

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 4, 2004
Metro Council Chamber

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

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:02 p.m.

1. INTRODUCTIONS

Councilor Monroe introduced Robert Liberty, Metro Council Elect for District 6.

2. CITIZEN COMMUNICATIONS

There were none.

3. EXTERNAL QUALITY CONTROL REVIEW

Alexis Dow, Metro Auditor, presented her report on External Quality Control Review.

4. FIRST QUARTER FINANCIAL REPORT

Casey Short, Financial Planning, presented the First Quarter Financial Report. He gave specifics for each fund. He said we were falling short of projected revenues in some areas such as Parks. He noted attendance had been down at the Oregon Zoo and at Glendoveer Golf Course. He provided an overview of excise tax and the General Fund. They were expecting they would be about where they budgeted for with regards to excise tax. Councilor Burkholder asked for a follow-up from the Chief Operating Officer on the enterprise funds.

5. CONSENT AGENDA

5.1 Consideration of minutes of the October 28, 2004 Regular Council Meetings.

Motion:

Councilor Burkholder moved to adopt the meeting minutes of the October 28, 2004, Regular Metro Council.

Vote:

Councilors Burkholder, Monroe, Newman, Hosticka and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed. Councilor Park abstained from the vote and Councilor McLain was absent from the vote.
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6. ORDINANCES – FIRST READING

6.1 **Ordinance No. 04-1062**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule Recognizing \$1,586,918 in Grant Funds and Private Contributions for a Series of Specific Projects in the Regional Parks Operating Fund; Transferring \$19,765 from Contingency to Operating Expenses in the Regional Parks Operating Fund; Amending the FY 2004-05 Through FY 2008-09 Capital Improvement Plan; and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 04-1062 to Council.

7. RESOLUTIONS

7.1 **Resolution No. 04-3506**, For the Purpose of Directing the 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, Performance-based Regulations.

Motion:	Councilor Park moved to adopt Resolution No. 04-3506.
Seconded:	Councilor Newman seconded the motion

Council President Bragdon opened a public hearing on Resolution No. 04-3506.

Ray Jaindl, Assistant Administrator for the Natural Resources Division of the Oregon Department of Agriculture, 635 Capitol St NE, Salem, OR 97301 said he had been responsible for developing and implementing the State’s agricultural water quality management program. He understood that Metro was exploring the possibility of developing a program that was outcome based similar to the State’s agriculture water quality program for the fish and wildlife habitat program. He was asked to review a letter provided by Metro that was given to Council by the Tualatin Riverkeepers. He responded to Councilor Park regarding that letter (a copy of his response is in the record). In regard to their program, they had been pleased with the success of the outcome-based program. In general landowners were going above and beyond what was necessary and improvements were occurring. While land management changes were occurring, improvements in riparian condition thus water qualities would take time. They weren’t seeing as much progress as some individuals were expecting to see, but improvement was occurring. Thus it was more difficult to document this early stage of the program but more long term they were expecting to see change occur. This program had been recognized by Environmental Protection Agency (EPA) as a basis of agriculture’s implementation plan for total maximum daily loads. It was providing the flexibility necessary to adapt as needed. As he indicated earlier, they, in the industry, were pleased with the outcome to date. Outreach, incentives and volunteer efforts with a regulatory backstop based on conditions, not practices, had been received well by landowners and were resulting in good things. He recommended it as a template and a means to address natural resource issues for Metro to consider.

Councilor Park said Mr. Jaindl’s letter addressed different ways of measuring success. One of the ways that it was being looked at was how many plans they had in place versus how much were they actually seeing occur on the ground. He said Mr. Jaindl had gone into an explanation as to why the plans didn’t match with what was occurring on the ground and the reasons why. He asked Mr. Jaindl to address this issue.

Mr. Jaindl responded that Councilor Park was referring to a letter from the Tualatin Riverkeepers who documented the number of individual farm plans that landowners developed and had submitted for the department to review and approve. These were not required by landowners to develop but were a means that the department provided to them to give them some assurance that they were doing the right things based on their resources and their goals. Again, landowners were not required to do this but many developed these plans on their own either working with consultants or with the Natural Resource Conservation Service. Those plans were private and would not be submitted to the department. In addition to doing those things, many landowners were doing on the ground projects on their own. They weren't going to government agencies, they weren't receiving grants, they wanted to do good things for their land because it was important that the resource was maintained and improved for their own economic benefit. A lot of these things were occurring and they were individual. That was the way farmers were and they didn't really want to talk to government and provide that information but they would do it on their own. They saw a lot going on but not being reported. That was one thing that was not captured in the letter and which he tried to relay in his response to the letter when he reviewed the letter.

Councilor Hosticka asked about outcomes measured. Had he seen improvement?

Mr. Jaindl explained how their program was built and developed. It was conditioned based rather than practices based. Rather than asking individuals to implement various different things, they were saying they needed to see certain conditions improving on the ground. For example, with riparian areas, allow for the establishment and maintenance of vegetation appropriate to the site for stream banks stability and shade. Their responsibility was water quality not habitat. By providing that condition, landowners then had the ability to look at their operations and decide what series of practices they needed to utilize to achieve those conditions. He spoke to how they measured outcomes. First, complaints were a way to measure outcomes. They had a series of rules with enforceable backstops, and if someone was managing their lands such that those riparian conditions weren't being achieved then the regulatory backstop allowed them the means to work through it. They also had the voluntary outreach to help people understand these things so they didn't have to get to the complaint stage. Second, they had a monitoring program where they were looking at a subset of the riparian areas around the State and looking at how those conditions were changing. They were establishing the foundation right now. They would be monitoring those conditions in the future to see that improvements were being made. The final stage was looking at water qualities since that was their responsibility. The Department of Environmental Quality (DEQ) was the agency primarily responsible for measuring water quality data so they relied on them rather than duplicating their efforts. If there was something that was missing that they thought would augment the results, then they were seeking to find resources to amend or add to the monitoring that was going on in terms of those areas. Sometimes they worked with their local soil and conservation district, which were partners in these efforts. This worked out quite good because they were the local link with the landowners.

Jim Labbe, Audubon Society of Portland, 5151 NW Cornell Rd, Portland OR 97210 reiterated from his last testimony that he thought Resolution No. 04-3506 had some promising features. A copy of his testimony is included in the record.

Marc Liverman, NOAA Fisheries, Goal5TAC member, 525 NE Oregon St #421 Portland OR 97232 said he was very surprised to see this resolution come forward, in particular the memorandum to Metro Policy Advisory Committee (MPAC) that Council President Bragdon had written had actually raised quite a few concerns for him. The memo characterized their efforts so far as never reaching effective programmatic outcomes at the regional level and the fact

that that was a problem that required new direction. In fact, within that group over the years, they thought they were well underway to developing program options that were voluntary and otherwise that were very closing bearing fruit that would in fact be that programmatic outcome at the regional level that they had been looking for. He said as he read the resolution it looked like eight more years of struggling with other groups would be necessary to produce an outcome. One of the problems with the resolution itself was that he thought that it created a false and confusing dichotomy between regulatory and non-regulatory approaches. A regulatory approach was one that simply said that you shall, must or will do something. Anything else that said may, should or can was non-regulatory. A program that said you shall have local performance standards in place in eight years was a regulatory program. Those standards themselves, the examples that were given, were regulatory standards, such as, buffer widths and tree retention ordinances. He expressed concern about calling it a non-regulatory program. He felt it would create an approach, which would allow people to see whatever they wanted to see. He thought it would be far from resolving arguments, he thought it would create quite a few more arguments than it would put to rest. He talked about the function of SB 1010 which had to do with water quality. It was not habitat protection. He also had participated in those rulemaking discussions with Councilor Park and Mr. Jaindl. His job dealt with agriculture issues. His experience with the onset of this program was trying for the first dozen plans or so to get the plan to include the word salmon or habitat or refer to voluntary incentive programs like the Conservation Reserve and Enhancement Program that would pay landowners to set aside habitat buffers. Those were not included in the plan. A decision was made that that was outside the purview of that approach. Their support for it as a habitat tool was not well founded. What was really important there was the fact that Goal 4 under lied that and said that agriculture land was set-aside for an agriculture purpose. Greenspaces were important as agricultural land as development land and forestland and that should be the basis of this approach.

Council President Bragdon said he had never characterized this as a non-regulatory approach. He recognized the existence of local regulations. His attempt was to recognize the existence of local regulations.

Mike Ragsdale, Costa Pacific Communities, 28801 SW 10th Wilsonville, OR 97070 said he was here today as an employee of a developer who took great pride in the community as they developed Orenco Station and now Villebois in Wilsonville as well as an ex-Presiding Officer of the Metro Council and a member of the Oregon Legislature that carried the bill on the floor of the House that created Metro. When they designed the whole concept of Metro, this was what they had talked about. They had talked about creating an agency in the region that would be able to set high level goals and standards for the local communities. They intended for that to be done with recognition that the Council had two constituencies, the residents of the region and local governments. He saw that Metro was very clearing setting the goals and standards and allowing the local governments to deliver on that in a partnership that was fostered by Metro. He commended the Council for the drafters of this resolution. He urged the Council to support the concept. He would comment as the developer of Villebois in Wilsonville, that he saw two things. One was that they were working with a Goal 5 program that had been adopted by the City of Wilsonville and they were working excellently. They were requiring them to preserve wetlands and tree stands. He commended Council also for recognizing in the language that the local programs that had been adopted would be recognized. They were working with Wilsonville on their local program. He talked about the experience at Dammasch. One of the tasks that Council will have as they move forward with this resolution was to remember Metro would have a tremendous amount of work and responsibility to provide the support. The education and technical assistance must be Metro's. He urged, take this as a tool to get the problem addressed more effectively. Finally, he thought the timelines were inappropriate. He felt Metro needed to

step up to their responsibility. If they were going to take this new course, he urged fast tracking the process. He felt Metro needed to say to the partners in the environmental community and local governments that they were willing to take that burden, to take that responsibility, willing to play off the work that had already been done and enhance that, convert it to something that was this model. He urged tighter timelines.

Councilor Burkholder clarified what timelines he was referring to. Mr. Ragsdale said June of 2012 was too long. He suggested three years ought to be adequate for any government agency.

Warren Aney, 9403 SW 74th Ave Tigard, OR 97223 provided a copy of his testimony (a copy of which is included in the meeting record).

Amanda Fritz, Friends of Arnold Creek, 4106 SW Vacuna St Portland OR 97219, submitted a copy of her testimony (a copy of which is in the record). She urged rejection of Resolution No. 04-3506.

Ann Gardner, Schnitzer Investment Group, 3200 NW Yeon Portland OR 97296, said this was the right resolution at the right time. It was important for protection of the resources. This recognized the work that had already been done. Metro's role was significant to fill the gaps to ensure significant lands were protected. It was important that they get to a final resolution.

Councilor Park asked about an acquisition ballot measure. Was Schnitzer Investment Group still committed to helping with a ballot measure? Ms. Gardner said she wasn't present for the testimony so could not speak to the commitment made, but she said if they had made a commitment they would honor that commitment.

Teresa Huntsinger Coalition for a Livable Future, 310 SW 4th St #612 Portland OR 97204 commended the Council for listening to the community to allow further public testimony on this resolution. A copy of her testimony is included in the record.

Michelle Bussard, Johnson Creek Watershed Council, 1900 SE Milport, Milwaukie, OR 97222 said for over a decade Metro had worked with the community to create plans that met the objectives of Goal 5. We would need to use all materials available to us if we were to protect wildlife and habitat (a copy of her testimony is included in the record).

Kevin Kohnstamm, 3002 NW Luray Circle Portland OR 97210, said he was here in support of the Resolution, 04-3506. He talked about Metro's budget documents, which suggested that Metro had already spent about \$10 million on this program.

Councilor McLain asked where he had come up with that budget number. Mr. Kohnstamm said he had looked at Metro's budget documents since 1998.

Bob Clay, City of Portland 1900 SW 4th Ave Portland OR 97210 summarized Gil Kelley's written testimony (a copy of which is included in the record).

Councilor Park asked when he would suggest regulations kick in? Mr. Clay said they would look to achieve performance standards by 2008. Councilor Park clarified was that they would then kick in January 2009? Mr. Clay said they preferred July 2008.

Jennifer Thompson, US Fish and Wildlife Services 2600 SE 98th Ave Portland OR 97266 said they had opposed the resolution (a copy of her testimony is included in the meeting record).

Councilor Hosticka asked if the Department of Fish and Wildlife had a role in administering the current tax incentive programs for riparian areas?

Ms. Thompson responded that they didn't. That was done at the State level. Councilor Hosticka asked, by whom? Ms. Thompson responded, Oregon Department of Fish and Wildlife.

Councilor Park asked what would be the proper level of regulations against take and were they willing now to suggest a certain level of regulations for that so they had a baseline? He noted 37 only applied to State not federal.

Ms. Thompson said the species that were listed right now were not under their jurisdiction. That would be a question for NOAA fisheries but they did all get together with the Metro Council and lay out some options both formal and informal options that Metro could assist with. As far as their species go, they had a petition that they were looking at right now to list three species of lamprey that did occur in the Metro region. They had bald eagles that were listed in the region. There were some tools under the Endangered Species Act that could be used as they were being petitioned for listing, as well as Habitat Conservation Planning, Safe Harbor Agreement, and Candidate Conservation Agreements. There were potential funding sources available to assist with habitat conservation planning.

Councilor Park asked if the two branches of federal government were willing to give Metro a baseline amount so they had something to rely upon. They had been asking but not getting an answer.

Ms. Thompson said they typically worked with their partners and negotiated what was the right amount. They didn't hand people the rules to be implemented. If they were doing a habitat conservation plan, it was a long process. She said they sat down with all of the stakeholders and tried to reach some kind of resolution. It was a complex process.

Councilor Park said he took the answer was no. Ms. Thompson said no they did not have a template they could hand Metro.

Councilor McLain talked about Metro's restoration projects and asked how many millions of dollars had we spent since 1991 to work on these restoration projects?

Ms. Thompson responded that they had funded about 300 grant/restoration projects. They had spent over \$2.6 million. These were all leveraged dollars about three to five times with local contributions. In all they had spent about \$4.6 million dollars in this region for urban conservation.

Councilor Burkholder said, given the other areas the federal agency worked in such as Seattle, who was the responsible body that coordinated the issue? In other urban areas, who were the responsible bodies?

Ms. Thompson said in most cases local governments developed programs with often a county umbrella plan.

Councilor Burkholder said the reason he asked the question was they were trying to explore what the role of this government should be. He talked about what they were trying to accomplish.

Councilor McLain asked if they had a process where they could review the program.

Ms. Thompson said yes but the program had to be developed first to see if they met the standards. There was a great opportunity for Metro to provide a liaison role between the federal government and local jurisdictions.

Councilor Hosticka said they could learn from this experience about what Metro would have to do if they followed this resolution to give guidance to the local governments about how they would comply with Metro's standards. They were frustrated because the federal government was giving them a blueprint or clear idea about how to comply with their standards and yet Metro was turning around and saying that they were going to do that same thing between Metro and local governments. Hopefully they could learn what kind of different communications between different levels of government was helpful that could lead to a conclusion and not just leads to more frustration.

David Leal, US Fish and Wildlife Services 2600 SE 98th Ave Portland OR 97266 said he had worked with Ms. Thompson. He spoke to how Metro's role could influence ESA. A copy of his testimony is included in the record.

Council President Bragdon said for six years he had been hearing about projects from the federal government. They had been waiting for a regional guideline. Mr. Leal said they had to have more information to consider the program.

John Marshall, US Fish and Wildlife Service, 2600 SE 98th Ave Portland OR 97266 said he dealt with the Federal Coordination Act. We had regulations and voluntary programs. He was concerned that Metro might have jumped the gun. He said they had recognized that the regulatory world needed to change. He said the City of Eugene was a great success example of Goal 5. We needed to look at a making a streamline process where the resources were given certainty of protection.

Councilor Newman asked if their agency was opposed to the resolution. He asked for clarification, were they commenting as individuals that they opposed to the resolution or was the agency opposed to it?

Mr. Marshall said the Oregon State Office was opposed to the resolution.

Brian Wegener, Tualatin Riverkeepers, 16507 SW Roy Rogers Rd Sherwood OR 97140 opposed the resolution and provided a copy of his testimony for the record.

Councilor Hosticka wanted to follow-up on the question that Councilor Newman asked and suggested Jennifer Thompson respond to how the federal agency would look upon the resolution and comment it on it in favor or opposition. Under what circumstances would a federal agency look at an action of Metro and then comment on it in favor or opposition?

Ms. Thompson explained that if Metro wanted to get coverage for species that were currently listed and a take permit for the activities that would be allowed, Metro would submit a package that would show what they were proposing to do and what the effects would be on the species. They would then rank it against criteria that were set out. She had included the process with the criteria in a letter she had previously submitted.

Councilor Hosticka wanted to understand the posture of the agency. He didn't know if they were taking a political stance here, saying that they opposed a resolution that was introduced in this body or whether they were taking an administrative stance which said under the laws and rules they operated, that they reviewed Metro's actions and found them wanting in some way.

Ms. Thompson explained that they worked on the Fish and Wildlife Coordination Act and they worked on the Endangered Species Act. They looked for opportunities to work collaboratively with people. It was looking at this program and the opportunities and looking at the way they could work together to conserve their trust resources. They felt that Metro could do this if they had a regulatory program combined with a non-regulatory piece.

Councilor Hosticka said their relationship with US Fish and Wildlife might be a mirror of their relationship with local governments if they adopted a program. It helped them understand their relationship with other governments.

Ms. Thompson said they worked on proactive collaborative programs. They were trying to get at conservation.

Councilor Park said if Metro adopted this resolution and had a program, would US Fish and Wildlife consider the program? Ms. Thompson responded that they would look at the program.

Councilor Park asked Mr. Wegener, in terms of reading the resolution, he was aware that there were regulations within this as currently proposed.

Mr. Wegener responded that they were aware that regulations were put off and not being enforced until 2012. Councilor Park asked Mr. Wegener again, he was aware that regulations were included in the resolution. Mr. Wegener said yes, eventually.

Council President Bragdon explained why Councilors were asking these questions.

Dana McCullough, 5385 NW Jackson School Rd Hillsboro OR 97123 said she was a homeowner and property owner by McKay Creek. They had an issue with the amount of land that been declared animal habitat. They had noticed some degradation of fish and frogs (a copy of her testimony is included in the record).

Dana Krawczuk, Ball Janik 101 SW Main St Suite 1100 Portland OR 97212 summarized her letter for the record.

Councilor McLain asked for clarification on her testimony. Ms. Krawczuk responded to her question.

Jonathan Schlueter, Westside Economic Alliance, Suite G 3 10200 SW Nimbus Portland OR 97223 spoke to valuing employment as well as nature. Westside Economic Alliance supported the resolution and an acquisition ballot measure. He had also suggested looking outside the boundary and looking to other places in the State. He spoke to the testimony that said we must preserve every tree and habitat. He gave an example of Pacific University with its tree canopy. He felt the resolution allowed the communities to do the right thing.

Cindy Catto AOC 9450 SW Commerce Wilsonville OR 97070 summarized her written testimony for the record.

Councilor McLain asked about legal challenges for local programs? Ms. Cato responded to her question. Councilor McLain explained why she asked the question and gave an example of Title 3.

Councilor Hosticka said he didn't think Measure 37 said they could not adopt regulations. They were working on developing this resolution. He hoped that Ms. Catto would continue to work with Metro.

Carl Axelsen, 11405 SW 33rd Portland OR 97219 said he worked in the natural resources area. He was opposed to this resolution but was keeping an open mind. He had talked with Oregon Department of Forestry. He talked about clear cutting areas outside the Urban Growth Boundary (UGB). He had asked the property owner why he had cut his trees. He had learned that a lot of the good behavior and poor behavior was not affected by regulation. He also believed you could continue with a non-regulatory program and still have a regulatory backstop. Finally, he was confident that there was a better way to get outcomes. He urged taking the time to study this before they voted on the resolution. He didn't see the region-wide regulations in the resolution.

John Gibben, 9822 SW Quail Post Portland OR 97219 said he lived in a planned community that was developed in the 1970s. He had clients who came to them with issues of regulatory takings. He said land use planning was a tool. He believed that regulation can be a component of Goal 5 but as an attorney who lived in a home-owners association, he found that they weren't self regulating even if the home owners associations had regulations. Regulations didn't necessarily work. He felt that a voluntary program was essential. He talked about Measure 37 and its impact. He gave an example of a fireman who had created a Christmas Tree Farm near Oregon City and then was unable to cut his trees. He was totally wiped out.

Councilor Hosticka talked about Measure 37 and appreciated Mr. Gibben's testimony.

Charlotte Lehan, Mayor of Wilsonville, 29786 Lehan Ct Wilsonville, OR 97070 said the City of Wilsonville had an acknowledged Goal 5 plan. They had relied on Metro's leadership to do their program. They were now thinking other jurisdictions were coming along. This resolution appeared to be a retreat on Goal 5 or at least a significant detour. If this non-regulatory approach was going to work, the only way to do that was with a bold incentive and education program that had some meat in it. There was no substance in this resolution. She gave an example of her concerns about the resolution. The main thing was that there wasn't enough substance for a non-regulatory approach. She also thought the timeline was too far out.

Councilor Burkholder asked Mayor Lehan about her concern. Mayor Lehan said they thought that Metro was having a region-wide program. They also didn't want to be the only jurisdiction with a strong regulatory program.

Kathleen Havane, 4707 SE Rex Dr Portland OR 97206, said she was a short term resident of Portland. She worked for a small reforestation company in Tigard. She shared that when she read the resolution, she was disappointed to see there was no statement addressing business developers and second, her comments related to the incentive program for businesses. She felt three public hearings weren't enough to get public input. She suggested looking at the LEEDS program to rate developers.

Council President Bragdon appreciated her suggestions and asked staff to follow up on her suggestions.

Tom Wolf, Trout Unlimited, 22875 NW Chestnut, Hillsboro OR 97124 said they opposed the resolution. He reiterated that as he read Measure 37, he didn't believe there should be no regulation. He said people were scared that they might not be compensated for losses. He believed regulations were a tool. He said Metro was the guiding force for jurisdictions. He felt a non-regulatory program would be a mistake. He suggested waiting to see how Measure 37 played out. The timeline for compliance needed to be set at June 2007.

Councilor Park asked if he believed regulations should kick in, in June 2007 if outcomes were being met? Mr. Wolf said if outcomes were being met, he still thought there needed to be regulation in place.

Patrice Snow, Oregon Department of Fish and Wildlife, 3406 Cherry St NE Salem OR 97303, said she was a member of Goal5TAC. She was surprised when the resolution was proposed. Metro needed to have all of the tools available to it for the Goal 5 program. They were supportive of incentives. She talked about two programs they were looking at amending. She also said they were supportive of restoration. They were concerned that if you eliminate regulation would result in further loss in the region of habitat. They were also concerned that if Metro changed course it would undermine the current existing Goal 5 programs. They urged keeping a regulatory component to the program

Councilor Park asked when she recommended regulations kick in? Ms. Snow said she supported the recommendations of the Goal5TAC, they recommended 2007. Councilor Park asked what if all of the outcomes were being accomplished. Ms. Snow said if they were meeting all of the goals of the Goal 5 program, they could reexamine. She was concerned that Metro would lose tools without regulation.

Councilor Hosticka asked what her experience had been with the tax incentive programs and their success. Ms. Snow responded that the incentive programs had not been widely used and explained why. Council President Bragdon said she had made a comment that she was unaware of any Goal 5 programs that were voluntary programs. He clarified that there were currently no voluntary programs in the region. He clarified that she was aware this program would not cause those 24 cities to have voluntary programs? He asked if these were her opinion or the opinion of the Kulongoski administration? Ms. Snow said she could not speak for the governor but she was speaking for ODFW. Councilor Park asked if she had run these comments by her commission? Ms. Snow responded no, they typically didn't when they were commenting on these sorts of things. She summarized what the commission took action on. Councilor Park asked whom then was she speaking for? Ms. Snow said she spoke for the Division. The policy decisions that addressed specifically the State's program went to the Commission. She gave examples of these decisions. Council President Bragdon asked if another State agency might have another opinion? Ms. Snow responded that was correct. She believed DEQ had spoken to Council.

Councilor Hosticka added that this was similar to when Metro's staff talked to other city councils whether actions were to be harmonious with policies adopted by Metro.

Beverly Bookin, CREEC 1020 SW Taylor #760 Portland OR 97205 provided testimony for the record supporting the passage of the resolution.

Peter Livingston, Columbia Corridor Association 1211 SW 5h Ave Suite 1600 Portland OR 97214 said he was here on behalf of the Columbia Corridor Association. He had already submitted testimony.

Council President Bragdon closed the public hearing.

Councilor Hosticka said he thought the resolution had helped accelerate the conversation. The resolution would not slow down the development of the program. He was hopeful that the resolution was the framework or vehicle for the program.

Councilor McLain thanked the audience for coming. She agreed that the resolution helped focus on what the third step should be. They had been working on this issue for 8 years. This was not the end but just the beginning of the opportunities for the third stage, the program itself. She talked about the testimony she had heard today. She raised the issue of basin or watershed approaches. They didn't want any gaps. There had been a lot of talk about Measure 37. Everyone was guessing what it meant. They weren't voting on any regulations. They were voting on compensation.

Councilor Park said it had been an interesting debate. One of his questions he had asked was when regulations would kick in. Metro didn't do regulations without their local partners. He talked about the different timelines that local jurisdictions had to implement their Goal 5 program. He had tried to pick a date that everyone could agree with. There was a wide range of choices as to the date regulations would kick in.

Councilor Monroe asked when Council President Bragdon would schedule this for adoption. Council President Bragdon said he had scheduled it for November 18, 2004.

Councilor McLain added her comments about the variation in dates.

8. CONTRACT REVIEW BOARD

Council President Bragdon suggested reversing consideration of the two resolutions. There was no objection.

8.2 Resolution No. 04-3503, For the Purpose of Authorizing the Chief Operating Officer to Execute Contract No. 926063 for Operation of the Metro South and Metro Central Transfer Stations

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3503.
Seconded:	Councilor Hosticka seconded the motion

Councilor Monroe summarized the resolution. He urged adoption.

Council President Bragdon opened a public hearing.

Warren Rosenfeld, Calbag Metals Co, Managing member of ORR, 2495 NW Nicolai, Portland OR 97210 said they had already received detailed information on their objections (a copy of his testimony is included in the record).

Council President Bragdon closed the public hearing.

Councilor Park thanked the Council for holding this over until this week. He appreciated the decision had been difficult. He said the staff had recommended not extending the contract with Browning-Ferris Industries (BFI) so they went out for an Release For Proposal (RFP). He was trying to understand the process.

Mike Hogle, Solid Waste and Recycling Director, shared the process they had gone through. They had wanted higher levels of recovery so they went out for an RFP.

Councilor Park asked what they were getting that was better with this contract?

Mr. Hogle said there was new equipment that would last longer. They were also requiring additional environmental sustainability. There would also be additional training.

Council President Bragdon asked about the difference between a letter of credit, surety bond or a corporate guarantee.

Marv Fjordbeck, Senior Attorney, said these were various instruments of credit. They provided an increased level of security and had been asked for because it was a new entity and they were unsure of the ability of the company to fulfill the contract. They had requested a corporate guarantee. Council President Bragdon said he understood they had offered a letter of credit. Mr. Fjordbeck said yes. Mr. Hogle said a condition of the RFP was a letter of credit or a corporate guarantee. They had asked for a corporate guarantee because of the uncertainty of the ability of the company to fulfill the contract.

Councilor Park expressed his concern. He would be more comfortable if they asked for this to be rebid. He wanted to make sure the process was done correctly.

Councilor McLain said these processes were technical and complicated. She spoke to lessons learned. She thought, looking at the letter of the law, the staff had fulfilled their responsibilities. They had asked the staff to deal with additional concerns in the negotiations. They had done that.

Councilor Burkholder said there were two issues, did they feel the negotiations were done correctly and ORR did not appeal. Were they getting the best deal possible? He felt that we were getting more than the original contract. He was in favor of this contract.

Council President Bragdon said he would be voting no on this resolution. He had no dissatisfaction with the existing vendor. He felt there was a shadow of doubt in his mind both with the negotiations and outcome.

Councilor Monroe reviewed the facts, the RFP went out, ORR got the highest rating, ORR contended that the negotiations were cut off too soon but ORR did not appeal, so the second bidder was considered. He said their options were to adopt the resolution or go out for bid again and spend both resources and money. He urged adoption.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe voted in support of the motion. The vote was 4 aye/2 nay, the motion passed with Councilor Park and Council President Bragdon voting no and Councilor Newman absent from the vote.
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8.1 **Resolution No. 04-3502**, For the Purpose of Authorizing the Chief Operating Officer to Execute Change Order No. 6 to the Contract For Operation of the Metro South and Metro Central Transfer Stations.

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3502.
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Seconded:	Councilor Hosticka seconded the motion
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Councilor Monroe explain the resolution and urged support.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Monroe, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Newman absent from the vote.
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9. CHIEF OPERATING OFFICER COMMUNICATION

He had no comments

10. COUNCILOR COMMUNICATION

Councilor Burkholder passed out a memo from Mike Wetter to the Metro Council concerning the Strategic Planning Outreach.

Council President Bragdon asked what they would be asking of the stakeholders. Councilor Burkholder said they would be asking the three questions included in the memo.

Councilor McLain talked about who you were asking and what hat they wore. She hoped that they would be asking a group of citizens as well as local officials.

Councilor Burkholder said this was looking at how we did in providing our services. There would be additional focus groups.

Councilor McLain reminded that there was more than one customer.

Council President Bragdon asked if they were expected to be available for these focus groups.

Councilor Burkholder said Council was not expected to be present. They wanted unvarnished feedback.

Councilor McLain said the Regional Water Consortium would be meeting at the beginning of December.

Council President Bragdon reminded that next Thursday the building would be closed for Veterans Day. The next Council meeting was scheduled for November 18th at 4:00pm.

11. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:58 p.m.

Prepared by

Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF NOVEMBER 4,
2004**

Item	Topic	Doc Date	Document Description	Doc. Number
5.1	Minutes	10/28/04	Metro Council Meeting Minutes of October 28, 2004	110404c-01
7.1	Letter	11/3/04	To: Metro Council From: Dana Krawczuk, Ball Janik Re: supports Resolution No. 04-3506, Goal 5 Fish and Wildlife protection program	110404c-02
7.1	Letter	11/3/04	To: Metro Council From: Andrew Schaedel, Water Quality Manager, DEQ, Northwest Region Re: comments on Goal 5, Fish and Wildlife protection program	110404c-03
4	Report	July through September 2004	To: Metro Council From: Casey Short, Financial Planning Re: FY 2004-05 Quarterly Report First Quarter	110404c-04
7.1	Letter	10/29/04	To: Council Park From: Ray Jandl, Assistant Administrator Natural Resources Division Department of Agriculture State of Oregon	110404c-05
7.1	Letter	11/3/04	To: Metro Council From: Warren Aney, Certified Wildlife Biologist, The Wildlife Society Re: recommendations concerning Res No. 04-3506 and Goal 5 program	110404c-06
7.1	Letter	11/4/04	To: Metro Council From: Michelle Bussard, Executive Director Johnson Creek Watershed Council Re: Res No 04-3506 Goal 5	110404c-07
7.1	Testimony	11/4/04	To: Metro Council From: Teresa Huntsinger, Coalition for a Livable Future Re: comments on Goal 5 and Res No 04-3506	110404c-08
7.1	Testimony	11/4/04	To: Metro Council From: Amanda Fritz Re: opposes Res No 04-3506, Goal 5	110404c-09
7.1	Testimony	11/1/04	To: Metro Council From: Amanda Fritz Re: Goal 5 and comments on Res No 04-3506	110404c-10
7.1	Letter	11/4/04	To: Metro Council From: Kemper McMaster, State Supervisor, US Department of Interior Fish and Wildlife Service Re: Testimony presented by Jennifer Thompson, John Marshall and David Leal opposing Res No 04-3506 Goal 5	110404c-11
7.1	Testimony	11/4/04	To: Metro Council From: David Leal, Fish and Wildlife Biologist with the US	110404c-12

			Fish and Wildlife Service Re: Goal 5 program	
7.1	Letter	11/4/04	To: Metro Council From: Brian Wegener and Sue Marshall, Tualatin Riverkeepers Re: Res No 04-3506 and Goal 5	110404c-13
7.1	Testimony	11/4/04	To: Metro Council From: Cindy Cato, Associated General Contractors Re: comments on Res No 04-3506 and Goal 5	110404c-14
7.1	Testimony	11/4/04	To: Metro Council From: Dana McCullough Re: Goal 5	110404c-15
7.1	Testimony	11/4/04	To: Metro Council From: Beverly Bookin, CREEC Re: Goal 5 and Res No 04-3506	110404c-16
8.2	Memo	No date	To: Metro Council From: Warren Rosenfeld, managing member of Oregon Resource Recycling Re: commenting on the RFP process for the transfer station contract	110404c-17
8.2	Letter	11/4/04	To: Metro Council From: Dean Alterman Lane Powell Spears Luberski Re: commenting on the RFP process for the transfer station contract	110404c-18
10	Memo	11/3/04	To: Metro Council From: Mike Wetter, Assistant to the President Re: Strategic Planning Outreach	110404c-19
7.1	Memo	22/4/04	To: Metro Council From: Jim Labbe, Audubon Society of Portland Re: Res No 04-3506 and Goal 5	110404c-20