

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 94-2039
EXECUTION OF A MEMORANDUM OF)
UNDERSTANDING (MOU) REGARDING) Introduced by
CONFORMITY OF PORTIONS OF THE) Planning Committee
AIR QUALITY MAINTENANCE AREA)
OUTSIDE OF METRO'S BOUNDARIES)

WHEREAS, The boundaries of the Oregon portion of the Portland/Vancouver Interstate Air Quality Maintenance Area (AQMA) were mutually agreed to by the Oregon Department of Environmental Quality (DEQ) and the federal Environmental Protection Agency (EPA) in the 1970's; and

WHEREAS, Metro's boundaries were established by Chapter 268 of the Oregon Revised Statutes and the Metro Charter; and

WHEREAS, Governor Straub designated Metro as the Portland metropolitan area planning organization (MPO) in 1979; and

WHEREAS, The Oregon portion of the Interstate AQMA does not comply with the federal air quality standard for Ozone; and

WHEREAS, Federal clean air legislation (the Clean Air Act) requires states to prepare State Implementation Plans (SIP's) for attainment and maintenance of federal air quality standards; and

WHEREAS, The Clean Air Act and implementing regulations require that transportation projects, whether or not they use federal funds and whether or not they are proposed in MPO transportation plans (i.e., the RTP) and improvement programs (i.e., the TIP), must demonstrate conformity with SIP's; and

WHEREAS, This conformity is established in Conformity Determinations prepared pursuant to federal regulations; and

WHEREAS, Metro prepares the Portland Area Conformity

Determination for approval by officials of the federal Department of Transportation; and

WHEREAS, Portions of the Oregon portion of the Interstate AQMA located in unincorporated portions of Multnomah, Clackamas and Washington Counties and in the rural incorporated cities of Banks, Gaston and North Plains fall outside Metro's boundaries; and

WHEREAS, The federal Metropolitan Planning Regulations (23 CFR Part 450) were jointly adopted by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) in November, 1993; and

WHEREAS, The new regulations require that an agreement between the MPO, state air quality and transportation authorities and affected local jurisdictions must be signed by the Governor which defines how conformity with the SIP will be determined for regionally significant transportation projects planned to occur in those portions of the Interstate AQMA outside Metro's boundaries; and

WHEREAS, In the absence of such an agreement Metro is required by the new planning regulations to assume all transportation planning responsibilities for such areas; now therefore,

BE IT RESOLVED,

1. That the Metro Council authorizes execution of a Memorandum of Understanding included in this Resolution as Exhibit A, which would specify how conformity with the SIP will be determined for both locally and federally funded, regionally

significant transportation projects planned in those portions of the Interstate AQMA outside Metro's boundaries.

2. That ODOT, DEQ, Tri-Met, and Clackamas, Multnomah and Washington Counties, and the cities of Banks, Gaston and North Plains will each also need to approve this MOU for it to become effective.

3. That upon approval by each party listed in the MOU, Metro staff is authorized to recommend the MOU to the Governor for approval.

4. That Metro staff is authorized to take such other action as may be needed to see that, upon final approval by the Governor, the MOU is submitted to the appropriate FHWA and FTA officials.

5. That this Memorandum of Understanding will expire at midnight, September 30, 1995, unless renewed by all signatories.

ADOPTED by the Metro Council this 22nd day of November,
1994.



Judy Wyers, Presiding Officer

EXHIBIT A

MEMORANDUM OF UNDERSTANDING FOR ANALYSIS OF TRANSPORTATION PROJECT CONFORMITY WITH THE OREGON STATE IMPLEMENTATION PLAN FOR OREGON PORTIONS OF THE PORTLAND/VANCOUVER AIR QUALITY MAINTENANCE AREA (AQMA) OUTSIDE METRO'S JURISDICTION

This Memorandum of Understanding is executed pursuant to the Metropolitan Planning regulations contained in 23 CFR Part 450.310(f) which state:

"If the metropolitan planning area does not include the entire nonattainment or maintenance area, there shall be an agreement among the State Department of Transportation, State air quality agency, affected local agencies, and the MPO describing:

- [A] The process for cooperative planning and analysis of all projects outside the metropolitan planning area but within the nonattainment or maintenance area.
- [B] The agreement must also indicate how the total transportation related emissions for the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purpose of determining [SIP] conformity...
- [C] The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the metropolitan planning area and the portion of the nonattainment or maintenance area outside the metropolitan planning area."

This situation occurs in the Portland area. The Metro MPO boundary does not encompass portions of the Portland/Vancouver Interstate Air Quality Maintenance Area (AQMA) which is in nonattainment status with respect to the National Ambient Air Quality Standards for Ozone established in the Clean Air Act Amendments of 1990 (hereafter, "rural AQMA area"). The rural AQMA areas of concern are depicted in Attachment 1 to this Memorandum, and encompass portions of unincorporated Clackamas, Multnomah and Washington Counties (the Counties) and the incorporated cities of Banks, Gaston and North Plains in Washington County (hereafter, the Cities). (It should be noted that the region is also in non-attainment for Carbon Monoxide. However, the boundary of the Oregon portion of the maintenance area for Carbon Monoxide is the same as the MPO boundary and is therefore not germane to this MOU.)

Under 23 CFR Part 450.308(a), a formal agreement must be approved by the Governor sanctioning an MPO boundary that is less than the AQMA boundary and which specifies the manner in which requirements of Part 450.310(f) (above) will be addressed. In the absence of such an agreement, Metro is required to implement all the metropolitan planning requirements identified in Part 450 for both rural AQMA and MPO boundary areas.

Metro has historically accounted for transportation facilities included in the entirety of the three counties, including those portions outside the MPO boundary but falling within the AQMA boundary, to ensure accuracy of its regional transportation model. Metro has also historically accounted for population and employment data within the entirety of the three Counties (and Yamhill and Clark Counties as well) for similar reasons. Metro shall continue to undertake these analyses contingent upon their continued identification as work items in the Unified Work Program and the availability of adequate planning funds.

Metro prepares the Portland Metropolitan Area Conformity Determination pursuant to 23 CFR Part 450.324(b), and consults with the Oregon Department of Environmental Quality (DEQ) regarding details of these Determinations. In the last four years in which Conformity Determinations have been required, Metro's analysis has included all regionally significant projects proposed within the entire Oregon portion of the Interstate AQMA. The MOU ratifies continuation of this practice.

Air quality matters affecting that portion of the Interstate AQMA in Washington State, including conformity of transportation related emissions with Washington State's SIP, are entirely the responsibility of Washington State governmental entities and are not addressed in this MOU.

A. Cooperative Planning and Analysis Process

1. Transportation system planning in rural AQMA areas shall be the joint responsibility of ODOT, the Cities and the Counties, with facility ownership establishing specific project-level responsibility as is currently the case. Demographic assumptions used in the planning process, both historical and projected, shall rely upon Metro's regional forecasts. Metro shall be responsible for transportation system planning (pursuant to the federal Metropolitan Planning Regulation) within its established boundaries which, it is agreed, shall be less than the boundaries of the Oregon portion of the Interstate AQMA unless otherwise amended pursuant to applicable state law. This declaration is responsive to 40 CFR Part 308(a).
2. ODOT Region 1, the Cities and the Counties are responsible for declaration to Metro of planned, regionally significant transportation projects proposed for implementation in rural AQMA areas. Failure to declare such projects to Metro shall cause the projects to be omitted from Metro's regional emissions analysis. Under Section 176(c)(2)(C) of the Clean Air Act, "a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under Title 23 U.S.C. or the Urban Mass Transportation Act... only if it comes from a conforming transportation plan and TIP."

Federal authorities interpret this section of the Clean Air Act to mean "projects must be included in a regional emissions analysis which demonstrates that the plan and TIP

would still conform if the project were included." (Federal Register, Vol. 58, No. 225, p. 62204, November 24, 1993) Local agency approval of any regionally significant transportation project not analyzed in Metro's regional emissions analysis, whether the project were federally or non-federally funded, would constitute a violation of the Clean Air Act and the Oregon State Implementation Plan. Such approvals could cause federal authorities to sanction the transportation program of the entire Portland area.

Therefore, upon discovery that a federally or non-federally funded, regionally significant transportation project in the rural Interstate AQMA area has not been assessed for conformity with the SIP, parties to this agreement shall withhold right-of-way and construction funding until the project shall have been included in a regional emissions analysis prepared by Metro.

3. Project declarations shall specify both when facility construction *and* operation are expected relative to "analysis years" adopted in the MPO Conformity Determination. For the FY 1995 Portland Metropolitan Area Determination, these years are 1995, 1996, 2000 and 2010. Metro, in consultation with DEQ, shall notify ODOT and the Cities and Counties of changed analysis years which may be adopted from time to time.
4. Project declarations shall define project design concept, scope and phasing sufficient to permit analysis of air quality impacts and, to the extent feasible, shall provide estimates of cost and source(s) of committed and/or anticipated revenue. The intent of revenue declarations is that only projects assured of funding, and thus of construction, shall be modeled. The interpretation of engineering specifications for purposes of defining system modelling parameters shall be conducted by Metro staff pursuant to reasonable professional practice and in consultation with project sponsors.
5. Prior to EPA approval of the State's Air Quality Conformity Rule (currently in development pursuant to 40 CFR Part 51 and 93), a regionally significant project occurring within a rural AQMA area shall have the meaning defined in 40 CFR Part 51.392, as augmented by the list of exempt projects contained in Part 51.460 and 51.462, or such other definition as may be agreed to in consultation between Metro, ODOT, and DEQ. After EPA approval of the State Rule, the meaning shall be as defined in the Rule, or as may be defined in the process of consultation provided for in the Rule. Metro's consultation with DEQ regarding rural Interstate AQMA area projects selected for analysis shall occur at the same time as Metro's consultation with DEQ regarding overall system definitions used in making Conformity Determinations pursuant to 40 CFR Part 51.402(c).
6. Prior to EPA approval of the State Conformity Rule, the threshold for project significance within the MPO boundary shall continue to be the more rigorous standard of "typical inclusion in Metro's regional transportation model," or such other standard

as may be adopted by Metro after consulting with DEQ. After EPA approval of the Rule, the definition shall be as defined in the Rule, or as may be defined in the process of consultation provided for in the Rule.

B. Treatment of Emissions Forecasts

1. Emissions resulting from regionally significant projects occurring both inside and outside of the MPO boundary shall be computed by Metro in a combined quantitative analysis meeting requirements of the 40 CFR Part 51 and 93 SIP Conformity regulations. The computation shall also sub-quantify emissions attributable to both the rural and MPO portions of the AQMA. The combined emission estimate shall be used as the basis for determining whether, on the basis of the region's phased air quality attainment status:
 - a. Total mobile source emissions are less in the milestone years than in 1990 or such other base year as may be adopted from time to time; and
 - b. Total mobile source emissions are less in each milestone year assuming implementation of the proposed regionally significant projects, than would occur without their implementation; and/or
 - c. Total emissions fall below the mobile source emission budget as may be specified in the Attainment SIP revision mandated by 40 CFR Part 51.

C. Conflict Resolution in the Event of Nonconformity

1. Quantification of emissions attributable to regionally significant projects will result in the TIP and/or RTP either passing or failing the above described "build/no build" and/or emission budget tests. In the event of a failure of any of the three tests, ODOT, Metro, the Counties, the Cities, Tri-Met and DEQ will cooperate in defining actions outside the metropolitan boundary necessary to achieve conformity of proposed projects with the SIP. The JPACT/Metro Council process will be relied upon to identify TIP/RTP amendments needed to demonstrate SIP conformity of projects occurring within the metropolitan boundary. Appropriate amendments or actions may include deletion of highway expansion projects, programming of transportation control and/or demand measures or a combination of these two approaches.
2. To the extent that deletion of highway expansion projects is pursued to demonstrate conformity, due weight in the selection process shall be given to the relative contribution of rural AQMA area emissions relative to MPO-area emissions. Countervailing considerations may include safety and preservation benefits of modernization proposals together with such other technical and administrative criteria as may be deemed appropriate by a majority of the Metro, County, ODOT and DEQ representatives. Should a project occurring within one of the Cities be proposed for deletion, the affected city shall have one vote in the cooperative process in actions regarding the project.

3. To the extent that programming of new transportation control and/or demand measures is pursued to demonstrate conformity, the selection of such measures shall be made by the MPO for reductions within the MPO portion of the AQMA, pursuant to 23 CFR Part 450.312(c), and by ODOT and/or Tri-Met, the Cities and the Counties for reductions attributable to rural AQMA areas. DEQ shall be consulted regarding the methodology employed by Metro for crediting of emission reductions attributable to all such measures as may be committed to by either the MPO, ODOT and/or Tri-Met, the Cities and the Counties.

4. The provisions of this MOU shall expire at midnight, September 30, 1995, unless renewed by all signatories. In the event this MOU (or an MOU substantially similar) is not renewed, an alternative approach for determining conformity shall be established.

Agreed to this _____ day of _____, 1994.

Rena Cusma
Executive Director, Metro

Donald Forbes
Director, ODOT

Lydia Taylor
Interim Director, ODEQ

Beverly Stein
Chair
Multnomah County Comm.

Ed Lindquist
Chair
Clackamas County Comm.

Bonnie Hays
Chair
Washington County Comm.

Tom Walsh
General Manager
Tri-Met

Barbara Roberts
Governor
State of Oregon

Howard Steinbach
Mayor
City of Banks

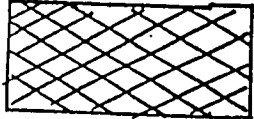
Brett Costelloe
Mayor
City of Gaston

Robert Kindel, Jr.
Mayor
City of North Plains

Rod Monroe
Chair
JPACT

Attachment 1

Map Key



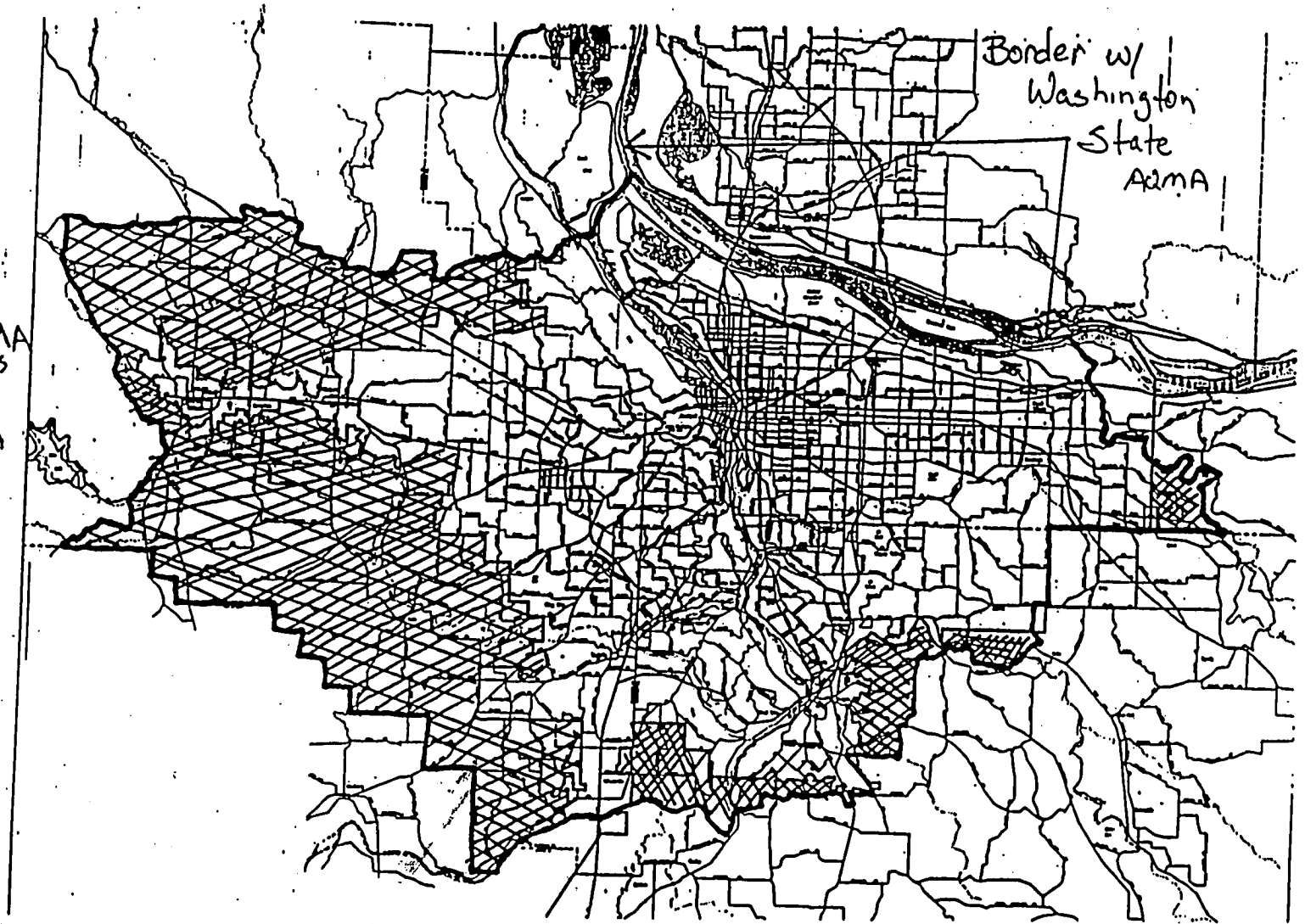
Rural
AQMA
Areas



AQMA
Boundary



MPO
Boundary



Border w/
Washington
State
AQMA

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-2039 FOR THE PURPOSE OF AUTHORIZING EXECUTION OF A MEMORANDUM OF UNDERSTANDING (MOU) REGARDING CONFORMITY OF PORTIONS OF THE AIR QUALITY MAINTENANCE AREA OUTSIDE OF METRO'S BOUNDARIES

Date: October 13, 1994

Presented by: Andrew Cotugno

PROPOSED ACTION

Adoption of this Resolution would constitute Metro's approval of a Memorandum of Understanding (MOU) which describes the process of determining conformity with the State (Air Quality) Implementation Plan of transportation projects occurring outside Metro's boundaries but located inside the Oregon portion of the Portland/Vancouver Interstate Air Quality Maintenance Area (AQMA). To become effective, the MOU must also be approved by ODOT; DEQ; Clackamas, Multnomah and Washington Counties; the Cities of Banks, Gaston, and North Plains; and then by the Governor.

TPAC has reviewed this Memorandum of Understanding and recommends approval of Resolution No. 94-2039.

BACKGROUND AND FACTUAL ANALYSIS

The federal Clean Air Act has long required federal officials to assure that no project which receives federal assistance will impede attainment and/or maintenance of federal air quality standards. This aspect of the Clean Air Act is especially directed at federally funded transportation projects. However, the Clean Air Act and implementing regulations also prohibit local agencies from approving non-federally funded projects unless assurance is provided that air quality standards will not be adversely affected. This assurance is provided in a qualitative and quantitative "Conformity Determination" prepared by Metro. The Determinations assess transportation projects recommended in the RTP, and which are allocated funding in the TIP or which are proposed by local agencies, for their consistency with goals and programs established in Oregon State (Air Quality) Implementation Plan (SIP). Metro prepares a Determination when either the RTP or the TIP is amended to include or to remove projects of regional air quality significance or when local agencies propose such projects.

The MOU that is the subject of this Resolution is made necessary by a discrepancy between boundaries of the Portland/Vancouver Interstate AQMA and Metro's boundary. The Interstate AQMA boundary was established in the 1970's by DEQ and EPA. Metro's boundary was established by ORS 268 as amended by the Metro Charter approved by the electorate in 1992. The Interstate AQMA boundary includes portions of rural Clackamas, Multnomah and Washington Counties which lie outside Metro's boundary including the incorporated cities of Banks, Gaston and North Plains. The

issues addressed by the MOU are who is responsible for determining transportation project conformity in these rural Interstate AQMA areas and the procedures to be used for making the determination and for resolving any disputes.

The MOU is made necessary by a provision of the metropolitan planning regulations recently adopted by FHWA and FTA. Section 450.308(a) of the regulations specifies that, in the absence of an MOU resolving these issues, Metro will be responsible for carrying out all federal MPO planning requirements within the entirety of the larger Interstate AQMA boundary.

The MOU is included as Exhibit A of the Resolution. It clarifies that Metro already conducts most of the population, employment and transportation modeling work needed to conduct Conformity Determinations within the entirety of the Interstate AQMA. Metro performs these modeling tasks within the scope of work approved annually in the region's Unified Work Program (UWP). Metro will continue to perform the modeling tasks so long as the UWP continues to approve of such work and provide adequate funding for Metro's efforts.

The MOU would formally designate Metro as the entity responsible for determining whether emissions resulting from regionally significant projects occurring outside its boundary, but within the Interstate AQMA boundary, conform with emission budgets and other criteria established in the SIP. It specifies the procedures that would be used to prepare the Determination, including the definition of regionally significant projects requiring conformity analysis and importantly, new responsibilities of local governments and ODOT to report planned projects to Metro for analysis. Also addressed are consultation procedures and the mechanisms to be used in settling disputes, should any occur. Finally, it has a sunset provision and will expire at midnight, September 30, 1995, unless it is renewed by all signatories.

This MOU addresses only issues pertinent to the Oregon portion of the Portland/Vancouver Interstate AQMA. Transportation planning and air quality conformity in the Washington State portion of the Interstate AQMA are the responsibility of appropriate Washington State government entities.

Recommendation of the Executive Officer

The Executive Officer recommends adoption of Resolution No. 94-2039.

PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 94-2039, AUTHORIZING EXECUTION OF A MEMORANDUM OF UNDERSTANDING (MOU) REGARDING CONFORMITY OF PORTIONS OF THE AIR QUALITY MAINTENANCE AREA OUTSIDE OF METRO'S BOUNDARIES

Date: November 18, 1994

Presented by: Councilor Moore

Committee Recommendation: At the November 17 meeting, the Committee voted 7-0 to recommend Council adoption of Resolution No. 94-2039. Voting in favor: Councilors Devlin, Gardner, Gates, Kvistad, McLain, Monroe and Moore. Councilor Washington was absent.

Committee Issues/Discussion: Andy Cotugno, Planning Director, presented the staff report. He noted that provisions of the Federal Clean Air Act now require conformity between local transportation and air quality plans. He explained that if the boundaries of the air quality planning area (Portland/Vancouver Interstate Air Quality Maintenance Area (AQMA)) are greater than those of the transportation planning area (in the Portland area, the boundary is the Metro boundary) then a process must be developed to address air quality issues related to transportation projects outside of the transportation planning area. The Oregon portion of the AQMA includes rural areas in Clackamas, Multnomah and Washington Counties and the cities of Gaston, Banks and North Plains which are outside of Metro's boundaries.

Cotugno explained that the purpose of this resolution is to authorize a Memorandum of Understanding (MOU) with the affected counties and cities for areas outside of the Metro boundaries. Cotugno noted that, since Metro already performs the modelling and analysis work for air quality determinations on transportation projects inside the Metro boundary, the MOU would propose the extend this authority to those areas inside the local AQMA, but outside of Metro's boundaries. Cotugno said that preliminary discussions had been held with the affected jurisdictions concerning the proposed MOU, and noted that Gaston had reacted negatively.

Councilor McLain suggested that she and staff set up meetings with the affected cities in her area to work toward addressing any concerns that they might have. Cotugno indicated that he would support convening such meetings.

Councilor Moore asked about the effect of not being able to develop a solution to this issue. Cotugno commented that local projects would not be eligible for federal funds unless agreement can be reached on how to address projects outside of Metro's boundary.