

Metro | Agenda

Meeting: Metro Council
Date: Thursday, June 11, 2015
Time: 2 p.m.
Place: Metro Regional Center, Council Chamber

CALL TO ORDER AND ROLL CALL

1. CITIZEN COMMUNICATION

2. CONSENT AGENDA

2.1 **Resolution No. 15-4628**, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License to the Suttle Road Recovery Facility for Delivery of Residential Yard Debris Mixed with Food Waste to the Dirt Hugger Composting Facility Located in Dallesport, Washington

2.2 Consideration of Council Meeting Minutes for May 14, 2015

3. RESOLUTIONS

3.1 **Resolution No. 15-4606**, For the Purpose of Authorizing the Chief Operating Officer to Execute a Declaration of Cooperation in Support of the Columbia River Levee Repair and Accreditation Oregon Solutions Process

Andy Cotugno, Metro

3.2 **Resolution No. 15-4612**, For the Purpose of Adopting the Annual Budget for Fiscal Year 2015-16, Making Appropriations, Levying Ad Valorem Taxes, and Reauthorizing an Interfund Loan

Tim Collier, Metro

3.2.1 **Public Hearing on Resolution No. 15-4612**

4. CHIEF OPERATING OFFICER COMMUNICATION

Martha Bennett, Metro

5. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for June 11, 2015 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, WA Channel 30 – Community Access Network <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 Call or visit web site for program times.	Portland Channel 30 – Portland Community Media <i>Web site:</i> www.pcmtv.org <i>Ph:</i> 503-288-1515 Call or visit web site for program times.
Gresham Channel 30 - MCTV <i>Web site:</i> www.metroeast.org <i>Ph:</i> 503-491-7636 Call or visit web site for program times.	Washington County and West Linn Channel 30– TVC TV <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 Call or visit web site for program times.
Oregon City and Gladstone Channel 28 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.	

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ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានក្បួនលក្ខណ៍រើសអើងសូមចូលទស្សនាការប្រកាស www.oregonmetro.gov/civilrights។
បើលោកអ្នកត្រូវការការបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1890 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

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Agenda Item No. 2.1

Resolution No. 15-4628, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License to the Suttle Road Recovery Facility for Delivery of Residential Yard Debris Mixed with Food Waste to the Dirt Hugger Composting Facility Located in Dallesport, Washington

Consent Agenda

Metro Council Meeting
Thursday, June 11, 2015
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 15-4628
OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM)
LICENSE TO THE SUTTLE ROAD RECOVERY FACILITY) Introduced by Martha J. Bennett,
FOR DELIVERY OF RESIDENTIAL YARD DEBRIS MIXED) Chief Operating Officer, with the
WITH FOOD WASTE TO THE DIRT HUGGER) concurrence of Tom Hughes, Council
COMPOSTING FACILITY LOCATED IN DALLESFORT,) President
WASHINGTON)

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system facility; and

WHEREAS, Recology Portland, Inc. has filed a complete application seeking a non-system license to deliver residential yard debris mixed with food waste from its Suttle Road Recovery Facility to the Dirt Hugger composting facility located in Dallesport, Washington, under the provisions of Metro Code Chapter 5.05, Solid Waste Flow Control; and

WHEREAS, such residential yard debris mixed with food waste will be collected from the Metro area and delivered to the Suttle Road Recovery Facility for consolidation, reload and transport to the Dirt Hugger composting facility; and

WHEREAS, the Dirt Hugger composting facility is authorized by the Klickitat County Health Department and the State of Washington Department of Ecology to accept and compost food wastes that includes post-consumer meat and dairy products; and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be issued together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of the Suttle Road Recovery Facility is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to the Suttle Road Recovery Facility a non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2015.

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1650 | FAX 503 813 7544



METRO

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

No. N-102-15(3)

LICENSEE:
Suttle Road Recovery Facility Recology Portland, Inc. 4044 North Suttle Road Portland, OR 97217
CONTACT PERSON:
Carl Peters, General Manager Phone: 503-283-2015 Fax: 503-289-2191 E-mail: cpeters@recology.com
MAILING ADDRESS:
Suttle Road Recovery Facility 4044 North Suttle Road Portland, OR 97217

ISSUED BY METRO:

Scott Robinson, Deputy Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Source-separated residential yard debris mixed with food waste that is generated by residential customers within the Metro region and delivered to the Suttle Road Recovery Facility.
2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 10,000 tons per each calendar year of the waste described in Section 1 of this license.
3	NON-SYSTEM FACILITY
	<p>The Licensee hereunder may deliver the waste described in Section 1, above, only to the following non-system facility for composting</p> <p style="padding-left: 40px;">Dirt Hugger 168 US 197 Dallesport, Washington 98617</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Washington Department of Ecology or local regulatory authority that the non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on June 1, 2015 and expire at midnight on December 31, 2017, unless terminated sooner under Section 7 of this license.
5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.



6	MATERIAL MANAGEMENT
	<p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facility listed in Section 3 under the following conditions:</p> <ul style="list-style-type: none">a) The non-system facility shall accept all solid waste that is delivered under authority of this license for the sole purpose of processing and composting on site. The licensee shall not dispose of any source-separated recyclable material, except as provided in Section 7;b) The non-system facility shall receive, manage, process, and compost all solid waste that is delivered under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.

7	REGIONAL SYSTEM FEE AND EXCISE TAX
	<p>The Licensee shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) Source-separated residential yard debris mixed with food waste described in Section 1 that is delivered under authority of this license and is accepted and composted in accordance with all applicable regulations at the Dirt Hugger composting facility listed in Section 3 is exempt from Regional System Fees and Excise Tax.(b) If the Licensee delivers source-separated residential yard debris mixed with food waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Regional System Fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.(c) If the Licensee delivers source-separated residential yard debris mixed with food waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Excise Tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.



8	RECORD KEEPING AND REPORTING
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all source-separated residential yard debris mixed with food waste that the Licensee delivers to the non-system facility described in Section 3 of this license. These records include the information specified in <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</p> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"> i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro; ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro’s designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3, above.</p>

9	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, 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.</p> <p>(b) This license shall be subject to amendment, modification or termination by Metro’s Chief Operating Officer (the “COO”) in the event that the COO determines that:</p> <ul style="list-style-type: none"> i. There has been sufficient change in any circumstances under which Metro issued this license; ii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.; or 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



	<p>Section 1 of this license be transferred to, and disposed of at, a facility other than the facility described in Section 3.</p> <p>(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.</p> <p>(d) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</p> <p>(f) This license authorizes delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p> <p>(g) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</p>
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10	COMPLIANCE WITH LAW
	<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.</p>

11	INDEMNIFICATION
	<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. 15-4628 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO THE SUTTLE ROAD RECOVERY FACILITY FOR DELIVERY OF RESIDENTIAL YARD DEBRIS MIXED WITH FOOD WASTE TO THE DIRT HUGGER COMPOSTING FACILITY LOCATED IN DALLESPO, WASHINGTON

May 4, 2015

Prepared by: Bill Metzler
(503) 797-1666

Approval of Resolution No. 15-4628 will authorize the Chief Operating Officer (COO) to issue a non-system license (NSL), similar to the proposed license attached to this resolution as Exhibit A, to the Suttle Road Recovery Facility (SRRF). The proposed NSL will authorize SRRF to annually deliver up to 10,000 tons of residential yard debris mixed with food waste to the Dirt Hugger composting facility located in Dallesport, Washington. SRRF is licensed by Metro to conduct reloading or residential yard debris mixed with food waste and material recovery of dry waste at its facility located at 4044 North Suttle Road, Portland Oregon.

BACKGROUND

1. Overview

The applicant seeks authorization to transport residential yard debris mixed with food waste generated within the Metro region to a non-system facility, the Dirt Hugger facility for composting. Metro Code Section 5.05.025 prohibits any person from transporting solid waste to non-system facilities without an appropriate license from Metro. The proposed NSL is subject to Metro Council approval because it involves putrescible waste (food waste).

SRRF is located at 4044 North Suttle Road, Portland Oregon (Metro District 5) and is owned and operated by Recology Portland, Inc. Recology, Inc., headquartered at 50 California Street, 24th Floor, in San Francisco California, is the parent company that owns Recology Portland, Inc. Recology, Inc. is also the contract operator for the Metro Central Transfer Station.

Recology owns and operates two material recovery facilities in the region that are licensed by Metro. They are: 1) SRRF (a material recovery and residential food waste reload facility), and 2) Foster Road Recovery Facility (a material recovery and yard debris reload facility). In addition, Recology, Inc. owns and operates three DEQ-approved composting facilities in Oregon: 1) NW Greenlands - Aumsville, 2) NW Greenlands -McMinnville, and 3) Nature's Needs composting facility located in North Plains.

On April 17, 2015, SRRF submitted a complete application to Metro requesting authorization to transport up to 10,000 tons of residential yard debris mixed with food waste to the Dirt Hugger facility for composting .

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

Metro Code Section 5.05.040 provides that a waste hauler may transport solid waste generated within Metro to any non-system facility only by obtaining an NSL. Metro Code further requires applications for NSLs for putrescible waste (such as food waste) to be reviewed by the COO and are subject to approval or denial by the Metro Council. Under Metro Code Subsection 5.05.043, the Council shall consider the following factors to the extent relevant to determine whether or not to issue an NSL:

- (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 non-system facility, the Dirt Hugger composting facility, is authorized to accept for composting, source-separated pre-consumer and post-consumer food waste (including vegetables, fruits, grains, meats, dairy, eggs and fats), manure from herbivorous animals, crop residue, wood waste and yard debris. Although Dirt Hugger is a relatively new facility in Dallesport, receiving approval in late 2014, the facility operated successfully in The Dalles, since 2010 with no significant compliance issues. Staff is not aware of any wastes accepted at the Dirt Hugger composting facility that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is presumed to be minimal because the facility is fully regulated and monitored by the appropriate local and state authorities.

- (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;*

According to the Klickitat County Health Department and Washington State Department of Ecology, the Dirt Hugger composting facility operates in compliance with all federal, state, and local requirements, rules and regulations and has had no violations related to public health, safety or environmental regulations.

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

Dirt Hugger uses operational practices and management controls that are typical of a food waste composting facility and that Metro considers adequate for the protection of health and the environment. In 2014, Dirt Hugger obtained all necessary composting and air quality permits from the Klickitat County Health Department and Washington State Department of Ecology.

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

The proposed license covers source-separated food waste from the Metro region that is delivered to other composting facilities. Therefore, approval of the proposed NSL will maintain a positive to neutral impact on the region's recycling and waste reduction efforts. The food waste is generated within the city of Portland's residential program.

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

Metro is contractually obligated to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Metro's disposal contractor, Waste Management of Oregon. The waste subject to the proposed license will be delivered to

a composting facility rather than disposed at a general-purpose landfill. Thus, approval of the requested license does not conflict with 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*

SRRF has a good record of compliance with local and state agencies responsible for public health, safety, and environmental rules and regulations.

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

Reloading source separated yard debris mixed with food waste at SRRF for delivery to the Dirt Hugger facility for composting will maintain recovery capacity which benefits the region's organics recovery program. Further, the Dirt Hugger composting facility provides an additional option for food waste composting to the region.

The proposed license includes a 31-month term, commencing on June 1, 2015, and expiring on December 31, 2017. Although new NSLs are typically issued for up to a three-year period (up to 36 months) to align with other similar NSLs or renewal cycles, staff recommends that the Metro Council establish a 31-month term in this instance in order to align the license with a calendar year renewal cycle. The Metro Code stipulates that new NSLs may be issued for up to a three-year period.¹

3. Anticipated Effects

The effect of Resolution No. 15-4628 will be to issue an NSL to SRRF authorizing the delivery of up to 10,000 tons of residential yard debris mixed with food waste each calendar year to the Dirt Hugger composting facility located in Dallesport, Washington.

4. Budget Impacts

The source-separated residential yard debris mixed with food waste proposed to be transported under authority of this NSL is exempt from the Metro Regional System Fee and Excise Tax and is already going to other compost facilities. Under this NSL, the food waste that will be delivered to the Dirt Hugger composting facility from SRRF will be tonnage that has previously been delivered from SRRF to the Nature's Needs composting facility in North Plains. The impact of the diverted tons has already been fully factored into the budget and rates for FY 2015-16.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 15-4628 finding that the license application satisfies the requirements of Metro Code Section 5.05.043, and issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

BM::bjl
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¹ Metro Code Section 5.05.045(5)(B)

Agenda Item No. 2.2

Consideration of Council Meeting Minutes for May 14, 2015

Metro Council Meeting
Thursday, June 11, 2015
Metro Regional Center, Council Chamber

Agenda Item No. 3.1

Resolution No. 15-4606, For the Purpose of Authorizing the
Chief Operating Officer to Execute a Declaration of
Cooperation in Support of the Columbia River Levee Repair
and Accreditation Oregon Solutions Process

Resolutions

Metro Council Meeting
Thursday, June 11, 2015
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 15-4606
CHIEF OPERATING OFFICER TO EXECUTE A)	
DECLARATION OF COOPERATION IN)	Introduced by Chief Operating Officer Martha
SUPPORT OF THE COLUMBIA RIVER LEVEE)	Bennett in concurrence with Council
REPAIR AND ACCREDITATION OREGON)	President Tom Hughes
SOLUTIONS PROCESS)	

WHEREAS, in 2013, Governor Kitzhaber asked Portland Mayor Charlie Hales and Multnomah County Chair Marissa Madrigal to convene an Oregon Solutions team of stakeholders, including representatives of Metro, to address the potential de-certification and de-accreditation of the Columbia River levee system in the Peninsula 1 and Peninsula 2 Drainage Districts in Portland; and

WHEREAS, de-accreditation and de-certification of the levee system would have negative economic consequences in the area protected by the levee, including potential loss of federal flood insurance, loss of access to assistance from the Army Corps of Engineers in the event of a damaging flood and loss of access to commercial financing for development of levee protected properties and projects; and

WHEREAS, the Metro Council adopted Resolution No. 14-4525 authorizing the Chief Operating Officer to execute an intergovernmental to commit up to \$300,000 plus interest toward the cost of a levee analysis in the Peninsula 1 and Peninsula 2 Drainage Districts; and

WHEREAS, the Oregon Solutions team with support from the Multnomah County Drainage District and Cornforth Consulting has made significant progress in identifying levee system deficiencies and increasing public awareness and has proposed execution of a Declaration of Cooperation to guide continuation of the process; and

WHEREAS, levee analysis and re-accreditation process needs to be extended to include the Multnomah Drainage District and the Sandy River Drainage Improvement Company; now therefore,

BE IT RESOLVED that the Metro Council authorizes execution of a non-binding Declaration of Cooperation in the form approved by the Metro Attorney with the intent to continue Metro’s participation in the assessment process.

ADOPTED by the Metro Council this _____ day of _____ 2015.

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 15-4606, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE A DECLARATION OF COOPERATION IN SUPPORT OF THE COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION OREGON SOLUTIONS PROCESS

Date: January 27, 2015

Prepared by: Andy Cotugno (ext. 1763)

BACKGROUND

In 2013, at the request of Governor Kitzhaber, Mayor Charlie Hales and Multnomah County Chair Marissa Madrigal co-convened the Columbia River Levee Repair and Accreditation Oregon Solutions Project Team with Metro as a stakeholder on the Team. Since then, with the election of Jules Bailey as a Multnomah County Commissioner, the Oregon Solutions Team is co-convened by Mayor Charlie Hales and Commissioner Jules Bailey. In May 2014, the Metro Council committed up to \$300,000 (plus up to \$85,000 interest across 7 years) as payment toward the cost of an evaluation of the levee system for Peninsula Drainage Districts 1 and 2. See Attachment 1 for delineation of the four drainage districts with levee system responsibilities.

Metro's involvement with the process is tied to Metro's interest as a property owner for Expo and Blue Lake Park and the broader regional policy interest in industrial lands and the natural habitat characteristics of the Columbia Slough and associated water bodies and wetlands. If the levee system is not addressed and the region's supply of industrial lands is decreased, it may trigger Metro growth management obligations to provide an adequate supply of developable lands. Metro staff obligations include participation on the Oregon Solutions Project Team, the Steering Committee and the Technical Advisory Committee. In addition there will be a need to coordinate with their public outreach efforts and review and comment on any assessment of natural habitats.

During the past year, there has been substantial progress in evaluating the adequacy of the Peninsula 1 and 2 levee system (see Attachment 2 for engineering factors to consider in the certification and accreditation process) and public education about the deficiencies and potential solutions. In addition, the Declaration of Cooperation (See Attachment 3) spells out agreements on a governance structure for the continuation of the process including the consensus building role of the Oregon Solutions Team, the decision-making responsibilities of individual participating jurisdictions, establishment of a Steering Committee to guide the process, establishment of a Technical Advisory Committee with representation from the participating governments to advise on the technical sufficiency of the assessment and establishment of a Public Outreach Team to guide public involvement.

Key to the stakeholder understanding of the issues has been dissemination of information about the complexities of the following federal laws and regulations:

- Federal Emergency Management Agency (FEMA) Federal Flood Insurance Program: At present, the lands within the levee protected drainage districts are not identified as a Special Flood Hazard Area (SFHA) on the FEMA Flood Hazard Boundary Maps (FHBM). As such, there is no requirement that the property owners purchase flood insurance through the National Flood Insurance Program (NFIP). As long as the levee systems maintain their accreditation, this status remains in effect. However, if the levees become de-accredited and FEMA maps them as a SFHA, provisions of the NFIP become effective. (Note: the accreditation for Peninsula 1 & 2 expired in 2013) Under this change, the local government would need to adopt special restrictions

for building in the floodplain and property owners would need to purchase flood insurance. Since the area would be vulnerable to a flood, the cost of this insurance would be very high and potentially unavailable. Without flood insurance in a designated SFHA, property owners would lose access to commercial credit for development investments. In short, de-accreditation leads to severe economic consequences to existing developed property and severe impact on ability to develop property.

- Army Corps of Engineers criteria for certification and accreditation: The Army Corps of Engineers establishes minimum engineering criteria for a levee system to be certified by a licensed professional engineer on the adequacy of a levee system to meet a 1% annual chance of a flood (also known as a 100-year flood). If the levee system can be documented to meet these criteria, the professional engineer can certify that the levee system meets the standards. Upon inspection by the US Army Corps of Engineers, the levee system can be accredited resulting in the continued designation by FEMA as an area not mapped as a flood hazard zone. The primary beneficiary of this levee accreditation and FEMA flood hazard mapping is the developed and developable properties behind the levees.
- Army Corps of Engineers Rehabilitation and Inspection Program (RIP): In addition to federal flood insurance through FEMA, the adequacy of a levee system is also controlled by the Army Corps of Engineers RIP Program. Under this program, as long as the levee system itself, as well as the operations and maintenance plan for the levee system, are deemed adequate, the Army Corps of Engineers will provide federal assistance in the event of a flood event. This assistance includes flood fighting assistance during the flood event and federal assistance to repair any part of the levee system that fails during an event. However, it is the discretion of the Army Corps of Engineers to determine the level of protection that is adequate based upon the degree of loss in the event of failure and the cost effectiveness of improvement required. In other words, a sufficient level of protection may be for a 200-year or a 500-year flood event (as compared to the FEMA flood insurance program that is tied to a 100-year event. For example (and only as an example) it may be deemed sufficient to protect farmland for a 100-year event but protect an international airport for a 500-year event. Those decisions remain to be made. The primary beneficiary of this levee evaluation system are the owners of the levee system (for federal assistance for repairs in the event of a failure) and for the community protected by the levee system if the process concludes that a higher than 100-year level of protection is warranted.
- Endangered Species Act (ESA): The National Oceanic and Atmospheric Administration Fisheries branch has responsibility for management of the Endangered Species Act as it relates to 11 listed fish species in the Columbia River. Under the ESA, NOAA Fisheries has responsibility for issuing a Biological Opinion for any federal action on whether the proposed action will *jeopardize* the continued existence of a listed species. The Corps levee accreditation process and the FEMA flood plain management program are both considered federal actions requiring a successful biological opinion to be issued by NOAA Fisheries. As such, the flood control plan is not limited to actions required to protect life and property from flood hazard but to do so in a manner that does not also jeopardize the continued existence of listed species. In addition, for lands designated as a floodplain, NOAA Fisheries requirements to preserve and enhance natural floodplain features will apply as well. With the levee system, these lands are not designated as floodplain. However, should the levee accreditation lapse resulting in areas being designated as floodplain, new ESA restrictions will apply.

The process that is underway involves an engineering assessment of the levee system to inform policy choices by the community and the responsible jurisdictions on the level of protection that is needed and considered affordable. Through this evaluation there will also be consideration of funding responsibility and implementation responsibility. At this time there is no preconceived conclusion on the degree to which funding will be sought from federal, state, regional, local government or drainage district sources.

State and federal funding approaches may be involved and regional support for proposed legislation will be essential.

There may be attention to the governance and funding structure of the drainage districts themselves which could impact Metro as a land owner. The four districts were created under different state enabling legislation at a time when their purpose was related to agricultural lands. In that respect, the governance and financing structures are tied to acreage and may be more appropriately tied to value.

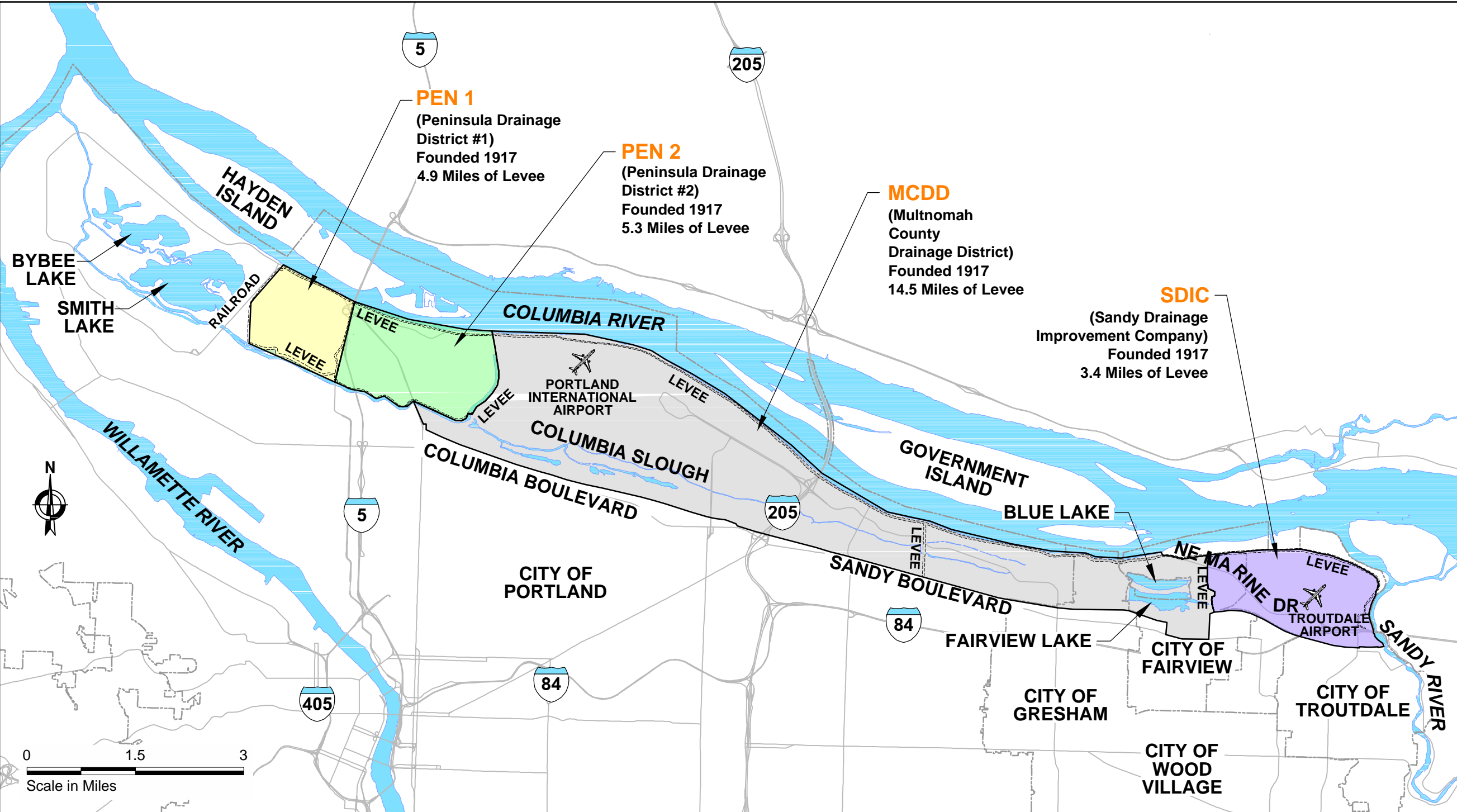
This Declaration of Cooperation proposes to expand the scope of the effort from the Peninsula 1 and 2 Drainage Districts to also include the Multnomah County Drainage District and the Sandy River Drainage Improvement Company. This allows for the broader area to take advantage of the process and increased understanding resulting from the initial work program which focused on Peninsula 1 and 2. In addition, integrating the work across all four drainage districts provides for increased efficiency in the process and would allow for consideration of re-accreditation of the entire area as a single system. This would alleviate the need and cost to address cross levees separating each district. There will be a subsequent intergovernmental agreement (IGA) to provide funding commitments for the expanded scope of work. It is anticipated that a second Oregon Infrastructure Financing Authority loan will be obtained to provide low cost financing for this work. The future IGA will establish the specifics of Metro's funding contribution tied to the approved scope of work but it is anticipated to be roughly comparable to the \$300,000 Peninsula 1 & 2 contribution from Metro.

ANALYSIS/INFORMATION

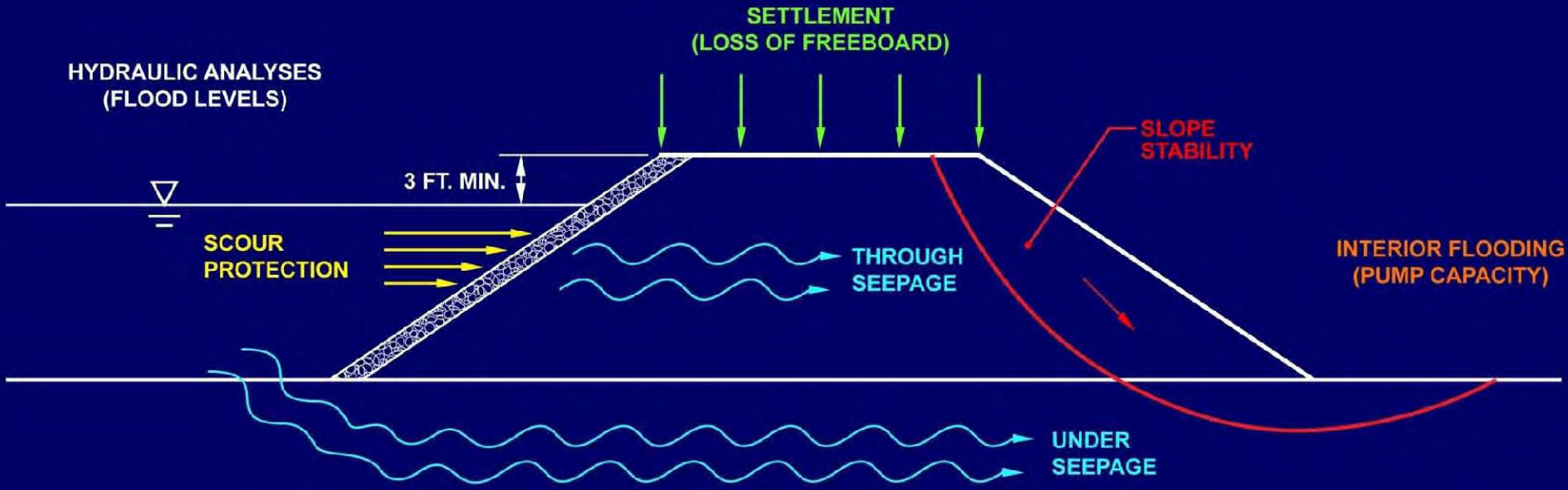
1. **Known Opposition:** At this time there is no known opposition. However, there are many stakeholders involved with the Oregon Solutions Team and decisions about the scope, cost and funding responsibilities for levee improvements could bring controversy.
2. **Legal Antecedents:** Metro has no legal obligation to pay for the levee repair, except for any assessments due to ownership of property within the drainage districts. Signing onto the Declaration of Cooperation and participation in this process is voluntary.
3. **Anticipated Effects:** Though nonbinding, executing this agreement represents a good faith pledge to participate in this process. Any future decisions remain the responsibility of the parties that will implement agreed upon actions. If any action is needed from Metro, there is nothing in this agreement that delegates that responsibility to others. By signing onto the Declaration of Cooperation, after having contributed to the engineering study, the expectation of the other parties to the Declaration of Cooperation may be that Metro will continue to be supportive and possibly contribute to future solutions. However, any future commitment of Metro funding contribution remains the prerogative of the Metro Council.
4. **Budget Impacts:** Metro has already committed up to \$300,000 (plus \$85,000 in potential interest cost) toward the consulting costs of Phase 1 of this project. This funding commitment is intended to be used as part of the loan payment schedule for a Business Oregon Infrastructure Finance Authority loan. Additional staff involvement under the Declaration of Cooperation can be accommodated in the current budget. An additional financial contribution of a similar amount will be requested for Phase 2 which will be dealt with through a separate resolution.

RECOMMENDED ACTION

Recommend approval of Resolution No. 15-4606



44 CFR 65.10 CERTIFICATION REQUIREMENTS



ALSO

- CHECK CLOSURE STRUCTURE DESIGNS
- OPERATION AND MAINTENANCE MANUALS
- ENCROACHMENTS

**COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION
Phase I to Phase II
DECLARATION OF COOPERATION – DRAFT 6/09/15**

Introduction and Purpose of this Declaration

The Columbia River Levee Repair and Accreditation Oregon Solutions Project Team is a cross-sector regional team working together to address the FEMA accreditation, U.S. Army Corps of Engineers (USACE) approval, and safety of the Columbia River levees.

The first phase of the Oregon Solutions process (Phase I) , which began in December of 2013, focused on identifying what issues or shortcomings in the levee system need to be addressed in Peninsula Drainage District No. 1 (PEN 1) and Peninsula Drainage District No. 2 (PEN 2). The Oregon Solutions Team participants also engaged in a learning process, about both the FEMA accreditation requirements and USACE Rehabilitation and Inspection Program (RIP).

Over the next 12-18 months our next phase of work (Phase II) will expand our geographic scope to complete similar assessments for the Multnomah County Drainage District (MCDD) and the Sandy Drainage Improvement Company (SDIC), and also complete physical inventories that will set the stage for evaluating alternative solutions to the issues and shortcomings identified in all four districts. We will also incorporate similar work in the Sauvie Island Drainage Improvement Company, as all five districts are likely to be mapped as a unit by FEMA.

This is an appropriate time for the Oregon Solutions Team to ratify its goals for the next phase and how it wants to work together. A Declaration of Cooperation that all parties sign will help clarify expectations for this next phase, including the following:

- Overall goals, principles, and commitments for how we will work together
- Geographic scope
- Interim governance structure – how decisions will get made
- Public outreach and involvement
- Funding issues and tasks

While this document is *not* a legally-binding agreement, it is intended as a good-faith representation of the intent and commitments of the signing parties at this time, to help facilitate the regional collaboration on this important project. However, in *no* event shall this document be used as the basis for any claim by one party against the other.

More importantly, it is intended to serve as a guidance document as the parties move forward to collaboratively make decisions related to levee repair and accreditation.

Phase I Accomplishments

1. The Columbia River Levee Repair and Accreditation Project was designated as an Oregon Solutions project by the Governor. While the primary focus of this project has been the levee systems in the PEN 1 and PEN 2 drainage districts in Portland, the initial intent was to utilize lessons learned from this process for subsequent flood safety efforts for others statewide.

2. A primary focus of Phase I was to identify the minimum requirements for Certification pursuant to FEMA accreditation of the levee systems in PEN 1 and PEN 2. Cornforth Consultants were retained to conduct an engineering assessment, and identified four areas requiring attention in order to meet the minimum acceptable standards for accreditation by FEMA:
 - The BNSF and UP railroad embankments form the west side of PEN 1. Although limited access to the railroad embankments prevented thorough analysis of soil stability, historical data shows that soil removed from the St. Johns cut covers the original trestle system supporting the railroad. While the USACE has recognized the embankment as serving a levee function and has improved or reinforced the embankment over the years, both railroad companies have stated it is against their national policy to sign the required operation and maintenance agreement to achieve accreditation.

- Two low spots near the Interstate 5 interchange at North Marine Drive. These do not meet the required height at the northeast corner of the cross levee for PEN 1 / PEN 2.
 - A low spot at the northeast corner of PEN 2. This spot fails to meet the required height. This low spot is located on vacant Port of Portland property.
 - The Peninsula Drainage Canal Cross-Levee that forms the east side of PEN 2. Instability due to narrow, steep embankments on this levee could cause the levee to fail during certain high water events. The cross-levee is narrow in width and has steep walls.
3. Cornforth Consultants subsequently completed an additional modeling analysis of the levee systems using the (USACE) authorized design level flood analyses. (i.e. a more protective, higher flood level standard)

In general, the new analyses using the USACE "authorized design" water surface elevations did not find any significant problems beyond those identified in the earlier FEMA 1-percent-annual-chance flood event analyses. For many of the levee sections in PEN 1 and PEN 2, the design water surface elevation approaches a 0.2-percent-annual-chance flood event elevation (500-year flood). The bottom line: addressing the issues identified under the earlier analyses in PEN 1 and PEN 2 could result in those levees being protective at the higher level, exceeding the minimum FEMA accreditation standards.

The only notable exception was in PEN 1, Reach 1-11, along the Columbia Slough, which protects the Portland International Raceway. In this reach, the levee has a calculated Factor of Safety (FS) of 1.3, slightly below the USACE's minimum FS of 1.4. However, because the FS is still significantly above a value of 1, USACE representatives stated that a reasonable approach to Reach 1-11 would be to note it as a 'focus area' during a high water event in the District's operation and maintenance manual in order to provide extra inspection and reconnaissance to this section of levee. Additionally, the

analysis found that the PEN 1 floodwall met USACE stability standards under the USACE authorized design water surface elevation.

4. The Oregon Solutions Team brought in a representative from NOAA to better understand the potential impact on levee repair options that the NOAA Biological Opinion may have on the National Flood Insurance Program in Oregon.
5. The USACE has indicated the key levee repairs or actions needed to keep the PEN 1 and PEN 2 districts active in the Corps' Rehabilitation and Inspection Program (RIP).
6. In June of 2014, the Oregon Infrastructure Finance Authority provided a 7-year low-interest loan for \$1.4 million, to complete the Cornforth engineering evaluation of the flood control systems in PEN 1 and PEN 2. Commitments were received from the PEN 1 District, PEN 2 District, City of Portland, Port of Portland, and Metro to pay off the loan. The City of Portland acted as the recipient of the loan and provided the administrative support.
7. The USACE and MCDD initiated a Planning Assistance to States (PAS) study for \$200,000 to develop alternatives and initial design of a solution to the railroad levee issues.
8. The Oregon Solutions Team has sponsored several opportunities to learn from other communities that have been through this. A panel discussion was held on May 20, 2014 and Scott Shapiro from Sacramento spoke to a statewide audience in November 2014. Both sessions were videotaped and are posted on the project's Oregon Solutions website.

Next Phase principles and commitments for how we will work together

We agree to the following principles and commitments to guide our efforts during the next phase of this project (in addition to the attached Oregon Solutions Team Ground Rules, attached, adopted in December 2013):

- a. Commitment to move forward. We commit to work together to keep the accreditation process moving forward in a way that is expeditious and timely yet

sensitive to the impacts that levee repair and accreditation decisions will have on many and varied stakeholders.

- b. Recognize the area's regional economic importance. We will work as regional partners to achieve a level of flood protection that recognizes the economic importance of the area protected by the levees to the metro region, while also being economically prudent.
- c. Importance of public outreach. We understand the critical need to inform and frequently update and hear from the public and community groups about repairs and the accreditation process, and the impacts they may have (both positive and negative).
- d. Ecological valuation. We will identify and explore levee system solutions that recognize and either enhance or minimize negative impacts to the ecological potential for the area.
- e. Historical Significance. We will also work to engage all communities with historical ties to the system in a collaborative discussion through public outreach and communication.
- f. Early collaboration with regulatory agencies. We will work proactively with federal, state and local agencies to identify and address regulatory concerns.

Next Phase Project Goals

In Phase I, the Oregon Solutions Team investigated the issues and deficiencies in meeting minimum FEMA accreditation standards for PEN 1 and PEN 2 through the Levee Engineering Assessment. Additional modeling was conducted to assess the USACE authorized design and existing levels of protection.

In the next phase, our work will focus on the following objectives:

- Develop inventories of the specific economic, community, and environmental resources protected by the regional levee system.
- Complete engineering assessments in MCDD, SDIC, and SIDIC consistent with those done for PEN 1 and PEN 2. .
- Maintain active status in the USACE's Rehabilitation and Inspection Program (RIP).

- Initiate work to develop longer term governance options
- Initiate discussion on longer term funding and financing of levee and drainage system options.
- Review potential impacts of climate change on Columbia River elevation levels and the safety of the levee system, including the evaluation of potential solutions.
- Implement a communications strategy with the general public and targeted audiences such as neighborhood groups about the project.
- Develop a process and criteria for evaluation and selection of preferred solutions. That process will include at least the following considerations for how best to meet the goals:
 - i. Impacts to surrounding public and private property owners including recognition of historical community impacts of the levee system
 - ii. Ecosystem function including environmental, wildlife and habitat values
 - iii. Consistency with existing neighborhood and community plans
 - iv. Current and future economic stability
 - v. Broader community benefits such as recreation, transportation and access
 - vi. Protection of key public (and other) infrastructure

By the end of this phase we will be ready to outline solution alternatives in each of the districts.

Expanding the Geographic Scope.

We will begin during the next phase to incorporate other districts or drainage companies in Multnomah County into a larger regional effort, as Multnomah County Drainage District, Sandy Drainage Improvement Company, and Sauvie Island Drainage Improvement Company will soon be facing similar needs for re-certification and accreditation.

A major consideration in taking this step is the indication by FEMA that accreditation and mapping is likely to be done for all five Multnomah County drainage areas at the same time. In addition, there are potential cost savings through coordinating remediation alternatives including

consideration of certifying and accrediting the perimeter levee of a single system and not include the cross levees between the separate districts.

We are expanding the geographic scope of the project to also benefit from potential administrative savings, cross-district learning, and relationships with federal agencies. At the same time, we will be sensitive and make every effort to not have the expansion result in unnecessary delays to action for specific districts or alternative solutions.

Next Phase Governance

We recognize that longer-term and more formal governance-structure changes may be required for governance on future levee issues and that revisions to *this* interim governance structure may even be required as we learn more. Nevertheless, for purposes of being able to move forward without costly delays, we believe agreement on the interim governance structure is critical.

a. **The Columbia River Levee Oregon Solutions Team**, designated by the Governor and which has been co-convened by Multnomah County Commissioner Jules Bailey and Portland Mayor Charlie Hales, will continue to be the main forum for regional collaborative recommendations to the appropriate jurisdictions on levee repair alternatives and related policies.

b. **Individual jurisdictions** have, and shall retain current authorities and responsibilities (e.g. the City of Portland is the jurisdiction officially recognized by FEMA to request re-accreditation for levees within the Portland City limits; and the drainage districts and improvement companies shall retain the primary responsibility to maintain their levee systems and continue in the USACE's RIP program).

c. **A Technical Advisory Committee** shall provide review and advice on technical matters to the Oregon Solutions Team. It will not make decisions, but may be asked to provide technical information and recommendations. This Technical Advisory Committee may in turn charge sub-committees with membership that will be

designed to provide the needed technical expertise and perspectives. Among the specific tasks for the Technical Advisory Committee in Phase II will be:

- Providing technical review and vetting of consultant work (including development or review of Scopes of Work for consultants)
- Helping frame technical issues or technical aspects of programmatic/policy decisions that will be before the Oregon Solutions Team
- Developing and reviewing alternatives for levee improvements

d. **A Communications and Outreach Sub-Committee** shall be charged with designing and implementing strategies for communicating with the general public and specific stakeholder groups, as necessary. This team will include communications staff from each of the government agencies on the Columbia Levee Oregon Solutions Team and will be open to equal participation from members of any other Oregon Solutions Team partner. The team will coordinate communications across agencies and direct the communications and engagement work of the Oregon Solutions Team.

e. **An Administrative Sub-Committee** will be formed to deliberate on administrative matters (meeting agendas, budgets, contracts, etc.) and at times make recommendations to the larger Oregon Solutions Team. Meetings of the Administrative Committee are open to members of the Oregon Solutions team and the public. Among the tasks for the Administrative Sub-Committee will be:

- Framing questions for the Technical Advisory Committee
- Framing policy issues for decision-making by the larger Columbia Levee Oregon Solutions Team
- Helping identify who has regulatory or legal responsibility/authority on a particular issue.
- Making some purely administrative decisions to move the project forward
- Delegating, for purposes of administrative efficiency, certain tasks such as review of contractor change orders, to one of the participating jurisdictions.

- Note: Any policy decisions or recommendations affecting multiple stakeholders will be reserved for the full Oregon Solutions Team, rather than the Steering Committee.

Participants in the Administrative Sub-Committee can be revised by the Oregon Solutions Team, but will initially include:

1. Bridgeton Neighbors Assn.
2. City of Fairview
3. City of Gresham
4. City of Portland
5. City of Troutdale
6. East Columbia Neighbors Assn.
7. Metro
8. Multnomah County
9. Multnomah County Drainage District #1
10. Peninsula 1 Drainage District
11. Peninsula 2 Drainage District
12. Port of Portland
13. Sandy Drainage Improvement Company
14. Sauvie Island Drainage Improvement Company
15. State of Oregon Regional Solutions Center

Public Outreach and Involvement

Effective public outreach and public involvement will be critical to the success of next phase(s) of this project. Property owners, residents, business owners, employees, recreationalists, environmentalists, and tax payers are a just a sample of the varied audiences that may be interested in, and affected by, the Levee Repair and Improvement project. The Columbia Levee Oregon Solutions Team intentionally includes representatives from many of these groups but will need to also make a collective effort to communicate with and provide opportunities to hear from both the general public and affected groups. This effort will include communication and public involvement tasks such as:

- Identification of community values to be used in evaluating levee repair or improvement alternatives
- Creating and maintaining partnerships with neighborhood associations, community groups, community leaders, business groups, conservation and environmental groups,

- Ensuring communication and engagement efforts are inclusive of historically underrepresented groups
- Developing and implementing communication strategies including installation of signage, earned media strategies, social media strategies, and public events
- Partnering with non-partisan, academic, or otherwise independent policy and research organizations
- Implementing public involvement strategies such as surveys, design charrettes, and/or focus groups
- Managing communications and outreach contractors to assist with media relations, design, and branding

Funding for Phase II

Major additional budget expenses anticipated for the next phase of the project include:

- Develop inventories of the specific economic, community, and environmental resources protected by the regional levee system.
- Complete engineering assessments in MCDD, SDIC, and SIDIC consistent with those done for PEN 1 and PEN 2.
- Begin development and evaluation of solutions throughout the levee system to meet FEMA and USACE requirements.
- Maintain active status in the USACE's Rehabilitation and Inspection Program (RIP).
- Identify specific anticipated effects of climate change that will impact the safety of the levee system and identify which effects should be considered in evaluating specific levee system solutions.
- Implement a communications strategy with the general public and targeted audiences such as neighborhood groups about the project.
- Oregon Solutions process management and facilitation
- Comprehensive economic study of the drainage areas and the impact of losing accreditation

Signature to this document does not constitute commitment of financial resources for the activities listed above. During the next phase we will develop separate Intergovernmental agreements or memorandums of understanding between the major jurisdictions for how to fund the necessary activities. We anticipate applying for State IFA assistance.

Legal authorities, constraints, and responsibilities

This interim governance approach has been informed by the current legal context, summarized in the attached Legal Subcommittee report: *Background on Flood Protection*. The Legal Subcommittee Report has been reviewed by the affected jurisdictions and, while not inclusive of *all* legal authorities and responsibilities related to levee accreditation or maintenance, it is generally accepted as providing an appropriate context for the interim governance approach outlined in this Declaration of Cooperation.

City of Portland,

Multnomah County

Peninsula 1 Drainage District

Peninsula 2 Drainage District

Bridgeton Neighborhood Association

East Columbia Neighborhood Assn.

Metro

Port of Portland

Audubon Society of Portland

Columbia Slough Watershed Council

Oregon Governor's Office

Multnomah County Drainage District

Oregon Dept. of Environmental Quality

Oregon DLCD

Columbia Corridor Association

Jubitz

Federal Emergency Management Agency

U.S. Army Corps of Engineers

City of Gresham

City of Troutdale

City of Fairview

Sauvie I. Drainage Improvement. Co.

Sandy Drainage Improvement Co.

**OREGON SOLUTIONS COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION
PROJECT**

LEGAL SUBCOMMITTEE REPORT: BACKGROUND ON FLOOD PROTECTION

PURPOSE

The Portland metropolitan area that borders the Columbia River, commonly known as the Columbia Corridor, is currently protected from flooding through an extensive system that includes a 27-mile levee running along the Columbia River, Sandy River, and the Columbia Slough, interior drainage components, and pump stations ("Flood Protection System"). The primary purpose of the system is to ensure the continued safety of the people, businesses, and other assets of the region.

The purpose of this document is to provide background on flood protection in the Columbia Corridor. It is an informational tool on flood protection authorities, standards, and tasks upon which decision-makers may rely as part of their policy analysis. Also, it can provide a framework within which decision-makers may agree to work cooperatively and collaboratively to address flood protection issues in the Columbia Corridor.

This document does not constitute a legally-binding commitment by any entity—nothing in this document is intended, and may not be construed as intending, to commit any entity to any tasks specified herein ,or otherwise, concerning flood protection.

The governmental jurisdictions are:

- a. Multnomah County Drainage District No. 1
- b. Peninsula Drainage District No. 1
- c. Peninsula Drainage District No. 2
- d. Sandy Drainage Improvement Company
- e. City of Fairview
- f. City of Gresham
- g. City of Portland
- h. City of Troutdale
- i. Metro
- j. Multnomah County
- k. Port of Portland
- l. State of Oregon—Oregon Water Resources Commission

FLOOD PROTECTION AUTHORITY

1. Peninsula Drainage District No. 1 ("PEN 1"), Peninsula Drainage District No. 2 ("PEN 2"), Multnomah County Drainage District No. 1 ("MCDD"), and Sandy Drainage Improvement Company ("SDIC") (collectively, "Drainage Entities").

1.1 PEN 1, PEN 2, and MCDD are drainage districts formed under ORS Chapter 547 and are subject to ORS 548, "for the purpose of having such lands reclaimed and protected by drainage or otherwise from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience and welfare or of public utility or benefit." (ORS 547.005)

1.2 SDIC is a drainage improvement corporation ("DIC") organized under ORS 554 and is directed by its articles of incorporation to construct, operate, and maintain flood control facilities and a system of sloughs, canals, ditches, and waterways to drain benefited properties and make water available for irrigation of benefited properties, for both sanitary and agricultural purposes. ORS 554.080; ORS 554.110.

1.3 The Drainage Entities are special purpose entities under ORS 198, are creatures of statute, and have only those powers enumerated in the statutes.

1.4 PEN 1, PEN 2, and MCDD lack the authority to expand upon or enhance their statutorily-enumerated powers through police-power regulations with the force and effect of law.

1.5 SDIC is a public corporation, but has it been held to be more akin to private non-profit corporations and to have no police powers in the usual sense, although a DIC can enact regulations applicable to its members. ORS 554.080(6).

1.6 The sole funding method available to the drainage districts for operations and debt is via assessment of property owners with the districts. ORS 547.455-.510. Such assessments are levied and collected in the same manner as property taxes. This is also the primary method available for funding DICs. ORS 554.080(8); ORS 554.130. DICs are also authorized to enact and enforce "rates, tolls, fees, fines, and chargers" for the maintenance and operation of the corporation (although SDIC has never done so). See ORS 554.080(7).

1.7 PEN 1, PEN 2, and MCDD are authorized the issuance of general obligation bonds payable from assessments for not more than 40 years. ORS 547.555-580. Such bonds are

"subject to approval by the electors of the district." ORS 547.555(1). There is some question as to whether a property owner is an "elector" within the meaning of the Ballot Measure 5 exception applicable to bonded indebtedness approved by the electors.

1.8 DICs may also issue bonds backed by assessments. ORS 554.160, 554.220. DIC assessments are not subject to compression under Measure 5.

2. City of Fairview, City of Gresham, City of Portland, and City of Troutdale (singularly, "City" and collectively, the "Cities").

2.1 Each City is a municipal corporation operating under a home rule charter pursuant to Or. Const. Art. IV, section 1(5); Article XI, Sec. 2. Each City has broad authority over all matters that it determines to be of municipal concern, except as expressly preempted by state statute and as limited in their home rule charters.

2.2 In addition to its broad home rule authority, each City has authority over land use planning, zoning, and development review within its jurisdictional boundaries, subject to compliance with state and regional requirements. See ORS Chapter 227. Cities also have express authority to assume the assets and responsibilities of any drainage district through annexation or partial annexation. ORS 222.510 to 222.580, as applied by ORS 547.755. (Before a City may withdraw territory from a drainage district, however, it must obtain approval from three-quarters of the district voters in the area to be annexed to the City.)

2.3 Each City has multiple funding sources and capabilities, subject to state preemption and regulation and the specific restrictions in their home rule charters.

2.4 The City of Portland owns Portland International Raceway and Heron Lakes Golf Club in PEN 1.

3. Metro.

3.1 Metro is a metropolitan service district operating under a home rule charter pursuant to Or. Const. Art. XI, Section 14. Metro has broad authority over all matters that it determines to be of metropolitan concern, except as expressly preempted by state statute or as limited by its Charter.

3.2 In addition to its broad home rule authority, Metro has authority over the Metropolitan Urban Growth Boundary ("UGB") and certain functional planning matters of regional concern.

3.3 Metro has broad funding authority under its Charter, but the Charter also contains certain limitations on that authority.

3.4 Metro owns the Portland Expo Center in PEN 1.

4. Multnomah County.

4.1 Multnomah County is a political subdivision of the State of Oregon established pursuant to ORS 201.260 and operating under a home rule charter pursuant to Or. Const. Art. VI, sec. 10. Multnomah County has broad authority over all matters that it determines to be of County concern, except as expressly preempted by state statute or as limited by its Charter.

4.2 In addition to its broad home rule authority, the County has authority over land use planning, zoning and development review within its jurisdiction boundaries outside of city boundaries, subject to compliance with state and regional requirements. See ORS Chapter 215. By intergovernmental agreement, the County has delegated that authority to cities for unincorporated areas within the Metropolitan Urban Growth Boundary ("UGB"). (All of the Drainage Entities are within the UGB.) In addition, the County has express statutory authority to exercise the powers of a diking district (ORS 551.160) and to exercise authority over drainage and flood control under ORS Chapter 549.

4.3 Multnomah County has broad funding authority under its Charter, subject to state preemption and regulation and the specific restrictions in their home rule charters.

4.4 Multnomah County owns roads and structures within MCDD and SDIC.

5. Port of Portland (the "Port").

5.1 The Port is a port district operating under its own enabling act, ORS Chapter 778. In addition, it may exercise most of the powers of port districts generally under ORS Chapter 777. See ORS 778.008. The purpose of the Port is to "promote the maritime, shipping, aviation, commercial, and industrial interests of the port" and is granted the power to "do any other acts and things which are requisite, necessary or convenient in accomplishing the purpose described or in carrying out the powers granted to it by law." ORS 778.015.

5.2 The Port may levy taxes and issue general obligation bonds pursuant to ORS 778.030 to 070 and revenue bonds per ORS 778.145 to 778.175. The Port also receives significant revenues from its commercial port operations. See ORS 778.025.

5.3 The Port owns real property in PEN 1, the Portland International in MCDD, and the Troutdale airport in and SDIC, which impacts the nature of the authority that it may have exercise with respect to these districts.

6. Oregon Water Resources Commission

6.1 The Water Resources Commission has general authority over state water resources pursuant to the authorities of ORS Chapter 537.

6.2 The Water Resources Commission has authority to participate in federal flood control projects pursuant to ORS 549.605 through ORS 549.645.

7. Intergovernmental Authority.

7.1 Intergovernmental Agreements. Pursuant to ORS 190.010 to 190.030, any unit of government may enter into an intergovernmental agreement ("IGA") with one or more other units of government for the performance of any functions or activities that the units of government has the authority to perform. A unit of government performing the functions or activities of another is "vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the agreement." MCDD, for example, administers all of the Drainage Entities pursuant to IGAs with PEN 1, PEN 2, and SDIC.

7.2 Intergovernmental Entities. Units of government can create an independent entity by IGA to perform certain functions and services. ORS 190.080. Such an entity can issue revenue bonds and enter into financing agreements, but may not levy taxes or issue G.O. bonds. ORS 190.080(2).

FLOOD PROTECTION STANDARDS

1. U.S. Army Corps of Engineers ("USACE").

1.1 Under the federal Flood Control Acts of 1936 and 1950, the Drainage Entities are obligated to operate and maintain the levee system in accordance with USACE's flood control regulations. In addition, PEN 1 is contractually obligated to USACE to do the same.

2. Federal Emergency Management Agency ("FEMA").

2.1 FEMA implements the National Flood Insurance Program ("NFIP"), which designates flood-prone areas as Special Flood Hazard Areas and requires flood insurance for properties in those areas as a condition of receiving any federal funding and assistance.

2.2 The NFIP applies to a "Community," which is defined as a state or a political subdivision that has "zoning and building code jurisdiction over a particular area having special

flood hazards" and, specifically, "authority to adopt and enforce floodplain-management regulations in the areas within its jurisdiction." 42 USC § 4003(a)(1); 44 CFR § 59.1.

Accordingly, the Cities and Multnomah County are Communities under the NFIP. The Drainage Entities, Metro, and the Port of Portland are not Communities under the NFIP.

2.3 If a Community relies on a levee system to avoid the Special Flood Hazard Area designation, then such a levee system must be accredited by FEMA as providing the appropriate level of flood-protection. The accreditation can be sought by a Community or "other party seeking recognition of such a levee system." 44 CFR § 65.10(a). As part of this accreditation process, either the Community or the Drainage Entities (as the levee system operator) could provide levee data that has been certified by a qualified engineer or by USACE. Under the NFIP, and to the extent an accreditation is sought, the only affirmative duty of the Drainage Entities is to provide a maintenance plan to FEMA. 44 CFR § 65.10(b).

MAJOR FLOOD PROTECTION TASKS

Flood protection in the Columbia Corridor faces a complex and changing regulatory landscape at local, state, and federal levels. This section describes aspects and tasks that are essential to an effective and efficient operation of the Flood Protection System in order to ensure the continued integrity of the system and the safety of the public and in light of the changing regulations. It is an informational tool that decision-makers can rely on in their policy analysis and evaluation of participation in a cooperative and collaborative process to address flood protection issues in the Columbia Corridor.

Nothing in this section or the document is intended, and may not be construed as intending, to commit any entity to any tasks or operational aspects specified herein.

1. Regulatory Tasks.

1.1 Adopt zoning and building code jurisdiction over a particular area having special flood hazards.

1.2 Adopt zoning and building codes to control development affecting the operation and maintenance of the Flood Protection System.

1.3 Adopt authority to enforce floodplain-management regulations in areas that the Flood Protection System serves.

1.4 Secure additional property rights, including easements and rights-of-way, necessary to operate, maintain, and protect the Flood Protection System.

1.5 Monitor and enforce against violations of the Drainage Entities' property rights, including easements and rights-of-way.

2. Operation and Maintenance Tasks.

2.1 Routinely inspect and investigate the adequacy (informally and formally) of the Flood Protection System by staff, USACE, and FEMA to comply with the standards of USACE and FEMA.

2.2 Dredge interior drainage ways.

2.3 Manage and pump influent stormwater from the interior drainage system.

2.4 Comply with other applicable laws in the operation and maintenance of the Flood Protection System, including but not limited to the Endangered Species Act, the Clean Water Act, the National Environmental Policy Act, and the Rivers and Harbors Act. This may include administrative consultation with the regulating agency, as well as capital improvements to the Flood Protection System.

2.5 Provide adequate administrative staffing for operation and maintenance.

3. Funding Tasks.

3.1 Provide adequate funding to adopt and enforce zoning and building codes, floodplain management regulations, and property rights.

3.2 Provide adequate funding to carry out operation and maintenance.

3.3 Provide adequate funding to investigate and make capital improvements to the Flood Protection System to comply with the standards of USACE and FEMA.

4. **FEMA Accreditation**

The following is a list of general steps to involve in a FEMA accreditation of a levee should a Community, or any other entity, chooses to pursue it.

4.1 Certification of the levee system by a professional engineer or by USACE.

(a) Investigate and evaluate the current condition and identify deficiencies

(b) Design and collaborate on best approaches to address deficiencies

(c) Implement repairs to address deficiencies

(d) Professional engineer or USACE "certifies" that levee meets accreditation

standards and submits certified documentation to FEMA

(e) FEMA accredits the system

- 4.2 Evaluate the cost and benefit of accreditation status
- 4.3 Evaluate financial options to fund accreditation
- 4.4 Evaluate governance options to seek and manage the accreditation process

Five Models on Governance From Other Jurisdictions

Many communities across the country rely on levees for flood protection. A number of these communities have dealt with issues concerning accreditation of their levee systems through various governance structures. The following is a list of a few models for illustrative purposes to inform decision-makers in their policy analysis and consideration. It is not an exhaustive list and does not seek to establish any preferred model.

1. Type I— Existing Structure.

1.1 This is the current structure in which the Drainage Entities are merely "maintenance entities" with limited and narrow statutory and funding authorities.

1.2 There are inadequate statutory and funding authorities to deal with the larger accreditation problem.

2. Type 2 —Joint Powers Authority ("JPA") or Intergovernmental Agreements (IGAs)

2.1 This was the approach taken in the Sacramento area. Pursuant to California's Joint Exercise of Powers Act, entities can agree to form a third party agency that makes use of their overlapping powers. There is lots of flexibility in California about the formation of JPAs, so they are common. This is similar to Oregon, allowing for local government agencies to entered into an IGA to perform "* * * any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform." ORS 190.010.

2.2 In California, and like the Drainage Entities, local maintenance districts were created without adequate funding or authorities to deal with the larger accreditation problem. JPAs were formed to deal with the issue.

2.3 Example: Sacramento Area Flood Control Agency ("SAFCA") is represented by five entities that include Reclamation Districts, a city, and two counties with representatives on the board of directors.

2.4 The advantage of a JPA is the reduction in distraction by other organizational issues. For example, a focused attention in SAFCA led to \$1 billion in flood control improvements including legislative appropriations, local funds, and bonds passed.

2.5 Authorities of JPA.

(a) Powers are limited to those powers held in common by the agencies, including things like funding mechanisms and eminent domain power.

(b) Authorities are not delegated from the participating entities to the JPA, but it is governed by participant entities.

(i) Actions by the JPA do not necessarily require approval from participant boards

(ii) Alternatively, veto power or approval requirements can be designated in the agreement which creates the entity.

(c) Regarding minority veto power:

(i) In the SAFCA example, 4 out of 7 city council members and all of the County Supervisors serve on the board of directors, giving them effective veto power in the JPA .

(ii) Depends on political considerations and how the various entities relate to one another.

3. Type III—JPA With Delegated Powers to a Member Agency

3.1 The legal structure is the same as above, but the JPA entity contracts with one of its members for all staffing.

3.2 By example, the West Sacramento Area Flood Control Agency ("WSAFCA") contracts with the City to provide the staffing to carry out the JPA functions.

3.3 This type of entity can lose focus because it is restricted by the limitations of the contracting entity—e.g. people's time and resources.

4. Type IV –Legislative Repurposing of an Existing Special District

4.1 An example is Southwest Illinois Flood Protection District in the Chicago area, where three to four cities are involved.

4.2 This district was formed when USACE had revoked certification and FEMA began to talk about accreditation.

4.3 They pursued a legislative fix that gave an old existing district new authority to manage the problem.

5. Type V—Land Use Authority Takes Over

5.1 An example is at the Trinity River Project, which is a flood control project and redevelopment along the river. The City took it over as a redevelopment project and managed in the flood control project.

5.2 The advantage of this model is that it avoided distraction by creating a dedicated department within the City.

6. Type VI – New Legislatively-Created District

6.1 Southeast Louisiana Flood Protection Authority is an example of such a newly created entity.

6.2 The legislature created a third party entity with representation from other existing flood protection entities.

6.3 The original entities still exist but the new entity overlays with new responsibilities.

6.4 The legislature hoped that the other entities would eventually be subsumed by the new one.



Team Member Ground Rules

The Project partners in the Oregon Solutions process are committed to the following “ground rules” for how they conduct their business with one another:

General Principles

- We agree to approach problems with creativity and with open minds.
- We each have a unique perspective and contribution to make.

Ground Rules

1. We recognize that the best outcome depends upon cooperation and collaboration by all entities at the table.
2. We commit to openly communicate ideas, potential contributions, and concerns, and also to engage in respectful, active listening to each other.
3. We will focus on the future we would like to create rather than past problems and past history of issues.
4. We will work toward an agreement that is fair and constructive for everyone. When consensus is not possible, we will acknowledge and accept our differences and work toward the best possible outcome.
5. We agree to commit to the agreed-upon solution, in whatever way we can. If we, individually, are unable to make a commitment for our organization, we will work to identify what will make that commitment possible.
6. We commit to building trust by doing what we say we will do.
7. We agree to notify each other before taking outside actions that might impact the process.
8. We agree to attend all meetings or designate an alternate and we will be responsible for keeping the alternate updated. We are responsible for keeping any group entity that we are affiliated with “up to speed.” If we have suggestions for an agenda, we will contact one of the Co-Conveners or project manager well in advance of the meeting.

Note: **Public participation** will be allowed with the consent of the Co-Conveners. Generally, the Project Team will be given priority in all discussion, and in some situations it will be limited to just the Project Team. All meetings are open to the public. Communications with the press and other media are most representative when they come on behalf of the whole Project Team.

Agenda Item No. 3.2

Resolution No. 15-4612, For the Purpose of Adopting the
Annual Budget for Fiscal Year 2015-16, Making
Appropriations, Levying Ad Valorem Taxes, and
Reauthorizing an Interfund Loan

Resolutions

Metro Council Meeting
Thursday, June 11, 2015
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE ANNUAL) BUDGET FOR FISCAL YEAR 2015-16, MAKING) APPROPRIATIONS, LEVYING AD VALOREM) TAXES, AND AUTHORIZING AN INTERFUND) LOAN))))))	RESOLUTION NO 15-4612 Introduced by Martha Bennett, Chief Operating Officer, with the concurrence of Council President Tom Hughes
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WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2015, and ending June 30, 2016; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Resolution) and considered; now, therefore,

BE IT RESOLVED,

1. The “Fiscal Year 2015-16 Metro Budget,” in the total amount of SIX HUNDRED SIX MILLION FOUR HUNDRED EIGHTY EIGHT THOUSAND THREE HUNDRED SIXTY FOUR DOLLARS (\$606,488,364), attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Resolution, at the rate of \$0.0966 per ONE THOUSAND DOLLARS (\$1,000) of assessed value for operating rate levy; at the rate of \$0.0960 per ONE THOUSAND DOLLARS (\$1,000) of assessed values for local option rate levy and in the amount of TWENTY NINE MILLION SIX HUNDRED FIFTY NINE THOUSAND SEVENTY FOUR DOLLARS (\$29,659,074) for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2015-16. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from <u>the Limitation</u>
Operating Tax Rate Levy	\$0.0966/\$1,000	
Local Option Tax Rate Levy	\$0.0960/\$1,000	
General Obligation Bond Levy		\$29,659,074

3. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1 of this Resolution, and hereby appropriates funds for the fiscal year beginning July 1, 2015, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.

4. The Oregon Zoo Operating Fund is hereby established. Major sources of revenue will be enterprise revenues generated by the Oregon Zoo and contribution from Metro's General Fund. In the event this fund is eliminated any remaining fund balance will be returned to the General Fund.

5. The Oregon Zoo Capital Asset Management Fund is hereby established. Major sources of revenue will be capital donations and grant funds. This fund may also receive contributions from the Oregon Zoo Operating Fund or Metro's General Fund. In the event this fund is eliminated any remaining fund balance will be returned to the Oregon Zoo Operating Fund, or in the absence of that fund, the General Fund.

6. An interfund loan from the Solid Waste Revenue Fund to the Oregon Zoo Capital Asset Management Fund is hereby reauthorized. The loan was originally authorized in FY 2014-15 for an amount not to exceed \$3.5 million. The first installment of the loan in the amount of \$1.5 million was made January 1, 2015 leaving the balance of the loan to be made in FY 2015-16. The loan will be made to fund two large capital projects at the Oregon Zoo. The loan, including interest at a rate equal to the average yield on Metro's pooled investments, will be repaid from Oregon Zoo operating revenues. Repayment for both installments of the loan will be made over a period not to exceed ten years beginning FY 2014-15. Annual interest only payments will be made until such time as the Oregon Zoo's commitment to debt service on the FY 2013 Full Faith & Credit bonds expires on 8/1/2016. Thereafter, annual principal payments will be due no later than June 30th of each fiscal year.

7. The Chief Operating Officer shall make the filings as required by ORS 294.458 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

ADOPTED by the Metro Council on this 18th day of June 2015.

Tom Hughes, Council President

APPROVED AS TO FORM:

Alison Kean, Metro Attorney

STAFF REPORT

CONSIDERATION OF RESOLUTION 15-4612 ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2015-16, MAKING APPROPRIATIONS, LEVYING AD VALOREM TAXES, AND AUTHORIZING AN INTERFUND LOAN

Date: March 24, 2015

Presented by: Martha Bennett
Chief Operating Officer

BACKGROUND

I am forwarding to the Metro Council for consideration and approval my proposed budget for fiscal year 2015-16.

Metro Council action, through Resolution No. 15-4612 is the final step in the process for the adoption of Metro's operating financial plan for the forthcoming fiscal year. Final action by the Metro Council to adopt this plan must be completed by June 30, 2015.

Once the budget plan for fiscal year 2015-16 is approved by the Metro Council on May 7, 2015, the number of funds and the maximum tax levy cannot be amended without review and certification by the Tax Supervising and Conservation Commission. Adjustments, if any, by the Metro Council to increase the level of expenditures in a fund are limited to no more than 10 percent of the total value of any fund's expenditures in the period between Metro Council approval in early May 2015 and adoption in June 2015.

Exhibit A to this Resolution will be available subsequent to the Tax Supervising and Conservation Commission hearing June 4, 2015. Exhibits B and C of the Resolution will be available at the public hearing on April 16, 2015.

ANALYSIS/INFORMATION

1. **Known Opposition** – Metro Council hearings will be held on the Proposed Budget on April 16, 2015 and May 7, 2015. Opportunities for public comments will be provided. Opposition to any portion of the budget will be identified during that time.
2. **Legal Antecedents** – The preparation, review and adoption of Metro's annual budget is subject to the requirements of Oregon Budget Law, ORS Chapter 294. Oregon Revised Statutes 294.635 requires that Metro prepare and submit its approved budget to the Tax Supervising and Conservation Commission by May 15, 2015. The Commission will conduct a hearing on June 4, 2015 for the purpose of receiving information from the public regarding the Metro Council's approved budget. Following the hearing, the Commission will certify the budget to the Metro Council for adoption and may provide recommendations to the Metro Council regarding any aspect of the budget.
3. **Anticipated Effects** – Adoption of this Resolution will put into effect the annual FY 2015-16 budget, effective July 1, 2015.
4. **Budget Impacts** – The total amount of the proposed FY 2015-16 annual budget is \$606,488,364 and 836.70 FTE.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Resolution No. 15-4612