

April 11, 2000

Metro Councilor Rod Park  
600 Northeast Grand Avenue  
Portland, Oregon 97232-2736

Dear Councilor Park:

This letter is in response to your correspondence dated March 31, 2000 concerning possible conflicts of interest you may have with regard to a proposed ordinance that would require local governments to impose limitations on development in areas within proximity to streams and other bodies of water.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
NO. 00S-008**

**STATED FACTS:** A person is one of seven elected members of the Metro Council. Metro is organized pursuant to a home rule charter adopted by the voters in 1992. It has authority, under its own charter and ORS 268, to adopt requirements for the cities and three counties within its boundaries that apply to the comprehensive plans and land use regulations of those local governments.

Pursuant to statutory and charter authority, the Metro Council is about to commence formal discussions and action on an ordinance that could require local governments to adopt limitations (not yet determined) on development in areas within proximity to streams and other bodies of water. These requirements would be adopted pursuant to statewide land use Goal 5 and as a Metro response to the National Marine Fisheries Service's (NMFS) listing of various salmon species pursuant to the Endangered Species Act (ESA) for the Metro region.

Prior to being elected to the Metro Council, and for a considerable period of time beforehand, the councilor and the councilor's family have owned and farmed approximately 60 acres in three parcels of undeveloped land located within the city limits of Gresham. The parcels of land are located inside the jurisdictional boundary of Metro and within the urban growth boundary established by Metro. One of the three parcels consists of 22 acres and contains approximately 600 lineal feet of an intermittent stream that flows through the property. The adoption of Metro's Goal 5 regulations may have an impact on the value of the property the councilor owns. Depending on the regulation Metro requires the City of Gresham to adopt, and the choices made by the City of Gresham in carrying out

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Metro's directive, the development potential of the councilor's property may be limited to some extent.

Prior to being elected to the Metro Council, the councilor listed the property for sale with a real estate broker. The councilor had entered into a sales contract to be formalized prior to the councilor's taking office, but circumstances surrounding the sale unfortunately dictated the councilor nullify the sales contract. Since that time the councilor has received several offers to purchase the property. The councilor has entered into more than one earnest money agreement for the sale of the property but to date none of the earnest money agreements has resulted in a final sale of the property. At this time, the property is still up for sale and the councilor has an offer pending.

Based on information supplied to the councilor by Metro's Data Resource Center, the councilor understands that the total area within the Metro boundary that would be subject to the proposed Goal 5 regulations is 296,000 acres of land. Within the boundary are about 900 miles of streams. Within 200 feet of these streams (the most currently discussed protection zone for Goal 5 regulation) there are approximately 44,000 acres of land. Of these 44,000 acres, about 25,000 acres are vacant and developable. There are over 15,000 tax lots located in these 25,000 vacant acres. The tax lots are owned by over 10,000 different individuals.

In addition to the 200 foot protection zone now being discussed by Metro, Goal 5 will also be addressing storm water runoff which will impact the 296,000 acres within the Metro boundary.

**RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7) of this section.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

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(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

ORS 244.120(2): An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

QUESTION #1: Does the councilor have an actual conflict of interest or a potential conflict of interest related to the adoption of the Goal 5 related ordinance by Metro?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. An actual conflict of interest occurs when a public official takes action that is reasonably certain to result in a financial benefit or detriment. It will occur when an action taken by the official would directly and specifically affect the financial interest of the official or the official's relative or a business with which the official or the official's relative is associated. A potential conflict of interest exists when an official takes action that could possibly have a financial impact on the official, a relative of the official or a business with which the official or a relative of the official is associated. Such possible financial impact is not certain.

ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. Sometimes a public official may take action that would have a financial impact on that official, a relative of that official or a business with which the official or the official's relative is associated. If other people in a class are also affected to the same degree by that action, the official would be exempt from conflict of interest disclosure requirements.

According to the stated facts there is approximately 296,000 acres of land and 900 miles of streams within the Metro boundary which would be impacted by the proposed ordinance. Within 200 feet of the streams there are approximately 44,000 acres of land of which about 25,000 are vacant and developable. There are over 15,000 tax lots located in these 25,000 vacant acres which are owned by over 10,000 individuals. It appears that the actions the councilor would take with regard to the proposed ordinance could financially impact not only the councilor but approximately 10,000 other individuals. It is the belief of the GSPC staff that the councilor would be in a class of approximately 10,000 landowners who would be affected to the same degree by the proposed ordinance. Accordingly, no conflicts of interest would arise and the councilor would be exempt from conflict of interest disclosure requirements.

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It should be noted that only the Government Standards and Practices Commission is authorized by law to determine the existence of a class for the purpose of compliance with the conflict of interest provisions of ORS Chapter 244.

QUESTION #2: If the councilor completes the transaction of selling the property does any conflict of interest the councilor had prior cease to exist?

OPINION: As stated previously, the class exception would apply and no conflicts of interest would arise.

QUESTION #3: Would any conflict of interest the councilor may have cease to exist upon the time that the councilor enters into a legally binding contract to sell the property to another individual?

OPINION: The class exception would exist and no conflicts of interest would arise.

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Please advise this office if you would like this matter submitted to the GSPC for adoption as a formal advisory opinion at a future meeting. Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director