

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO)
SIGN THE SECOND ADDENDUM TO METRO'S 2002) Resolution No. 05-3557
INTERGOVERNMENTAL AGREEMENT WITH THE)
TUALATIN BASIN NATURAL RESOURCES) Introduced by Councilors Hosticka and
COORDINATING COMMITTEE) McLain
)

WHEREAS, the Regional Framework Plan and Urban Growth Management Functional Plan ("UGMFP") state that Metro will undertake a program for protection of fish and wildlife habitat; and

WHEREAS, the Title 3, Section 5 of the UGMFP sets forth actions that the Metro Council anticipated that Metro would take in identifying, considering and protecting regionally significant fish and wildlife habitat conservation areas; and

WHEREAS, on May 16, 2002, the Metro Council adopted Resolution No. 02-3195 authorizing the former Executive Officer to enter into an intergovernmental agreement with the newly formed entity the Tualatin Basin Natural Resource Coordinating Committee ("TBNRCC"). The IGA was signed and became effective on May 22, 2002; and

WHEREAS, one of the purposes of the IGA between Metro and the TBNRCC was to coordinate on the economic, social, environmental and energy ("ESEE") analysis and program for fish and wildlife habitat conservation called for in the UGMFP and as described in the "Tualatin Basin Approach" which is Exhibit A to Resolution No. 02-3195; and

WHEREAS, on May 15, 2003, the Metro Council adopted Resolution No. 03-3332 authorizing the Chief Operating Officer to sign the First Addendum to the IGA to extend the schedule for completion of the program until December 2004; and

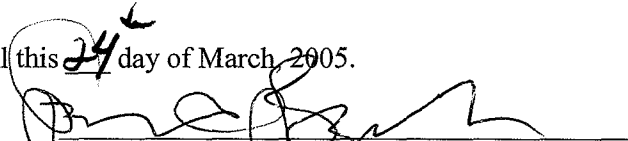
WHEREAS, the schedule for concluding Metro's program is now estimated to be by May 2005; and

WHEREAS, Metro and the TBNRCC desire to amend the IGA to reflect that revised schedule and to make other amendments to clarify the schedule for implementation of the program as required by the IGA; now, therefore,

BE IT RESOLVED:

The Council authorizes the Chief Operating Officer to enter into the "Second Addendum to Intergovernmental Agreement TBNRCC/Metro Regional Resource Planning Project" in substantially the form attached as Exhibit A.

ADOPTED by the Metro Council this 24 day of March, 2005.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



**SECOND ADDENDUM TO
INTERGOVERNMENTAL AGREEMENT
TBNRCC/METRO REGIONAL RESOURCE PLANNING PROJECT**

This Addendum Agreement is entered into between the Tualatin Basin Natural Resources Coordinating Committee (“TBNRCC”), an ORS Chapter 190 intergovernmental association, and the Portland Metropolitan Service District (“Metro”).

WHEREAS:

1. Metro and TBNRCC have entered into an intergovernmental agreement, approved by the Metro Council by Resolution No. 02-3195 on May 16, 2002, and by TBNRCC on June 10, 2002, and amended by a First Addendum approved by the Metro Council by Resolution 03-3332 on May 15, 2003, and by TBNRCC on May 5, 2003 (“Metro-TBNRCC IGA”).

2. The Metro-TBNRCC IGA established a schedule based on Metro’s expectation to conclude the Metro fish and wildlife habitat protection and restoration program work by December 2004.

3. Metro’s schedule to complete Metro fish and wildlife habitat protection and restoration program has changed.

4. Metro has established a new schedule that contemplates completion of the Metro Metro fish and wildlife habitat protection and restoration program work by May 2005.

5. Metro and TBNRCC now desire to amend the Metro-TBNRCC IGA pursuant to its Paragraph 10 to reflect these new dates for action by TBNRCC, and otherwise to affirm the principles and processes set forth in that Agreement.

NOW, THEREFORE, IT IS AGREED:

1. Paragraph 4 of the Metro-TBNRCC IGA is amended as follows:

TBNRCC will adopt recommended programs for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources either at the TBNRCC meeting on March 28, 2005, or at its meeting on April 4, 2005. TBNRCC will submit its adopted recommended programs, together with supporting ESEE analyses, to Metro no later than three days after TBNRCC adopts its recommended programs.

2. Paragraph 5 of the Metro-TBNRCC IGA is amended as follows:

The Metro Council will consider and conclude review of the TBNRCC recommended programs and supporting record, and take action on the recommended programs and supporting ESEE analyses, within a total of 120 days of submission. As part of its review, Metro shall initiate solicitation of public comments and solicit comment from

appropriate advisory committees including the Metro Policy Advisory Committee (“MPAC”), Metro Technical Advisory Committee (“MTAC”), Water Resources Policy Advisory Committee (“WRPAC”), and Goal 5 Technical Advisory Committee (“G5TAC”) consistent with Metro's citizen involvement program.

Consistent with the Tualatin Basin Approach document, Metro shall apply the “overall goal” (quoted in full in this paragraph) of the Streamside CPR Program Outline – Purpose, Vision, Goal Principles and Context” (“Vision Statement”) recommended to the Metro Council by MPAC on October 4, 2000 as the standard for determining whether to include the TBNRCC’s recommended programs and supporting ESEE analyses in the Urban Growth Management Functional Plan. The entire Vision Statement is attached as Exhibit “C” to this document to provide context for understanding the terms of the following “overall goal” standard:

“The overall goal is 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. This system will be achieved through conservation, protection and appropriate restoration of streamside corridors through time.”

If, after receiving comment from the public and Metro advisory committees, the Metro Council concludes that the TBNRCC’s recommended programs comply or substantially comply with the above standard, Metro shall complete the process to adopt the recommended programs and supporting ESEE analyses, in substantially the same form as submitted, as its functional plan element for the regional resource sites identified in the recommendations. Metro review for compliance with the above standard will evaluate the program for potential to improve regional resource conditions basin-wide, addressing the entire Tualatin Basin system, as well as addressing each regional resource site identified by the Metro Council in its draft inventory of Goal 5 regional resources within the jurisdiction of the Basin governments.

3. Paragraph 6 of the Metro-TBNRCC IGA as amended by its First Addendum is further amended to delete references to taking action within the time-frames and as set forth in the agreement forming the TBNRCC and to establish a new time-frame for such action, incorporating the process set forth in the agreement forming the TBNRCC, and shall now read as follows:

“If Metro adopts the TBNRCC recommendations in its adopted functional plan in substantially the same form as submitted by TBNRCC, the city and county members of TBNRCC shall initiate, provide notice, and hold hearings on proposed ordinances amending their comprehensive plans and land use regulations to implement the Metro functional plan provisions submitted by the TBNRCC. Each city and county TBNRCC member will conclude hearings and adopt, adopt with amendments, or reject the proposed ordinances to amend comprehensive plans and land use regulations within one year after

the Metro Council’s final decision adopting the TBNRCC decisions as part of the Metro functional plan, or within 60 days after acknowledgement of Metro’s functional plan provisions, whichever is later, or as soon as possible thereafter if its charter or other notice and hearing requirements prevent final action at such time. Each member of TBNRCC shall take final action adopting or rejecting any other program or regulation necessary to implement the adopted Metro functional plan provisions submitted by the TBNRCC within one year after the Metro Council’s final decision, or within 60 days after acknowledgement of Metro’s functional plan provisions, whichever is later, or as soon as possible thereafter if its charter or other notice and hearing requirements prevent final action at such time. Nothing in this Agreement shall obligate any TBNRCC member to adopt the proposed ordinances or other programs or regulations necessary to implement the adopted Metro functional plan provisions for the Tualatin Basin. However, each Basin government shall adopt findings explaining its decision to reject or vary from ordinances, programs, or other actions necessary to implement the adopted Metro functional plan provisions submitted by TBNRCC. Failure to adopt ordinances or other programs or actions necessary to implement the Metro functional plan provisions submitted by TBNRCC may result in a determination by Metro that plans or land use regulations do not substantially comply with the Metro functional plan.”

4. Paragraph 15 of the Metro-TBNRCC IGA is amended as follows:

This Agreement shall terminate December 31, 2007, unless first extended by the parties.

5. To the extent the schedules contemplated by “The Basin Approach” document that is attached as Exhibit B to the Metro-TBNRCC IGA are at variance with the schedules of this Addendum, this Addendum shall control.

**TUALATIN BASIN NATURAL
RESOURCES COORDINATING
COMMITTEE**

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

STAFF REPORT

IN CONSIDERATION OF RESOLUTION 05-3557 AUTHORIZING THE CHIEF OPERATING OFFICER TO SIGN THE SECOND ADDENDUM TO METRO'S 2002 INTERGOVERNMENTAL AGREEMENT WITH THE TUALATIN BASIN NATURAL RESOURCES COORDINATING COMMITTEE

Introduced by Councilors McLain and Hosticka

Date: March 11, 2005

Prepared by: Chris Deffebach

BACKGROUND

The Regional Framework Plan and Urban Growth Management Functional Plan ("Functional Plan") state that Metro will undertake a program for protection of fish and wildlife habitat. Title 3, Section 5 of the Functional Plan sets forth actions that the Metro Council anticipated that Metro would take in identifying, considering and protecting regionally significant fish and wildlife habitat conservation areas. Metro is applying State Goal 5 administrative rule as the framework for identifying regionally significant fish and wildlife habitat areas and developing a habitat protection program.

The jurisdictions in the Tualatin Basin, under their responsibilities and authority under State law and/or local charters, are also responsible for developing a program for protection of fish and wildlife habitat. These jurisdictions have formed Tualatin Basin Natural Resource Coordinating Committee and are coordinating their efforts to develop a protection program for the Basin. To coordinate their program with Metro's program, Metro and Tualatin Basin Natural Resource Coordinating Committee have entered into an intergovernmental agreement, approved by the Metro Council by Resolution No. 02-3195 on May 16, 2002, and by Tualatin Basin Natural Resource Coordinating Committee on June 10, 2002.

In 2003, Metro Council approved the first amendment to the Tualatin Basin IGA with adoption of Resolution No. 03-3332. This agreement revised the date for the Tualatin Basin Natural Resource Coordinating Committee to adopt programs for regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources and submit them, together with supporting the economic, social, environmental and energy analysis, to Metro. The revised intergovernmental agreement calls for this submission from the Tualatin Basin Natural Resource Coordinating Committee to Metro by August 16, 2004.

The first amendment to the IGA also extended the termination date for the Metro-Tualatin Basin Natural Resource Coordinating Committee agreement from June 1, 2004 to December 31, 2005.

ANALYSIS/INFORMATION

Resolution No. 05-3557 revises the date for the Tualatin Basin Natural Resource Coordinating Committee to submit its program to Metro from August 16, 2004 to March 31, 2005 (if the TBNRCC approves the program on March 28, 2005) or on April 7 (if the TBNRCC approves the program on April 4, 2005) in the Intergovernmental Agreement between the Tualatin Basin Natural Resource Coordinating Committee and

Metro. This schedule allows Metro to incorporate the Tualatin Basin Approach into the staff recommended Functional Plan and Framework Plan amendments for the Fish and Wildlife Habitat Program for release for public review and comment beginning on April 6 (if submitted on March 31) at MTAC. If the later date is submitted, it will delay the start of the public review and comment period, but not affect the current public hearing and Council consideration schedule of April 28 and May 12.

The revised IGA gives Metro Council 120 days, after submission by the Tualatin Basin, to take action on the recommended program and supporting ESEE analysis. References to limiting public review to the first 60 days of that period are eliminated. Instead, Metro will review the Tualatin Basin submission as part of the review of its own proposed program. The revised IGA eliminates reference to review by ETAC because ETAC no longer exists.

Resolution No. 05-3557 also revises the date for all of the Tualatin Basin jurisdictions for compliance with the Metro Functional Plan. The revised date is for compliance within one year from the time of Metro Council approval. The old agreement called for compliance within six months. The extended time is intended to give local jurisdictions more time given the reduced resources and increased demands many planning departments are now facing.

The revised IGA modifies the process set forth for consideration by Tualatin Basin members as not obligating any TBNRCC member to adopt the proposed ordinances or other programs or regulations necessary to implement the adopted Metro functional plan provisions.

Finally, the resolution revises the termination date from December 31, 2005 to December 31, 2007.

1. **Known Opposition:** None.
2. **Legal Antecedents:** This resolution amends the existing intergovernmental agreement between Metro and Tualatin Basin Natural Resource Coordinating Committee.
3. **Anticipated Effects:** Resolution No. 05- 3557 will promote coordination between the Tualatin Basin jurisdictions and Metro in the development and adoption of fish and wildlife habitat protection plans.
4. **Budget Impacts:** None.

RECOMMENDED ACTION

Approval of Resolution No. 05-3557.