

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL WORK SESSION MEETING
DATE: November 30, 2004
DAY: Tuesday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

- 2:00 PM 1. DISCUSSION OF AGENDA FOR COUNCIL
REGULAR MEETING, DECEMBER 2, 2004/
ADMINISTRATIVE/CHIEF OPERATING OFFICER
AND CITIZEN COMMUNICATIONS**
- 2:15 PM 2. MEASURE 37 DISCUSSION**
- 3:00 PM 3. GOAL 5 AMENDMENTS**
- 3:45 PM 4. COUNCILOR BRIEFINGS/COMMUNICATIONS**

ADJOURN

Agenda Item Number 3.0

GOAL 5 AMENDMENTS

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

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

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:

Daniel B. Cooper, Metro Attorney

PROPOSED BURKHOLDER AMENDMENTS
Resolution No. 04-3506

Amendment No. 1. Paragraph 3 of the resolution shall be amended as follows:

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. Not later than the second anniversary of the effective date of Metro's Program to Achieve Goal 5, and each anniversary thereafter until, and including, such anniversary in 2009, ~~the~~ Chief Operating Officer shall ~~periodically prepare and present to the Metro Council a written report on the assess~~ the region's progress toward meeting the regional outcome measures. Not later than March 1, 2010, the Chief Operating Officer also 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 2010 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.

Amendment No. 2.

- (a) The following language shall be inserted as paragraph 4 of the resolution and the subsequent paragraphs shall be renumbered accordingly:

“4. Local Governments to Prepare Plans to Meet Regional Outcome Measures

Local governments shall prepare plans demonstrating how they will meet the regional outcome measures described in paragraph 3 of this resolution. Not later than the second anniversary of the effective date of Metro's Program to Achieve Goal 5, local governments shall submit such plans to Metro for review.”

- (b) Former paragraph 4 of the resolution (renumbered paragraph 5 pursuant to section (a) of this amendment) shall be amended as follows:

To help the region meet the regional outcome measures, as Metro implements the non-regulatory approaches described in paragraph 2, above, and as local governments develop plans to demonstrate how they will meet the regional outcome measures as described in paragraph 4, above, ~~the~~ Metro 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.

PROPOSED NEWMAN AMENDMENT
Resolution No. 04-3506

Amendment No. 1.

- (a) The title of the resolution shall be amended as follows:

FOR THE PURPOSE OF REVISING METRO'S PRELIMINARY GOAL 5 ALLOW, LIMIT, OR PROHIBIT DECISION; AND DIRECTING THE CHIEF OPERATING OFFICER TO DEVELOP A FISH AND WILDLIFE HABITAT PROTECTION AND RESTORATION PROGRAM THAT RELIES ON A NON-REGULATORY EFFORT TO IMPROVE HABITAT PRIOR TO ANY IMPLEMENTATION OF NEW REGIONAL, PERFORMANCE-BASED REGULATIONS BALANCED REGULATORY AND INCENTIVE-BASED APPROACH

- (b) The following paragraph shall be added to the resolution as the final recital:

WHEREAS, based on further review and consideration of the Draft Phase 2 ESEE Analysis, Metro is now prepared to revise its preliminary decision of where to allow, limit, or prohibit development on regionally significant fish and wildlife habitat lands and impact areas and, based on that revised decision, to develop a Program to Achieve Goal 5;

- (c) The following paragraph shall be added to the resolution as new paragraph 1:

1. Revised Allow-Limit-Prohibit Decision

Based upon and supported by the Metro Council's further review and analysis of the economic, social, environmental, and energy consequences of decisions to allow, limit, or prohibit conflicting uses in identified fish and wildlife habitat resources and impact areas, on the technical and policy advice Metro has received from its advisory committees, and on the public comments received regarding the ESEE analysis, the Metro Council concludes that the preliminary allow, limit, and prohibit decisions described in Exhibit A best reflect the appropriate ESEE tradeoffs for the region. The Council's revised preliminary decision reflects the conclusion that a limit decision is appropriate for Class I and Class II riparian habitat, but that an allow decision is appropriate for all other habitat classes.

- (d) The document attached to this proposed amendment and identified as "Exhibit A to Resolution No. 04-3506A" shall become Exhibit A to the resolution.

- (e) Paragraph 2 of the introduced resolution shall be amended as follows:

2. ~~Development of Local Program Performance Standards and Timeline for Compliance~~ Direct Staff to Develop Regulatory Program for Class I and II Riparian Habitat

The Metro Council directs staff to develop a regulatory program to protect and restore Class I and II riparian habitat consistent with the revised allow, limit, and prohibit decision described in Exhibit A, with the factors described in Exhibit C to Resolution No. 04-3440A, and with the provisions of this paragraph. The regional fish and wildlife habitat protection and restoration program. Such a program shall establish local program performance standards for the protection and restoration of Class I and II riparian habitat 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 Class I and II riparian 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 Class I and II riparian 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, provided that the local government can demonstrate that its program will meet the performance standards. 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: two years after acknowledgment by the Oregon Land Conservation and Development Commission of Metro's Program to Achieve Goal 5.

- (f) Paragraph 1 of the introduced resolution shall be renumbered as paragraph 3 and shall be amended as follows:

~~13. Metro's Program Shall Rely Primarily on Education, Incentive, Restoration and Acquisition Programs~~
Direct Staff to Develop Non-Regulatory Program for All Habitat

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 shall be consistent with the factors described in Exhibit D to Resolution No. 04-3440A, shall have a particular focus on non-regulatory actions that can be taken to preserve and restore Class A and B upland wildlife habitat, Class III riparian habitat, habitats of concern, and impact areas, and shall include:

a. Education and Incentive Programs

Metro's program shall be focused, first and foremost, focus 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 no later than the general election to be held in November 2006, 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. Such a program shall include "local share" amounts dedicated for use by any local government in the region that has adopted its own non-regulatory habitat protection and restoration incentive program. As staff develops the regional habitat property acquisition program it shall further develop and clarify clear and objective standards to determine the types of local non-regulatory incentive-based programs that are sufficient to qualify a local government to receive its local share of the acquisition bond proceeds.

(g) Paragraph 4 of the introduced resolution shall be amended as follows:

To help the region meet the regional outcome measures achieve the program's vision "to conserve, protect and restore a continuous ecologically viable streamside corridor system . . . in a manner that is integrated with the surrounding urban landscape," as Metro implements the regulatory and non-regulatory approaches described in paragraph 2, above this resolution, 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.

EXHIBIT A TO RESOLUTION NO. 04-3506A

REGULATORY PROGRAM

Based on the results of the Phase II ESEE analysis, public comments, and technical review, Metro Council recommends that the following allow-limit-prohibit designations form the basis for a regulatory program to protect fish and wildlife habitat.

Fish & wildlife habitat classification	High Urban development value	Medium Urban development value	Low Urban development value	Other areas
	Primary 2040 components, ¹ high employment value, or high land value ⁴	Secondary 2040 components, ² medium employment value, or medium land value ⁴	Tertiary 2040 components, ³ low employment value, or low land value ⁴	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	ML / A ⁵	SL	SL	SL / SL+ ⁶
Class II Riparian/Wildlife	LL / A ⁵	LL	ML	ML / SL+ ⁶
Class III Riparian/Wildlife	A ⁷	A ⁷	A ⁷	A ⁷
Upland Wildlife	A ⁷	A ⁷	A ⁷	A ⁷
Impact Areas	A ⁷	A ⁷	A ⁷	A ⁷

¹Primary 2040 components: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

²Secondary 2040 components: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

³Tertiary 2040 components: Inner and outer neighborhoods, Corridors

⁴Land value excludes residential lands.

⁵Apply allow treatment to the International Terminal (IT) site because Council finds the site's special economic importance outweighs its resource values and direct staff to determine if there are other similarly situated sites.

⁶Apply more strict protection (SL+) to parks designated as natural areas in Class I and II riparian habitat.

⁷Develop aggressive, non-regulatory, incentive-based programs to preserve and restore Class III riparian habitat, upland habitat, habitats of concern, and impact areas.

Key to abbreviations

SL = strictly limit

ML = moderately limit

LL = lightly limit

A = allow

NATURE-FRIENDLY NEIGHBORHOODS PROPOSAL,
AMENDMENT TO RES. NO. 04-3506
INTRODUCED BY COUNCILOR CARL HOSTICKA

Amendment No. 1.

- (a) The title of the resolution shall be amended as follows:

~~FOR THE PURPOSE OF DIRECTING THE CHIEF OPERATING OFFICER TO DEVELOP A FISH AND WILDLIFE HABITAT PROTECTION AND RESTORATION PROGRAM THAT RELIES ON A NON-REGULATORY EFFORT TO IMPROVE HABITAT PRIOR TO ANY IMPLEMENTATION OF NEW REGIONAL, PERFORMANCE-BASED REGULATIONS~~

- (b) The following paragraph shall be added to the resolution as the third recital:

WHEREAS, Metro has committed in the Regional Urban Growth Goals and Objectives (RUGGOs) to “manage watersheds to protect and ensure the integrity of streams, wetlands and floodplains, and their multiple biological, physical and social values and that a region-wide system of linked significant wildlife habitats should be preserved, restored and managed to maintain the region’s biodiversity;” and

- (c) The final recital of the resolution shall be amended as follows:

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~~ a combination of tools and strategies, and our progress toward meeting those goals should be annually measured; ~~before local governments are required to comply with any new rules or regulations to improve performance over time through adaptive management;~~ now therefore,

- (d) Paragraph 1(a) of the resolution shall be amended as follows:

Metro’s program shall be ~~focused, first and foremost, on creating~~ include 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.

- (e) Paragraph 1(b) of the resolution shall be deleted and replaced with the following:

The Metro Council intends to develop, and take before the voters for approval no later than the general election to be held in November 2006, 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. Such a program shall include “local share” amounts dedicated for use by any local government in the region that has adopted its own non-regulatory habitat protection and restoration incentive program. As staff develops the regional habitat property acquisition

program it shall further develop and clarify clear and objective standards to determine the types of local non-regulatory incentive-based programs that are sufficient to qualify a local government to receive its local share of the acquisition bond proceeds.

- (f) Paragraph 2 of the resolution shall be amended as follows:

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 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. 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, 2007 or two years after acknowledgment by the Oregon Land Conservation and Development Commission of Metro's Program to Achieve Goal 5, whichever is the later date. 2012, subject to the provisions of paragraph 4 of this resolution.

- (g) Paragraph 3 of the resolution shall be amended as follows:

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 annually assess the region's progress toward meeting the regional outcome measures and. 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.

- Comparison of:**
- 1. Resolution No. 04-3506 (Bragdon/Park);**
 - 2. Hosticka's Nature-Friendly Neighborhoods Proposal (Amendment to Res. No. 04-3506);**
 - 3. Newman Amendment; and**
 - 4. Burkholder Amendments.**

Common Features

1. Development of non-regulatory program elements including education, incentive, restoration and acquisition components.
2. Development of regulatory program element based on local program performance standards. Regulatory component will both provide flexibility to allow local governments to come up with their own unique approaches, provided they will meet the performance standards, and will include a model ordinance that local governments may adopt without further review, if they choose not to expend any additional resources toward program development.
3. Metro will seek LCDC acknowledgment of its program.
4. Metro to provide technical assistance to local governments to assist them in the development of regulatory and non-regulatory aspects of local programs.

Differences are expressed in the chart on the following page.

Differences Between Original and Proposed Amendments to Resolution No. 04-3506

<u>Program Feature</u>	<u>Resolution No. 04-3506 (Bragdon/Park)</u>	<u>Nature-Friendly Neighborhoods Proposal (Hosticka)</u>	<u>Newman Amendment</u>	<u>Burkholder Amendment</u>
Acquisition bond measure	Intent to develop and seek voter approval expressed; no date certain.	Intent to develop and seek voter approval no later than Nov. 2006.	Intent to develop and seek voter approval no later than Nov. 2006. To include local share available to local governments that have adopted their own non-regulatory incentive programs.	Intent to develop and seek voter approval no later than Nov. 2006.
Regionally significant habitat covered by regulatory program	All habitat covered (Council's May 2004 preliminary ALP decision unchanged).	All habitat covered (Council's May 2004 preliminary ALP decision unchanged).	Revises Council's May 2004 preliminary ALP decision to only apply regulatory program to Class I and II Riparian Habitat.	All habitat covered (Council's May 2004 preliminary ALP decision unchanged).
Significance/Use of Regional Outcome Measures	If region meets the outcome measures in 2010, then regulatory program may be further delayed.	Used to measure region's progress in preserving habitat. Not related to whether or when regulatory program is implemented.	Not specifically included in proposal.	If region meets the outcome measures, then regulatory program may be further delayed. Local governments must prepare plans to meet outcome measures within two years of overall program adoption.
Effective date of regulatory program.	June 1, 2012 (with option to extend if region meets the regional outcome measures as assessed in 2010).	June 1, 2007, or 2 years from LCDC acknowledgement (whichever is later).	2 years from LCDC acknowledgement.	June 1, 2012, if voters approve acquisition bond measure by Nov. 2006, (with option to extend as in original resolution). If acquisition bond measure not approved, then June 1, 2010 (with option to extend).
Reporting Requirements— Assessment of Progress Toward Meeting Regional Outcome Measures	Metro COO to periodically assess—but no specific deadlines established except final deadline: COO's final written report due to Metro Council by March 1, 2010.	Metro COO to annually assess and compile written report to Metro Council.	No specific requirements.	Metro COO to periodically assess. COO's final written report due to Metro Council by March 1, 2010 (if acquisition bond measure approved) or by March 1, 2008 (if bond measure not approved).

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A G E N D A

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METRO

Agenda

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

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. SALMON FESTIVAL PRESENTATION Desmond

4. CONSENT AGENDA

4.1 Consideration of Minutes for the November 18, 2004 Metro Council Regular Meeting.

4.2 **Resolution No. 04-3508**, For the Purpose of Confirming the Appointment Of Paul Edwards to the Regional Solid Waste Advisory Committee (SWAC).

4.3 **Resolution No. 04-3516**, For the Purpose of Appointing Citizen Members to The Transportation Policy Alternatives Committee and the Regional Travel Options Subcommittee in December 2004.

5. ORDINANCES – FIRST READING

5.1 **Ordinance No. 04-1066**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule Transferring \$62,280 From the General Fund Contingency to the Zoo Operating Fund Materials and Services For Completion of Capital Maintenance Projects; and Declaring an Emergency.

5.2 **Ordinance No. 04-1067**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule For the Purpose of Transferring \$92,902 From Contingency to Personal Services in the Planning Fund to Add 1.0 FTE Regional Planning Director (Program Director II); and Declaring an Emergency.

5.3 **Ordinance No. 04-1068**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule, Recognizing \$200,000 in Grant Funds and Increasing Capital Outlay in the Zoo Operating Fund, Amending the FY 2004-05 Through FY 2008-09 Capital Improvement Plan For Completion of Storm Water Handling Projects; and Declaring an Emergency.

6. ORDINANCES - SECOND READING

6.1 **Ordinance No. 04-1063**, For the Purpose of Denying a Solid Waste Franchise Application of Columbia Environmental, LLC to Operate a Local Transfer Station (*PUBLIC HEARING ONLY, NO FINAL ACTION*). Park

6.2 **Ordinance No. 04-1064**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule Recognizing the Transfer of \$504,000 From Metro's General Fund Tourism Opportunity and Competitiveness Account to MERC Pooled Capital Fund, Capital Outlay and Transferring \$150,000 From MERC Pooled Capital Fund Contingency to MERC Pool Capital Fund, Capital Outlay; and Declaring an Emergency. Park

7. RESOLUTIONS

7.1 **Resolution No. 04-3517**, For the Purpose of Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement With the City of Portland Providing For Funding and Construction of Stormwater Improvements at the Oregon Zoo. Monroe

8. CONTRACT REVIEW BOARD

8.1 **Resolution No. 04-3511**, For the Purpose of Amending Contract No. 923895 With Ducks Unlimited For the Water Control Structure at Smith and Bybee Lakes Wildlife Area. Hosticka

9. CHIEF OPERATING OFFICER COMMUNICATION

10. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for December 2, 2004 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtvvtv.org -- (503) 629-8534 Thursday, December 2 at 2 p.m. (live)</p>	<p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 Sunday, December 5 at 8:30 p.m. Monday, December 6 at 2 p.m.</p>
<p>Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 Monday, December 6 at 2 p.m.</p>	<p>Washington County Channel 30 -- TVTV www.yourtvvtv.org -- (503) 629-8534 Saturday, December 4 at 11 p.m. Sunday, December 5 at 11 p.m. Tuesday, December 7 at 6 a.m. Wednesday, December 8 at 4 p.m.</p>
<p>Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>	<p>West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>

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

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

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M E M O R A N D U M

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METRO

To: Metro Council
From: Chris Deffebach
Subject: Goal 5 TAC/WRPAC comments on Resolution 04-3506 and amendments
Date: November 22, 2004

At their November 19th meeting, the combined Technical Advisory Committee for the Fish and Wildlife Habitat Program (Goal 5 TAC) and the Water Resources Policy Advisory Committee (WRPAC) reviewed Resolution 04-3506, proposed by Bragdon/Park and draft amendments to this Resolution as prepared by Councilors Hosticka, Burkholder and Newman. A summary of the main features of the Resolution and the effect of the amendments that Goal 5/WRPAC reviewed is attached. This memo summarizes this group's comments on each of the major elements of the Resolution: Date of the acquisition and restoration bond measure, habitat coverage, role of regional outcome measures, effective date of the regulatory program, and reporting requirements. All comments were made as one body, not two.

Acquisition and Restoration Bond Measure Date

The Committee considered alternative dates for a bond measure and agreed, without formally voting, that the sooner the bond measure was on the ballot, the better with recognition that consideration needs to be given to the timing of other ballot measures. Additional comments included a request that the bond measure be directed for fish and wildlife habitat and that staff needed direction to determine what would be included for funding in the bond measure.

Coverage of Regionally Significant Habitat

The Committee considered three alternative levels of coverage for regionally significant habitat. No one (0) voted to restrict the coverage of the regulatory element of a fish and wildlife habitat program to Class I and II Riparian areas only. Seventeen (17) agreed with a statement that the uplands are important. The nature of the protection program for these areas was not discussed. One (1) person voted that they were not ready to make a recommendation. Another commented that the cost of the choices should be determined.

Effective date of regulatory program

The Committee discussed the merits of an effective date for a regulatory program for the years 2012, 2007, no recommendation, or as soon as possible. No one voted in support of an effective date of 2012. Several expressed concerns that 2007 may not give local jurisdictions enough time

to develop and adopt a program. The group reached an informal agreement that an early date, and a certain date was desirable as well as a process for determining exceptions, as Metro has established for other Functional Plan requirements.

Outcome measures

Without voting, the Committee discussed the importance of determining goals (or a trajectory) for the region and the importance of using measures to determine if the region is making substantial progress towards these goals. Further discussion indicated that the indicators should be readily measurable and attributable to local programs. The measures should also be used to applying an adaptive management program.

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METRO

METRO COUNCIL INFORMAL
November 30, 2004, 2:00 pm

SUMMARY OF MEASURE 37
Pay Compensation or “Waive” Regulation

Highlights:

- Right to compensation dates back to the time “family” acquired property
- Right to “waiver” dates back to the time current owner acquired property
- “Demand” (written) for compensation triggers claim process
- 180 days after “demand” if no compensation paid on waiver approved civil litigation (attorney’s fees) may be commenced. Decisions to waive are not land use decisions
- Judgment for compensation payable only from “specifically appropriated” funds
- If compensation not paid “within 2 years of the date on which it accrues” the owner may “use” property as allowed at time of acquisition
- Local government may adopt procedures but failure to follow procedures or file a land use application is not grounds for dismissal of civil litigation
- Claims must be brought within two years of adoption of measure (old claims) on new regulations or two years after any land use application is filed when old or new regulations are applied
- Exemptions for health and safety, building codes, Federal law and “nuisances”



METRO

METRO COUNCIL INFORMAL
November 30, 2004, 2:00 pm

SUMMARY OF MEASURE 37
Pay Compensation or "Waive" Regulation

- Issues (some of many):
 - What is necessary to file claim?
 - What is burden of proof at local level?
 - What is effect of waiver:
 - What gets waived the regulation that "caused" the loss of value as any regulation that was adopted after acquisition?
 - Can property subject to a waiver be sold with the waivers intact?
- Metro Issues:
 - What Metro regulations are implicated?
 - A. Title IV Industrial Land?
 - B. Title III Streams, slopes and wetlands?
 - C. Title II Parking?
 - D. Title I Minimum density:
- What about the UGB?
- What should Metro do:
 - Require separate claims at Metro?
 - Require notice from local governments of claims and participate in local process?
 - Establish minimum requirements for claims and waivers of Metro regulations?
- What's happening?
 - Metro Area Attorneys' meeting on December 3, 2004
 - Discussions in the Legislature regarding:
 - A. Compensation?
 - B. Clarification?
 - C. Reform?

Measure 37

Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

- (1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.
- (2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.
- (3) Subsection (1) of this act shall not apply to land use regulations:
 - (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;
 - (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
 - (C) To the extent the land use regulation is required to comply with federal law;
 - (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
 - (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
- (4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.
- (5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.
- (6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.
- (7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.
- (8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation

may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions - for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.