

A G E N D A

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



**METRO**

**Agenda**

MEETING: METRO COUNCIL REGULAR MEETING  
DATE: December 9, 2004  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA)  
ACCOUNTING AWARD**

Stringer

**4. CONSENT AGENDA**

4.1 Consideration of Minutes for the December 2, 2004 Metro Council Regular Meeting.

**5. ORDINANCES - SECOND READING**

5.1 **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 Pooled Capital Fund, Capital Outlay; and Declaring an Emergency.

Park

5.2 **Ordinance No. 04-1065**, For the Purpose of Amending Chapter 2.04 of the Metro Code Relating to Public Contracting.

Monroe

5.3 **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.

Monroe

5.4 **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

Burkholder

Regional Planning Director (Program Director II); and Declaring an Emergency.

5.5 **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. Monroe

6. **RESOLUTIONS**

6.1 **Resolution No. 04-3512**, For the Purpose of Providing Direction to Metro Concerning Bills Before the 2005 Oregon Legislature. Hosticka

6.2 **Resolution No. 04-3514**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License to AGG Enterprises, Inc. for Delivery Of Source Separated Pre-Consumer Food Waste to the Nature's Needs Facility for Composting. Monroe

6.3 **Resolution No. 04-3518**, For the Purpose of Directing Staff to Facilitate The Completion of Concept Planning For Area 93 by Resolving Outstanding Issues of Governance, Provision of Services and Cooperation Between Affected Parties. Monroe

6.4 **Resolution No. 04-3519**, For the Purpose of Amending an Easement Granted To Miramount Pointe for Non-Park Use through Property Owned by Metro And the North Clackamas Parks and Recreation District on Mt. Talbert. Newman

6.5 **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. Park

7. **CHIEF OPERATING OFFICER COMMUNICATION**

8. **COUNCILOR COMMUNICATION**

**ADJOURN**

**Television schedule for December 9, 2004 Metro Council meeting**

<p><b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b>          Channel 11 -- Community Access Network  <a href="http://www.yourtv.org">www.yourtv.org</a> -- (503) 629-8534          Thursday, December 9 at 2 p.m. (live)</p>	<p><b>Washington County</b>          Channel 30 -- TVTV  <a href="http://www.yourtv.org">www.yourtv.org</a> -- (503) 629-8534          Saturday, December 11 at 11 p.m.          Sunday, December 12 at 11 p.m.          Tuesday, December 14 at 6 a.m.          Wednesday, December 15 at 4 p.m.</p>
<p><b>Oregon City, Gladstone</b>          Channel 28 -- Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275          Call or visit website for program times.</p>	<p><b>West Linn</b>          Channel 30 -- Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275          Call or visit website for program times.</p>
<p><b>Portland</b>          Channel 30 (CityNet 30) -- Portland Community Media  <a href="http://www.pcmv.org">www.pcmv.org</a> -- (503) 288-1515          Sunday, December 12 at 8:30 p.m.          Monday, December 13 at 2 p.m.</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](http://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).

*Handwritten scribbles*

Agenda Item Number 4.1

Consideration of Minutes of the December 2, 2004 Regular Council meeting.

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber



**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 Pooled Capital Fund, Capital Outlay; and Declaring an Emergency**

*Second Reading.*

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY	)	ORDINANCE NO. 04-1064
2004-05 BUDGET AND APPROPRIATIONS	)	
SCHEDULE RECOGNIZING THE TRANSFER	)	Introduced by Mike Jordan, Chief Operating
OF \$504,000 FROM METRO'S GENERAL FUND	)	Officer, with the concurrence of the Council
TOURISM OPPORTUNITY &	)	President
COMPETITIVENESS ACCOUNT TO THE MERC	)	
POOLED CAPITAL FUND CAPITAL OUTLAY	)	
AND TRANSFERRING \$150,000 FROM MERC	)	
POOLED CAPITAL CONTINGENCY TO MERC	)	
POOLED CAPITAL FUND, CAPITAL OUTLAY;	)	
AND DECLARING AN EMERGENCY	)	

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations within the FY 2004-05 Budget; and

WHEREAS, Oregon Budget Law ORS 294.326(3) allows for the expenditure in the year of receipt of funds transferred from its General Fund; and

WHEREAS, Oregon Budget Law ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction; and

WHEREAS, the need for the transfer of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2004-05 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$504,000 from the Metro's General Fund Tourism Opportunity & Competitiveness Account and transferring \$150,000 from MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay.
2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A  
Ordinance No 04-1064**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Total Personal Services</b>		<b>23.00</b>	<b>\$1,796,906</b>	<b>0.00</b>	<b>\$0</b>	<b>23.00</b>	<b>\$1,796,906</b>
<b>Total Materials &amp; Services</b>			<b>\$569,286</b>		<b>\$0</b>		<b>\$569,286</b>
<b><i>Interfund Transfers</i></b>							
<i>INDTEX Interfund Reimbursements</i>							
5800	Transfer for Indirect Costs						
	* to Building Management Fund		337,777		0		337,777
	* to Support Services Fund		680,958		0		680,958
	* to Risk Mgmt Fund-Liability		5,660		0		5,660
	* to Risk Mgmt Fund-Worker Comp		7,550		0		7,550
<i>EQTCH Fund Equity Transfers</i>							
5810	Transfer of Resources						
	* to Planning Fund (general allocation)		4,066,611		0		4,066,611
	* to Planning Fund (project allocation)		75,234		0		75,234
	* to Reg. Parks Fund (general allocation)		476,847		0		476,847
	* to Reg. Parks Fund (earned on SW revenues)		730,198		0		730,198
	* to Reg. Parks Fund (\$1 per ton on SW)		1,235,149		0		1,235,149
	* to Reg. Parks Fund (\$1.50 per ton on SW)		1,512,917		0		1,512,917
	* to Reg. Parks Fund (landbanking)		231,008		0		231,008
	* to MERC Pooled Capital Fund		0		504,000		504,000
	* to MERC Operating Fund (OCC - VDI Compliance)		182,129		0		182,129
<b>Total Interfund Transfers</b>			<b>\$9,542,038</b>		<b>\$504,000</b>		<b>\$10,046,038</b>
<b><i>Contingency and Ending Balance</i></b>							
<i>CONT Contingency</i>							
5999	Contingency						
	* General Contingency		563,000		0		563,000
	* Prior Year PERS Reserve		58,550		0		58,550
	* Current Year PERS Reserve		86,758		0		86,758
	* Tourism Opportunity & Competitiveness Fund		504,307		(504,000)		307
<i>UNAPP Unappropriated Fund Balance</i>							
5990	Unappropriated Fund Balance						
	* Ending balance		902,361		0		902,361
	* Recovery Rate stabilization reserve		412,042		0		412,042
<b>Total Contingency and Ending Balance</b>			<b>\$2,527,018</b>		<b>(\$504,000)</b>		<b>\$2,023,018</b>
<b>TOTAL REQUIREMENTS</b>		<b>23.00</b>	<b>\$14,435,248</b>	<b>0.00</b>	<b>\$0</b>	<b>23.00</b>	<b>\$14,435,248</b>

Note: This Ordinance does not reflect Ordinance No. 04-1066 that transfers \$63,208 to the Zoo Operating Fund

Exhibit A  
Ordinance No 04-1064

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Merc Pooled Capital</b>							
<b><i>Resources</i></b>							
<i>BEGBA Beginning Fund Balance</i>							
	* Prior year ending balance		4,698,164		0		4,698,164
	* Prior year PERS reserve		16,458		0		16,458
<i>GVCN1 Contributions from Governments</i>							
	4145 Government Contributions		321,484		0		321,484
<i>INTRS1 Interest Earnings</i>							
	4700 Interest on Investments		67,779		0		67,779
<i>DONA1 Contributions from Private Sources</i>							
	4750 Donations and Bequests		627,775		0		627,775
	4760 Sponsorship		88,000		0		88,000
<i>EQTRE Fund Equity Transfers</i>							
	4970 Transfer of Resources						
	* from Convention Center Capital Fund		385,000		0		385,000
	* from MERC Operating - OCC		178,750		0		178,750
	* from General Fund		0		504,000		504,000
	* from MERC Operating - Expo Center		117,356		0		117,356
<b>TOTAL RESOURCES</b>			<b>\$6,500,766</b>		<b>\$504,000</b>		<b>\$7,004,766</b>
<b>Total Personal Services</b>		<b>4.95</b>	<b>\$406,287</b>	<b>0.00</b>	<b>\$0</b>	<b>4.95</b>	<b>\$406,287</b>
<b>Total Materials and Services</b>			<b>\$10,000</b>		<b>\$0</b>		<b>\$10,000</b>
<b><i>Capital Outlay</i></b>							
<i>CAPNC Capital Outlay (Non-CIP Projects)</i>							
	5710 Improve-Oth thn Bldg (non-CIP)		40,000		0		40,000
	5720 Buildings & Related (non-CIP)		305,600		0		305,600
	5740 Equipment & Vehicles (non-CIP)		10,000		0		10,000
<i>CAPCI Capital Outlay (CIP Projects)</i>							
	5715 Improve-Oth thn Bldg (CIP)		800,000		0		800,000
	5725 Buildings & Related (CIP)		1,720,000		654,000		2,374,000
	5745 Equipment & Vehicles (CIP)		266,750		0		266,750
<b>Total Capital Outlay</b>			<b>\$3,142,350</b>		<b>\$654,000</b>		<b>\$3,796,350</b>
<b>Total Interfund Transfers</b>			<b>\$354,000</b>		<b>\$0</b>		<b>\$354,000</b>
<b><i>Contingency and Ending Balance</i></b>							
<i>CONT Contingency</i>							
	5999 Contingency						
	* General Contingency		500,000		(150,000)		350,000
	* Prior Year PERS Reserve		16,458		0		16,458
	* Current Year PERS Reserve		21,123		0		21,123
<i>UNAPF Unappropriated Fund Balance</i>							
	5990 Unappropriated Fund Balance						
	* Ending Balance		2,050,548		0		2,050,548
<b>Total Contingency and Ending Balance</b>			<b>\$2,588,129</b>		<b>#####</b>		<b>\$2,438,129</b>
<b>TOTAL REQUIREMENTS</b>		<b>4.95</b>	<b>\$6,500,766</b>	<b>0.00</b>	<b>\$504,000</b>	<b>4.95</b>	<b>\$7,004,766</b>

Note: This Ordinance does not reflect Ordinance No. 04-1065 that transfers \$63,208 to the Zoo Operating Fund

**Exhibit B**  
**Ordinance No. 04-1064**  
**FY 2004-05 SCHEDULE OF APPROPRIATIONS**

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Amended Appropriation</u>
<b>GENERAL FUND</b>			
Council Office/Public Affairs			
Operating Expenses (PS & M&S)	\$2,101,192	\$0	\$2,101,192
Subtotal	2,101,192	0	2,101,192
Special Appropriations			
Operating Expenses (PS & M&S)	265,000	0	265,000
Subtotal	265,000	0	265,000
General Expenses			
Interfund Transfers	9,542,038	504,000	10,046,038
Contingency	1,212,615	(504,000)	708,615
Subtotal	10,754,653	0	10,754,653
Unappropriated Balance	1,314,403	0	1,314,403
<b>Total Fund Requirements</b>	<b>\$14,435,248</b>	<b>\$0</b>	<b>\$14,435,248</b>
<b>MERC POOLED CAPITAL FUND</b>			
Operating Expenses (PS & M&S)	\$416,287	\$0	\$416,287
Capital Outlay	3,142,350	654,000	3,796,350
Interfund Transfers	354,000	0	354,000
Contingency	537,581	(150,000)	387,581
Unappropriated Balance	2,050,548	0	2,050,548
<b>Total Fund Requirements</b>	<b>\$6,500,766</b>	<b>\$504,000</b>	<b>\$7,004,766</b>

Note: This Ordinance does not reflect Ordinance No. 04-1066 that transfers \$62,280 to the Zoo Operating Fund

**ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED**

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**Resolution No. 04-24**

**For the purpose of recommending to the Metro Council a proposal for an investment funded by the Metro Tourism Opportunity and Competitiveness Account (MTOCA), recommending a budget amendment to the fiscal year 2004-05 adopted Metro budget to authorize the transfer of \$504,000 from Metro's general fund contingency to MERC pooled capital fund capital outlay and the transfer of \$150,000 from MERC pooled capital contingency to MERC capital outlay, and approving transmittal of the recommended amendment to the Metro Council.**

WHEREAS, Metro Code 6.01.050 provides that the Commission shall annually prepare and approve an annual budget which shall, to the maximum extent permitted by law, consist of one commission-wide series of appropriations in those categories which are required by local budget law, applicable to all buildings, facilities, and programs managed by the Commission; and

WHEREAS, the Commission previously approved and transmitted to the Metro Council the Fiscal Year 04-05 budgets for the MERC Operating Fund, the MERC Pooled Capital Fund, and the Convention Center Project Capital Fund; and

WHEREAS, on May 20, 2004, the Metro Council passed Ordinance No. 04-1052, increasing the excise tax on solid waste by \$.50 per ton; and

WHEREAS, the proceeds from this tax are allocated to the Metro Tourism Opportunity and Competitiveness Account ("MTOCA"), to be used to maximize the competitiveness, financial viability, economic impact, and continued success of the Oregon Convention Center; and

WHEREAS, on October 7, 2004, the Metro Council passed Resolution No. 04-3494A, which adopted MTOCA Policy And Guidelines; and

WHEREAS, in Resolution No. 04-3494A, the Metro Council directed the MERC Commission to submit proposals for funding the goals and strategies listed in the adopted MTOCA Policy And Guidelines, with priority given to those under Goal Number 1; and

WHEREAS, Goal Number 1 in the MTOCA Policy And Guidelines includes Strategy A, expending funds to obtain official green building (LEED) certification for the Oregon Convention Center; and

WHEREAS, obtaining LEED certification for the Oregon Convention Center will enhance OCC's marketing advantages and enhance OCC and Portland's distinctive reputation for environmental quality and build on the state's "Brand Oregon" campaign; and

WHEREAS, this certification could be used to enhance OCC's marketing advantages, particularly in conjunction with the Portland Visitor's Association (POVA's) "It's Not Easy Being Green" marketing plan for Portland. Such certification would enhance OCC and Portland's distinctive reputation for environmental quality and build on the State's "Brand Oregon" campaign; and

WHEREAS, the MERC Commission recommends expending funds from MTOCA for Fiscal Year 2004-05 to assist OCC to obtain official green building (LEED) certification, based on the understanding that fully funding the improvements to obtain LEED certification will also require funding from MTOCA in future fiscal years; and

WHEREAS, the Metro Council is the ultimate budget authority for MERC and, in accordance with budget law and the MTOCA Policy and Guidelines, final decisions on the recommendation made by the MERC Commission will be made as Supplementary Budget actions by the Metro Council.

**BE IT THEREFORE RESOLVED AS FOLLOWS:**

1. The MERC Commission recommends the expenditure of \$1,378,000 to obtain Green Building (LEED) certification for the Oregon Convention Center, as shown as "Strategy A" in the attached Exhibit "A," which recommendation is based on the understanding that the initial funding for the work will come in part from MTOCA funds for Fiscal Year 2004-05, and that additional MTOCA funds in future fiscal years will also be allocated to this project, as shown more particularly in the attached Exhibit "A," and
2. The MERC Commission recommends adoption of a budget amendment transferring \$504,000 from Metro's General Fund Tourism Opportunity & Competitiveness Fund Contingency to Metro's General Fund Transfer of Resources to MERC's Transfer of Resources and the appropriation of those funds in MERC's Pooled Capital, Capital Outlay; and
3. The MERC Commission recommends adoption of a budget amendment transferring \$150,000 from MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay; and
4. The MERC Commission authorizes a five-year \$850,000 intra-fund loan from those funds identified as Expo's in MERC Pooled Capital Fund to OCC for expenditure on the Green Building (LEED) certification projects, which shall be repaid over a five-year term in semi annual payments with an interest rate of 3.5% per annum.
5. The MERC Commission grants the authority to MERC staff to prepare and present a Budget Ordinance to the Metro Council to amend the Fiscal Year 04-05 budget to reflect the above changes.



Passed by the Commission on October 27, 2004.

Approved as to Form:  
Daniel B. Cooper, Metro Attorney

\_\_\_\_\_

Chair

By: \_\_\_\_\_  
Lisa Umscheid  
Senior Attorney

\_\_\_\_\_

Secretary-Treasurer

## MERC STAFF REPORT

**Agenda Item:** For purpose of submitting to the METRO Council a proposal for the investment in the LEED Certification for the Oregon Convention Center, funded from the new Tourism Opportunity and Competitiveness Account (MTOCA) capital Improvements totaling \$1,378,000.

**Resolution:** 04-24

**Date:** October 28, 2004

**Prepared by:** Kathy Taylor and Jeff Blosser

**Background:** The MERC Commission previously approved a Policy and Guidelines for establishing a process and criteria for proposed investments from the Metro Tourism and Opportunity and Competitiveness Account. The MERC Budget Committee discussed the Goals and Strategies identified in the Policy and Guidelines and is recommending investment in Goal #1, Targeted Capital Investments in the Oregon Convention Center's physical plant that yield demonstrable marketing advantages. Strategy A: Green Building (LEED) Certification.

Funds could be expended to obtain official LEED certification for OCC. This certification could be used to enhance OCC's marketing advantages, particularly in conjunction with the Portland Oregon Visitor's Association (POVA's) "It's Not Easy Being Green" marketing plan for Portland. Such certification would enhance OCC and Portland's distinctive reputation for environmental quality and build on the State's "Brand Oregon" campaign.

**Fiscal Impact:**

- A. **Expenditure:** of \$1,378,000 to obtain Green Building (LEED) certification, as described in the attached Exhibit "A."
  
- B. **Funding:**
  - 1. Amendment transferring \$504,000 from Metro's General Fund Tourism Opportunity & Competitiveness Fund Contingency to Metro's General Fund Transfer of Resources to MERC's Transfer of Resources and the appropriation of those funds in MERC's Pooled Capital, Capital Outlay; and
  - 2. Amendment transferring \$150,000 from MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay;
  - 3. A five-year \$850,000 intra-fund loan from those Funds identified as Expo's in MERC Pooled Capital Fund to OCC for expenditure on the Green Building (LEED) certification projects. The loan to be repaid over a five-year term in semi annual payments with an interest rate of 3.5%.

**Recommendation:** Staff recommends approval of Resolution No. 04-24.

## Metro Tourism Opportunity and Competitiveness Account

Program	Request	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
<b>Beginning Balance</b>		-	32,568	440,705	863,717	1,301,975	1,755,862
<b>Resources</b>							
Excise Tax from Metro		A 504,000	B 595,000	609,875	625,122	640,750	656,769
Intra-fund transfer from Expo to OCC	12/1/2004	850,000					
Business Energy Tax Credits (BETC)		150,000					
<b>Loan Payments</b>							
To repay funds to Expo							
5 years/3.5% annual interest, with semiannual payments		(93,432)	(186,863)	(186,863)	(186,863)	(186,863)	(93,432)
<b>MTOCA Goals</b>							
<b>Goal 1</b>	Targeted capital investments in the Oregon Convention Center's physical plant that yield demonstrable marketing advantages.						
<b>Strategy A -- Green Building LEED Certification</b>	Apply for LEED Certification on expansion by November 2004						
			n/a				
	Retrofit existing building to meet LEED standards						
Replace three 800 ton chiller units	870,000	E					
Replace 250 ton chiller	130,000	E					
Chiller room ventilation/noise abatement	60,000						
Chiller controls	28,000						
Replace 198 Toilet/Urinals (auto flush)	125,000						
Replace light sensors	10,000						
ZGF Consulting	30,000						
Contingency 10%	125,000						
	<u>1,378,000</u>		(1,378,000)				
<b>Strategy B -- OCC Operational Advantage</b>		C					
<b>Strategy C -- Headquarters Hotel Related Investments</b>		C					
<b>Goal 2</b>	Assist the Visitor Development Fund with Oregon Convention Center Facility Costs.						
<b>Strategy A -- Offset Facility Costs when VDI allocation not fully funded</b>		C					
<b>Goal 3</b>	Maintain the Oregon Convention Center in First Class Condition						
<b>Strategy A -- Ensure sufficient funds for basic OCC cleaning, maintenance, and event service.</b>		C					
<b>Net Change for the Year</b>		<u>32,568</u>	<u>408,137</u>	<u>423,012</u>	<u>438,258</u>	<u>453,887</u>	<u>563,337</u>
<b>Ending Balance Available for other Items</b>		<u>32,568</u>	<u>440,705</u>	<u>863,717</u>	<u>1,301,975</u>	<u>1,755,862</u>	<u>2,319,199</u>

- A Budget amount for 2004-05. Effective September 1, 2004.  
 B Assume future MTOCA funds will be available. Apply Metro inflation estimate 2.5% to this and all future periods.  
 C Assume investment in all strategies -- amounts by strategy to be determined.  
 D Concept only -- projects to be submitted to Metro Council for approval.  
 E Chillers in the existing building need to be replaced to meet environmental standards

### Operating Impact

Reduced energy costs LEED		10,000	10,000	10,000	10,000	10,000
Additional convention revenue from LEED, net		50,000	50,000	50,000	50,000	50,000
		<u>-</u>	<u>10,000</u>	<u>60,000</u>	<u>60,000</u>	<u>60,000</u>

## STAFF REPORT

IN CONSIDERATION OF 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 & COMPETITIVENESS ACCOUNT TO MERC POOLED CAPITAL FUND, CAPITAL OUTLAY AND TRANSFERING \$150,000 FROM MERC POOLED CAPITAL FUND CONTINGENCY TO MERC POOLED CAPITAL FUND, CAPITAL OUTLAY; AND DECLARING AN EMERGENCY

---

Date: November 1, 2004

Prepared by: Kathy Taylor and Jeff Blosser

## BACKGROUND

The purpose of this Ordinance is to take the necessary budget action to implement the MERC Commission's recommendation for use of the Metro's General Fund Tourism and Opportunity Contingency Fund (MTOCA). Metro Resolution No. 04-3494 adopted a policy and established a process and criteria for proposed investments from the Metro Tourism Opportunity and Competitiveness Account (MTOCA). This Ordinance reflects the recommendation of the MERC Commission as stated in the attached Exhibit C, MERC's Commission approved Resolution No. 04-24 and staff report.

The MERC Commission is recommending that these funds be expended to obtain official green building (LEED) certification for the Oregon Convention Center. This certification would enhance OCC's marketing plan by making the center attractive to conventions that require LEED certification. In addition, this project fits nicely with POVA's "It's Not Easy Being Green" marketing plan for Portland.

The complete project is expected to cost \$1,378,000 to obtain Green Building (LEED) certification. The details of the project components are included in an attachment to the MERC Staff Report. Funding for the total project is proposed to be from the transfer of \$504,000 from MTOCA account, \$150,000 from MERC Pooled Capital contingency (which will be reimbursed by expected Business Energy Tax Credits) and an \$850,000 intra fund loan from Expo's fund balance. The repayment of the intra fund loan is to be over five years with semi annual payments bearing interest of 3.5%. The initial funding of this project allows for the first of these payments. Subsequent payments on the intra fund loan will be from future years transfers from the MTOCA account.

## ANALYSIS/INFORMATION

1. **Known Opposition:** None known
2. **Legal Antecedents:** ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt funds transferred from Metro's General Fund. ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.
3. **Anticipated Effects:** This action allows the department to complete the LEED Certification for the Oregon Convention Center that will increase the marketability of the Oregon Convention Center

4. **Budget Impacts** This action requests the recognition of \$504,000 in capital outlay from the transfer from the Metro General Fund MTOCA account, and \$150,000 in capital outlay from MERC Pooled Capital Contingency. The balance of the appropriation for this project comes from canceling the \$750,000 Expo Center Electrical Project. Expected energy credits of \$150,000 will replace the \$150,000 used from contingency.

#### **RECOMMENDED ACTION**

The Chief Operating Officer, in concurrence with the Council President, recommends adoption of this Ordinance.

Agenda Item Number 5.2

**Ordinance No. 04-1065, For the Purpose of Amending Chapter 2.04 of the Metro Code Relating to Public Contracting.**

***Second Reading.***

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER ) ORDINANCE NO. 04-1065  
2.04 OF THE METRO CODE RELATING TO )  
PUBLIC CONTRACTING ) Amendments Introduced  
) by Councilor McLain  
)

**McLAIN AMENDMENT 1.** Section 5 of Metro Ordinance No. 04-1065 is amended to read as follows:

2.04.042 Procurement of Personal Services Contracts Up to \$50,000

(a) ~~For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged. Any procurement of personal services not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.~~

(b) ~~For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three (3) potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. Any procurement of personal services exceeding \$5,000 but not exceeding \$75,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.~~

(c) Any procurement of personal services exceeding \$75,000 shall be awarded in accordance with the provisions of ORS 279B.060

**McLAIN AMENDMENT 2.** Section 11 of Metro Ordinance No. 04-1065 is amended to read as follows:

SECTION 11.

2.04.053 Special Procurements

(a) Pursuant to ORS 279B.085, the following public contracts are approved as classes of special procurements based on the legislative finding by the Metro Contract Review Board that the use of a special procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, ORS 279B.060, ORS 279B.065 ORS 279B.070:

- (1) All contracts estimated to be not more than ~~\$50,000~~ \$75,000 provided that the procedures required by Section 13 of this Ordinance are followed.

- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items; ~~and any sales of food or concession items at Metro facilities.~~
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for ~~formal~~ sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that the provisions of ORS 279B.080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at the ~~Oregon Zoo~~ provided that the provisions of ~~Section 2.04.060~~ are followed facilities owned or operated by Metro.
- (6) Contracts for warranties, including but not limited to ~~computer software warranties,~~ in which the supplier of the goods or services covered by the warranty has designated a ~~sole~~ an authorized provider for the warranty service.
- (7) Contracts for computer hardware, ~~and software,~~ provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than ~~\$75,000~~, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.
- (13) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to ~~telephone service, electric, natural gas, and sanitary services,~~ provided that if competition is available, a Request for Proposal process is followed.
- (14) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- (15) Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.



~~(1416)~~ The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.

~~(1517)~~ Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

~~(1618)~~ Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.

(19) Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides a material and substantial portion of the funding for such project.

(b) Description of procurement procedures for class special procurements: Procurements for each of the class special procurements described in subsection (a) shall be performed by means of procedures chosen by the Chief Operating Officer as an appropriate method tailored to and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may include but shall not limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

(c) Specific contracts not within the classes described in subsection (a) may be procured by special procurements subject to the requirements of ORS 279B.085.

**McLAIN AMENDMENT 3.** Section 14 of Metro Ordinance No. 04-1065 is amended to read as follows:

**SECTION 14.**

**2.04.056 Procurement of Public Contracts**

(a) Any procurement of a public contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of a public contract exceeding \$5,000 but not exceeding \$75,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of a public contract exceeding \$75,000 shall be awarded in accordance with the provisions of either ORS 279B.055, ORS 279B.060, or ORS 279B.085.

## **STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 04-1065, FOR THE PURPOSE OF AMENDING CHAPTER 2.04 OF THE METRO CODE RELATING TO PUBLIC CONTRACTING**

---

Date: November 18 2004

Prepared by: David Biedermann

## **BACKGROUND**

The 2003 Oregon Legislature enacted a major revision to public contracting law, Oregon Revised Statutes Chapter 279. The legislative work is comprehensive, and deals with a variety of issues affecting Metro.

As a result, the Office of Metro Attorney and the Metro Contracts Manager reviewed the agency's Contract Code for both consistencies with the State law changes and to bring the Code up-to-date with changed circumstances within Metro. The result is a significant amendment of the Metro code (the last was done in 1996) to bring it into legal symmetry with the State law and to adapt to Metro business changes in the last nine years.

The State law takes effect March 1 2005; this ordinance is before you more than 90 days prior to the date of effect to avoid the need and use of an emergency clause.

The major changes in the legislation are in five areas.

1. Current law requires a local government to affirmatively name itself as its local contract review board. According, the Metro Council is currently designated as the Metro Public Contract Review Board. The new 2003 law now provides that if a local government does not act to the contrary, it serves as its own contract review board without having to name itself. Additionally, the new Oregon public contracting law allows local governments to use their own contracting rules, rather than following the State Attorney General's Model Rules. To do so, governments must affirmatively opt out of the state rules. The proposal before the Council continues the current policy choice of opting out of the state contracting rules.
2. The new State law substantially changed the dollar thresholds for informal quotations and formal bids. The current levels are:
  - a. Under \$5,000 no quotes are necessary,
  - b. Between \$5,000 and \$50,000 a minimum of 3 quotes are required and
  - c. Over \$50,000 formal bids must be submitted.

The change occurs in “b” and “c”; quotations will be required between \$5,000 and \$150,000, and the formal bid threshold will be \$150,000.

Note: The November 16<sup>th</sup> Council work session indicated an informal consensus to set the Metro level at \$100,000. MERC would also then move to that level with no annual inflationary adjustment, as has been the case in the past. MERC management supports this change.

3. If an agency uses prequalification in its bidding process, the Contract Review Board can hear appeals from vendors that are disqualified. That process is now called “debarment”. (Metro does not use prequalification process.)
4. The proposed changes to the Metro code include updates to incorporate state law purchasing changes related to procurement of recycled goods, such as oil manufacturing and reuse of lawn maintenance debris.
5. The Metro Contract Review Board has the power to grant “exemptions” for specific procurements that are not required to be procured through competitive bids or competitive proposals. Examples are regulated products and services, repair services where the cost cannot be determined without extensive dismantling, and contracts where Metro receives a revenue for providing a service, etc.

The guiding principle is that such exemptions: (a) will be unlikely to encourage favoritism in the awarding of public contracts or will substantially diminish competition for public contracts and, (b) will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that compliance with other new, expanded procurement methods will not. The state law now refers to these exemptions as “special procurements”.

The review by the Office of the Metro Attorney and the Contracts Officer identified a few contractual circumstances that can benefit from being “special procurements.”

- The exemption for the purchase of food is changed to include all Metro facilities, not just the Oregon Zoo. We propose the following change.
  - Purchase of food items for resale at facilities owned or operated by Metro.
- The existing exemption for exclusion of warranties from competitive bidding has historically been interpreted to include software warranties, which includes support agreements with the manufacturer. To clarify the purpose, software and hardware acquisition, warranty and support are now separated from other warranty procurements (such as compacters at the Transfer Stations). We propose the following changes as special procurements.

- Contracts for warranties other than computer software warranties described in subsection 7, in which the supplier of the goods or services covered by the warranty has designated an authorized provider for the warranty service.
  - Contracts for computer hardware, software and associated warranties.
- Metro has some limited situations where it requires a service that, while generally available in the marketplace, is nonetheless restricted to a sole source by another government. In that case, we have no choice but to use the prescribed vendor. Our Code, however, requires a competitive process. We propose the following addition to the Metro list of special procurements:
  - Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- The state law clarifies the use of cooperative procurements among governments. We propose to specifically include this as a special procurement to allow another governments to conduct the process on behalf of Metro. We propose the following addition to the Metro list.
  - Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.
- There are increased efforts by both for-profit and non-profit private organizations willing to both raise funds and do work Metro sees necessary to meet its goals (wildlife habitat remediation, donation of in-kind services to build a public improvement, preservation of wetlands, etc.)

When acceptable to our goals, it would be both cumbersome, potentially embarrassing to the potential donor and likely unsuccessful for Metro to then advertise to seek others willing to donate the same amount of funds and time to accomplish the same goal. We propose the following additions to the Metro list of special procurements that are exempt from competitive processes:

- Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides a material and substantial portion of the funding for such project. [for minor alterations, ordinary repairs or maintenance necessary to preserve a public improvement in which a contractor provides the funding for such project.]
- Contracts for public improvements in which a contractor agrees to provide provides a material and substantial portion of the funding for such public improvement project.

Note: The November 16<sup>th</sup> Council work session indicated an informal consensus supporting the update to the list of exemptions granted by the Metro Public Contract Review Board.

#### **ANALYSIS/INFORMATION**

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code 2.04, State of Oregon Revised Statutes (ORS) 279 (current), and prospective chapters 279A, 279B and 279C (effective March 2005).
3. **Anticipated Effects:** Metro Code 2.04 will be in compliance with ORS 279A, B and C.
4. **Budget Impacts:** Depending on the actions taken by the Metro Council, adoption of the ordinance could result in annual budgetary savings of up to \$35,000 by eliminating staff time and processing costs for procurements less than \$100,000. These are largely advertising costs and staff costs to prepare and release more formal documents required by formal bidding.

At the same time, the work to maintain a strong competitive market for Metro business will continue. Multiple written quotations from a variety of qualified sources will be solicited for every Metro contract and purchase.

#### **RECOMMENDED ACTION**

Chief Operating Officer recommends passage of Ordinance 04-1065.

Agenda Item Number 5.3

**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.**

*Second Reading*

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY	)	ORDINANCE NO. 04-1066
2004-05 BUDGET AND APPROPRIATIONS	)	
SCHEDULE TRANSFERRING \$62,280 FROM	)	Introduced by Mike Jordan, Chief Operating
THE GENERAL FUND CONTINGENCY TO THE	)	Officer, with the concurrence of the Council
ZOO OPERATING FUND MATERIALS AND	)	President
SERVICES FOR COMPLETION	)	
OF CAPITAL MAINTENANCE PROJECTS; AND	)	
DECLARING AN EMERGENCY	)	

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations within the FY 2004-05 Budget; and

WHEREAS, Oregon Budget Law ORS 294.450(1) provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction; and

WHEREAS, Oregon Budget Law ORS 294.450(3) provides for transfers of appropriations and a like amount of budget resources from the general fund to another fund, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction; and

WHEREAS, the need for the transfer of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2004-05 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$62,280 from the Metro's General Fund Contingency to Operating Expenses in the Zoo Operating Fund.
2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

Exhibit A  
Ordinance No. 04-1066

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund - General Expenses</b>							
<b>Total Personal Services</b>		<b>23.00</b>	<b>\$1,796,906</b>	<b>0.00</b>	<b>\$0</b>	<b>23.00</b>	<b>\$1,796,906</b>
<b>Total Materials &amp; Services</b>			<b>\$569,286</b>		<b>\$0</b>		<b>\$569,286</b>
<b><u>Interfund Transfers</u></b>							
<i>INDTEX Interfund Reimbursements</i>							
5800	Transfer for Indirect Costs						
	* to Building Management Fund		337,777		0		337,777
	* to Support Services Fund		680,958		0		680,958
	* to Risk Mgmt Fund-Liability		5,660		0		5,660
	* to Risk Mgmt Fund-Worker Comp		7,550		0		7,550
<i>EQTCHG Fund Equity Transfers</i>							
5810	Transfer of Resources						
	* to Planning Fund (general allocation)		4,066,611		0		4,066,611
	* to Planning Fund (project allocation)		75,234		0		75,234
	* to Reg. Parks Fund (general allocation)		476,847		0		476,847
	* to Reg. Parks Fund (earned on SW revenues)		730,198		0		730,198
	* to Reg. Parks Fund (\$1 per ton on SW)		1,235,149		0		1,235,149
	* to Reg. Parks Fund (\$1.50 per ton on SW)		1,512,917		0		1,512,917
	* to Reg. Parks Fund (landbanking)		231,008		0		231,008
	* to MERC Operating Fund (VDI Compliance)		182,129		0		182,129
	* to Zoo Operating Fund		0		62,280		62,280
<b>Total Interfund Transfers</b>			<b>\$9,542,038</b>		<b>\$62,280</b>		<b>\$9,604,318</b>
<b><u>Contingency and Ending Balance</u></b>							
<i>CONT Contingency</i>							
5999	Contingency						
	* General Contingency		563,000		(62,280)		500,720
	* Prior Year PERS Reserve		58,550		0		58,550
	* Current Year PERS Reserve		86,758		0		86,758
	* Tourism Opportunity & Competitiveness Fund		504,307		0		504,307
<i>UNAPP Unappropriated Fund Balance</i>							
5990	Unappropriated Fund Balance						
	* Ending balance		902,361		0		902,361
	* Prior Year PERS Reserve		0		0		0
	* Recovery Rate stabilization reserve		412,042		0		412,042
<b>Total Contingency and Ending Balance</b>			<b>\$2,527,018</b>		<b>(\$62,280)</b>		<b>\$2,464,738</b>
<b>TOTAL REQUIREMENTS</b>		<b>23.00</b>	<b>\$14,435,248</b>	<b>0.00</b>	<b>\$0</b>	<b>23.00</b>	<b>\$14,435,248</b>

*The Amended Column does not reflect the impact of Ordinance No. 04-1064, transferring \$504,307 out of the Tourism Opportunity & Competitiveness Account.*



Exhibit A  
Ordinance No. 04-1066

ACCT	DESCRIPTION	<u>Current Budget</u>	<u>Revision</u>	<u>Amended Budget</u>
<b>Zoo Operating Fund - Resources</b>				
<i><u>Resources</u></i>				
<i>BEGBAL</i>	<i>Beginning Fund Balance</i>			
	* Prior year ending balance	5,455,062	0	5,455,062
	* Prior year PERS Reserve	550,000	0	550,000
<i>RPTAX</i>	<i>Real Property Taxes</i>			
4010	Real Property Taxes-Current Yr	8,673,597	0	8,673,597
4015	Real Property Taxes-Prior Yrs	260,307	0	260,307
<i>GRANTS</i>	<i>Grants</i>			
4100	Federal Grants - Direct	77,000	0	77,000
<i>CHGSVC</i>	<i>Charges for Service</i>			
4500	Admission Fees	5,679,420	0	5,679,420
4510	Rentals	265,023	0	265,023
4550	Food Service Revenue	4,143,070	0	4,143,070
4560	Retail Sales	2,108,419	0	2,108,419
4630	Tuition and Lectures	838,074	0	838,074
4635	Exhibit Shows	273,121	0	273,121
4640	Railroad Rides	481,860	0	481,860
4645	Reimbursed Labor	186,047	0	186,047
4650	Miscellaneous Charges for Svc	500	0	500
<i>INTRST</i>	<i>Interest Earnings</i>			
4700	Interest on Investments	90,076	0	90,076
<i>DONAT</i>	<i>Contributions from Private Sources</i>			
4750	Donations and Bequests	912,500	0	912,500
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>			
4170	Fines and Forfeits	20,000	0	20,000
4890	Miscellaneous Revenue	27,907	0	27,907
<i>INFREQ</i>	<i>Special Items-Infrequent Items</i>			
4810	Sale of Fixed Assets	2,000	0	2,000
<i>EQTREV</i>	<i>Fund Equity Transfers</i>			
4970	Transfer of Resources			
	* from General Fund	0	62,280	62,280
<b>TOTAL RESOURCES</b>		<b>\$30,043,983</b>	<b>\$62,280</b>	<b>\$30,106,263</b>

Exhibit A  
Ordinance No. 04-1066

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Zoo Operating Fund - Expenditures</b>							
<b>Total Personal Services</b>		<b>150.85</b>	<b>\$12,313,752</b>	<b>0.00</b>	<b>\$0</b>	<b>150.85</b>	<b>\$12,313,752</b>
<i>Materials &amp; Services</i>							
<i>GOODS Goods</i>							
5201	Office Supplies		77,385		0		77,385
5205	Operating Supplies		1,177,688		0		1,177,688
5210	Subscriptions and Dues		28,621		0		28,621
5214	Fuels and Lubricants		40,000		0		40,000
5215	Maintenance & Repairs Supplies		277,335		0		277,335
5220	Food		980,481		0		980,481
<i>SVCS Services</i>							
5240	Contracted Professional Svcs		743,140		0		743,140
5245	Marketing		163,500		0		163,500
5251	Utility Services		2,016,245		0		2,016,245
5255	Cleaning Services		37,630		0		37,630
5260	Maintenance & Repair Services		103,845		0		103,845
5265	Rentals		141,320		0		141,320
5280	Other Purchased Services		509,378		0		509,378
5290	Operations Contracts		1,575,402		0		1,575,402
<i>CAPMNT Capital Maintenance</i>							
5262	Capital Maintenance - Non-CIP		318,760		62,280		381,040
<i>IGEXP Intergov't Expenditures</i>							
5300	Payments to Other Agencies		18,385		0		18,385
<i>OTHEXP Other Expenditures</i>							
5450	Travel		44,690		0		44,690
5455	Staff Development		12,570		0		12,570
5490	Miscellaneous Expenditures		75,100		0		75,100
<b>Total Materials &amp; Services</b>			<b>\$8,341,475</b>		<b>\$62,280</b>		<b>\$8,403,755</b>
<b>Total Capital Outlay</b>			<b>\$85,700</b>		<b>\$0</b>		<b>\$85,700</b>
<b>Total Interfund Transfers</b>			<b>\$2,790,366</b>		<b>\$0</b>		<b>\$2,790,366</b>
<b>Total Contingency and Ending Balance</b>			<b>\$6,512,690</b>		<b>\$0</b>		<b>\$6,512,690</b>
<b>TOTAL REQUIREMENTS</b>		<b>150.85</b>	<b>\$30,043,983</b>	<b>0.00</b>	<b>\$62,280</b>	<b>150.85</b>	<b>\$30,106,263</b>

**Exhibit B**  
**Ordinance No. 04-1066**  
**FY 2004-05 SCHEDULE OF APPROPRIATIONS**

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Amended Appropriation</u>
<b>GENERAL FUND</b>			
Council Office/Public Affairs			
Operating Expenses (PS & M&S)	\$2,101,192	\$0	\$2,101,192
Subtotal	2,101,192	0	2,101,192
Special Appropriations			
Operating Expenses (PS & M&S)	265,000	0	265,000
Subtotal	265,000	0	265,000
General Expenses			
Interfund Transfers	9,542,038	62,280	9,604,318
Contingency	1,212,615	(62,280)	1,150,335
Subtotal	10,754,653	0	10,754,653
Unappropriated Balance	1,314,403	0	1,314,403
<b>Total Fund Requirements</b>	<b>\$14,435,248</b>	<b>\$0</b>	<b>\$14,435,248</b>
<b>ZOO OPERATING FUND</b>			
Operating Expenses (PS & M&S)	\$20,655,227	\$62,280	\$20,717,507
Capital Outlay	85,700	0	85,700
Interfund Transfers	2,790,366	0	2,790,366
Contingency	2,030,595	0	2,030,595
Unappropriated Balance	4,482,095	0	4,482,095
<b>Total Fund Requirements</b>	<b>\$30,043,983</b>	<b>\$62,280</b>	<b>\$30,106,263</b>

*The Amended Column does not reflect the impact of Ordinance No. 04-1064, transferring \$504,307 out of the Tourism Opportunity & Competitiveness Account in the General Fund.*

*The Amended Column does not reflect the impact of Ordinance No. 04-1068, recognizing \$200,000 in grant revenue in the Zoo Operating Fund, and increasing capital outlay accordingly.*

*All Other Appropriations Remain as Previously Adopted*

## STAFF REPORT

IN CONSIDERATION OF 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

---

Date: December 2, 2004

Prepared by: Sarah Chisholm/Brad Stevens

### BACKGROUND

The Oregon Zoo received accreditation from the Aquarium and Zoological Association (AZA) in September 2004. Through the process of accreditation, the Oregon Zoo was required to put together a plan for improvements in some of the older exhibits. Additionally, the United States Department of Agriculture (USDA) inspectors had recommendations for maintenance work after visiting this summer. The required improvements have been identified and costs have been calculated at \$65,950. The breakdown is as follows:

Resurface cages and floor painting in the primate building (AZA)	\$46,150
Paint sun bear and polar bear doors and railings in holding area (AZA)	9,000
Paint five tiger cages (AZA)	6,000
Floor work in the tiger holding area (USDA)	4,800
<b>Total Costs</b>	<b>\$65,950</b>

In June 2004 the Council approved an amendment to the FY 2004-05 budget providing the opportunity for Council consideration of funding for a Zoo capital maintenance or renewal & replacement project to be paid for by a transfer from the General Fund, using excise tax proceeds generated from the Winged Wonders exhibit and the Simulator attraction. The amendment did not guarantee that such a transfer would be authorized. However, in recognition of the Zoo's inability to fund its capital maintenance needs in the FY 2004-05 budget, this amendment provided an opportunity for the Zoo to make some headway on its capital backlog.

The following budget note was included in the FY 2004-05 Adopted Budget:

*Budget Note #5: Transfer from General Fund*

*The amount of excise tax generated through the end of FY 2003-04 from the proceeds of the Simulator and Winged Wonders attractions at the Oregon Zoo will be considered by the Council for transfer to the Zoo Operating Fund upon presentation by Zoo staff of a capital maintenance or renewal & replacement project in FY 2004-05. The amount is estimated to be \$63,000, but the actual amount will be determined by actual excise tax proceeds calculated at FY 2003-04 year end (second close).*

The actual amount of excise tax proceeds collected in FY 2003-04 were \$62,280.

## ANALYSIS/INFORMATION

1. **Known Opposition** None known
2. **Legal Antecedents** ORS 294.450(1) provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.

ORS 294.450(3) provides for transfers of appropriations and a like amount of budget resources from the general fund to another fund, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.

3. **Anticipated Effects** This action would allow the Oregon Zoo to complete three capital maintenance projects recommended by the Aquarium and Zoological Association as part of the accreditation process and one project recommended by United States Department of Agriculture.
4. **Budget Impacts** This action would reduce contingency in the General Fund by \$62,280, with a corresponding increase to interfund transfers out. In the Zoo Operating Fund, interfund transfers in and materials & services expenditures would increase by \$62,280. Detailed information on the budget impacts of this amendment can be found in Exhibits A and B of the ordinance.

## RECOMMENDED ACTION

The Chief Operating Officer, in concurrence with the Council President, recommends adoption of this Ordinance.

Agenda Item Number 5.4

**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.**

***Second Reading***

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY )  
2004-05 BUDGET AND APPROPRIATIONS )  
SCHEDULE FOR THE PURPOSE OF )  
TRANSFERRING \$97,902 FROM )  
CONTINGENCY TO PERSONAL SERVICES IN )  
THE PLANNING FUND TO ADD 1.00 FTE )  
REGIONAL PLANNING DIRECTOR )  
(PROGRAM DIRECTOR II); AND DECLARING )  
AN EMERGENCY )

ORDINANCE NO. 04-1067  
Introduced by Mike Jordan, Chief Operating  
Officer, with the concurrence of the Council  
President

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations within the FY 2004-05 Budget; and

WHEREAS, the need for the transfer of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2004-05 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$97,902 from contingency to personal services in the Planning Fund to add 1.0 FTE Regional Planning Director (Program Director II).
2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A  
Ordinance No. 04-1067**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Planning Fund</b>							
<i>Personal Services</i>							
<i>SALWGi Salaries &amp; Wages</i>							
5010	Reg Employees-Full Time-Exempt						
	Director II	1.00	113,234	-	0	1.00	113,234
	Manager I	3.00	220,868	-	0	3.00	220,868
	Manager II	8.00	667,213	-	0	8.00	667,213
	Program Director II	1.00	108,880	1.00	73,143	2.00	182,023
	Program Supervisor II	6.00	460,771	-	0	6.00	460,771
	Administrative Assistant	2.00	72,434	-	0	2.00	72,434
	Assoc. Management Analyst	1.00	56,197	-	0	1.00	56,197
	Assoc. Regional Planner	7.00	386,112	-	0	7.00	386,112
	Assoc. Trans. Planner	5.00	276,099	-	0	5.00	276,099
	Asst. Regional Planner	4.00	187,671	-	0	4.00	187,671
	Asst. Trans. Planner	2.00	90,275	-	0	2.00	90,275
	Asst. Management Analyst	1.00	46,255	-	0	1.00	46,255
	Principal Regional Planner	5.00	365,926	-	0	5.00	365,926
	Principal Transportation Planner	3.00	230,928	-	0	3.00	230,928
	Program Analyst IV	1.00	65,056	-	0	1.00	65,056
	Program Analyst V	2.00	144,456	-	0	2.00	144,456
	Senior Management Analyst	1.00	61,958	-	0	1.00	61,958
	Senior Regional Planner	3.00	195,620	-	0	3.00	195,620
	Senior Trans. Planner	11.00	717,349	-	0	11.00	717,349
	Senior Public Affairs Specialist	2.00	110,498	-	0	2.00	110,498
5015	Reg Empl-Full Time-Non-Exempt						
	Administrative Secretary	3.00	107,281	-	0	3.00	107,281
	Program Assistant 2	1.00	39,964	-	0	1.00	39,964
5020	Reg Employees-Part Time-Exempt						
	Associate Regional Planner	1.50	84,423	-	0	1.50	84,423
	Assistant Management Analyst	0.75	33,014	-	0	0.75	33,014
	Asst. Regional Planner	0.90	41,630	-	0	0.90	41,630
5080	Overtime		5,000		0		5,000
	Salary Adjustments						
	Adjustment Pool (Non-Rep/AFSCME)		241,204		0		241,204
<i>FRINGE Fringe Benefits</i>							
5100	Fringe Benefits						
	Base Fringe		1,736,613		24,759		1,761,372
<b>Total Personal Services</b>		<b>76.15</b>	<b>\$6,866,929</b>	<b>1.00</b>	<b>\$97,902</b>	<b>77.15</b>	<b>\$6,964,831</b>
<b>Total Materials &amp; Services</b>			<b>\$8,795,515</b>		<b>\$0</b>		<b>\$8,795,515</b>



Exhibit A  
Ordinance No. 04-1067

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Planning Fund</b>							
<b>Total Capital Outlay</b>			<b>\$47,000</b>		<b>\$0</b>		<b>\$47,000</b>
<b>Total Interfund Transfers</b>			<b>\$2,189,991</b>		<b>\$0</b>		<b>\$2,189,991</b>
<i><b>Contingency and Ending Balance</b></i>							
<i>CONT Contingency</i>							
5999	Contingency						
	* General contingency		474,577		(97,902)		376,675
	* Prior Year PERS Reserve		150,000		0		150,000
	* Current Year PERS Reserve		162,263		0		162,263
<i>UNAPP Unappropriated Fund Balance</i>							
5990	Unappropriated Fund Balance						
	* Computer Replacement Reserve		90,000		0		90,000
<b>Total Contingency and Ending Balance</b>			<b>\$876,840</b>		<b>(\$97,902)</b>		<b>\$778,938</b>
<b>TOTAL REQUIREMENTS</b>		<b>76.15</b>	<b>\$18,776,275</b>	<b>1.00</b>	<b>\$0</b>	<b>77.15</b>	<b>\$18,776,275</b>

**Exhibit B**  
**Ordinance No. 04-1067**  
**FY 2004-05 SCHEDULE OF APPROPRIATIONS**

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Amended Appropriation</u>
<b>PLANNING FUND</b>			
Operating Expenses (PS & M&S)	\$15,662,444	\$97,902	\$15,760,346
Capital Outlay	47,000	0	47,000
Interfund Transfers	2,189,991	0	2,189,991
Contingency	786,840	(97,902)	688,938
Unappropriated Balance	90,000	0	90,000
<b>Total Fund Requirements</b>	<b>\$18,776,275</b>	<b>\$0</b>	<b>\$18,776,275</b>

*All Other Appropriations Remain as Previously Adopted*

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1067, FOR THE PURPOSE OF TRANSFERRING \$97,902 FROM CONTINGENCY TO PERSONAL SERVICES IN THE PLANNING FUND TO ADD 1.00 FTE REGIONAL PLANNING DIRECTOR (PROGRAM DIRECTOR II); AND DECLARING AN EMERGENCY

---

Date: November 4, 2004

Prepared by: Andy Cotugno

### BACKGROUND

This is a critical leadership position that assists the Planning Director by ensuring progress on and completion of the Division's work programs. Inclusion of this key leadership position will ensure work programs are consistent with the Council goals and objectives included in Council's Strategic Planning Process and reflected in the annually adopted budget. This position ensures a high level interface with the Metro Council, Joint Policy Advisory Committee on Transportation and will have contact with elected officials at the federal, state and local level, and with the Metro Policy Advisory Committee, which are comprised of local elected officials. Planning's previous Regional Director was transferred and appointed as Director of Solid Waste and Recycling Department early in 2003. This request is for the addition of 1.00 FTE and the funding of a Program Director II, reporting to the Planning Director.

### ANALYSIS/INFORMATION

1. **Known Opposition** None Known
2. **Legal Antecedents** ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction
3. **Anticipated Effects** This is a critical leadership position in the Planning Department. Re-filling this position will add 1.00 FTE, ensure more divisional effectiveness, create more efficiency and free up the Director's schedule.
4. **Budget Impacts** This action would reinstate 1.00 FTE Program Director II in the Regional Planning Division of the Planning Department. In addition, this action would transfer \$97,902 from the Planning Department's contingency for the salary and fringe benefits for the position for seven months, through the end of the current fiscal year. This is a permanent position, and would add \$175,379 in salary and fringe to the Planning Department budget in fiscal year 2005-06.

### RECOMMENDED ACTION

The Chief Operating Officer, in concurrence with the Council President, recommends adoption of this Ordinance.



METRO

PEOPLE PLACES  
OPEN SPACES

**Title:** **Regional Planning Director (Program Director I or II\*\*)**  
**Planning Department**

**Annual Salary (PD I):** \*Min: \$89,000; Mid: \$106,650; Max: \$124,300, annually, FT, exempt  
(Program Director I)

**Annual Salary (PD II):** \*Min: \$97,600; Mid: \$119,450; Max: \$141,290, annually, FT, exempt  
(Program Director II)

**Internal Deadline:** \_\_\_\_\_, 5:00 p.m.

**General Deadline:** \_\_\_\_\_, 5:00 p.m.

This position is not represented and is exempt.

Recruitment Number: Planning-1720-Nov04

**\*Note:** This position is not represented and is exempt. For non-represented classifications, Metro encourages and rewards excellent performance with increases in base salary to the mid point of the salary range at this time, and an annual bonus of up to 3 percent, at this time, for employees whose salary is at the midpoint, but below the maximum. Therefore, the incumbent in this position at this time can earn up to \$106,650 in base salary for Program Director I, and \$119,450 in base salary for Program Director II.

**Summary:** Provides overall direction and supervision to the Long Range Planning and Policy Division of the Planning Department. The division is composed of sections that are assigned key agency tasks of: Regional Transportation Planning (includes the federally designated Metropolitan Planning Organization, maintains the Regional Transportation Plan and the Metropolitan Transportation Improvement Program); planning and administrative oversight of the region's Urban Growth Boundary and the 2040 Growth Concept; administration and update to the Regional Framework Plan and planning for the protection and enhancement of natural resources. Ability to inspire and motivate assigned staff in these sections is essential.

This position is a key leadership position for the department. It is expected that the individual will work closely with the Metro Council and elected officials at the federal, state and local level. In addition, it is expected that there will be close coordination and cooperation with private sector business and environmental advocacy groups. Ability to work with elected and citizen policy groups to implement Metro's program is essential.

This position ensures progress on and completion of the Division's work program consistent with the objectives and measures included in the adopted budget. Oversees a team of managers, a supervisor, and project managers and team leaders to develop and maintain budgets, schedules, timelines and work quality. Interfaces closely with Joint Policy Advisory Committee on Transportation (JPACT) and Metro Policy Advisory Committee (MPAC), which are comprised of local elected officials. This position reports directly to the Planning Director, and works closely with the Metro Chief Operating Officer and the Metro Council. This position is responsible for 23 full time equivalents and an annual budget of approximately \$5 million.

The key project this position will be responsible for is the re-evaluation of Metro's 2040 Growth Concept. Adopted in 1995, the 2040 Growth Concept has provided the vision for growth in the region and has galvanized numerous public and private organizations to support a transportation and growth strategy that is unique in the U.S. A decade later, Metro is interested in evaluating the successes and failures in order to renew and refine this essential policy framework. This position will be expected to guide Metro staff,

provide policy support to the Metro Council and effectively engage business and community interests through this important process.

**Essential Job Duties:**

An employee in this position must be able to perform all of the essential job duties listed below with or without reasonable accommodation; however, this list is not intended to include all of the specific tasks which an employee in this position may be expected to perform.

- Plans, organizes and directs Long Range Planning and Policy Division program area priorities encompassing transportation, land use and natural resources planning. Establishes, implements and monitors policies and procedures for the effective, efficient operation of assigned areas.
- Provides leadership in the development and implementation of policies and programs for Metro's transportation and growth management planning programs.
- Consults with elected officials and senior management on issues; establishes strategic direction, and guides processes for critical functions/programs for a department.
- Develops partnering relationships with external entities in support of Metro programs; meets with high level, internal & external, public & private officials to represent programs.
- Chairs or co-chairs regional technical and policy committees related to transportation and growth management planning. Represents Metro in various outreach activities, including participation in committees organized by state and local agencies, business and neighborhood organization meetings, speaking engagements, and conferences and training events.
- Provides full supervision over supervisory, professional and technical positions with primary responsibility for hiring, promoting, transferring, assigning, evaluating performance, initiating salary action, handling grievances, disciplining, and discharging employees.
- Assists in short- and long-range planning of the department; manages special projects or studies to meet the overall direction and objectives of the department.
- Develops and implements the budget for assigned areas of responsibility; oversees controls to ensure expenditures are in legal compliance and within limits authorized through the budget.
- Ensures compliance with relevant federal and state transportation, land use and air quality statutes, rules and regulations.
- Evaluates internal departmental systems to ensure maximum efficiency and effectiveness: develops and establishes department policies and code revisions.
- Responds to various department's operational problems and determines appropriate action or resolutions.
- Prepares documents and reports, interprets department rules and directives, reviews all contracts and resolves contract disputes; ensures compliance with Metro Code and relevant laws.
- Performs other related duties, as assigned.

**Minimum Requirements for Program Director I:** Bachelor's degree in planning or a related field, and seven years of specialized experience or operational management in area of responsibility; or any combination of education and experience which provides the applicant with the knowledge, skills and abilities required to perform the job. Experience in the private sector is a plus. Certification from the American Institute of Certified Planners is a plus. May require the possession of or ability to obtain a valid driver's license issued in the incumbent's state of residency, for travel to meetings.

**Minimum Requirements for Program Director II:** Bachelor's degree in planning or a related field, and eight to ten years of specialized experience or operational management in area of responsibility; or any combination of education and experience which provides the applicant with the knowledge, skills and abilities required to perform the job. Experience in the private sector is a plus. Certification from the American Institute of Certified Planners is a plus. May require the possession of or ability to obtain a valid driver's license issued in the incumbent's state of residency, for travel to meetings.

**Required Knowledge, Skills and Abilities:**

- Executive level knowledge of the principles and practices, legal requirements, regulations, and laws applicable to area of assigned responsibility.
- Knowledge and understanding of market forces affecting land use and transportation decisions.
- Thorough knowledge of fiscal management, including budget preparation and expenditure control.
- Knowledge of management theory and the principles and practices of supervision.
- Knowledge of and experience with a balanced mix of regulatory programs and economic incentives to implement desired land use and transportation outcomes.
- Strong leadership skills with the ability to build consensus among diverse groups.
- Skill and ability in using computers, and major business and specialized software programs.
- Ability to communicate successfully with elected officials, the media, the public, and various interest groups regarding sensitive and/or complex issues.
- Ability to work with elected and citizen policy groups to implement Metro's program is essential.
- Ability to understand and articulate the "Big Picture" and oversee and engage in the details.
- Ability to inspire and motivate assigned staff in these sections is essential.
- Ability to analyze and evaluate operations and develop and implement corrective action.
- Demonstrated ability to plan, organize and oversee assigned work programs, monitor work schedules, and evaluate the work of others.
- Ability to develop departmental goals and objectives and perform strategic and operational planning activities.
- Ability to establish and maintain effective working relationships with managers and non-managers, elected officials, other agencies, and the general public.
- Demonstrated ability to facilitate large and small groups dealing with a wide variety of issues.

**Working Conditions:** Duties are primarily performed in an office environment while sitting at a desk or computer terminal. Employees in this series may encounter the hazardous chemicals, equipment and situations normally found in such an environment. Travel, extensive overtime and evening meetings may be required. Physical requirements include continuous sitting and hearing; frequent talking, walking, fingering, repetitive motions of the hand and wrist and handling; and lifting, pushing, carrying and/or pulling of up to 25 pounds. Mental activities required by jobs in this series include continuous use of discretion, decision-making and interpersonal skills. Depending on the area of responsibility, advanced math and programming may be required. Customer Service, negotiations, mentoring, training and supervision, presentations and teaching are frequently performed. Reading, writing, understanding and speaking English is required.

**Benefits:** Metro participates in the Public Employees Retirement System (PERS), contributing both the employer and employee portion; eligibility generally begins after working 600 or more hours in a 12-month period. Metro provides generous health care benefits that vary depending on the plan the employee chooses, bargaining unit affiliation, and employment status.

**Immigration law notice:** Only US citizens and aliens authorized to work in the United States will be hired. All new employees will be required to complete and sign an employment eligibility form and present documentation verifying identity and employment eligibility.

**Equal employment opportunity:** All qualified persons will be considered for employment without regard to race, color, religion, sex, national origin, age, marital status, veteran status, political affiliation, disability, or sexual orientation. Assistance will be gladly provided upon request, for any applicant with sensory or non-sensory disabilities.

**Application Procedure:** This position opens on \_\_\_\_\_. To apply, submit a resume with a cover letter describing why your background and experience make you the ideal candidate, in addition to completing our AA/EEO form, to: Metro Human Resources, 600 NE Grand Avenue, Portland, OR 97232; or fax to (503) 797-1798; or email [jobs@metro.dst.or.us](mailto:jobs@metro.dst.or.us).

Your resume and cover letter must be received at the Human Resource Department, 600 NE Grand Avenue, Portland, OR 97232, by 5:00 p.m., on \_\_\_\_\_ (for internal candidates), and \_\_\_\_\_ (for general candidates).

**\*\* This position will be filled at either a Program Director I or II,  
depending upon qualifications.**

***An Equal Opportunity/Affirmative Action Employer***

Agenda Item Number 5.5

**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.**

*Second Reading*

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY	)	ORDINANCE NO. 04-1068
2004-05 BUDGET AND APPROPRIATIONS	)	
SCHEDULE, RECOGNIZING \$200,000 IN	)	Introduced by Mike Jordan, Chief Operating
GRANT FUNDS AND INCREASING CAPITAL	)	Officer, with the concurrence of the Council
OUTLAY IN THE ZOO OPERATING FUND,	)	President
AMENDING THE FY 2004-05 THROUGH FY	)	
2008-09 CAPITAL IMPROVEMENT PLAN FOR	)	
COMPLETION OF STORM WATER HANDLING	)	
PROJECTS; AND DECLARING AN	)	
EMERGENCY	)	

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2004-05 Budget; and

WHEREAS, Oregon Budget Law ORS 294.326(3) allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose; and

WHEREAS, the need for the increase of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2004-05 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of recognizing \$200,000 in grant funds for specific projects and increasing capital outlay in the Zoo Operating Fund.
2. That the FY 2004-05 through FY 2008-09 Capital Improvement Plan is hereby amended to include the projects shown in Exhibit C to this Ordinance.
3. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A**  
**Ordinance No. 04-1068**

ACCT	DESCRIPTION	<u>Current Budget</u>	<u>Revision</u>	<u>Amended Budget</u>
<b>Zoo Operating Fund - Resources</b>				
<i><u>Resources</u></i>				
<i>BEGBAL</i>	<i>Beginning Fund Balance</i>			
	* Prior year ending balance	5,455,062	0	5,455,062
	* Prior year PERS Reserve	550,000	0	550,000
<i>RPTAX</i>	<i>Real Property Taxes</i>			
4010	Real Property Taxes-Current Yr	8,673,597	0	8,673,597
4015	Real Property Taxes-Prior Yrs	260,307	0	260,307
<i>GRANTS</i>	<i>Grants</i>			
4100	Federal Grants - Direct	77,000	0	77,000
4120	Local Grants - Direct	0	200,000	200,000
<i>CHGSVC</i>	<i>Charges for Service</i>			
4500	Admission Fees	5,679,420	0	5,679,420
4510	Rentals	265,023	0	265,023
4550	Food Service Revenue	4,143,070	0	4,143,070
4560	Retail Sales	2,108,419	0	2,108,419
4630	Tuition and Lectures	838,074	0	838,074
4635	Exhibit Shows	273,121	0	273,121
4640	Railroad Rides	481,860	0	481,860
4645	Reimbursed Labor	186,047	0	186,047
4650	Miscellaneous Charges for Svc	500	0	500
<i>INTRST</i>	<i>Interest Earnings</i>			
4700	Interest on Investments	90,076	0	90,076
<i>DONAT</i>	<i>Contributions from Private Sources</i>			
4750	Donations and Bequests	912,500	0	912,500
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>			
4170	Fines and Forfeits	20,000	0	20,000
4890	Miscellaneous Revenue	27,907	0	27,907
<i>INFREQ</i>	<i>Special Items-Infrequent Items</i>			
4810	Sale of Fixed Assets	2,000	0	2,000
<b>TOTAL RESOURCES</b>		<b>\$30,043,983</b>	<b>\$200,000</b>	<b>\$30,243,983</b>

*The Amended Column does not reflect the impact of Ordinance No. 04-1066, transferring \$62,280 from the General Fund to the Zoo Operating Fund, and increasing materials & services accordingly.*

**Exhibit A**  
**Ordinance No. 04-1068**

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Zoo Operating Fund - Expenditures</b>							
<b>Total Personal Services</b>		<b>150.85</b>	<b>\$12,313,752</b>	<b>0.00</b>	<b>\$0</b>	<b>150.85</b>	<b>\$12,313,752</b>
<b>Total Materials &amp; Services</b>			<b>\$8,341,475</b>		<b>\$0</b>		<b>\$8,341,475</b>
<i>Capital Outlay</i>							
<i>CAPNON Capital Outlay (Non-CIP Projects)</i>							
5710	Improve-Oth thn Bldg (non-CIP)		45,700		0		45,700
5720	Buildings & Related (non-CIP)		40,000		0		40,000
<i>CAPCIP Capital Outlay (CIP Projects)</i>							
5715	Improve-Oth thn Bldg (CIP)		0		200,000		200,000
<b>Total Capital Outlay</b>			<b>\$85,700</b>		<b>\$200,000</b>		<b>\$285,700</b>
<b>Total Interfund Transfers</b>			<b>\$2,790,366</b>		<b>\$0</b>		<b>\$2,790,366</b>
<b>Total Contingency and Ending Balance</b>			<b>\$6,512,690</b>		<b>\$0</b>		<b>\$6,512,690</b>
<b>TOTAL REQUIREMENTS</b>		<b>150.85</b>	<b>\$30,043,983</b>	<b>0.00</b>	<b>\$200,000</b>	<b>150.85</b>	<b>\$30,243,983</b>

*The Amended Column does not reflect the impact of Ordinance No. 04-1066, transferring \$62,280 from the General Fund to the Zoo Operating Fund, and increasing materials & services accordingly.*

**Exhibit B**  
**Ordinance No. 04-1068**  
**FY 2004-05 SCHEDULE OF APPROPRIATIONS**

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Amended Appropriation</u>
<b>ZOO OPERATING FUND</b>			
Operating Expenses (PS & M&S)	\$20,655,227	\$0	\$20,655,227
Capital Outlay	85,700	200,000	285,700
Interfund Transfers	2,790,366	0	2,790,366
Contingency	2,030,595	0	2,030,595
Unappropriated Balance	4,482,095	0	4,482,095
<b>Total Fund Requirements</b>	<b>\$30,043,983</b>	<b>\$200,000</b>	<b>\$30,243,983</b>

*The Amended Column does not reflect the impact of Ordinance No. 04-1066, transferring \$62,280 from the General Fund to the Zoo Operating Fund, and increasing materials & services accordingly.*

*All Other Appropriations Remain as Previously Adopted*

## Capital Project Request - Project Detail

**Project Title:** Stormwater Handling System **Fund:** Zoo Operating Fund  
**Project Status:** Incomplete **Funding Status:** Funded **FY First Authorized:** 2004-05 **Department:** Oregon Zoo  
**Project Number:** TEMP204 **Active:**  **Dept. Priority:** 2 **Facility:**  **Division:** Construction Maintenance  
**Source Of Estimate:** Preliminary **Source:** Greenworks **Start Date:** 12/04 **Date:** 11/16/2004  
**Type of Project:** New **Request Type:** Initial **Completion Date:** 6/05 **Prepared By:** Brad Stevens

Project Estimates	Actual	Budget/Est	Prior						
Capital Cost:	Expend	2003-2004	Years	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	Total
Construction	\$0	\$0	\$0	\$200,000	\$0	\$0	\$0	\$0	\$200,000
<b>Total:</b>	\$0	\$0	\$0	\$200,000	\$0	\$0	\$0	\$0	\$200,000
<b>Funding Source:</b>									
Grants	\$0	\$0	\$0	\$200,000	\$0	\$0	\$0	\$0	\$200,000
<b>Total:</b>	\$0	\$0	\$0	\$200,000	\$0	\$0	\$0	\$0	\$200,000
<b>Annual Operating Budget Impact:</b>									

### Project Description / Justification:

Estimated Useful Life (yrs) 15

First Full Fiscal Year of Operation: 2005-06

A study of potential projects was completed by GreenWorks, a contractor for BES. Based on that study, five projects were identified and agreed to be priorities by BES and the Zoo. The recommended projects are all in public areas where educational messages regarding storm water can be easily communicated via simple interpretives, a requirement of the grant.

The projects selected include installation of bioswales in a portion of the Washington Park Parking Lot, installation of a storm water treatment facility near the concert lawn, disconnecting downspouts on the viewing kiosks adjacent to the elephant front yard, and if funds are available, projects in the Kongo Ranger Station and Sankuru Trader areas of the zoo will be explored.

This project will reduce the amount of water going into the sewer system and reduce the sewer bill of the Zoo. The amount of reduction will not be known until the design work is completed. The operating impact of this project will also not be totally known until design is complete and will be documented at the time contracts for the project are completed.

## STAFF REPORT

IN CONSIDERATION OF 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

---

Date: December 2, 2004

Prepared by: Sarah Chisholm/Brad Stevens

## BACKGROUND

Zoo staff is working together with the City of Portland, Bureau of Environmental Services (BES) to identify innovative storm water handling projects to be constructed at the Zoo. These projects are being funded by the Environmental Protection Agency with pass-through funds to BES. There is \$200,000 in grant funds available for this project. The project will be funded entirely by the grant. The funding period ends June 30, 2005.

A study of potential projects was completed by GreenWorks, a contractor for BES. Based on that study, five projects were identified and agreed to be priorities by BES and the Zoo. The recommended projects are all in public areas where educational messages regarding storm water can be easily communicated via simple interpretives, a requirement of the grant.

The projects selected include installation of bioswales in a portion of the Washington Park Parking Lot, installation of a storm water treatment facility near the concert lawn, disconnecting downspouts on the viewing kiosks adjacent to the elephant front yard, and if funds are available, projects in the Kongo Ranger Station and Sankuru Trader areas of the zoo will be explored

## ANALYSIS/INFORMATION

- 1. Known Opposition** None known
- 2. Legal Antecedents** ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts and bequests received by a municipal corporation in trust for a specific purpose
- 3. Anticipated Effects** This action allows the department to recognize the grants dedicated to the projects described in this staff report.
- 4. Budget Impacts** This action would increase grant revenue in the Zoo Operating Fund by \$200,000, with a corresponding increase to capital outlay. Detailed information on the budget impacts of this amendment can be found in Exhibits A, B and C of the ordinance. These projects will be funded entirely with grant revenues, with no reduction in fund balance.

## RECOMMENDED ACTION

The Chief Operating Officer, in concurrence with the Council President, recommends adoption of this Ordinance.

Agenda Item Number 6.1

**Resolution No. 04-3512, For the Purpose of Providing Direction to Metro Concerning Bills before the 2005 Oregon Legislature.**

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PROVIDING	)	RESOLUTION NO. 04-3512
DIRECTION TO METRO CONCERNING BILLS	)	
BEFORE THE 2005 OREGON LEGISLATURE	)	Introduced by Chief Operating Officer
	)	Michael J. Jordan, with the concurrence of
	)	Council President David Bragdon

WHEREAS, Metro has an interest in bills before the 2005 Oregon Legislature;

WHEREAS, the Metro Councilors and Metro staff will represent Metro's interest during the upcoming legislative session;

WHEREAS, the Metro Council wishes to establish a united position on important legislative proposals and provide direction to Metro staff in order to represent the will of the agency;

WHEREAS, the attached Exhibit A of this resolution lists specific proposals that are of concern to Metro and the Metro Area and gives guidance to Metro staff on Metro's position on these proposals; and

WHEREAS, the attached Exhibit B is a statement of principles regarding categories of legislation that gives guidance to Metro staff in representing Metro; now therefore

BE IT RESOLVED that the Metro Council hereby directs the Metro Chief Operating Officer, the Metro Attorney and Metro staff to make the agency's position on a variety of legislative proposals clear with the 2005 Oregon Legislature consistent with Exhibits A and B attached hereto.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit "A" to Resolution 04-3512  
METRO LEGISLATIVE PRIORITIES  
November 22, 2004**

**TOP PRIORITY ISSUES**

- **Comprehensive review of Oregon's land use planning program:** The Department of Land Conservation and Development (DLCD) is proposing a multi-year review of Oregon's land use program. Such a review should be comprehensive, balanced, fact-based, and solution-oriented. Metro should actively participate in the development of legislation initiating such a process and in the effort to secure adequate funding for an important effort of this magnitude.
- **Extending the five-year cycle for evaluation of Metro UGB to ten years:** Metro is the only jurisdiction in the state that is required to evaluate the residential capacity of its urban growth boundary (UGB) every five years. This exercise demands a tremendous dedication of public resources and prevents Metro and its local government partners from engaging in the long-range planning that can keep the region both livable and economically competitive in the future. Metro should introduce legislation extending the cycle to ten years.
- **Multi-modal transportation funding package:** On November 17, 2004, the Joint Policy Advisory Committee on Transportation (JPACT) endorsed a transportation funding concept that includes the following elements: (1) funding for operations, maintenance, and modernization of the state and local road system; (2) funding for improvements to alternative modes of passenger and freight transportation, including light rail and transit, passenger and freight rail improvements, and improvements to marine terminals and airports; and (3) continued funding within the ODOT budget for elderly and disabled transit service, bus replacement and transportation demand management. Metro should work with JPACT, the five other Oregon MPOs, and other interested parties to secure passage of a package that includes as many of these elements as possible.
- **Funding for a headquarters hotel serving the Oregon Convention Center:** In order to maximize the Oregon Convention Center's benefits to the region and the state, Metro supports the construction of a convention center headquarters hotel. Pending the completion of further analysis of the financial viability of this project, Metro should collaborate with the Metropolitan Exposition Recreation Commission, the Portland Development Commission and other interested parties to pursue financial support from the state for hotel construction.

**OTHER PRIORITY ISSUES, BY TOPIC**

**LAND USE**

- **Eliminating duplicative UGB appeals:** The same statute that gives the Land Conservation and Development Commission (LCDC) jurisdiction over most UGB expansions limits the scope of LCDC's jurisdiction in these matters to the statewide planning goals. This leads to

the same UGB decision being appealed to both LCDC (for alleged violation of statewide goals) and LUBA (for other alleged violation of Metro's charter, for example). This unnecessary duplication wastes time and money for all parties. Metro should introduce legislation to eliminate this duplicative process.

- **Allowing Metro-area cities to use annexation plan provisions of ORS 195:** Because of an apparent drafting error in Metro's statute (ORS 268), Metro-area cities are unable to use the "annexation plan" provisions of ORS 195. Metro should introduce legislation to correct this error. Doing so will help to facilitate the orderly urbanization of land within the urban growth boundary.
- **Urban-scale commercial and industrial development outside UGBs:** Metro has an interest in restricting urban-scale commercial and industrial development to lands within urban growth boundaries. Legislation passed in 2003 greatly reduced the restrictions on industrial development on rural land outside the Willamette Valley. Legislation is expected in 2005 to extend similar treatment to commercial development, though the Willamette Valley may still be exempted. DLCD will also convene a work group on this topic. Metro should participate in this work group and monitor this legislation, with the goal of retaining the functional integrity of Metro's UGB.
- **Industrial Facility Siting Council:** A proposal may be forthcoming to create a new body and a new process to streamline the siting of certain industrial facilities. Metro has an interest in an industrial facility siting process that is efficient, fair, and accountable, and that results in siting decisions that comply with regional economic goals, sound land use planning principles, and community aspirations. Until more details become available, Metro should monitor this proposal.

*The following issues should be discussed in the context of the proposed comprehensive review of Oregon's land use planning system, though it is possible that they may become the subject of 2005 legislation:*

- **Rural reserves:** Defining certain lands as "rural reserves" and giving them a legally enforceable status as the fifth priority in the hierarchy of lands for UGB expansions would provide a mechanism to implement the "hard edge" concept under consideration by the Metro Council and make enforceable the Green Corridor Agreements with neighboring jurisdictions to maintain separation from the Metro area. Metro should continue to develop this concept and ensure that it is considered in any discussion of major changes in the UGB expansion process, including any changes in the hierarchy.
- **20-year land supply:** While Metro is committed to providing adequate land to accommodate future housing needs, the 20-year supply requirement is inflexible and possibly excessive. Metro supports the removal or relaxation of this requirement; at a minimum, it would be helpful to allow jurisdictions some leeway as to how precisely they meet an exact 20-year need.
- **Annexation and related issues:** Cities are the best means of providing public services to urban areas. Metro has a strong interest in encouraging the orderly incorporation of urban

and urbanizing areas. Metro should oppose legislative efforts to create procedural obstacles to annexation, monitor other annexation-related legislation, and promote continued conversations with other interested parties about how to create the conditions for rational urbanization.

## **TRANSPORTATION**

- **Transportation planning rule:** The TPR is nationally recognized for its groundbreaking approach to the integration of land use and transportation planning, but has been controversial in Oregon since its inception. A number of recent events have heightened this controversy and caused various interests to again suggest that the TPR be re-evaluated or modified. Metro has consistently supported the integration of land use and transportation planning through the TPR, which has helped the region to achieve many of its livability goals, and thus does not support wholesale changes to the rule. However, it may be advisable to clarify certain provisions implicated in recent litigation. While it would be preferable to accomplish this through rulemaking, legislation will be introduced in 2005; Metro should closely monitor any administrative or legislative activity on this topic.
- **TDM funding:** Metro's Regional Travel Options (RTO) Program 5-Year Strategic Plan identifies collaborative marketing of transportation alternatives as a top priority and provides a coordinated framework for marketing activities in the Portland region. ODOT's 2003-2005 budget includes \$1.5 million for marketing transportation alternatives, much of which is likely to be spent in the Metro area in connection with the RTO effort. Metro should support the renewal of this funding in the 2005-2007 ODOT budget. (This concept is also encompassed within the larger transportation finance proposal.)

## **PARKS AND GREENSPACES**

- **System development charges:** Metro has an interest in ensuring that local communities have the resources necessary to provide adequate parks facilities to new and existing residents and does not support proposals to limit the ability of local governments to raise those resources through system development charges. Legislation to cap park SDCs is expected in 2005. Metro should collaborate with other local governments and parks providers to respond to this legislation.
- **Forest Legacy funding:** The Forest Legacy Program is a federal program that is intended to protect environmentally important forests threatened with conversion to non-forest uses through conservation easements or fee-acquisition from willing landowners. However, federal funding that might have come to Oregon under this program has been blocked by certain legislators. Metro should work with other natural resource and conservation organizations, property owners, the Oregon Department of Forestry, and Oregon's Congressional delegation to urge the Oregon Legislature to allow these federal funds to come to Oregon.

## **SOLID WASTE**

- **Electronic waste management:** Used electronic products are a rapidly growing waste problem due to their quantity, rapid obsolescence, and toxicity. As a member of the Advisory Committee on Electronic Products Stewardship established by the 2003 Legislature, Metro supports measures aimed at increasing reuse and recycling of electronic waste through the creation of a product stewardship system based on producer responsibility. Legislation is likely in 2005.

## ENVIRONMENT

- **MTBE:** Methyl tertiary butyl ether (MTBE) is used as a fuel oxygenate elsewhere in the country in order to lower carbon monoxide emissions from gasoline-powered vehicles. California and Washington have banned the use of MBTE because it has been considered a potential carcinogen and it is very difficult (costly) to remove from water if it leaks into a water supply. Metro should support a ban on MTBE as an oxygenated fuel additive and should introduce legislation on this topic if necessary.

## OREGON ZOO

- **Zoo debt repayment:** Metro and the Oregon Zoo took out a \$5 million loan from the Oregon Economic and Community Development Department (OECDD) in 1997 to fund the light rail station and parking lot improvements at Washington Park. This loan is being repaid at \$400,000+/year for 15 more years. This is a huge economic burden on Metro and the zoo. Metro should seek either debt forgiveness from the state or an allocation of funds by the Legislature for general zoo support that could be used to pay down the debt, allowing the Zoo to direct cost savings to deferred maintenance.

## LOWER PRIORITY ISSUES

### LAND USE

- **Suitability of land for inclusion in UGBs:** Metro should support a “housekeeping” amendment of ORS 197.298 to clarify that the hierarchy of lands for UGB expansion does not require the inclusion of higher-priority lands (e.g., exception areas) that are not suitable for the proposed use.
- **LUBA structure:** Legislation may be introduced that would transfer the Land Use Board of Appeals (LUBA) from the executive branch to the judicial branch, turning LUBA referees into “magistrates” under the Court of Appeals. Legislative discussion of this proposal could expand into a broader discussion of the appeals process. Metro should monitor this proposal and other proposals related to the land use appeals process.
- **Funding for planning:** Lack of funding is a barrier to sound planning. This problem manifests itself in many ways; examples include planning of UGB expansion areas and concept planning for the future urbanization of areas like the Stafford basin. Metro should

support the inclusion of adequate grant funds in the DLCD budget to support local planning efforts.

- **Performance measures:** Statutory timelines for reporting on performance measures and taking corrective action are unrealistically short. Metro supports amending ORS 197.302 to establish more realistic timelines.

## FINANCE

- **Land value taxation:** This policy would allow local taxing districts to tax land at a higher rate than improvements. Such a system could create an incentive for more efficient development. However, given the restrictions on property taxes that have been added to the Oregon Constitution by the voters, the development of such a system would almost certainly require a constitutional amendment. Metro should introduce legislation on land value taxation as the vehicle for making informational presentations to the Revenue Committees of the Legislature.
- **Regional revenue sharing:** Regional revenue sharing (also known as tax base sharing), in which a portion of the increased tax revenues from new development are distributed throughout a metropolitan region, can both increase social and geographic equity and support sound regional land use policies. Rather than introducing legislation at this time, Metro should convene a regional dialogue (possibly in the form of a task force or advisory committee) on the relationship between land use and fiscal policy.

## PARKS AND GREENSPACES

- **M66 local share allocation:** Since its inception, the local share appropriation from Measure 66 funds (Parks and Salmon) has been \$5,000,000 annually statewide, regardless of lottery collections and allocations to State Parks. Metro supports increased state funding for parks in the region and will work collaboratively with park providers in the metro region and around the state to support increased state funding for local park providers.

## SOLID WASTE AND RECYCLING

- **Funding for pesticide use reporting system:** The Legislature enacted a pesticide use reporting system in 1999 but has never provided adequate funding to implement the program. Metro's work to improve water quality, fish and wildlife habitat, and stormwater management would be enhanced by information resulting from a comprehensive pesticide use tracking program. Accordingly, as part of its efforts to reduce the impact of pesticides on residents and the environment, Metro should support adequate funding for, and implementation of, the Pesticide Use Reporting System.
- **Bottle bill expansion:** A legislative proposal may be forthcoming in 2005 to "modernize" the state's beverage container system. Metro should support improvements to Oregon's bottle bill with the goals of reducing litter and increasing the number of beverage containers that are recycled rather than landfilled.

## **ENVIRONMENT**

- **Funding for watershed councils and soil and water conservation districts:** Metro has an interest in supporting organizations that are using cooperative and non-regulatory approaches to help protect fish and wildlife habitat. Metro should support legislation that provides funding for the Oregon Watershed Enhancement Board (which funds local watershed councils) and local soil and water conservation districts at levels adequate to allow them to complete their mission. Metro should also support legislation that recognizes the importance of funding their activities in urban areas.
- **Conservation easement property tax assessments:** This proposal would allow a property owner who enters into a conservation easement to transfer land from a previous farmland or forestland tax assessment program into a conservation easement tax assessment program designed to keep the land at the same assessed value after the switch as before. This would remove a barrier to the acquisition of conservation easements, thereby helping to facilitate protection of open space, and of fish and wildlife habitat in Metro's Goal 5 habitat inventory, through non-regulatory means.

## **OREGON ZOO**

- **Zoo parking lot:** The Metro Council should oppose any legislation that would require the zoo to give up the parking lot for non-zoo uses.

**Exhibit “B” to Resolution 04-3512  
METRO LEGISLATIVE PRINCIPLES<sup>1</sup>**

**LAND USE:**

1. **Efficiency:** Land within UGBs should be used efficiently before UGBs are expanded.<sup>2</sup>
2. **Need:** The requirement to demonstrate need for UGB expansions should not be evaded or diluted.<sup>3</sup>
3. **Transportation:** Land use and transportation planning should be coordinated so land uses do not undermine the transportation system and transportation investments do not lead to inappropriate land uses.<sup>4</sup>
4. **Pre-emption:** Within the context of Oregon’s land use system, Metro’s authority should not be pre-empted.
5. **Annexation:** As cities are the preferred governing structure for providing public services to urban areas, Metro supports reforms that will facilitate, or reduce barriers to, orderly annexation and incorporation.
6. **Rules/Statutes:** Administrative rules should not be adopted into statute.
7. **Complete Communities:** Metro supports legislation that facilitates development of complete communities, including employment opportunities, choices of housing types affordable to people of all income levels, transportation choices, and parks and greenspaces accessible to all.<sup>5</sup>
8. **Non-Regulatory Tools:** State efforts at regulatory streamlining should include funding to support development of non-regulatory tools for achieving desired land use outcomes.<sup>6</sup>
9. **Funding:** State mandates to expand UGBs should be accompanied by funding for planning.
10. **Fiscal Responsibility:** Funding to support urban development should be generated at least in part by fees on those who directly benefit from that development.
11. **Measure 37:**
  - Gains from government regulation/investment should be accounted for in any calculation of value reduction.
  - The state should be responsible for claims when a state requirement is the ultimate basis for the claim.
  - No public funds should be spent to support development outside UGBs in response to a Measure 37 waiver.
  - Landowners should provide compensation to neighbors or the public when their actions after waiver of regulations reduce neighbors’ property values or reduce the value of publicly owned resources, including but not limited to the air and waters of the state.

**SOLID WASTE:**

12. **Toxicity and waste reduction:** Metro supports efforts to minimize the impact of the waste stream on the environment.

**TRANSPORTATION:**

13. **Transportation Funding:** Metro supports an increase in overall transportation funding and supports flexibility in the system to provide for local solutions to transportation problems.

**PARKS AND GREENSPACES:**

14. **Parks and Greenspaces:** Metro supports measures to increase the level of state funding distributed to local governments for acquisition, capital improvements, and park operations.



---

<sup>1</sup> Footnotes refer to applicable policy statements in Metro’s Regional Framework Plan (RFP), July 2003.

<sup>2</sup> Numerous RFP references, including: p. 10, growth should occur inside the UGB in the form of infill and redevelopment with higher density where appropriate; policy 1.1, Urban Form; policy 1.6, Growth Management; policy 1.8, Developed Urban Land; policy 1.9, Urban Growth Boundary; policy 1.12, Protection of Agriculture and Forest Resource Lands. The RFP, on p. 36, also quotes the Future Vision statement: “Widespread land restoration and redevelopment must precede any conversion of land to urban uses to meet our present and future needs.”

<sup>3</sup> P.11, UGB will be expanded only when a need for additional urban land is demonstrated; policy 1.1, Urban Form.

<sup>4</sup> Numerous RFP references, including: p. 10, by coordinating land uses with transportation system, the region embraces its locational advantage as trade hub; p. 17, growth concept links urban form to transportation to ensure the development of a regional plan that is based on efficient use of land and safe, efficient and cost effective transportation system; p. 59, integrating movement of goods and people with surrounding land uses is fundamental to RFP; policy 2.2, Consistency between Land Use and Transportation; policy 2.6, Urban Form; policy 2.7, Jobs/Housing Balance; policy 2.11, Street Design; policy 2.21, Adequacy of Transportation Facilities.

<sup>5</sup> See p. 11 re: mixed-use centers of housing, employment, transit, with a range of services and amenities in a walkable environment; jobs/housing balance outside neighborhoods; and protection of open spaces. See also policy 1.3, Housing and Affordable Housing; policy 1.4, Economic Opportunity; policy 1.5, Economic Vitality; policy 1.7.2, Sense of Place; Chapter 2, Transportation, on transportation choices generally; Chapter 3, Parks, Natural Areas, Open Spaces And Recreational Facilities, recognizing “the importance of parks, natural areas and recreational facilities in the urban fabric of communities throughout the region.” The RFP, on p. 37, also quotes the Future Vision statement: “Focus public policy and investment on the creation of mixed-use communities that include dedicated public space and a broad-range [*sic*] of housing types affordable to all.”

<sup>6</sup> Policy 1.1, Urban Form (on targeting public investments to reinforce a compact urban form); p. 92, a variety of strategies will be used to protect and manage parks and natural areas to support habitat and recreational opportunities, including acquisition, education, landowner incentives.

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 04-3512, FOR THE PURPOSE OF PROVIDING DIRECTION TO METRO CONCERNING BILLS BEFORE THE 2005 OREGON LEGISLATURE**

---

Date: November 22, 2004

Prepared by: Randy Tucker

#### **BACKGROUND**

The Metro Council has taken formal positions on legislation since its inception. The first action taken by the Council was in Resolution No. 79-23 in which it took a position on SB 66, which dealt with economic development. Since that time, Metro has taken formal and informal positions on legislation (state and federal) that it feels impacts the region.

The agenda and principles described in Exhibits "A" and "B" were developed by Randy Tucker (Legislative Affairs Manager) in consultation with the Metro Council. The specific legislative issues described in Exhibit "A" emerged from consultation with legislative liaisons in each Metro department. These issues were discussed with the Metro Council in work sessions that occurred on August 10, September 21, October 19, and November 2. They reflect current Metro policy where applicable.

In the work session on November 2, the Council provided direction on its legislative priorities and principles and asked that they be incorporated in Resolution 04-3512. Where applicable, these principles also reflect existing Metro policy as embodied in the Regional Framework Plan.

As issues arise and develop during the 2005 Oregon Legislative Session, the Council will have the opportunity to take positions on specific pieces of legislation and to modify its agenda as it sees fit.

#### **ANALYSIS/INFORMATION**

1. **Known Opposition:** none
2. **Legal Antecedents:** none applicable
3. **Anticipated Effects:** Provide direction to Metro staff with respect to issues before the 2005 Oregon Legislature.
4. **Budget Impacts:** None

#### **RECOMMENDED ACTION**

Staff recommends approval of Resolution No. 04-3512.

Agenda Item Number 6.2

**Resolution No. 04-3514, For the Purpose of Authorizing the Chief Operating Office to Issue a Non-System License to AGG Enterprises, Inc. for Delivery of Source Separated Pre-Consumer Food Waste to the Nature's Needs Facility for Composting.**

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF ) RESOLUTION NO. 04-3514  
OPERATING OFFICER TO ISSUE A NON-SYSTEM )  
LICENSE TO AGG ENTERPRISES, INC. FOR ) Introduced by Michael Jordan,  
DELIVERY OF SOURCE SEPARATED PRE- ) Chief Operating Officer, with the  
CONSUMER FOOD WASTE TO THE NATURE'S ) concurrence of David Bragdon,  
NEEDS FACILITY FOR COMPOSTING ) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers putrescible solid waste generated from within the Metro boundary to a disposal facility located outside the regional boundary; and,

WHEREAS, AGG Enterprises, Inc. has applied for a non-system license to deliver source separated pre-consumer food waste to the Nature's Needs facility under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.05 of the Code; and,

WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request for a non-system license with the conditions and in the form attached to this resolution as Exhibit A; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to issue a non-system license to AGG Enterprises, Inc., in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

EXHIBIT A to Resolution No. 04-3514

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1650 | FAX 503 797 1795



METRO

**METRO SOLID WASTE FACILITY  
NON-SYSTEM LICENSE**

**Number N-114-04**

<b>LICENSEE:</b>
AGG Enterprises, Inc. 5555 N Channel Ave., Bldg 3 Portland, OR 97217
<b>CONTACT PERSON:</b>
Contact person: George Simons Phone: (503) 283-2015 Fax: (503) 283-2070 e-mail: <a href="mailto:Aggenterprisesi2@qwest.net">Aggenterprisesi2@qwest.net</a>
<b>MAILING ADDRESS:</b>
Carmen Gales & George Simons PO Box 17163 Portland, OR 97217

**METRO**

**Licensee's Acceptance &  
Acknowledgement of Receipt:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Michael Jordan, Chief Operating Officer  
Print name and title

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	This license authorizes delivery to the non-system facility listed in section 3, below, of only source-separated pre-consumer vegetative food waste generated by customers of AGG within the Metro region. Delivery to the listed non-system facility of meats, fats, seafoods, and any other waste not authorized in this section is prohibited.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	This license grants the licensee the authority to deliver for processing up to 15,000 tons per calendar year of the waste described in section 1, above.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The licensee hereunder may deliver the waste described in section 1, above, to the following non-system facility for the purpose of processing and composting; provided that this facility has all necessary permits and authorizations required by state and other local governments to accept and process the waste described in section 1, above:</p> <p style="text-align: center;">Nature's Needs 9570 NW 307th Ave. North Plains, OR 97133</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2005 and expire at midnight on December 31, 2006.
<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving its vehicles during the loading and transporting of solid waste authorized by this license.

<b>6</b>	<b>LOADS TO BE COVERED ON ALL SIDES</b>
	Loads of food waste delivered under authority of this license shall be covered on all sides, and such coverage shall prevent spillage of any amount of waste onto public or private property.

<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This non-system license shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li>(a) The permissive transfer of solid waste to the Nature's Needs facility authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer in the event that the Chief Operating Officer determines that:<ul style="list-style-type: none"><li>(i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of this license,</li><li>(ii) the provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, or</li><li>(iii) Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in section 1 of this license be transferred to, and disposed of at, a facility other than the facility described in section 3, above.</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</li><li>(d) No later than the fifteenth (15th) day after the end of each fiscal quarter, Licensee shall submit to Metro's Solid Waste &amp; Recycling Department a letter reporting the tonnage delivered during each month of the preceding quarter. Licensee shall make all records from which the tonnage was derived available to Metro</li></ul>

	<p>for its inspection or copying, as long as Metro provides no less than three (3) calendar days written notice of an intent to inspect documents.</p> <p>(e) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(f) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3.</p>
--	---

<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee shall be deemed part of this license as if specifically set forth herein. This license does not authorize the licensee to collect any type of solid waste or recyclable material in violation of any local franchise requirements.</p>

<b>9</b>	<b>INDEMNIFICATION</b>
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>



## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3514 FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE  
TO AGG ENTERPRISES, INC. FOR DELIVERY OF SOURCE SEPARATED FOOD WASTE  
TO THE NATURE'S NEEDS FACILITY FOR COMPOSTING

---

November 8, 2004

Prepared by: Steve Kraten

## BACKGROUND

### Description of the Resolution

Approval of Resolution No. 04-3514 will authorize the Chief Operating Officer to issue a new non-system license (NSL) to AGG Enterprises, Inc. (AGG) to annually deliver a maximum of 15,000 tons of source-separated, pre-consumer vegetative food waste, generated by its commercial customers to the Nature's Needs facility located at 9570 NW 307<sup>th</sup> Avenue in North Plains, Oregon. Because Nature's Needs is a composting facility, not a general purpose landfill, this NSL will not implicate Metro's obligations under its disposal contract, nor would Metro fees and taxes be due on such waste.

AGG is already delivering this waste to Nature's Needs. Changes to Code Chapter 5.05, Solid Waste Flow Control, approved by the Metro Council in October 2003 require putrescible source-separated recyclable materials to go to a facility designated to accept such waste. This NSL is subject to Council approval because it involves putrescible solid waste. AGG's application was made in response to a letter from Metro mailed to all generators and haulers that take source-separated, pre-consumer vegetative food waste from within the Metro region to Nature's Needs, informing them of the need to obtain non-system licenses.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed non-system license.

### 2. Legal Antecedents

Changes to Code Chapter 5.05, Solid Waste Flow Control, approved by the Council that became effective on October 9, 2003, made the issuance of NSLs for putrescible waste subject to approval by the Council rather than subject to approval by the Chief Operating Officer, as was previously the case. Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The proposed disposal site is a composting facility rather than a landfill and thus does not pose the same potential environmental risk from wastes delivered from prior users. Staff is not aware of any wastes accepted at Nature's Needs that could pose a risk of environmental contamination.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including, but not limited to, public health, safety and environmental rules and regulations;*

Nature's Needs operates under authority of an 18-month franchise granted in November 2003, by Washington County and a composting permit issued by the DEQ. The facility has been the source of odor complaints but has been in compliance with all federal, state and local requirements, rules and regulations.

The owner/operator of Nature's Needs also owns and operates East County Recycling (ECR) located at 12409 NE San Rafael Street in Portland, Oregon. ECR is a Metro-licensed materials recovery facility. ECR's compliance history includes several Notices of Noncompliance issued by Metro and the DEQ for unauthorized acceptance of putrescible and hazardous waste; receiving non-recoverable loads of dry waste and reloading it without a reload permit; and failure to maintain an adequate operating plan. Staff does not believe that ECR's compliance record is justification not to issue this NSL. ECR is working to address all such compliance issues. Nature's Needs accepts a different and more controlled waste stream. Nature's Needs has, to staff's knowledge, continued to operate in compliance with all legal requirements despite these issues arising at ECR.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

Nature's Needs receives pre-consumer food waste on a paved tipping pad. Vegetative materials and food-contaminated cardboard are separated onto opposite sides of the pad and then re-mixed to get an optimal carbon-nitrogen ratio. After grinding, the organic material is placed into 300 foot long plastic "Ag Bags" on a large pad that was paved with the aid of a \$55,000 organics recycling grant from Metro. The food waste composts within the Ag Bags for eight to twelve weeks. During that time air is forced through the bags with electric fans and the compost is monitored for temperature and CO<sub>2</sub> levels. The bags are then opened and the compost cured for another two to three months in uncovered windrows. Paved areas are pressure washed frequently with wash water and storm water managed under a DEQ permit. These operational practices and management controls are judged by Metro, Washington County and DEQ staff to be adequate.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The applicant has applied to deliver 15,000 tons annually of waste that has historically been delivered for landfill disposal. Since Nature's Needs is presently the only facility within 150 miles of the Metro region authorized to compost food waste, this waste stream will likely go to disposal if the NSL is denied.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

The waste subject to the proposed license is proposed to be delivered to a composting facility rather than disposed at a general purpose landfill. Thus, approval of the requested license does not implicate Metro's disposal contract or any other of its existing contractual arrangements.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal,*

*state and local requirements including, but not limited to, public health, safety and environmental rules and regulations; and*

The applicant, AGG Enterprises, Inc., is a solid waste hauler. Since 2001, AGG has received seven written warnings and citations from Metro - six for uncovered loads and one for illegal dumping. AGG's citations and warnings for uncovered loads were all for loads of non-putrescible materials. The illegal dumping occurred when a residential drop box customer's deposit check was found to be drawn on an account with insufficient funds and the AGG driver sent to retrieve the box first tipped the contents onto the lawn, sidewalk, and street before hauling it away. Staff believes that this was an isolated incident that is not likely to recur. Staff continues to observe uncovered AGG drop boxes hauled on public roads with debris extending up above the top edges of the boxes where it can be blown off in the wind and will continue to take enforcement action when possible. However, staff does not believe that the applicant is likely to haul food waste in uncovered boxes and a provision is included in the proposed license that specifically requires loads to be covered. Staff is not aware of any other compliance issues related to public health, safety, or the environment.

(7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

Recovery through composting is preferred to landfill disposal. Since October 2003, Metro has used enforcement discretion regarding generators and haulers that delivered pre-consumer food waste to Nature's Needs without benefit of non-system licenses. This was deemed appropriate as no Metro fees or taxes were at stake and there were discussions under way between Metro and the operator of Nature's Needs regarding a possible designated facility agreement. However, Nature's Needs has declined to become a designated facility and so, in conformance with the Code, it is required that in-region generators or their haulers apply for non-system licenses to haul waste to that facility.

### Conclusion

The Chief Operating Officer finds that the proposed license satisfies the requirements of Metro Code Section 5.05.035, License to Use Non-System Facility, for the requested Non-System License.

### **3. Anticipated Effects**

The effect of Resolution No. 04-3514 will be to issue an NSL for delivery of up to 15,000 tons per calendar year of pre-consumer vegetative food waste to the Nature's Needs facility.

### **4. Budget Impacts**

The regional system fee and excise tax will not be collected on waste delivered under authority of the proposed NSL and have not been collected for such waste in the past year. Therefore, the budget impact, to the extent that it is discernable for 15,000 tons annually, has already been factored into the budget.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 04-3514, and issuance of an NSL substantially similar to the NSL attached to the Resolution as Exhibit A.

SK:bjl  
S:\REM\kraten\Facilities\AGG\staffrpt101504.DOC

**Resolution No. 04-3518, For the Purpose of Directing Staff to Facilitate the Completion of Concept Planning for Area 93 by Resolving Outstanding Issues of Governance, Provision of Services and Cooperation between Effected Parties.**

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DIRECTING METRO STAFF )  
TO FACILITATE COMPLETION OF CONCEPT )  
PLANNING FOR AREA 93 BY RESOLVING )  
OUTSTANDING ISSUES OF GOVERNANCE, )  
PROVISION OF SERVICES AND COOPERATION )  
BETWEEN THE AFFECTED PARTIES.

RESOLUTION NO. 04-3518

Introduced by  
Councilor Rod Monroe

WHEREAS, Area 93 located in Multnomah County was included in the urban growth boundary (UGB) by the Metro Council in 2002 to satisfy a portion of the region’s residential land need; and

WHEREAS, although the western portion of Area 93 is contiguous to the UGB there remains a gap to the east that lies outside of the UGB that was studied prior to the 2002 UGB decision; and

WHEREAS, the gap along the eastern portion of the site causes the City of Portland problems in establishing an intergovernmental agreement with Multnomah County and the City to plan for the urbanization of unincorporated rural areas that are contiguous to the city limits; and

WHEREAS, after further examination of this area Metro Staff has concluded that including the area to the east would make a more logical boundary for an orderly extension of urban services; and

WHEREAS, the eastern portion of Area 93 represents 224 acres of land and is expected to yield approximately 243 dwelling units which would not have any significant impact on the housing need, and supply as determined in the 2002 Urban Growth Report; and

WHEREAS, the Metro Council desires to instruct staff to prepare an ordinance and all findings needed to amend the UGB to include this area and include this task in the work needed to fulfill the remand work order from the Land Conservation and Development Commission subject to the applicable law and formal support from the City of Portland and Multnomah County to complete Metro’s Periodic Review obligations; now, therefore,

BE IT RESOLVED, the Metro Council instructs staff to complete this work as soon as possible.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

## **STAFF REPORT**

### **RESOLUTION NO. 04-3518, FOR THE PURPOSE OF DIRECTING METRO STAFF TO FACILITATE THE COMPLETION OF CONCEPT PLANNING FOR AREA 93 BY RESOLVING OUTSTANDING ISSUES OF GOVERNANCE, PROVISION OF SERVICES AND COOPERATION BETWEEN AFFECTED PARTIES**

---

Date: December 9, 2003

Prepared by: Lydia M. Neill  
Principal Regional Planner

## **BACKGROUND**

A portion of study Area 93 (located north of NW Thompson Road east of NW 124<sup>th</sup>) was included in the urban growth boundary (UGB) in 2002 to meet 20-year residential land need with a condition of approval that the Title 11 planning be completed by March 2005. Multnomah County has raised several concerns that impact the timely completion of Title 11 concept planning for this area. The remaining portion of the study area that was not included in the boundary impacts how Area 93 will be planned and governed.

## **ANALYSIS/INFORMATION**

The original boundary of study Area 93 was surrounded by the UGB on three sides and is located within Multnomah County. This oddly shaped area has steep slopes and some rural residential development throughout the site. The western portion of the site (approximately 159 net acres) was brought into the UGB in 2004 and is expected to yield approximately 524 dwelling units. The remaining portion of Area 93 that was left out of the UGB would yield approximately 243 dwelling units on 224 net acres of land. The eastern portion of the site creates a gap between the City of Portland who will most likely urbanize and annex this area.

Multnomah County has an agreement with the City of Portland to provide urban services for all areas of the County that are located within the UGB. Without including the eastern portion of Area 93 within the UGB the City of Portland finds it difficult to conduct concept planning for this area because it is not located contiguous to the City's jurisdictional boundary.

In a letter dated November 9, 2004, the Multnomah County Board of Commissioners responded to a letter from Councilor Rod Monroe urging the Board to complete the Title 11 concept planning within the two-year time frame approved by the Metro Council when the UGB was amended. The letter from the board outlines three key steps toward moving forward with this planning effort. The board urges Metro to: 1) expand the UGB to include the eastern portion of study Area 93 known as Bonny Slope, 2) resolve governance issues prior to planning, and 3) convene the interested parties of Multnomah County, City of Portland, City of Beaverton and Washington County. Coordination between the interested parties is essential because this area may be included in the Portland City limits but have public facilities provided by Clean Water Services.

At the conclusion of 2002 Metro determined that the 20-year need for residential land had been satisfied for the period from 2002 to 2022. The Council's 2002 decision exceeded 20-year land need by 666 dwelling units. Typically the Metro region absorbs approximately 2,000 acres of land or 4,128 dwelling units per year. As of December 2004 the region will have consumed two years worth of the 20-year land supply. Inclusion of the eastern portion of Area 93 (224 acres) will have

a negligible impact on the overall supply of residential land in the UGB and will resolve the governance and servicing issues that are impeding urbanization of the site.

1. **Known opposition:** It is not known whether there is property owner opposition to including the eastern portion of the site inside of the UGB. Multnomah County has expressed an interest in resolving conflicts that impede planning for the area by including this land in the UGB which was expressed in a letter from the Board of County Commissioners dated November 9, 2004. Without this action the Board of County Commissioners may oppose completion of concept planning for this area.
2. **Legal Antecedents:** none
3. **Anticipated Effects:** It is unknown whether or not this action can be taken as part of Periodic Review.
4. **Budget Impacts:** Staff will need to be re-assigned from other program areas to complete the analysis required to develop findings and an ordinance to amend the UGB.

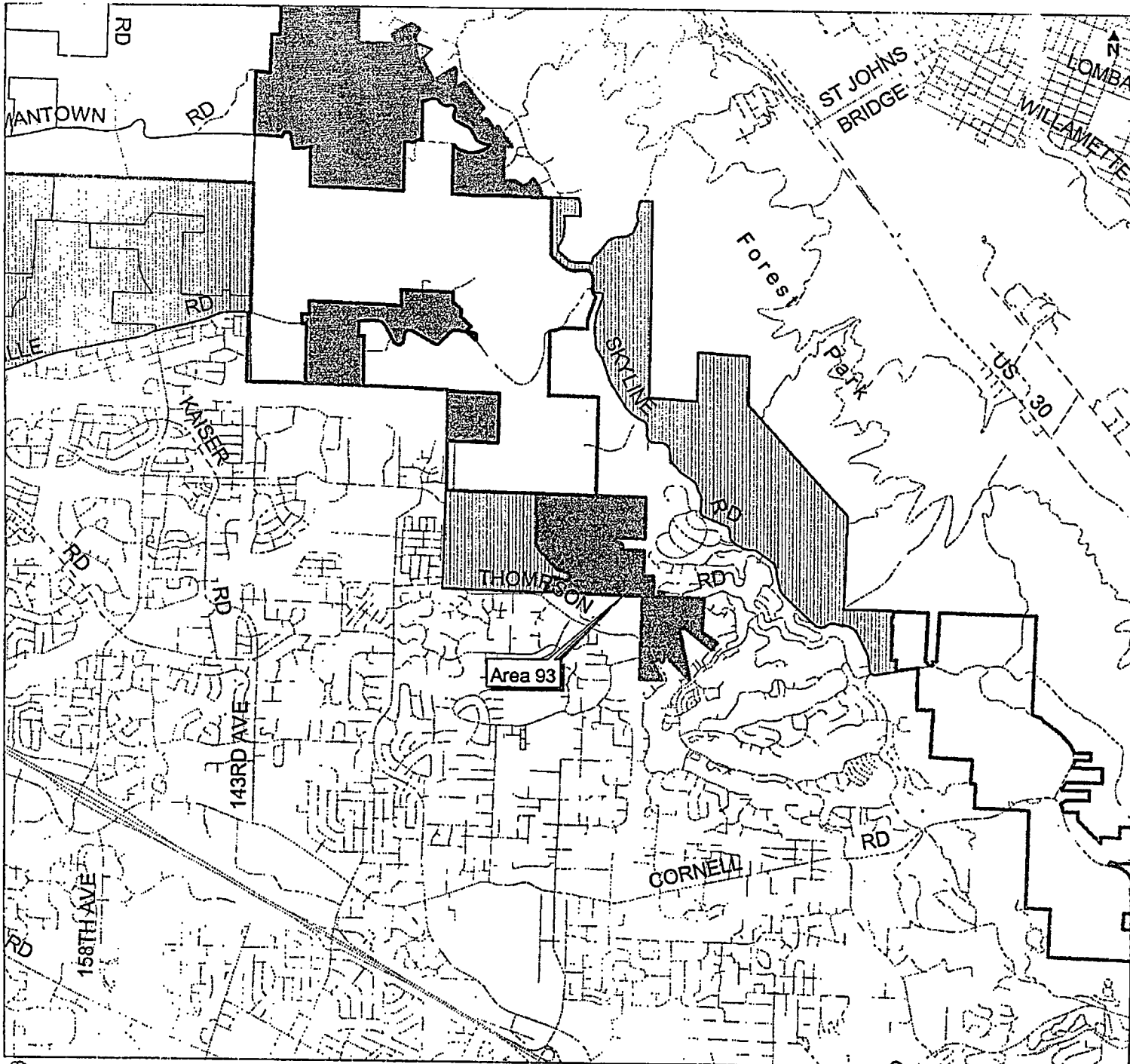
#### **RECOMMENDED ACTION**

Approval of Resolution No. 04-3518 directing the Planning Director to complete the work necessary to expand the UGB to add the eastern portion of the site to facilitate concept planning.




Attachment 1: Map of Area 93

Attachment 2: Letter dated November 9, 2004- Multnomah County Board of Commissioners

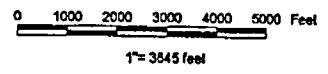
I:\gm\community\_development\staff\neill\Task 3 and subreg\area93staffreport.doc



# Study Area 93

-  Urban Growth Boundary
-  UGB Expansion Areas
-  UGB Alternative Analysis Study Areas

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or partial accuracy. There are no warranties, expressed or implied, including the accuracy of measurements or fitness for a particular purpose, accompanying this product. However, Metro's best efforts will be appreciated.



**METRO**

600 NE Grand Ave.  
Portland, OR 97232-2736  
503 797-1742 FAX 503 797-1009  
Email: [drc@metro.dst.or.us](mailto:drc@metro.dst.or.us)





# MULTNOMAH COUNTY OREGON

**BOARD OF COUNTY COMMISSIONERS  
501 SE HAWTHORNE, 6<sup>TH</sup> FLOOR  
PORTLAND, OREGON 97214**

**DIANE LINN • CHAIR OF THE BOARD  
MARIA ROJO DE STEFFBY • DIST. 1 COMMISSIONER  
SERENA CRUZ • DIST. 2 COMMISSIONER  
LISA NAITO • DIST. 3 COMMISSIONER  
LONNIE ROBERTS • DIST. 4 COMMISSIONER**

---

November 9, 2004

Councilor Rod Monroe  
Metro Council  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

Dear Councilor Rod Monroe:

Thank you for your letter dated October 7<sup>th</sup> regarding Urban Planning for Bonny Slope, Metro Urban Growth Area 93 and for your participation in the briefing before the Multnomah County Board of Commissioners on October 28<sup>th</sup>.

The County believes that there are three key steps in this process and would request METRO's cooperation in moving forward with them as outlined below:

- 1) The governance issues for Area 93 should be determined prior to conducting the Title 11 planning.
- 2) METRO should convene the interested parties to discuss who should be conducting the required Title 11 planning. The interested parties would include Washington County, Multnomah County, METRO and the Cities of Portland and Beaverton.
- 3) METRO should consider expanding the urban growth boundary prior to Title 11 planning occurring to include the portion just east of Area 93 known as Bonny Slope.

Making a decision about who conducts the Title 11 planning and who will govern the area can provide the citizens of this area with certainty as to when their land will be developable under urban rules. At the completion of Title 11 planning, the county could adopt zoning controls to help assure realization of the proposed urbanization plan. Development in the interim between completion of Title 11 planning and the availability of urban services including subdivision review can be managed in this way.

---

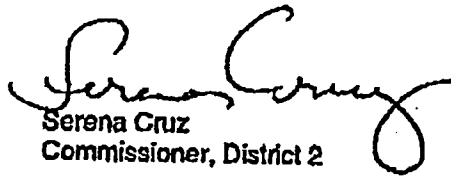
Page 2

We believe that convening the interested parties will answer the concerns that we have raised and will be the basis for an amendment. We look forward to your response so that we may move forward with the necessary plans to begin coordinating and convening meetings with the jurisdictions that may play a role in the Title 11 planning.

Sincerely,

  
Diane Linn  
Chair

  
Maria Rojo de Steffey  
Commissioner, District 1.

  
Serena Cruz  
Commissioner, District 2

  
Lisa Nalto  
Commissioner, District 3

  
Lonnie Roberts  
Commissioner, District 4

Agenda Item Number 6.4

**Resolution No. 04-3519, For the Purpose of Amending an Easement Granted to Miriamount Pointe for Non-Park Use through property owned by Metro and the North Clackamas Parks and Recreation District on Mt. Talbert.**

Metro Council Meeting  
Thursday, December 9, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING AN ) RESOLUTION NO. 04-3519  
EASEMENT GRANTED TO MIRAMONT )  
POINTE FOR NON-PARK USE THROUGH )  
PROPERTY OWNED BY METRO AND THE ) Introduced by Chief Operating Officer Michael  
NORTH CLACKAMAS PARKS AND ) J. Jordan, with the concurrence of Council  
RECREATION DISTRICT ON MT. TALBERT ) President David Bragdon

WHEREAS, Metro owns a 75% share and North Clackamas Parks and Recreation District (“NCPRD”) owns a 25% share in a 67-acre parcel of open space property in Clackamas County on Mt. Talbert, located at 11650 SE Sunnyside Road (the “Mt. Talbert Property”); and

WHEREAS, the Mt. Talbert Property Master Plan and Management Recommendations has been completed and approved by NCPRD and the Clackamas County Board of Commissioners; and

WHEREAS, Miramont Pointe, an assisted living and Alzheimer’s care facility, was built on the neighboring property to the west; and

WHEREAS, Resolution No. 04-3448 “For the Purpose of Granting an Easement to Miramont Pointe for Non-Park Use Through Property Owned by Metro and the North Clackamas Parks and Recreation District on Mt. Talbert,” adopted on April 29, 2004, granted an easement over the Mt. Talbert Property, providing for Miramont Pointe’s construction and permanent maintenance of an access drive, stormwater disposal area and landscaped entry on the Mt. Talbert Property at the intersection of SE 117<sup>th</sup> Avenue and Sunnyside Road (the “Miramont Pointe Easement”); and

WHEREAS, Miramont Pointe now requests the expansion of the Miramont Pointe Easement’s stormwater disposal area, in order to comply with Clackamas County’s wetland zoning regulations; and

WHEREAS, Resolution No. 97-2539B “For the Purpose of Approving General Policies Related to the Review of Easements, Right-Of-Ways and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department,” adopted November 6, 1997, requires formal review of all easement requests by the Metro Council; and

WHEREAS, the Metro Regional Parks and Greenspaces Department has determined that the proposed expansion of the stormwater disposal portion of the Miramont Pointe Easement has met the criteria in Resolution No. 97-2539B, can be accommodated with minimal impact to natural resources, recreational resources, recreational facilities, recreational opportunities and operation and management of the open spaces, and that it is consistent with the existing Mt. Talbert Property Master Plan; now therefore

BE IT RESOLVED, that the Metro Council authorizes the Chief Operating Officer to execute the attached First Amendment to Easement and Restrictive Covenant Agreement, attached as Exhibit A, expanding the Miramont Pointe Easement's stormwater disposal area.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

---

David Bragdon, Council President

Approved as to Form:

---

Daniel B. Cooper, Metro Attorney

**Exhibit A**  
**First Amendment to Easement and Restrictive Covenant Agreement**

(Placeholder)

**FIRST AMENDMENT**  
**TO**  
**EASEMENT AND RESTRICTIVE COVENANT AGREEMENT**

Date: \_\_\_\_\_, 2004

Between: METRO, a municipal corporation and political subdivision of the State of Oregon ("Metro"), as to an undivided 75% interest, and NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a municipal corporation and political Subdivision of the State of Oregon ("NCPRD"), as to an undivided 25% interest (collectively "Parks")

And: MIRAMONT POINTE, LLC, a Minnesota limited liability company ("Miramont Pointe"), as to an undivided Thirty Nine and 80/100th percent (39.80%) interest, HRTG SQUARE PROPERTIES LIMITED PARTNERSHIP, a Minnesota limited partnership ("HRTG"), as to an undivided Forty Six and 03/100th percent (46.03%) interest, and CRESTWOOD APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership ("Crestwood"), as to an undivided Fourteen and 17/100th percent (14.17%) interest (collectively "Miramont")

WITNESSETH:

WHEREAS, Miramont is the fee owner of that certain parcel of real property located in Clackamas County, Oregon, legally described on Exhibit "A" (the "Miramont Parcel"); and

WHEREAS, Parks is the fee owner of that certain parcel of real property located in Clackamas County, Oregon, legally described on Exhibit "B" (the "Parks Parcel"); and

WHEREAS, Miramont and Parks are parties to that certain Easement and Restrictive Covenant Agreement dated May 27, 2004, and recorded May 27, 2004 as Fee No. 2004-048373 in the Official Records of Clackamas County, Oregon (the "Easement Agreement"); and

WHEREAS, the Easement Agreement provided for Miramont to construct certain drainage swales to be located partially on the Miramont Parcel and partially on the Parks Parcel; and

WHEREAS, Parks anticipated constructing a trail on the Parks Parcel, with switchbacks in order to comply with Americans with Disabilities Act requirements, extending in a generally southerly direction from the trailhead; and

WHEREAS, Clackamas County's wetland regulations require the drainage swales to be relocated entirely onto the Parks Parcel and the relocation of the drainage swales may require Parks to construct its trail partially on the Miramont Parcel; and

WHEREAS, Miramont and Parks desire to amend the Easement Agreement to provide for such relocations on the terms and conditions set forth in this First Amendment to Easement and Restrictive Covenant Agreement ("Amendment").

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Miramont and Parks hereby agree as follows:

1. **Definitions.** All capitalized terms not defined in this Amendment shall have the meaning ascribed to them in the Easement Agreement.

2. **Amendment of Construction Plans.** Exhibit I to the Easement Agreement ("Description of the Plans and Improvements") is hereby amended by substitution of the revised "Description of the Plans and Improvements" attached as Exhibit "C" hereto. The term "Trailhead Improvements," defined in Section 1.2 of the Easement Agreement shall mean the trailhead improvements shown on the drawing attached hereto as part of Exhibit "C."

3. **Amendment of Parks Parcel Drainage Easement** The Parks Parcel Drainage Easement is hereby amended by the addition of the terms and conditions set forth in this Section 3.

3.1 The Parks Parcel Drainage Area is hereby amended to mean the portion of the Parks Parcel legally described and depicted in Exhibit "D" attached hereto.

3.2 Parks shall have a right to construct a trail over the Parks Parcel Drainage Improvements, provided such improvements do not impair the functioning of the Parks Parcel Drainage Improvements or materially increase the difficulty or cost of maintaining the Parks Parcel Drainage Improvements.

3.3 Parks shall have a right to relocate or modify the Parks Parcel Drainage Improvements for Parks' convenience at Parks' sole expense provided the relocated or modified improvements provide an equivalent level of service and the relocation or modification does not materially increase the difficulty or cost of maintaining the Parks Parcel Drainage Improvements.

4. **Amendment of Miramont Parcel Drainage Easement.** The Miramont Parcel Drainage Easement is hereby amended by the addition of the terms and conditions set forth in this Section 4.

4.1 The Miramont Parcel Drainage Area is hereby amended to mean the portion of the Miramont Parcel legally described and depicted in Exhibit "E" attached hereto.

4.2 In addition to the uses set forth in the Easement Agreement, Parks shall have a right to construct within the Miramont Parcel Drainage Area a portion of a paved or



unpaved pedestrian trail ("Trail Improvements"), in the location shown on Exhibit "F" attached hereto, subject to terms and conditions set forth herein.

4.3 Construction of the Trail Improvements shall be at Park's sole cost and expense in a good and workmanlike manner in accordance with all applicable laws. Miramont shall reasonably cooperate with Park's efforts to obtain any governmental permits and approvals necessary for construction of the Trail Improvements. Parks shall obtain Miramont's prior written consent to any material modifications to the Trail Improvements, and such consent shall not be unreasonably withheld; provided, however, in no event shall Miramont be required to consent to any Trail Improvements proposed to be located south of the Wetland Buffer Boundary line shown on Exhibit "F." Upon completion of construction, the Trail Improvements shall remain the property of Parks. Miramont shall repair any damage, disturbance or erosion to the surface of the Miramont Parcel Drainage Easement that may be caused by the construction of the Trail Improvements and shall replace the landscaping in any area that is disturbed by such construction.

4.4 Parks shall maintain and repair any Trail Improvements constructed in the Miramont Parcel Drainage Area in a good, safe, clean and orderly condition at its sole cost and expense. Parks shall keep the Miramont Parcel free and clear of any mechanic's or materialmen's lien claims by reason of the repair, maintenance or other work done in the Miramont Parcel Drainage Easement by Parks or at Park's request.

5. **Entire Agreement.** This Amendment constitutes the entire agreement between Parks and Miramont with respect to the subject matter hereof. Parks and Miramont do not rely upon any statement, promise or representation not herein expressed, and once executed and delivered, this Amendment shall not be modified or altered in any respect except by written instrument executed by Parks and Miramont and recorded in the real property records of Clackamas County, Oregon.

6. **Execution.** This Amendment may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

[signatures begin on next page]

**MIRAMONT:**

**MIRAMONT POINTE, LLC**  
a Minnesota limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HRTG SQUARE PROPERTIES LIMITED  
PARTNERSHIP, a Minnesota limited  
partnership**

By: John B. Goodman Enterprises, Inc.,  
a Minnesota corporation  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CRESTWOOD APARTMENTS LIMITED  
PARTNERSHIP, a Minnesota limited  
partnership**

By: John B. Goodman Enterprises, Inc.,  
a Minnesota corporation  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**PARKS:**

**METRO, a municipal corporation and political subdivision of the State of Oregon**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a municipal corporation and political subdivision of the State of Oregon**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, the \_\_\_\_\_ of MIRAMONT POINTE, LLC, a Minnesota limited liability company, on behalf of the limited liability Company.

NOTARY PUBLIC FOR \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, the \_\_\_\_\_ of JOHN B. GOODMAN ENTERPRISES, INC., a

Minnesota corporation, the general partner of HRTG SQUARE PROPERTIES LIMITED PARTNERSHIP, a Minnesota limited partnership, on behalf of the limited partnership.

NOTARY PUBLIC FOR \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, the \_\_\_\_\_ of JOHN B. GOODMAN ENTERPRISES, INC., a Minnesota corporation, the general partner of CRESTWOOD APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership, on behalf of the limited partnership.

NOTARY PUBLIC FOR \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, the \_\_\_\_\_ of METRO, a municipal corporation and political subdivision of the State of Oregon, on behalf of said corporation and subdivision.

NOTARY PUBLIC FOR \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, the \_\_\_\_\_ of NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a municipal corporation and political subdivision of the State of Oregon, on behalf of the said corporation and subdivision.

\_\_\_\_\_  
NOTARY PUBLIC FOR \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE MIRAMONT PARCEL**

A parcel of land in the Northeast one-quarter of Section 3, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point on the Southerly right of way of SE Sunnyside Road 33.00 feet, right angle measure, from Engineer's Centerline Station 122+69.37, said point being the Northwest corner of the property described in Deed Document No. 97-057024; thence along the West line of said property South 16°01'22" West, 805.46 feet to the Southwest corner; thence along the South line South 71°41'54" East, 313.56 feet to the Southeast corner; thence along the East line, North 16°25'00" East, 745.25 feet to a point on said right of way; thence along said right of way on a spiral curve left, 45.00 feet Southerly parallel with said centerline, the long chord of which bears North 63°05'28" West, 204.11 feet to an angle point on said right of way; thence along said right of way North 55°09'13" West, 83.26 feet to an angle point, said point being 33.00 feet, right angle measure, from said centerline; thence North 63°26'26" West, 39.87 feet to the point of beginning.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE PARKS PARCEL**

Part of the Northwest one-quarter of the Northeast one-quarter of Section 3; in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as:

Beginning at the Northwest corner of that tract of land conveyed to Orris J. Fry and Bernice Craig Fry, his wife, by deed recorded April 17, 1944, in Book 323, page 429, Clackamas County Records, which beginning point is also Northwesterly, along the centerline of the Milwaukie-Foster County Road, 200.00 feet, more or less, from the intersection of said centerline, with the East line of the Northwest one-quarter of the Northeast one-quarter of said Section 3, from said beginning point; running thence Northwesterly, along the centerline of said road, 150.00 feet, more or less, to the most Westerly Northwest corner of that tract of land conveyed to Louis T. Birkenfeld and Ruth W. Birkenfeld, his wife, by deed recorded July 22, 1939, in Book 260, page 86, said records; running thence South 16° 00' West, along the West line of said Birkenfeld Tract, to the Southwest corner of said tract, which is located on the South line of the Northwest one-quarter of the Northeast one-quarter of said Section 3; running thence East, on the 1/16th Section line, 160.00 feet, more or less, to the Southwest corner of the aforementioned Fry tract; running thence North 16° 00' East, along the West line of said Fry tract, 1150.00 feet, more or less, to the point of beginning.

## EXHIBIT "C"

### DESCRIPTION OF THE PLANS AND IMPROVEMENTS

#### Plans

The "Plans" shall mean the plan set entitled "Access Road to Miramont Pointe" prepared for David Bye, John B. Goodman Limited Partnership by Alpha Engineering, Inc., consisting of the following sheets (the "Construction Plans"):

Sheet no	Sheet	Date
1	Title Sheet	Rev. 5/13/04
2	Erosion Control Notes & Details	Rev. 9/27/02
3	Grading & Erosion Control Plan	Undated
4	Site & Demolition Plan	Undated
5	Utility Plan (signed by Water Environment Services of Clackamas County on 8/15/04 and 9/10/04)	Rev. 7/20/04
6	Detail Sheet	Rev. 9/27/02
L1	Water Quality Planting Plan	Rev. 7/8/04

and the Landscape Plan entitled "Miramont Pointe Access" rev. date 4/04 prepared by LanPacific, Inc. (Sheet 1 of 1) ("Landscape Plan"), and any amendments and additions to the foregoing Construction Plans and Landscape Plan. Any material changes to the Plans involving improvements to be constructed on the Parks Parcel shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld.

#### Driveway Improvements

The "Driveway Improvements" shall consist of the following, to the extent such improvements are located in the Driveway Area on the Parks Parcel: (a) the improvements depicted on Sheet 4 of 6 (Site and Demolition Plan) of the Construction Plans (including the driveway, driveway curbing, sidewalks and certain parking areas depicted on the plans, but not including certain parking areas and related curbing, building foundations or any other improvements labeled "future"), (b) the landscaping described in the Landscape Plan, to the extent it is located immediately adjacent to the driveway or sidewalks, (c) any related lighting and irrigation systems constructed by or for Miramont, (d) any directional, parking or similar signage constructed by or for Miramont (provided, however, any such signage shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld), and (e) any additions to, modifications of, and replacements of any of the foregoing (provided, however, any material additions or modifications shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld). The improvements described as "future" are proposed improvements that Parks may or may not build at a later date, depending on whether and how the Trailhead Improvements are constructed.



### Landscape Improvements

The "Landscape Improvements" shall consist of the following, to the extent such improvements are located within the Driveway Area on the Parks Parcel: (a) the monument signage to be constructed or installed by or for Miramont, (b) the landscaping described in the Landscape Plan, to the extent it is not located immediately adjacent to the driveway or sidewalks, and (c) any additions to, modifications of, and replacements of any of the foregoing (provided, however, any material additions or modifications shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld).

### Parks Parcel Drainage Improvements

The "Parks Parcel Drainage Improvements" shall consist of the following, to the extent such improvements are located in the Parks Parcel Drainage Area on the Parks Parcel: (a) the drainage improvements depicted on Sheet 5 of 6 (Utility Plan) of the Construction Plans, as further detailed on Sheet 6 of 6 (Detail Sheet) of the Construction Plans, not including any drainage improvements described as "future," and (b) the landscaping depicted on Sheet L1 (Water Quality Planting Plan) of the Construction Plans. The improvements described as "future" are proposed improvements that Parks may or may not build at a later date, depending on whether and how the Trailhead Improvements are constructed.

### Miramont Parcel Drainage Improvements

The Miramont Parcel Drainage Improvements consist of the following, to the extent such improvements are located on the Miramont Parcel: (a) the drainage improvements, if any, depicted on Sheet 5 of 6 (Utility Plan) of the Construction Plans, as further detailed on Sheet 6 of 6 (Detail Sheet) of the Construction Plans, and (b) the landscaping, if any, depicted on Sheet L1 (Water Quality Planting Plan) of the Construction Plans.



EXHIBIT C

ODM\GRP\WISEDUNN-CAR.POST\CLIENTS\311352.1

**EXHIBIT "D"**

**DESCRIPTION OF THE PARKS PARCEL DRAINAGE EASEMENT**

(see attached)



ALPHA ENGINEERING, INC.

LEGAL DESCRIPTION  
PARKS PARCEL BASEMENT  
CLACKAMAS COUNTY, OREGON

JOB NO. 499-005

A TRACT OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 98-000988, CLACKAMAS COUNTY DEED RECORDS, FROM WHICH THE NORTHWEST CORNER OF SAID PROPERTY BEARS NORTH 16°25'00" WEST, 130.43 FEET; THENCE CONTINUING ALONG SAID LINE SOUTH 16°25'00" WEST, 293.12 FEET; THENCE LEAVING SAID LINE, NORTH 40°40'54" EAST, 143.69 FEET; THENCE NORTH 86°56'37" EAST, 64.74 FEET; THENCE NORTH 03°19'57" EAST, 21.36 FEET; THENCE NORTH 70°57'10" WEST, 62.90 FEET THENCE NORTH 23°19'47" EAST, 120.65 FEET; THENCE NORTH 16°03'24" EAST, 9.00 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE NORTH 10.86 FEET, SAID CURVE HAVING A RADIUS OF 54.00 FEET, A CENTRAL ANGLE OF 11°31'25" AND A LONG CHORD BEARING NORTH 68°10'53" WEST, 10.84 FEET; THENCE SOUTH 27°34'49" WEST, 9.00 FEET; THENCE NORTH 62°25'11" WEST, 5.43 FEET; THENCE ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH 5.87 FEET TO A POINT OF COMPOUND CURVATURE, SAID CURVE HAVING A RADIUS OF 89.00 FEET, A CENTRAL ANGLE OF 03°46'50", AND A LONG CHORD BEARING NORTH 64°18'34" WEST, 5.87 FEET; THENCE ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH 44.19 FEET TO THE POINT OF BEGINNING, SAID CURVE HAVING A RADIUS OF 82.00 FEET, A CENTRAL ANGLE OF 30°52'24" AND A LONG CHORD BEARING NORTH 81°38'14" WEST, 43.65 FEET.

CONTAINING APPROXIMATELY 15,866 SQUARE FEET.

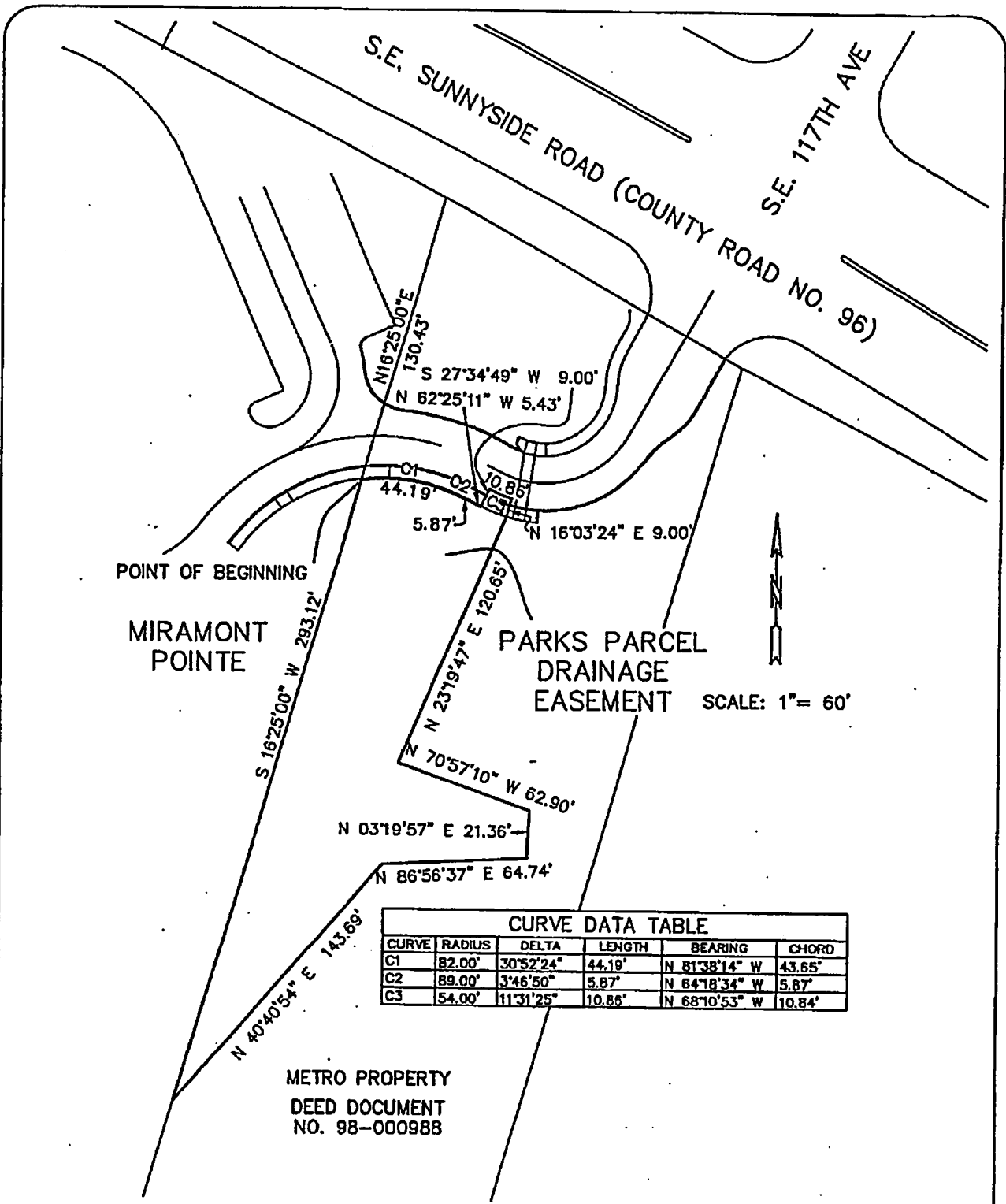
THE BASIS OF BEARINGS IS PER SURVEY NUMBER 28,215, CLACKAMAS COUNTY SURVEY RECORDS.

EXHIBIT D

Plaza West • Suite 230 • 9600 SW Oak • Portland, Oregon 97223  
Office 503-452-8003 • Fax 503-452-8043  
• www.alpha-eng.com •




VALID UNTIL 12/31/05



CURVE DATA TABLE					
CURVE	RADIUS	DELTA	LENGTH	BEARING	CHORD
C1	82.00'	30°52'24"	44.19'	N 81°38'14" W	43.65'
C2	89.00'	3°46'50"	5.87'	N 84°18'34" W	5.87'
C3	54.00'	11°31'25"	10.86'	N 68°10'53" W	10.84'

METRO PROPERTY  
DEED DOCUMENT  
NO. 98-000988

DRAWN BY: CWF DATE: 10-27-04  
 REVIEWED BY: CWF DATE: 10-26-04  
 PROJECT NO.: 499-005  
 SCALE: 1"=60'

  
**ALPHA ENGINEERING INC.**  
 PLANNING • DEVELOPMENT SERVICES • SURVEYING  
 OFFICE 503-452-8003 • FAX 503-452-8045  
 PLAZA WEST • SUITE 230 • 9600 SW OAK • PORTLAND, OR 97223

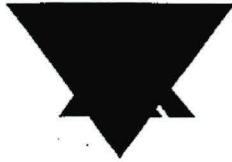
N:\proj\499-005\dwg\Survey\REVPARKSDRAIN.dwg - SHEET: 4 of 4 - 4/18/04

N:\proj\499-005\dwg\Survey\REVPARKSDRAIN.dwg  
EXHIBIT D

**EXHIBIT "E"**

**DESCRIPTION OF THE MIRAMONT PARCEL DRAINAGE EASEMENT**

(see attached)



ALPHA ENGINEERING, INC.

LEGAL DESCRIPTION  
MIRAMONT PARCEL EASEMENT  
CLACKAMAS COUNTY, OREGON

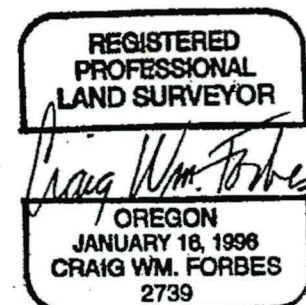
JOB NO. 499-005

A TRACT OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 98-000988, CLACKAMAS COUNTY DEED RECORDS, FROM WHICH THE NORTHWEST CORNER OF SAID PROPERTY BEARS NORTH  $16^{\circ}25'00''$  WEST, 162.67 FEET; THENCE CONTINUING ALONG SAID LINE SOUTH  $16^{\circ}25'00''$  WEST, 466.18 FEET; THENCE LEAVING SAID LINE, NORTH  $61^{\circ}12'01''$  EAST, 145.72 FEET; THENCE NORTH  $28^{\circ}47'59''$  EAST, 267.37 FEET; THENCE NORTH  $48^{\circ}30'52''$  EAST, 140.26 FEET; THENCE NORTH  $25^{\circ}55'27''$  WEST, 9.70 FEET; THENCE NORTH  $36^{\circ}13'56''$  WEST, 21.90 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST 15.47 FEET TO A POINT OF REVERSE CURVATURE, SAID CURVE HAVING A RADIUS OF 88.50 FEET, A CENTRAL ANGLE OF  $10^{\circ}01'03''$  AND A LONG CHORD BEARING NORTH  $41^{\circ}46'20''$  EAST, 15.45 FEET; THENCE ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST 39.57 FEET, SAID CURVE HAVING A RADIUS OF 64.50 FEET, A CENTRAL ANGLE OF  $35^{\circ}09'07''$ , AND A LONG CHORD BEARING NORTH  $54^{\circ}20'22''$  EAST, 38.95 FEET; THENCE SOUTH  $04^{\circ}15'52''$  WEST, 10.89 FEET.

CONTAINING APPROXIMATELY 38,995 SQUARE FEET.

THE BASIS OF BEARINGS IS PER SURVEY NUMBER 28,215, CLACKAMAS COUNTY SURVEY RECORDS.

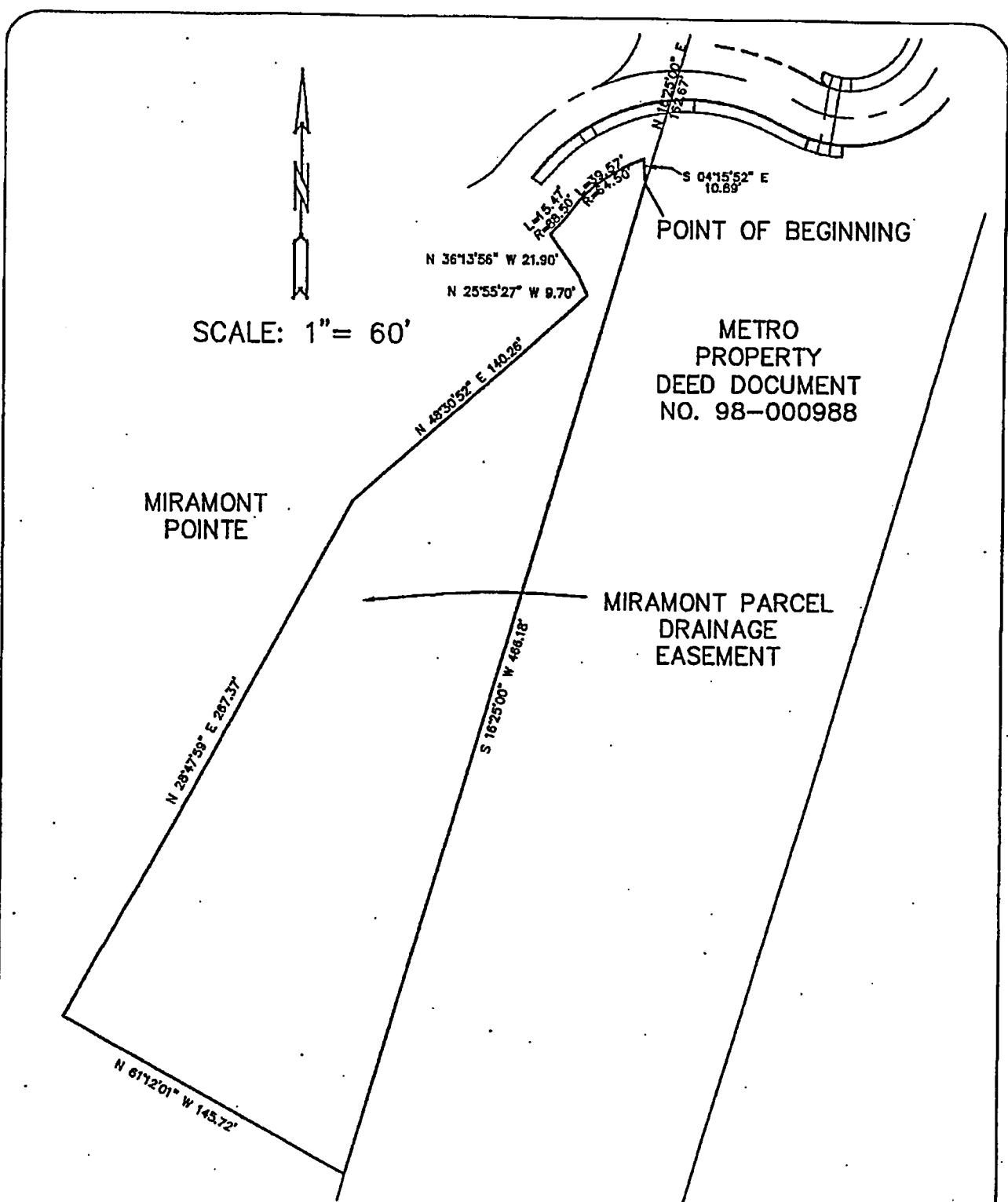


VALID UNTIL 12/31/05

EXHIBIT E


Plaza West • Suite 230 • 9600 SW Oak • Portland, Oregon 97223  
Office 503-452-8003 • Fax 503-452-8043  
• www.alpha-eng.com •





N:\proj\499-005\dwg\Survey\REV\MIRAMONTDRAN.dwg - SHEET: 2 of 11 Oct 27, 2006 - 4:02pm cwf

DRAWN BY: CWF DATE: 10-27-04  
 REVIEWED BY: CWF DATE: 10-26-04  
 PROJECT NO.: 499-005  
 SCALE: 1"=60'

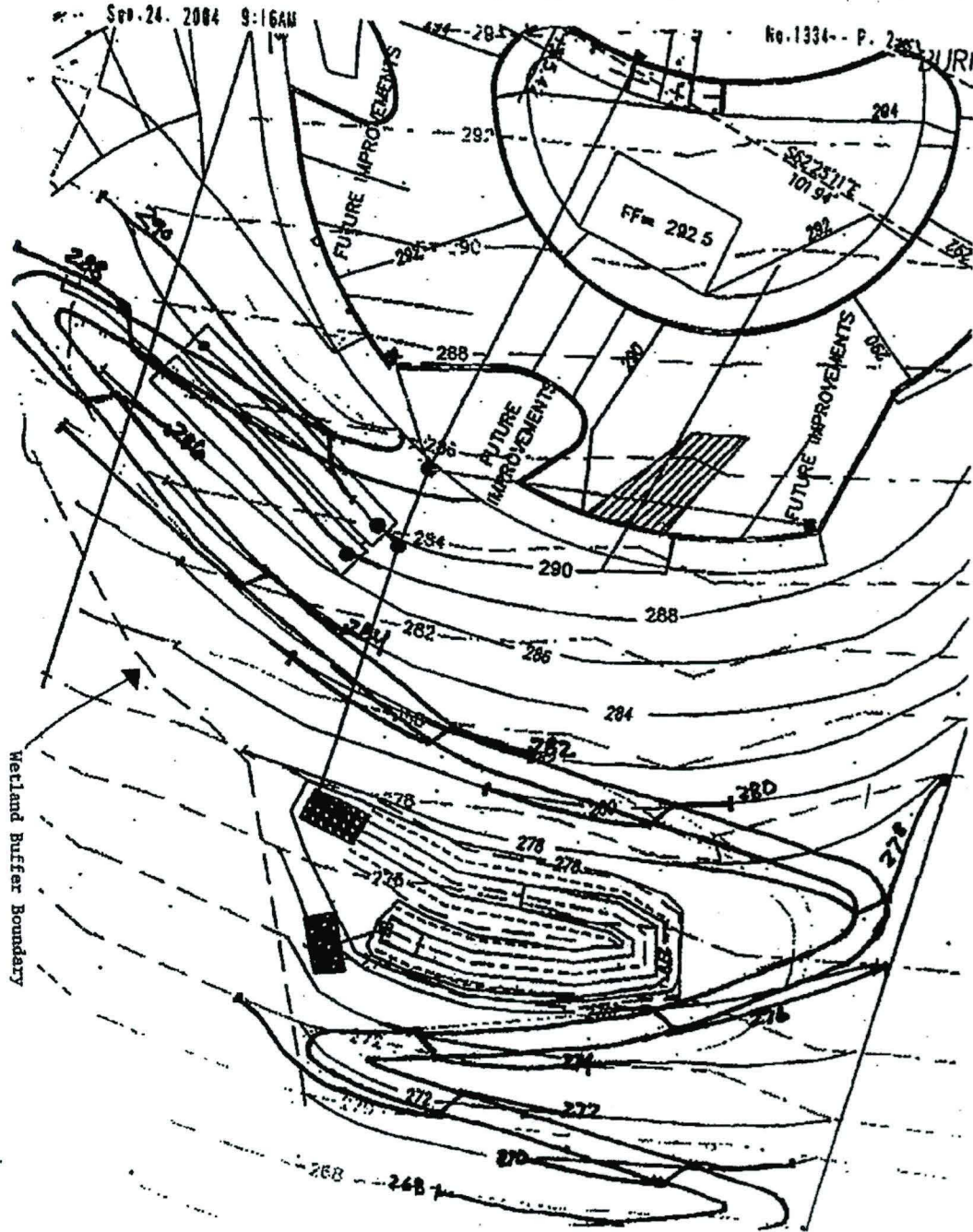


**ALPHA ENGINEERING INC.**  
 PLANNING • DEVELOPMENT SERVICES • SURVEYING  
 OFFICE 503-452-8003 • FAX 503-452-8043  
 PLAZA WEST • SUITE 230 • 9600 SW OAK • PORTLAND, OR 97223



EXHIBIT "F"

DESCRIPTION OF THE TRAIL IMPROVEMENTS



## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 04-3519, FOR THE  
PURPOSE OF AMENDING AN EASEMENT GRANTED TO  
MIRAMONT POINTE FOR NON-PARK USE THROUGH  
PROPERTY OWNED BY METRO AND THE NORTH CLACKAMAS  
PARKS AND RECREATION DISTRICT ON MT. TALBERT

---

**Date:** November 22, 2004

**Presented by:** Nancy Chase

### **BACKGROUND**

In May of 1995, voters of the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million of bond funds. The bond measure identified 14 regional target areas and six regional trails and greenways for property acquisition, including the East Buttes/Boring Lava Domes target area.

One objective of the East Buttes/Boring Lava Domes Target Area refinement plan encourages Metro to partner with other governments and non-profit organizations in the acquisition of open space properties on urban buttes including Mt. Talbert, a forested butte just east of I-205 and south of SE Sunnyside Road. Mt. Talbert was specifically identified for acquisition and protection due to its diversity of wildlife habitats, including older stands of Douglas fir and Western red cedar trees, and its location at the edge of a rapidly urbanizing area. For these reasons, North Clackamas Parks and Recreation District ("NCPRD") identified Mt. Talbert as an essential natural area component of its master plan.

In January of 1998, Metro and NCPRD purchased a 67-acre property on Mt. Talbert. The partnership consisted of Metro's contribution of 75% of the purchase price, and NCPRD's commitment to manage the property and to pay the balance of the purchase price. The majority of the 67-acre Metro/NCPRD property consists of the northeast slope of Mt. Talbert, including a large remnant second growth Douglas fir stand. A smaller, narrow strip of the property extends north from this forested area, crosses Mt. Scott Creek, and connects Mt. Talbert to SE Sunnyside Road at the intersection of SE Sunnyside Road and SE 117<sup>th</sup> Avenue. In contrast to the forested slope, the portion of this narrow strip close to SE Sunnyside Road is covered with blackberry and contains few of the natural resources that motivated Metro and NCPRD to invest in this property.

In 1999 and 2000, NCPRD conducted a master planning process to determine the most appropriate way to manage these 67 acres and the rest of the Mt. Talbert Natural Area. The Mt. Talbert Master Plan, approved by Metro Council on July 13, 2000, concluded that the narrow strip of land connecting SE Sunnyside Road to Mt. Talbert is the most appropriate public access point and trailhead location for the natural area. The master plan envisions a parking lot and trailhead with picnic tables and restroom facilities in this area.

The property west of and adjacent to the proposed trailhead area is now occupied by Miramont Pointe, a 158-unit senior assisted living/Alzheimer's care facility ("Miramont"). Clackamas County approved the construction of Miramont Pointe, subject to the condition that its vehicular access to SE Sunnyside Road would be restricted to a "right in, right out" curb cut off eastbound Sunnyside Road until the SE 117<sup>th</sup> intersection is developed. Clackamas County Transportation had earlier relocated the planned SE 117<sup>th</sup>

intersection in anticipation that Metro/NCPRD would provide access to the immediately adjoining neighbors to the east and west off the Mt. Talbert property at the time the trailhead is developed. The intersection of SE 117<sup>th</sup> Avenue and SE Sunnyside Road is to be a four-way stop signalized intersection that allows for right and left hand turns.

On April 29, 2004, Metro approved Miramont's easement request via Resolution 04-3448, which included a permanent driveway easement providing for curbs, sidewalks and landscaping, temporary construction use, and a drainage easement providing for a stormwater system ("Miramont Pointe Easement"). Subsequently, Clackamas County required that the location of the stormwater system improvements and drainage area easement be shifted eastward, burdening more of the Mt. Talbert Property, in order to protect a wetland buffer area located on the Miramont property. As a result, Miramont now requests an amendment to the Miramont Pointe Easement providing for the expansion of the Miramont Pointe Easement's drainage easement.

## **FINDINGS**

- The First Amendment to Easement and Restrictive Covenant Agreement and construction documents satisfy the criteria established by the Easement Policy, Metro Council Resolution 97-2539B. Attachment 1 attached hereto specifically applies the 13 policy criteria of the Metro Easement Policy to Miramont's easement application.
- The Miramont Pointe Easement is consistent with the Mt. Talbert Master Plan, adopted by NCPRD in May 2000.
- NCPRD, as co-owner, has approved the First Amendment to Easement and Restrictive Covenant Agreement and construction documents.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition.** None.

**2. Legal Antecedents.** Metro Council Resolution No. 97-2539B, adopted on November 6, 1997, established a policy for Metro's consideration of requests to encumber properties managed by Metro Regional Parks and Greenspaces with private easements designed for access, utilities, or other non-park uses (the "Easement Policy"). The Easement Policy outlines specific criteria against which private easement applications should be considered. Miramont's First Amendment to Easement and Restrictive Covenant Agreement application is consistent with these criteria under the terms and conditions of the attached documents. This resolution requests Metro Council approval of Miramont's First Amendment to Easement and Restrictive Covenant Agreement application and authorization for the Chief Executive Officer to execute a grant of easement based on its consistency with Metro Easement Policy.

**3. Anticipated Effects.** Resolution No. 04-3519 requests approval for the Chief Operating Officer to execute a First Amendment to Easement and Restrictive Covenant Agreement, amending an easement approved by the Metro Council on April 29, 2004 via Resolution 04-3448. The First Amendment to Easement and Restrictive Covenant Agreement provides for the expansion of a stormwater disposal area.

The area proposed to be encumbered by the Easement has little natural resource value. Miramont's contribution to the design of the trailhead and construction of the driveway and stormwater drainage system will significantly reduce the public's expense in implementing the trailhead portion of the Mt.

Talbert Master Plan. Further, Metro will have no maintenance obligations for the driveway and stormwater drainage system improvements as long as the Mt. Talbert Property is used for park purposes.

**4. Budget Impacts.** The applicant, Miramont Pointe, will build the stormwater drainage system, which is engineered such that it will also accommodate stormwater flows from the trailhead improvements, when built. Minimal or no costs to Metro are expected to arise from the construction of the stormwater system.

#### **RECOMMENDED ACTION**

Michael J. Jordan, Chief Operating Officer recommends adoption of Resolution No. 04-3519.

**Attachment 1 to Staff Report  
Resolution 04-3519  
Metro Easement Policy Criteria and Staff Findings**

- 1) **Provide for formal review of all proposed easements, rights of ways, and leases for non-park uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.**

Staff Finding: Criterion is satisfied through a review process that includes formal easement application, staff review and approval from Metro Council.

- 2) **Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.**

Staff Finding: The applicant's proposal includes significant park benefits, including a trailhead and parking area design and partial construction that is consistent with the Mt. Talbert Master Plan.

- 3) **Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.**

Staff Finding: The access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the natural area values of Mt. Talbert.

- 4) **Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: The access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the Mt. Talbert natural area and will advance the site's ultimate use as a trailhead.

- 5) **Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.**

Staff Finding: The applicant will mitigate for the potential impacts of road construction by: using erosion control measures which Metro and NCPRD will monitor revegetating portions of the Mt. Talbert Property disturbed by construction, and will commit to permanently maintain the easement improvements.



- 6) Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The dimensions and terms of the easements are limited to accommodate an access drive as associated stormwater drainage system benefiting the assisted care facility, and are not transferable or assignable to adjacent properties without Metro's consent.

- 7) Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: Because of the applicant's extensive investment in easement improvements, the term of the easement will be perpetual.

- 8) Require reversion, non-transferable, and removal and restoration clauses in all easements, rights of ways, and leases.**

Staff Finding: The access easement will include these terms.

- 9) Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying, or assuring compliance with the terms of any easement, right of way, or lease for non-park use.**

Staff Finding: Metro staff assigned to this application has documented time and costs spent on this application and informed the applicant of the policy requiring reimbursement. Execution of the easement is subject to satisfaction of all Metro expenses.

- 10) Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than money.**

Staff Finding: Staff has determined that the cash compensation proposed by Miramont Pointe, along with improvements to the Metro property, provides benefit no less than fair market value.

- 11) Require full indemnification from the easement, right of way or leaseholder for all costs, damages, expenses, fines, or losses related to the use of the easement, right of way, or lease. Metro may also require insurance coverage and/or environmental assurances if deemed necessary by the Office of Metro Attorney.**

Staff Finding: The easement will include indemnification and insurance provisions.

- 12) Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.**

Staff Finding: No exception requested.

**13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:**

- A. The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute unfeasibility.**

Staff Finding: Applicant has submitted a detailed proposal including all required information. The only alternative access remains the current “right in, right out” access.

- B. Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.**

Staff Finding: Metro and NCPRD have concluded that the proposed easement, as well as the trailhead and parking area design submitted by applicant, are consistent with the Mt. Talbert Natural Area Master Plan.

- C. Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.**

Staff Finding: Clackamas County Transportation relocated SE 117<sup>th</sup> Avenue with the understanding that Metro and NCPRD provide access to Miramont Pointe through the Mt. Talbert Property at such a time as the trailhead is constructed.

- D. If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.**

Staff Finding: The Department has been negotiating with the applicant since October of 1999. These negotiations have resulted in an easement application and legal documents that blends the Metro/NCPRD plan to have a parking area and trailhead facility on the subject property with applicant’s need to create access to Miramont Pointe.

- E. Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval. In no event shall construction of a project commence prior to formal approval of a proposal.**

Staff Finding: Final documents have been negotiated and revised by the Metro Attorney to conform with Metro requests.

- F. Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way, or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.**

Staff Finding: Metro costs have been documented and applicant must reimburse Metro prior to receiving the easement.

- G. Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state, or local jurisdiction requirements.**

Staff Finding: Criterion satisfied.



**Resolution No. 04-3506, For the Purpose of Directing the Chief Operating Office 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.**

Metro Council Meeting  
Thursday, December 9, 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.

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

The Metro Council ~~intends to~~shall 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.

- (b) 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 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. If the fish and wildlife property acquisition and restoration bond measure described in paragraph 1(b) of this resolution is approved by the voters of the region, then 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 43(a) of this resolution. If the fish and wildlife property acquisition and restoration bond measure described in paragraph 1(b) of this resolution is not approved by the voters of the region, or if it is not put on the ballot for voter approval by November 2006, then local governments shall be required to be in compliance with the local program performance standards no later than June 1, 2010, subject to the provisions of paragraph 3(b) of this resolution.

- (c) 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. If the fish and wildlife property acquisition and restoration bond measure described in paragraph 1(b) of this resolution is approved by the voters of the region, then the provisions of paragraph 3(a) of this resolution shall be effective. If the fish

and wildlife property acquisition and restoration bond measure described in paragraph 1(b) of this resolution is not approved by the voters of the region, or if it is not put on the ballot for voter approval by November 2006, then the provisions of paragraph 3(b) of this resolution shall be effective.

a. 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 assess~~ prepare and present to the Metro Council a written report on 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.

b. 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 2007, 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. Not later than March 1, 2008, 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 2008 report. Not later than June 1, 2008, 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. 1a. [To be considered only if Amendment No. 1 is not adopted.]

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, ~~it~~ 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.



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.~~

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, <sup>1</sup> high employment value, or high land value <sup>4</sup>	Secondary 2040 components, <sup>2</sup> medium employment value, or medium land value <sup>4</sup>	Tertiary 2040 components, <sup>3</sup> low employment value, or low land value <sup>4</sup>	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	ML / A <sup>5</sup>	SL	SL	SL / SL+ <sup>6</sup>
Class II Riparian/Wildlife	LL / A <sup>5</sup>	LL	ML	ML / SL+ <sup>6</sup>
Class III Riparian/Wildlife	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>
Upland Wildlife	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>
Impact Areas	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>

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

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

<sup>3</sup>Tertiary 2040 components: Inner and outer neighborhoods, Corridors

<sup>4</sup>Land value excludes residential lands.

<sup>5</sup>Apply 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.

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

<sup>7</sup>Develop 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



# MULTNOMAH COUNTY OREGON

**BOARD OF COUNTY COMMISSIONERS  
501 SE HAWTHORNE, 6<sup>TH</sup> FLOOR  
PORTLAND, OREGON 97214**

**DIANE LINN • CHAIR OF THE BOARD  
MARIA ROJO DE STEFFEY • DIST. 1 COMMISSIONER  
SERENA CRUZ • DIST. 2 COMMISSIONER  
LISA NAITO • DIST. 3 COMMISSIONER  
LONNIE ROBERTS • DIST. 4 COMMISSIONER**

---

December 9, 2004

Metro Councilors  
METRO  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

Dear Councilors:

Multnomah County supports Resolution No. 04-3518 directing Metro staff to facilitate completion of Concept Planning for Area 93 by resolving outstanding governance issues and provision of services and cooperation between the affected parties.

The County believes that passage of this resolution will move forward three key steps in this process. These include:

- 1) Determining the governance issues for Area 93 prior to conducting the Title 11 planning.
- 2) Convening the interested parties to discuss who should be conducting the required Title 11 planning. The interested parties would include Washington County, Multnomah County, METRO and the Cities of Portland and Beaverton
- 3) METRO's expansion of the urban growth boundary prior to Title 11 planning to include the portion just east of Area 93 known as Bonny Slope

Making a decision about who conducts the Title 11 planning and who will govern the area can provide the citizens of this area with certainty as to when their land will be developable under urban rules. At the completion of Title 11 planning, the county could adopt zoning controls to help assure realization of the proposed urbanization plan. Development in the interim between completion of Title 11 planning and the availability of urban services including subdivision review can be managed in this way.



We believe that convening the interested parties will answer the concerns that we have raised and will be the basis for an amendment. Thank you for this opportunity to comment on our support for this resolution you are considering today and we look forward to working with METRO and getting underway with the necessary plans so we can begin coordinating and convening meetings with the jurisdictions that may play a role in the Title 11 planning.


Sincerely,

  
Diane Linn  
Chair

  
Maria Rojo de Steffey  
Commissioner, District 1

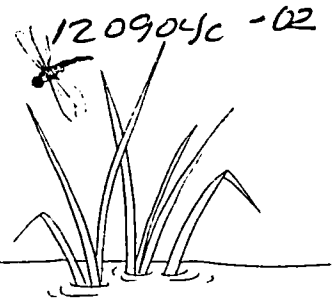
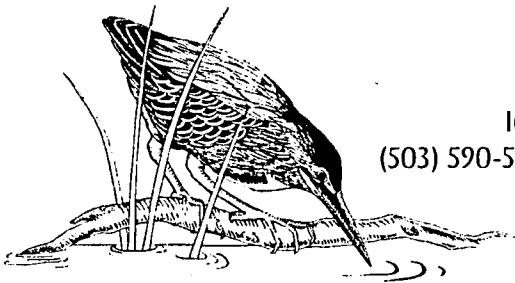
  
Serena Cruz  
Commissioner, District 2

  
Lisa Naito  
Commissioner, District 3

  
Lonnie Roberts  
Commissioner, District 4

# TUALATIN Riverkeepers

16507 SW Roy Rogers Rd. Sherwood, OR 97140  
(503) 590-5813 • fax: (503) 590-6702 • www.tualatinriverkeepers.org  
email: info@tualatinriverkeepers.org



Dec. 9, 2004

Regarding Metro Resolution 04-3506

President Bragdon and Council Members:

Thank you for the opportunity to comment on Metro Resolution 04-3506 and its myriad amendments. The Tualatin Riverkeepers supports the Nature Friendly Neighborhood proposal as the option most likely to fulfill the goal of Metro's regional Fish and Wildlife Protection Program and integrate compliance with the Clean Water Act and Endangered Species Act. This option was discussed and supported by the WRPAC/Goal 5 TAC and is also consistent with the City of Portland recommendations - that received broad support from MTAC with a caveat reinforcing the need for flexibility related to industrial and high urban land uses.

We could support the Newman amendment as amended by MPAC if the ALP decision is maintained that includes the uplands. A phased regulatory approach could address the Class I and II riparian early, with Class III riparian and uplands to follow in a timely, uniform, and reasonable timeline.

### The Importance of Addressing Uplands

Compliance with CWS and ESA cannot be achieved by just focusing on the riparian areas. Title 3 only dealt with a component of the water quality issues related to erosion, bank stability, and potentially riparian shading. The impact of stormwater was not addressed in Title 3 and remains the most significant source of urban water pollution in the Tualatin basin adding excessive nutrients, bacteria, toxics and sediment to public waters and result in a failure to meet state water quality standards. Stormwater discharges directly into streams in the Tualatin basin or for new development may be slowed by swales.

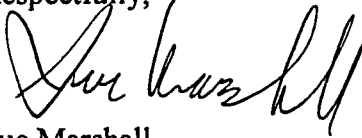
It is critical that uplands be retained in the regional fish and wildlife program to determine how best to apply the full mix of tools (voluntary and regulatory) to address preservation of tree canopy, reduction of impervious surface, integrate green streets and green design components. Some of these tools could be part of a lightly limit application. We risk losing opportunities by eliminating uplands before the program elements have been defined.

The Tualatin Basin Natural Resource Coordinating Committee recognized the importance of a watershed approach with their designation of inner impact area (Metro ALP map)

and outer impact area (the rest of the watershed). It was envisioned that green design could play an important role in restoring watershed health.

We urge you to include the uplands and adopt some combination of the Newman – Nature Friendly Neighborhoods amendments. Thank you very much for your consideration.

Respectfully,

A handwritten signature in cursive script, appearing to read "Sue Marshall".

Sue Marshall  
Executive Director  
Tualatin Riverkeepers

December 9, 2004

Testimony of Jon Biemer

7521 SE Woodward St.

Portland OR 97206

Re. Resolution 04-3506 and Newman amendment

Regulation has its good and bad points. So I don't want to take ~~meets~~ non-regulatory approaches off the table. However a non-regulatory approach requires the following things to be in place: (1) Leadership, (2) A plan, (3) Consensus and (4) Time. I hear a frantic rush to approve the resolution and its amendment. This is understandable after nine years of work and a satisfying meeting of local government representatives. My sense ~~is~~<sup>is</sup> that Metro has not finished its work in developing a plan and consensus. The number of people here to testify indicate that you are premature.

Therefore I recommend that you table this issue until you have the strong support of residents, developers and environmental interests.

To: Metro Council  
From: Loren Albert  
Date: 12/9/04  
Regarding: Resolution 04-3506

My name is Loren Albert, I am a 20 year old college student, I have lived in Oregon the last 18 years but this is my second year living in Portland. I came to testify today in opposition to Resolution 04-3506 for three main reasons: the quantitative value of Portland's environment, the qualitative value of the Portland's environment, and the necessity of regulatory, not voluntary, measures to protect Portland's environment. This is the third Metro hearing I have been to regarding the Goal 5 fish and wildlife program, although this is my first time testifying. At the other hearings I was impressed by the public outpouring of support for a fish and wildlife program to protect riparian habitat and water quality not just because we all have the right of clean water, and a healthy environment, but because protecting the environment helps our local economy. I particularly remember the testimony of a Reed Economics Professor that showed that the value of property rises when we maintain healthy environmental standards, helping our economy. I have seen testimony stressing the cost and hard work it takes to restore degraded habitat, and as someone who has spent time weeding out invasive ivy I agree that is so much harder to restore than to protect. An ounce of prevention is worth a pound of cure.

Yet in addition to all of the quantitative testimony that puts a monetary value on our environment, I would like to speak to the quantitative value as well. As a Reed College student I attest to the number of college students that come here because the Portland area is so beautiful. Every day I can see once endangered wood ducks in Reed's Canyon. What's the monetary value of wood ducks? I have friends from Los Angeles at Reed who continue to be impressed by green spaces in the city where one can escape the city for a moment of peace and solitude. What is the monetary value of this peace and solitude?

*is a little better w/ the Neuman proposal, but still*

It seems to me that Resolution 04-3506 disregards the public's testimony esteeming both the quantitative and qualitative value of Portland's riparian habitat and water quality. I am asking you to employ <sup>more</sup> regulatory measures, not only voluntary measures to protect all regionally significant fish and wildlife habitat in Metro's Program. I would like to see a Regional Greenspaces Bond Measure before the votes by 2006 to see what the voters really think. I do not think that the passage of Measure 37 reflects voters views on the environment because without researching the measure, voters would have no idea that the environment would be affected. Furthermore Measure 37 is not the opinion of people that live <sup>in Portland</sup> in Oregon, but of people that live in the entire state. Finally please require local governments to comply with regional performance standards as soon as possible, and include upland habitat in a regulatory protection program.

*At this time I would like to recognize some college students who, like myself support ~~more~~ regulatory measures such as those in the Nature Friendly Neighborhood proposal.*

METRO TESTIMONY, 12/9/04, RESOLUTION 04-3506  
CARL AXELSEN, 11405 SW 33<sup>rd</sup> AVE., PORTLAND, OR

The Council has heard, and will hear today, testimony on the policy and science involved in a decision on Resolution 04-3506. **My plea to the Council as a volunteer working in the area's natural resources, is to listen and use what you hear.**

A career of nearly 40 years in management taught me to value listening more than anything - to listen, who to listen to, and how to integrate and apply what I heard.

As you deliberate, listen to what Jim Labbe, Mike Houck, Sue Marshall, Brain Waggener, and the folks from state and federal fish & wildlife and others have to say about policy and practice in the protection of habitat. Listen to what Amanda Fritz, Michelle Brussard and others have to say about what it takes for watershed councils and volunteers to be effective. These people are out on the ground everyday and they have been for years. They bring knowledge, training, and perspective to this Council.

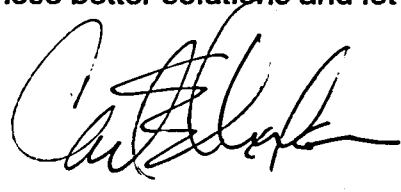
They also interact with landowners angered by regulation, frightened by the potential of loss, and offended by violations of property rights, real and perceived. Listen to them with a mind to the possibilities; not with a mind to decide what's wrong with their testimony; not to determine for whom they speak. They are speaking from experience and knowledge and commitment. Compromises are being proposed. There is a win in here to be had.

I have listened. I have attended Metro open houses, hearings, and landowner workshops. Council President Bragdon and Councilor Park are absolutely correct in declaring show-stopping problems with the Metro program as it was unfolding. The complexity of instituting land-use regulations is daunting. But locking out the option of regulation for years is not the solution. The solution lies somewhere in a better approach to the application of limited regulation along with voluntary action. These people testifying can help you make a blend of strategies work.

Listen also to testimony in favor of resolution 04-3506. However I plead with the Council to consider carefully those arguments based on negative economic scenarios. I've heard repeatedly "good, hard working families won't be able to afford housing because we're tying up all this habitat land and keeping it off the market." No one in this room believes affordability is a matter of a single factor. Affordability of housing has to do with supply, demand, and most off all, the opportunity for families to earn wages that support buying a house. Whether or not housing is affordable is a matter of the workings of the entire economic and social system. The people blaming environmental policy know this. Their doomsday declarations are disingenuous and manipulative.

To adapt resolution 04-3506 as written would be a mistake and a failure of leadership - made particularly so because the problems uncovered were real and because better solutions are at hand. Choose one of those better solutions and let's get back to work, outside, where it matters.

Thank you for your consideration.

 12/9/04

Wendy Stevens  
Testimony opposing resolution 04-3506  
12/9/04

- Please oppose Resolution 04-3506 as currently proposed and to support Carl Hosticka's Nature Friendly Neighborhood proposal.
- Why I value fish, wildlife and natural areas in this region
  - o We all need healthy relationships with nature, especially in cities where we spend most of our time. In order to know and enjoy all that nature has to offer, we need nature in our everyday lives. And we need healthy, functioning natural systems to be healthy: physically, emotionally, spiritually and intellectually.
- Why we have a moral and ethical obligation to protect a healthy environment.
  - o Urbanization is increasing world-wide. Protecting and enhancing biodiversity and ecosystem function in urban areas needs to be a priority of every city. Currently we need regulations to help guide decision-making until "business as usual" automatically means taking care of our environment, that which sustains us. We are moving in that direction, but are not yet there.

Specifically, I urge you to:

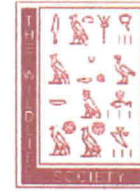
- Include all regionally significant fish and wildlife habitat in Metro's program.
- Employ the full range of habitat protection tools. Measure 37 does not prevent Metro from including regulatory habitat protections in the program. Regulations are critical to protect natural areas from the most destructive development.
- Require local governments to substantially comply with regional performance standards no later than June 1 2007.
- Support putting a Regional Greenspaces Bond Measure before the voters no later than 2006.
- Support aggressive non-regulatory programs to complement habitat protection standards for new development.
- Support annual assessment of habitat conditions to measure progress.





THE WILDLIFE SOCIETY  
OREGON CHAPTER

POST OFFICE BOX 2378  
CORVALLIS, OR 97339



120904c-07

6 December 2004

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

Re: Metro Council Resolution 04-3506

Dear Councilors:

The Oregon Chapter of The Wildlife Society is concerned about the effects and precedents that could result from the adoption of Metro Council Resolution 04-3506 as it now stands. As we understand the proposed change, the regulatory aspects of Metro's fish and wildlife habitat conservation program would be replaced by a primary emphasis on education, incentives, acquisition, and restoration.

As a society of wildlife professionals with over 600 members statewide, it has long been our policy that natural resource management should be based on proven principles of management, including the use of sound science and effective conservation practices. Meaningful habitat conservation is key to successful wildlife conservation, and urban landscapes and watersheds can provide habitat beneficial to a wide variety of important wildlife species.

Metro staff biologists have produced an exemplary assessment of current habitat conditions using some of the best available science and technology. From this, Metro staff is developing a very workable and achievable set of conservation programs that are based on recognized and effective habitat management practices.

We agree that education, incentives, acquisition, and restoration can help conserve Metro region wildlife habitat, but these measures should not replace regulations. Successful habitat conservation requires a regulatory mechanism to make other measures more effective and to insure that necessary conservation occurs where it is most needed. A conservation program that does not include regulation is likely to produce spotty and unpredictable results, since it depends on the location and cooperation of willing participants.

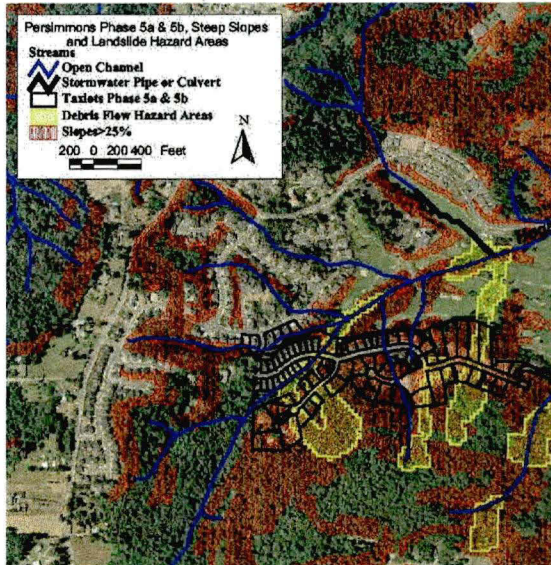
Therefore we recommend that Resolution 04-3506 be amended to include a regulatory component. Education, incentives, acquisition, and restoration are worthwhile concepts and should be emphasized, but a total conservation program requires a regulatory component to be effective.

Thank you for your consideration of our Chapter's views on this important issue. We would be pleased to discuss this further with Metro Council or any of its staff.

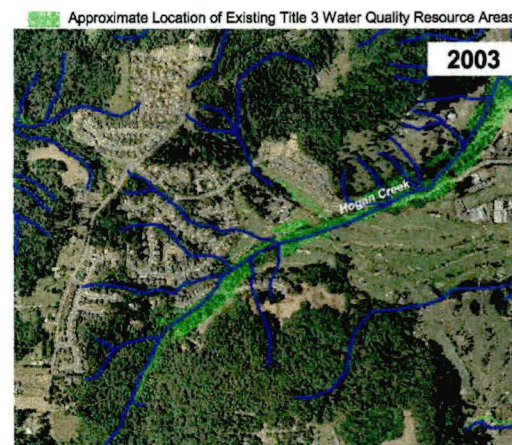
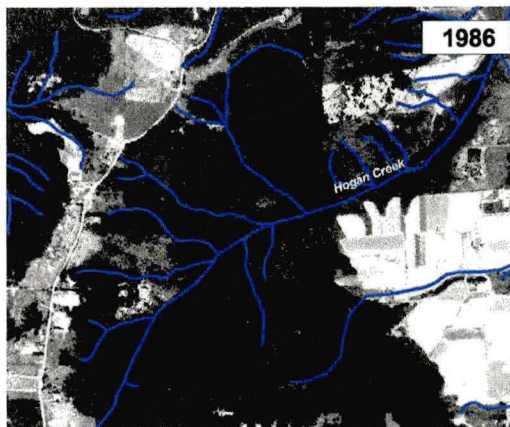
Richard A. Schmitz, PhD  
President



From  
Jim  
Lalabe



Persimmons 5a and 5b on South Hogan Butte (left) involved clearing and grading in steep sloped headwater ravines (right) within State-designated debris flow hazard areas. The development resulted in the burial of two headwater tributaries of Hogan Creek and puts the life and property of future homeowners at greater risk. Better site planning could have avoided or minimized impacts to the most sensitive areas, combining the opportunities for habitat protection and landslide hazard reduction. During the 1996 floods, poorly planned construction and development practices on steep or unstable slopes contributed to approximately 630 landslides in the Portland-Metro. In the City of Portland over 30 homes were left uninhabitable and public-sector costs alone were at least \$20 million. While hazards can be reduced by site-engineering, a major cause of landslides in 1996 was the *cumulative* affects of inadequate storm water management that super-saturated slopes.<sup>3</sup>



Sequential aerial photos of Hogan Creek watershed in 1986 (left) and 2003 (right) illustrate the cumulative impacts of successive planned subdivisions. Existing Water Quality Management Areas (Title 3) cover only a portion of the main channel of Hogan Creek and the lower section of one tributary. Research in the Portland-Metro region indicates a strong relationship between aquatic habitat of streams like Hogan Creek and the cumulative loss of forest canopy in their watershed.<sup>4</sup>

<sup>1</sup> *Where Rivers are Born: The Scientific Imperative for Defending Small Streams and Wetlands*, American Rivers, September 2003.

<sup>2</sup> *Draft 2004 Performance Measures Report*, Metro, November 2004.

<sup>3</sup> *Landslides in the Portland, Oregon Metropolitan Area Resulting from the Storm of February 1996: Inventory Map, Database and Evaluation*, prepared for Metro by the Department of Geology at Portland State University, pp. 37, 1988. *Landslide Loss Estimation Pilot Project in Oregon*. State of Oregon Department of Geology and Mineral Industries. Portland, Oregon, pp. 23, 2002.

<sup>4</sup> *Portland Benthic Invertebrate Analysis*, Metro Regional Services, Portland, OR, pp. 87, 2002.



**Habitat Degradation and Loss from Urban Development in the Portland-Metro Region:**

*Examples of habitat degradation and loss in small headwater streams.*



These small headwater streams support unique and sensitive wildlife species and are critical to maintain the water quality of the entire Portland-Metro region. Stream ecologists in Western Oregon found invertebrate species in intermittent streams (streams that flow part of the year) out numbered those found in streams with year-around flow. Small headwater or intermittent streams make up an estimated 75% or of total stream length in a watershed and provide critical linkages between rivers and the surrounding landscape or watershed.<sup>1</sup> They influence the quality and quantity of downstream

waters, reducing flooding during the winter, maintaining viable stream flows during the hot summer months, and determining the productivity of local and basin-wide food webs.

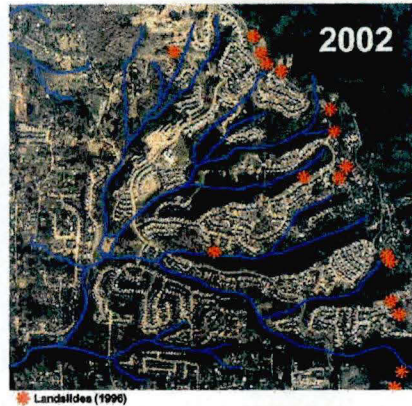
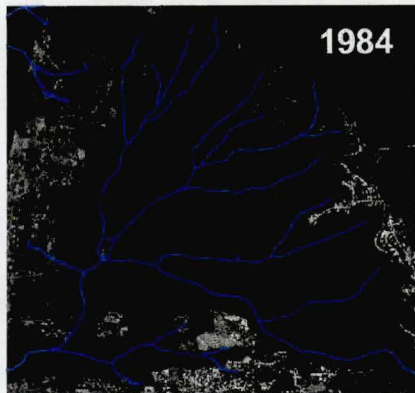
Despite their importance to fish, wildlife, and water quality, small headwater streams in the Portland-Metro region are threatened by urban development. Approximately 255 mapped miles of stream in the Portland-metro region are not protected by Metro's regional water quality standards (Title 3).<sup>2</sup> Updated mapping in Washington County and the Cities of Portland and Gresham indicate previous inventories left many miles of small headwater unmapped. Hence, even under existing standards, most local jurisdictions lack protections for many small headwater tributaries.

In being small and numerous, the cumulative loss and degradation of headwater streams puts the overall environmental health of our region- and associated economic values- in jeopardy.



**Subdivision clearing in the Rock Creek headwaters**

Many intact headwater streams in the Portland Metro-region are located in forested uplands with steep unstable slopes where increased landslide hazards make home building potentially dangerous to life and property. The Forest Heights development in the headwater ravines of Cedar Mill Creek (below) caused over a dozen landslides during the 1996 flood and degraded stream habitat for at least five miles downriver, to Tualatin Hills Nature Park.



Persimmons development in the Gresham buttes and lava domes similarly illustrates the negative environmental impacts of suburban development on headwater streams. Persimmons development encompasses several planned unit developments within the Hogan Creek watershed a headwater tributary to Upper Johnson Creek. Subdivision phase 5a and 5b (highlighted below) included 70 detached single-family homes in SFR4 zoning. Lot sizes in Persimmons range from 4700-45,000 square feet (mean/median 14,000/37,750 sq. feet). Build out market values (building and land) range from \$48,000 to \$10,300,000. Hogan Creek supports threatened steelhead trout. Upper Johnson Creek is a water quality limited stream (DEQ 2002 303d list) that also supports coho salmon.



**Habitat Degradation and Loss from Urban Development:**

*An example of stream corridor fragmentation and degradation: Hoodland Estates, Gresham.*

Hoodland Estates, located at 282<sup>nd</sup> and Chase Road in Gresham, is a 55-lot subdivision permitted in 2002 under the City of Gresham's existing local Goal 5 program (adopted in 1988). The base zoning (SFR4) allows for detached single family housing with minimum lot sizes from 6,500 to 8,500 square feet. Lot sizes in Hoodland Estates range from 5,100-19,000 square feet (mean/median 7,000/6100 sq. feet). Build out market values (building and land) range from \$230,000 to \$1,650,000. Hoodland Estates is located along Kelly Creek, a tributary of the Lower Sandy River. Kelly Creek is a water quality limited stream (DEQ 2002 303d list) that supports state and federally listed stocks of native steelhead trout and coho and chinook salmon. Sensitive species known to inhabit this sub-watershed include Red-legged frog, Northwestern pond turtle, and Painted turtle, species known to depend on healthy and diverse riparian (streamside) habitats.

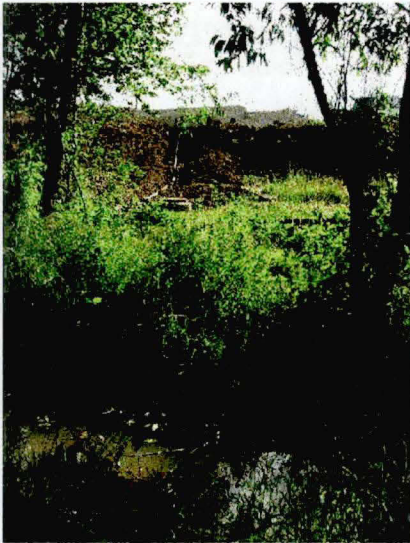


The oblique aerial photograph of Hoodland Estates illustrate five examples of poor site planning that jeopardizes streamside habitats by degrading or fragmenting the stream corridor and unsuccessfully integrating the built and natural environments within and between planned subdivisions. The main stem Kelly Creek corridor runs along the lower third of the photograph.

**1 – Cumulative impacts:** A previous subdivision has already encroached on the Kelly Creek corridor. The lack of coordination *between* successive developments results in cumulative environmental impacts to the resource. Over time these impacts reduce or eliminate riparian functions and habitat connectivity that support fish and wildlife species and water quality. Better site planning could avoid or minimize these impacts.







**2 – Direct Impacts:** 15-50' stream setbacks at Hoodland Estates are insufficient to protect and restore viable riparian corridors for fish and wildlife, including threatened or at risk species. The photograph to the left was taken from the middle of Kelly Creek looking west toward the subdivision. The existing vegetated buffer, already inadequate to provide shade, is at risk of addition loss over time due to channel migration or flood-disturbance.

Stream ecosystems are dynamic. An ecologically viable stream corridor system must maintain continuity of ecological functions over time and space. That means maintaining adequate corridor width to accommodate natural (or human-altered) flood or channel disturbance that will alter channel location and vegetation over time. Better site planning at Hoodland Estates could have avoided or minimized present and future conflicts and, in this instance, easily maintain zoned densities.

**3 – Clearing, grading and soil compaction near streams increases long-term costs of non-regulatory tools:** Clearing, grading and soil compaction below significant breaks in bank slopes (as shown here adjacent to the Kelly Creek) pose immediate and long-term water quality and habitat impacts that degrade the resource. Allowing backyards to encroach into sensitive areas increases the long-term costs of homeowner outreach and education and reduces the overall feasibility of achieving and sustaining best management practices along a stream's length.

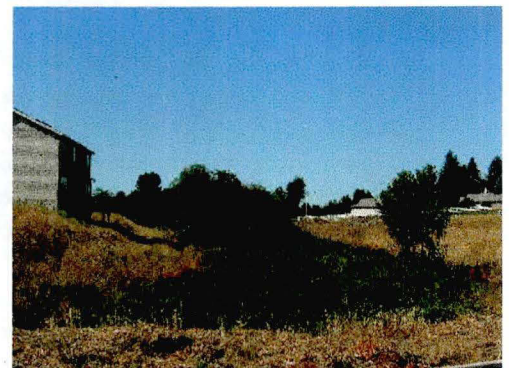


**4 – Culvert stream crossings limit or eliminate aquatic and riparian wildlife connectivity.** Existing development standards do not require road crossings to maintain even minimal connectivity for aquatic wildlife species. Associated habitat impacts go unmitigated. Loss of migration routes isolates wildlife populations leading to local extirpation or extinction of sensitive species.

Left: Culvert crossing across tributary stream at Hoodland Estates.

**5 – No restoration and enhancement of green infrastructure.** Required upgrades of physical infrastructure (roads, utilities, etc) do not include green infrastructure (streams, wetlands, flood areas, and vegetated corridors). The entire cost of enhancing and restoring degraded green infrastructure will be born by the future homeowners, public, and future generations.

Right: Degraded Kelly Creek tributary at Hoodland Estates.



120904c-09



**URBAN  
Greenspaces  
INSTITUTE**

**Directors**

Goody Cable, Chair  
M. J. Cody, Vice Chair  
Martha Gannett, Secretary/Treasurer

**Staff**

Mike Houck, Executive Director

**Advisory Board**

Bill Bakke, Executive Director  
Native Fish Society  
Portland, Oregon

Janet Santos Cobb, President  
California Oak Foundation  
Oakland, California

Patrick M. Condon  
James Taylor Chair in Landscape  
and Livable Environments  
University of British Columbia  
Vancouver, British Columbia

Dr. David Goode  
Head of Environment  
Greater London Authority  
London, England

Charles Jordan, Director  
The Conservation Fund  
Portland, Oregon

Jon Kusler, Executive Director  
International Institute of Wetland  
Science and Public Policy  
Berne, New York

Robert L. Liberty  
Senior Counsel for  
Congressman Earl Blumenauer  
3rd Congressional District, Oregon  
Portland, Oregon

Peg Malloy, Executive Director  
Portland Housing Center  
Portland, Oregon

Dr. Rutherford Platt  
Department of Geosciences  
University of Massachusetts  
Amherst, Massachusetts

Dr. Joe Poracsky  
Geography Department  
Portland State University  
Portland, Oregon

Ann Riley  
Waterways Restoration Institute  
Berkeley, California

Ralph Thomas Rogers  
Urban Ecologist  
Seattle, Washington

Paddy Tillett  
Architect and Urban Designer  
Portland, Oregon

Mike Uhtoff  
Northwest Nature Shop  
Ashland, Oregon

December 9, 2004

David Bragdon, Metro President  
Metro Council  
600 NE Grand  
Portland, OR 97232

Dear President Bragdon and Councilors,

I am presenting this testimony on behalf of the Urban Greenspaces Institute. As you know, I have participated in Metro's Regional Greenspaces, Region 2040 and Goal 5 processes as a member of MTAC, WRPAC, and Goal 5 TAC, as well as having served on several subcommittees throughout the Goal 5 process.

Given that you will hear testimony on the myriad-topics related to Resolution 04-3506 and various amendments before you, I will on just four specific points of concern, in addition to offering my support for adoption of Councilor Hosticka's *Nature Friendly Neighborhood* amendments.

- 1). Upland Forests
- 2). Regulations as an essential tool
- 3). Measure 37 Implications
- 4). Existing Goal 5 Implementation Committee

**Upland Habitats**

The first issue I'd like to address are upland habitats. It's critical that today's decision ensures that upland habitats receive some level of protection through the Regional Goal 5 program. Others, I am sure, will point out numerous reasons for this. I will focus on only one aspect of upland habitats, those areas that were recently brought into the UGB, the Damascus-Boring area, Springwater area in Gresham, and North Bethany.

Several years ago when the Metro started the UGB expansion discussion virtually everyone agreed that these areas would be treated differently than areas within the existing UGB, the philosophy being, "we can do it right, with a relatively clean slate" in urban expansion areas. And, in point of fact, a lot of good planning has occurred in the Damascus and Springwater

planning efforts, including plans to improve protection and restoration of stream corridors and upland buttes.

Proposing to afford no protection of upland habitat in these urban expansion areas is contrary to previously adopted Metro policy and undermines the progressive planning efforts in these areas. I am you to recognize the greater opportunities to protect upland wildlife habitat within these new urban expansion areas by applying the already adopted ALP (Allow, Limit, Protect) Goal 5 maps for those areas. This is consistent with already adopted regional policy for urban expansion areas. The upzoning that will occur in these areas will add, not reduce, economic value of private lands. That fact represents a legally and morally valid opportunity to protect Goal 5 resources as these new expansion areas urbanize.

#### **Regulations, One Critical Tool**

The proposal to eliminate regulations as one of many tools to implement the Goal 5 program makes no sense. We have ample on-the-ground information that documents the continued loss of fish and wildlife habitat, even in those local jurisdictions with Goal 5 programs. The need for additional protection has been made over and over. We simply cannot wait until 2012 or beyond, as proposed in Resolution 04-3506, to implement region wide fish and wildlife habitat protections. You will simply be putting the application of regulations to another Metro Council.

#### **Ballot Measure 37**

There are those who would contend that Metro cannot or should not put in place any level of regulations because of Measure 37. The argument is that "the voters have spoken" and that putting in place regulations at this time goes against the alleged will of the voters.

The voters did not vote to rescind or avoid new regulations to protect the environment. Neither did they vote to weaken local or regional land use planning programs. All we can say at this point is that there is public support for equity in application of land use regulations. To interpret the passage of Measure 37 as a public mandate to eliminate environmental regulations is a misinterpretation of the public's sentiment.

Furthermore, Measure 37 explicitly exempted regulations related to the Clean Water, Clean Air and Endangered Species Acts as well as regulations intended to protect human health and safety. This provides you with

numerous ways to implement regulations that respond to clean water, endangered species, and human health and safety issues.

Furthermore, I would argue that Metro is in at least as good a position to document and argue the case that these regulations will, in fact, increase the value of properties region wide and in most instances on specific sites where property owners might argue there is a diminution in value. You could also develop a regulatory approach that applies after a property is sold to a new owner.

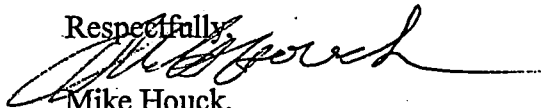
Finally, neither Resolution nor the proposed amendments—short of adoption of the *Nature Friendly Neighborhood* amendments---will achieve the objectives of Region 2040 Growth Concept or the Goal 5 Vision, which was adopted by MPAC and the full Metro Council. I urge you to either reject Resolution

#### **Goal 5 Implementation Committee**

There is a Goal 5 Implementation Committee that was put in place prior to the submission of Resolution 04-3506. The Resolution renders this committee moot, if they are precluded from considering various levels of regulations to implement the regional Goal 5 program. I urge you to reject the Resolution and allow this formal Metro process to proceed, as did the work of MTAC, Goal 5 TAC, WRPAC and MPAC in getting to this point. Resolution 04-3506 is a serious breach of Metro's long-standing, inclusive and methodical process. The Resolution was introduced without the consultation of any Metro committee or, for that matter, the Metro Council. It is, in my opinion, contrary to what to date has been a slow, but fair and transparent public process, one that should be allowed to play out through Metro's committee process.

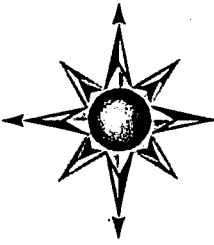
Finally, to achieve the objectives I've outlined above I urge you to adopt Councilor Hosticka's *Nature Friendly Neighborhood* amendments to Resolution 04-3506.

Respectfully,



Mike Houck,  
Executive Director





# COALITION FOR A LIVABLE FUTURE

310 SW FOURTH AVENUE, SUITE 612 • PORTLAND, OR 97204  
PHONE: 503.294.2889 • FAX: 503.225.0333 • WWW.CLFFUTURE.ORG

Testimony delivered 12/9/04  
By Teresa Huntsinger,  
Coalition for a Livable Future

## Council President Bragdon and Metro Councilors:

At this time it is appropriate to remind ourselves of why we are here today, why we are creating a Regional Fish and Wildlife Habitat Protection Program. Not in terms of legal jargon and Goal 5, but in terms of what we want to create for the Portland metropolitan region, and what we want our region to be like 40 years from now.

Portland is an innovative place. And we are poised to be on the cutting edge of a growing national and international movement to make urban areas vibrant and livable, reduce the negative environmental impacts of development, and protect and even restore wildlife habitat in cities. An integral part of Metro's 2040 vision is providing access to nature in the city, in order to increase livability as we maintain our urban growth boundary and build up, not out. CLF believes we can protect habitat areas and achieve our development goals, and we are currently working with a small team of urban designers and natural resources experts to show what that might look like on four sites across the region, including a regional center, a town center, a station area, and a regionally significant industrial area. We hope when this project is complete it will inform Metro's Goal 5 program and your work to more fully develop centers.

We believe it is Metro's role to collaboratively create the vision for our region, and work with cities and counties to implement that vision. My concern with the Bragdon-Park Resolution is that it abandon's Metro's vision of protecting fish and wildlife habitat throughout the region, and instead leaves us essentially with the status quo. Some jurisdictions have strong Goal 5 programs, and others don't. Because fish and wildlife cross jurisdictional boundaries, this piecemeal approach is ineffective. Nonprofit groups and volunteer "friends" organizations struggle to restore natural areas and provide environmental education on meager budgets, and I have not seen any evidence that Metro will be able to significantly ramp up those programs. The Bragdon-Park resolution relies on the status quo and does not seek to set a higher standard for our region. It provides no incentive for local jurisdictions to meet performance standards, because it has now become clear that there may not even be a "regulatory backstop" in the year 2012, depending on the votes of a future Metro Council. We can do better than that, and it is this Metro Council's responsibility to do better than that.

Metro should set a high standard, which expresses our aspirations for our region's future, and seeks to achieve a better outcome than the status quo. And we should use all the tools available to us to achieve our vision, including regulatory and non-regulatory tools.

### C O A L I T I O N M E M B E R S

- AMERICAN INSTITUTE OF ARCHITECTS, PORTLAND CHAPTER • AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS • ASSOCIATION OF OREGON RAIL AND TRANSIT ADVOCATES • ALDRION SOCIETY OF PORTLAND • BETTER PEOPLE • BICYCLE TRANSPORTATION ALLIANCE • CASCADIA BEHAVIORAL HEALTH CARE • CITE, CREATIVE INFORMATION • CITIZENS FOR SENSIBLE TRANSPORTATION • CLACKAMAS COMMUNITY LAND TRUST • COLUMBIA GROUP SIERRA CLUB • COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION • COMMUNITY ACTION ORGANIZATION • COMMUNITY ALLIANCE OF TENANTS • COMMUNITY DEVELOPMENT NETWORK • ECUMENICAL MINISTRIES OF OREGON • ELDERS IN ACTION • ENTERPRISE FOUNDATION • ENVIRONMENTAL COMMISSION OF THE EPISCOPAL DIOCESE OF OREGON • FAIR HOUSING COUNCIL OF OREGON • FANS OF FANNING CREEK • FRIENDS OF ARNOLD CREEK • FRIENDS OF CLATSOP COUNTY • FRIENDS OF FOREST PARK • FRIENDS OF GOAL FIVE • FRIENDS OF ROCK, BRANSON AND WILLOW CREEKS • FRIENDS OF SMITH AND BYRDE LAKES • FRIENDS OF TRYON CREEK STATE PARK • GROWING GARDENS • HILLSDALE NEIGHBORHOOD ASSOCIATION • JOBS WITH JUSTICE • JOHNSON CREEK WATERSHED COUNCIL • JUSTICE & PEACE COMMISSION OF ST. IGNATIUS CATHOLIC CHURCH • LEAGUE OF WOMEN VOTERS OF THE COLUMBIA RIVER REGION • MERCY ENTERPRISE • NORTHWEST HOUSING ALTERNATIVES • 1000 FRIENDS OF OREGON • OREGON COUNCIL OF TROUT UNLIMITED • OREGON ENVIRONMENTAL COUNCIL • OREGON FOOD BANK • OREGON SUSTAINABLE AGRICULTURE LAND TRUST • PEOPLE'S FOOD CO-OP • PORTLAND CITIZENS FOR OREGON SCHOOLS • PORTLAND COMMUNITY LAND TRUST • PORTLAND COMMUNITY RENOVEMENT INITIATIVES • PORTLAND HOUSING CENTER • PORTLAND IMPACT • REACH COMMUNITY DEVELOPMENT INC. • ROSE COMMUNITY DEVELOPMENT CORP. • SISTERS OF THE ROAD CAFE • SOUTHEAST UPLIFT NEIGHBORHOOD PROGRAM • SUNNYSIDE UNITED METHODIST CHURCH • TUALATIN RIVERKEEPERS • TUALATIN VALLEY HOUSING PARTNERS • URBAN LEAGUE OF PORTLAND • URBAN WATER WORKS • WETLANDS CONSERVANCY • WILLAMETTE PEDESTRIAN COALITION • WILLAMETTE RIVERKEEPER • WOODLAWN NEIGHBORHOOD ASSOCIATION



Of the proposals before you today, Councilor Hosticka's "Nature-Friendly Neighborhoods Proposal" does the best job of bringing us back to the vision of protecting and restoring fish and wildlife habitat throughout the region.

We support the intent in all the proposals to seek voter approval for an acquisition bond measure, but we cannot pin all our hopes for the fish and wildlife habitat protection program on that possibility.

We are concerned that Councilor Newman's amendment completely writes off all upland habitats in the region. This is contrary to the notion of thinking from a watershed perspective. Lack of tree cover in the uplands and covering the ground with impervious surfaces would reduce the effectiveness of the riparian area protections. It is all connected. Furthermore, when Metro decided to bring the Damascus area into the Urban Growth Boundary, trade-offs had to be considered between expanding onto farmland or onto the rich forestlands of the Damascus area. According to state land use laws, farmland gets the highest levels of protection in the context of UGB expansion decisions. But it was understood that even if Damascus' natural areas, such as the buttes, were brought into the UGB, they would be protected when Metro finished its Goal 5 program. It would be irresponsible to develop a Goal 5 program that provides no protections for upland habitats.

I urge you to take these points into consideration as you make this historic decision today. And I hope you will make this decision based on your long-term vision for our region's future, rather than on short-term political considerations.

  
Teresa Huntsinger  
Program Director

M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1700 | FAX 503 797 1794



To: Metro Council  
From: Andy Cotugno  
Subject: MPAC Recommendations on Resolution 04-3506  
Date: December 9, 2004

At their meeting on December 8, 2004, MPAC reviewed Resolution 04-3506, proposed by Council President Bragdon and Councilor Park, 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, as well as several amendments to this resolution as drafted by Councilors Hosticka, Newman and Burkholder.

After much discussion, MPAC voted to recommend that the Bragdon/Park Resolution be amended as proposed by Newman with further amended by MPAC. (Vote was 13 in favor and 3 against). The recommended resolution, as amended:

- Modifies the Allow-Limit-Prohibit decision, adopted by Metro Council in May of 2004, to include limit treatments on Riparian Class 1 and 2 habitat only and remove limit treatments (change to "allow") on Riparian Class 3 and Upland Class A, B and C. This would focus a regulatory approach to the Riparian Class 1 and 2 areas and a non-regulatory approach to protecting and restoring the other habitat areas.
- Requests that Metro Council establish a timely, uniform and reasonable timeline for local jurisdictions to come into compliance with new Functional Plan requirements for the fish and wildlife habitat program.
- Specifies that the May ALP restrictions be mandated for the Class 1 – 3 and Class A and B uplands within future UGB expansions with the expectation that annexing jurisdictions would condition, through ordinance, the annexing party's acceptance of the jurisdiction's land-use regulations (including the protections of both critical riparian and upland fish and wildlife habitats).
- Expresses intent to develop and seek voter approval of a bond measure to support fish and wildlife habitat acquisition and restoration by November 2006 with a local share dependent upon local adoption of a fish and wildlife habitat program.
- Requests that regional performance measures be established and requests that the Metro COO annually assess progress in meeting these performance measures and compile a written report annually that describes the region's progress.

**MPAC Comments**

**December 9, 2004**

**Page 2**

- Adds a Whereas to recognize that a number of local jurisdictions have established regulatory and non-regulatory programs that contribute toward the conservation, protection and restoration of fish and wildlife habitat, some of which have been acknowledged by the state as in compliance with Goal 5.
- Clarifies that this resolution is not intended to roll back the existing regulations local jurisdictions may have for fish and wildlife protection.

MPAC members discussed the merits of delaying the development of the fish and wildlife habitat protection program at this time. The discussion highlighted the need to reach certainty on this program, to move forward towards implementing a program that will lead to positive on the ground results and the difficulties that jurisdictions face in moving forward with any new program while implementing Measure 37.

The resolution, incorporating MPAC recommendations, is attached as is a complete list of MPAC's recommended amendments.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REVISING METRO'S ) RESOLUTION NO. 04-3506A  
PRELIMINARY GOAL 5 ALLOW, LIMIT, OR ) [MPAC RECOMMENDED AMENDMENT]  
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 ) Introduced by Metro President David Bragdon  
TO IMPROVE HABITAT PRIOR TO ANY ) and Metro Councilor Rod Park  
IMPLEMENTATION OF NEW REGIONAL,  
PERFORMANCE-BASED REGULATIONS  
BALANCED REGULATORY AND INCENTIVE-  
BASED APPROACH

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, a number of local jurisdictions have established regulatory and non-regulatory programs that contribute toward the conservation, protection and restoration of fish and wildlife habitat; some of which have been acknowledged by the state as in compliance with Goal 5; 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; and

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; 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. 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 all Class I and Class II riparian habitat, that an allow decision is appropriate for all other habitat classes within the current urban growth boundary, and that a limit decision is appropriate for Class A and B upland wildlife habitat within future urban growth boundary expansion areas, as identified at the time such land is designated as urban land. It is the Council's intent that, to the extent permitted by law, after land is designated as urban land, the annexing jurisdictions would condition, through ordinance, the annexing party's acceptance of the jurisdiction's land-use regulations (including the protections of all riparian habitat and Class A and B upland wildlife habitat).

This approach shall not be interpreted by local jurisdictions in the region as direction to repeal, amend, or weaken any regulations that such jurisdictions have already adopted to conserve, protect, and restore areas that have been designated as regionally significant habitat.

2. Development of Local Program Performance Standards and Timeline for Compliance Direct Staff to Develop Regulatory Program for All Class I and II Riparian Habitat and for Class III Riparian Habitat and Class A and B Upland Wildlife Habitat In Areas Added to the Urban Growth Boundary After the Program's Effective Date

The Metro Council directs staff to develop a regulatory program to protect and restore all 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 program shall also include regulatory provisions that will apply to Class III riparian habitat and Class A and B upland wildlife habitat in areas added to the urban growth boundary after the program's effective date. ~~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. The program shall include a reasonable, timely, and uniform schedule for local compliance with performance standards.~~

~~1.3. 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.

3.4. 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 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.~~

4.5. Metro Technical Assistance to Local Governments

~~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.~~

5.6. 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

**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, <sup>1</sup> high employment value, or high land value <sup>4</sup>	Secondary 2040 components, <sup>2</sup> medium employment value, or medium land value <sup>4</sup>	Tertiary 2040 components, <sup>3</sup> low employment value, or low land value <sup>4</sup>	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	ML / A <sup>5</sup>	SL	SL	SL / SL+ <sup>6</sup>
Class II Riparian/Wildlife	LL / A <sup>5</sup>	LL	ML	ML / SL+ <sup>6</sup>
Class III Riparian/Wildlife	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>
Class A Upland Wildlife	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>	A <sup>7</sup> / SL <sup>8</sup> / SL+ <sup>6,8</sup>
Class B Upland Wildlife	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup> / SL+ <sup>6,8</sup>
Class C Upland Wildlife	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>
Impact Areas	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>

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

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

<sup>3</sup>Tertiary 2040 components: Inner and outer neighborhoods, Corridors

<sup>4</sup>Land value excludes residential lands.

<sup>5</sup>Apply 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.

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

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

<sup>8</sup>These limit decisions for Class III riparian habitat and Class A and B upland wildlife habitat will apply to property brought within the urban growth boundary after the program's effective date.

**Key to abbreviations**

SL = strictly limit

ML = moderately limit

LL = lightly limit

A = allow

MPAC RECOMMENDED 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 thirteenth recital:

WHEREAS, a number of local jurisdictions have established regulatory and non-regulatory programs that contribute toward the conservation, protection and restoration of fish and wildlife habitat; some of which have been acknowledged by the state as in compliance with Goal 5; and

- (c) The following paragraph shall be added to the resolution as the sixteenth and 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;

- (d) The following text 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 all Class I and Class II riparian habitat, that an allow decision is appropriate for all other habitat classes within the current urban growth boundary, and that a limit decision is appropriate for Class III riparian habitat and Class A and B upland wildlife habitat within future urban growth boundary expansion areas, as identified at the time such land is designated as urban land. It is the Council's intent that, to the extent permitted by law, after land is designated as urban land, the annexing jurisdictions would condition, through ordinance, the annexing party's acceptance of the jurisdiction's land-use regulations (including the protections of all riparian habitat and Class A and B upland wildlife habitat).

This approach shall not be interpreted by local jurisdictions in the region as direction to repeal, amend, or weaken any regulations that such jurisdictions have already adopted to conserve, protect, and restore areas that have been designated as regionally significant habitat.

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

(f) 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 All Class I and II Riparian Habitat and for Class III Riparian Habitat and Class A and B Upland Wildlife Habitat In Areas Added to the Urban Growth Boundary After the Program's Effective Date

The Metro Council directs staff to develop a regulatory program to protect and restore all 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 program shall also include regulatory provisions that will apply to Class III riparian habitat and Class A and B upland wildlife habitat in areas added to the urban growth boundary after the program's effective date. 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. The program shall include a reasonable, timely, and uniform schedule for local compliance with performance standards.~~

(g) 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.

(h) Paragraph 3 of the introduced resolution shall be renumbered as paragraph 4 and shall be amended as follows:

34. 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.~~

- (i) Paragraph 4 of the introduced resolution shall be renumbered as paragraph 5 and 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, abovethis 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.

- (j) Paragraph 5 of the introduced resolution shall be renumbered as paragraph 6.

M:\attorney\confidential\07\04\03\02\02\Reso. 04-3506 MPAC am 1120804.doc

## 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, <sup>1</sup> high employment value, or high land value <sup>4</sup>	Secondary 2040 components, <sup>2</sup> medium employment value, or medium land value <sup>4</sup>	Tertiary 2040 components, <sup>3</sup> low employment value, or low land value <sup>4</sup>	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	ML / A <sup>5</sup>	SL	SL	SL / SL+ <sup>6</sup>
Class II Riparian/Wildlife	LL / A <sup>5</sup>	LL	ML	ML / SL+ <sup>6</sup>
Class III Riparian/Wildlife	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>
Class A Upland Wildlife	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>	A <sup>7</sup> / SL <sup>8</sup> / SL+ <sup>6,8</sup>
Class B Upland Wildlife	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / LL <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup>	A <sup>7</sup> / ML <sup>8</sup> / SL+ <sup>6,8</sup>
Class C Upland Wildlife	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>
Impact Areas	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>

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

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

<sup>3</sup>Tertiary 2040 components: Inner and outer neighborhoods, Corridors

<sup>4</sup>Land value excludes residential lands.

<sup>5</sup>Apply 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.

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

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

<sup>8</sup>These limit decisions for Class III riparian habitat and Class A and B upland wildlife habitat will apply to property brought within the urban growth boundary after the program's effective date.

#### Key to abbreviations

SL = strictly limit

ML = moderately limit

LL = lightly limit

A = allow