in the affected territory;**

- ([7]6) **[Matching t]The recipients of tax supported urban services [with] will, to the extent possible, be the payers of the tax;**
- ([8]7) **[The equitable a]Allocation of the costs to [alternative] likely urban service providers of serving [between] new development and prior development will be equitable]; and**
- (9) **Economies of scale**].
- ([10) **Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria of Section 3.09.050(d) considering Factors (1) through (9) above.]**

(f) A final boundary change decision by an approving entity shall state the effective date, which date shall be no earlier than 10 days following the date that the written decision is **[reduced to writing, and]** mailed to all necessary parties. However, a decision that has not been contested by any necessary party may become effective upon adoption.

(g) Only territory already within the defined Metro **[Urban Growth Boundary] UGB** at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and **[without] outside** the **[Urban Growth Boundary] UGB**.

3.09.060 Creation of Boundary Appeals Commission

(a) The Metro Boundary Appeals Commission is created to decide contested cases of final boundary change decisions made by approving entities. The Metro Council shall appoint the Commission which shall consist of three citizen members, one each to be appointed from a list of nominees provided to the Metro Council President at least 30 days prior to the commencement of each term by Clackamas, Multnomah and Washington counties, respectively. The Council shall appoint two of the members for a initial four-year term and one for a nominal two-year term, the initial terms to be decided by chance; thereafter, each commissioner shall serve a four year term. Each Commission member shall continue to serve in that position until replaced. Commission members may not hold any elective public office.

(b) The Metro Chief Operating Officer shall provide staff assistance to the Commission and shall prepare the Commission's annual budget for approval by the Metro Council.

(c) At its first meeting and again in its first meeting of each successive calendar year, the Commission shall adopt rules of procedure that address, among other things, the means by which a position is declared vacant and the means of filling a vacant position; and, the Commission at that first meeting shall elect a chairperson from among its membership, who shall serve in that position until a successor is elected and who shall preside over all proceedings before the Commission.

3.09.070 How Contested Case Filed

(a) A necessary party to a final decision that has appeared in person or in writing as a party in the hearing before the approving entity decision may contest the decision before the Metro Boundary Appeals Commission. A contest shall be allowed only if notice of appeal is served on the approving entity no later than the close of business on the 10th day following the date that the written decision is **[reduced to writing, authenticated and]** mailed to necessary parties. A copy of the notice of appeal shall be served on the same day on Metro together with proof of service on the approving entity, the

affected entity and all necessary parties. The notice of appeal shall be accompanied by payment of Metro's prescribed appeal fee. Service of notice of appeal on the approving entity, the affected entity and all necessary parties by mail within the required time and payment of the prescribed appeal fee shall be jurisdictional as to Metro's consideration of the appeal.

(b) An approving entity shall prepare and certify to Metro, no later than 20 days following the date the notice of appeal is served upon it, the record of the boundary change proceedings.

(c) A contested case is a remedy available by right to a necessary party. When a notice of appeal is filed, a boundary change decision shall not be final until resolution of the contested case by the Commission.

(d) A final decision of an approving entity is subject to appeal to the Commission by a necessary party when it is the last action that needs to be taken by the approving entity prior to the referral of the boundary change to the electors in those cases where approval of the electors is required or permitted.

3.09.080 Alternate Resolution

(a) On stipulation of all parties to a contested case made at any time before the close of the hearing before the Commission, the Commission shall stay further proceedings before it for a reasonable time to allow the parties to attempt to resolve the contest by other means.

(b) A contested case that is not resolved by alternate means during the time allowed by the Commission shall be rescheduled for hearing in the normal course.

3.09.090 Conduct of Hearing

(a) The Commission shall schedule and conduct a hearing on a contested case no later than 30 days after certification of the record of the boundary change proceedings.

(b) The Commission shall hear and decide a contested case only on the certified record of the boundary change proceeding. No new evidence shall be allowed. The party bringing the appeal shall have the burden of persuasion.

(c) The Commission shall hear, in the following order, the Metro staff report, if any; argument by the approving entity and the affected entity; argument of the party that contests the decision below; and rebuttal argument by the approving entity and the affected entity. The Commission may question any person appearing before it. Metro staff shall not make a recommendation to the Commission on the disposition of a contested case.

(d) The deliberations of the Commission may be continued for a reasonable period not to exceed 30 days.

(e) The Chairperson may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony. The Chairperson shall cause to be kept a verbatim oral, written, or mechanical record of all proceedings before the Commission.

(f) No later than 30 days following the close of a hearing before the Commission on a contested case, the Commission shall consider its proposed written final order and shall adopt the order by majority vote. The order shall include findings and conclusions on the criteria for decision listed in

subsections (d) and (g) of Section 3.09.050[(d) and (g)]. The order shall be deemed final when reduced to writing **[in the form adopted,]** and served by mailing on all parties to the hearing.

(g) The Commission shall affirm or deny a final decision made below based on substantial evidence in the whole record. The Commission shall have no authority to remand a decision made below for further proceedings before the approving entity, and may only stay its proceedings to allow for alternate resolution as provided for in this chapter.

3.09.100 Ex Parte Communications to the Boundary Appeals Commission

Commission members shall place in the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to them during the pendency of the proceeding on a contested case. A party to the proceeding at its request shall be allowed a reasonable opportunity to rebut the substance of the communication.

3.09.110 Ministerial Functions of Metro

(a) Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall be made available to the public at a price that reimburses Metro for its costs. Additional information requested of Metro related to boundary changes shall be provided subject to applicable fees.

(b) The Metro Chief Operating Officer shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor(s) and elections officer(s), the Secretary of State and the Oregon Department of Revenue.

(c) The Metro Chief Operating Officer shall establish a fee structure **[for]** establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, appeals to the Boundary Appeals Commission and for related services. The fee schedule shall be filed with the Council Clerk and distributed to all cities, counties and special districts within the Metro region.

3.09.120 Minor Boundary Changes to Metro's Boundary

(a) Minor boundary changes to the Metro Boundary may be initiated by Metro or the county responsible for land use planning for the affected territory, property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the minimum requirements of Section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

(b) Notice of proposed minor boundary changes to the Metro Boundary shall be given as required pursuant to Section 3.09.030.

(c) Hearings will be conducted consistent with the requirements of Section 3.09.050. When it takes action on a minor boundary change, the Metro Council shall consider the requirements of Section 3.09.050 and all provisions of applicable law.

(d) Minor boundary changes to the Metro Boundary may be made pursuant to the expedited process set forth in section 3.09.045.

(e) The following criteria shall apply in lieu of the criteria set forth in subsections (d) or (e) of section 3.09.050 to a minor boundary to Metro's boundary. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

(1) The affected territory lies within the UGB; and

(2) The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services.

(f) Contested case appeals of decisions regarding minor boundary changes to the Metro Boundary are subject to appeal as provided in Section 3.09.070.

3.09.130 Incorporation of a City that Includes Territory Within Metro's Boundary

(a) A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in section 3.09.030, the minimum requirements for a petition in section 3.09.040, the hearing and decision requirements in subsections (a), (c), and (f) of section 3.09.050, the contested case requirements and hearing provisions of 3.09.070, 3.09.080, 3.09.090 and 3.09.100, except that the legal description of the affected territory required by section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

(b) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.01.

(c) The following criteria shall apply in lieu of the criteria set forth in Section 3.09.050(d) and (e). An approving entity shall demonstrate that incorporation of the new city complies with the following criteria:

(1) At least 150 people reside in the territory proposed for incorporation, as required by ORS 221.020;

(2) No part of the territory proposed for incorporation lies within the boundary of another incorporated city, as prohibited in ORS 221.020;

(3) The petition complies with the requirements of ORS 221.031;

(4) The petitioner's economic feasibility statement complies with the requirements of ORS 221.035;

(5) If some of the territory proposed for incorporation lies outside the Metro UGB, that portion of the territory conforms to the requirements of ORS 221.034;

(6) The petitioner's economic feasibility statement indicates that the city must plan for average residential density of at least 10 dwelling units per net developable residential acre or such other density specified in Title 1 (one) and Title 11 (eleven) of the Urban Growth Management Functional Plan; and

(7) Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

Materials for agenda item #9 Healthy Centers Forum will be distributed at the MPAC meeting on October 13, 2004.