

Final Report

Fair Growth and Farmlands Project Committee

Final Report to the Metro Council

April 18, 2006



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Committee Final Report**

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Executive Summary

The Portland Metropolitan region faces several serious challenges to maintaining its livability in the face of growth over the next several years, including a lack of funds to pay for planning and infrastructure in new areas and threats to the preservation of the region's productive farmland.

As part of a Metro Council project initiated by Councilors Robert Liberty and Carl Hosticka, three informal subcommittees were convened to examine how these regional needs might be funded through a windfall tax imposed on the increases in land value that occurs when land is added to the regional urban growth boundary, and how such a tax might be designed. The Metro Council had considered a windfall tax in December 2002 and again in August in 2005 when the Metro Measure 37 Task Force recommended using windfall tax profits to address Measure 37 claims and other regional objectives.

This report contains the recommendations of three subcommittees that met over the past three months and examined the possibility of a windfall tax and its potential uses in the region.

The subcommittees recognized that a tax on windfall profits from urban growth boundary expansions would not provide enough revenue to satisfy the various regional needs for which it might be used. However, the revenue from this source could make a substantial contribution to meeting those needs and should be given serious consideration.

The subcommittees recommended that revenue from a tax on the increase in value of land added to the urban growth boundary in future expansion areas should be used:

- To pay for 80% of the cost of concept planning and half of the cost of comprehensive planning for those expansion areas.
- To pay for new infrastructure (new roads, sewer lines, school buildings, etc.) in the expansion areas.
- To pay for new or replacement infrastructure in existing communities inside the UGB, preferably in order to fulfill the regional strategy for growth.
- To provide permanent protection of farmland by the voluntary sale and purchase of development rights for land inside exclusive farm use zones in Clackamas, Multnomah and Washington counties.
- To create a "fairness fund" overseen by a panel of citizens, to address issues of fairness related to reductions in value caused by government regulations.

The first two of these categories of uses would receive a majority of the funds.

With respect to the tax, the subcommittee recommended:

- The tax should only become due upon a voluntary act by the developer to develop the property, specifically, approval of an application to develop. As long as the landowner left the land as it was before it was added to the boundary, no tax would be due.
- The tax should only apply to future urban growth boundary expansions.
- The tax should be levied against the increase in value of land when Metro adds it to the urban growth boundary so it can be developed (a government “giving.”) That increase in value would be based on a model of urbanization value gains developed by Metro incorporating fair market value appraisals made by county assessors as well as various other factors.
- The first 100% of profit should be exempt from the tax.
- Voters must approve the program, including the tax and the uses of the funds.

The introduction describes the origins and policy context for this project, as well as some important notes on the tax mechanism. The bulk of the report is a summary of each subcommittee’s recommendations, including some explanation for those recommendations. Appendices provide a list of Metro policies, goals and objectives supporting the concept of this project and an example of administrative costs for an extensive easement program.

Introduction

The Concept of Government “Givings” Created by Urban Growth Boundary Expansions

Rural land lying outside the regional urban growth boundary (“UGB”) in the Portland area is zoned primarily for exclusive farm use (EFU), forest conservation uses, or for rural home sites on two-, five- or 10-acre lots. (Areas zoned for rural residential uses are often referred to as “exception areas.”)

When land in these zones is added to the metropolitan urban growth boundary by action of the Metro Council, it increases dramatically in value, by 200%, 400% or even 1000%, because this government action allows the land to be used for intense urban uses, like subdivisions, shopping centers or office buildings.

People refer to this dramatic increase in land value caused by government action to increase the permitted development as a “givings” (in contrast to “takings”) or a government “windfall.”

Origins of the Project

In December 2002, the Metro Council expressed its intention to tax some of the windfall profits or “givings” created by its expansion of the urban growth boundary, in order to pay for various regional needs.

In December 2004, the Metro Council authorized the creation of a Measure 37 Task Force to examine the potential consequences of Measure 37 on the implementation of the regional plan for growth. One of the task force’s recommendations to the Council in August 2005 was that Metro pursue the idea of taxing the profits from UGB expansions to address Measure 37 claims and other regional objectives. In the fall of 2005, after discussion during a Council work session, the Council authorized the creation of a Council project to be led by Councilors Hosticka and Liberty to follow up on this recommendation.

At the invitation of Councilor Liberty, representatives of local governments, various interest groups (including prospective taxpayers) and tax experts convened during February, March and April of 2006 to examine a range of regional needs that are not being met that might logically be funded by a tax on windfall profits from *future* UGB expansions, as well as the legality and structure of such a tax. The volunteers were organized into three informal subcommittees each addressing a separate topic:

- The tax mechanism,
- Possible investments of the windfall tax revenues in urban expansion areas and existing neighborhoods, and
- Possible investments of the windfall tax revenues in farmland preservation efforts and to address valid Measure 37 claims.

Until the end of their deliberations, subcommittee members’ work was focused on answering some basic questions about their topic. Once the proposal was better defined through their work,

the members were asked their opinions on the use of the funds and the merits of the entire proposal.

More details about the antecedents to this report are contained in the appendices.

Policy Context for the Fair Growth and Farmlands Project

The region faces several serious challenges to maintaining its livability in the face of growth over the next several years. The Fair Growth and Farmlands project addresses the following issues:

- *Lack of funds to pay for land use planning and infrastructure in UGB expansion areas*

Development in UGB expansion areas is stalled because of the lack of money to pay for the capital improvements needed to build new communities, the new schools, roads, water and sewer lines, and so forth. The absence of infrastructure financing has meant that past UGB expansion areas remain largely undeveloped several years after their approval.

- *Conflict between rural development allowed under Measure 37 waivers with agricultural and urban uses*

As of July 2005, there are more than 18,000 acres of claims for Measure 37 waivers from state and local land use laws in the three-county area. About 90% of those claims are for lands in exclusive farm use or forest conservation zones. Many of the requested waivers are for large lot subdivisions, which if built, will conflict with adjoining farming operations, could compromise aquifers and generate demand for new schools and new investments in roads and public safety services. (These problems were described by Metro's Measure 37 Task Force.)

- *Long-term threats to agriculture*

Over the long run, a continuation of the pattern of Measure 37 waivers may erode the land base needed to sustain agriculture. Within the agricultural community, continuing UGB expansions and the steady conversion of farmland to serve urban uses outside the UGB, creates uncertainty about the long-term viability of farming. These combined threats to farmland could undermine the support from the agriculture industry in the legislature for exclusive farm use zoning. If farm zoning collapses, sooner or later our urban area would sit in a sea of sprawl, degrading the quality of life and making future urbanization impossible.

- *Carrying out voters intent to address fairness to certain landowners*

Since Measure 37 was passed in November of 2004, as far as is known, no Measure 37 claimant has been compensated. This seems contrary to the wishes of voters who voted for a measure with a ballot title whose first three words were "Government must pay..." The region can no longer wait for the Legislature to act, but must demonstrate creative leadership that provides more fairness to regulated landowners.

Many Metro policies regarding urban development and the protection of farmland and other rural lands and resources will be compromised by these problems. (These policies are specifically identified in the appendices.)

Note About Possible Revenues from this Source and Setting of Tax Rates

How much a tax on urban growth boundary expansion profits depends largely on three factors:

1. The gains in land value caused by the UGB expansion.
2. The tax rate and any exemptions.
3. The amount of land added to the boundary.

Using a reasonable range of assumptions about each of these factors yields a range of possible revenues of \$120 million to \$1.56 billion over 20 years. (See table in Appendix 2.)

Initially committee members and others assumed that the rate should be based on the regional needs, such as planning, infrastructure development and farmland preservation, to be satisfied by the source of the funding. However, it became clear very quickly that it was impossible for this revenue source to fund all new infrastructure, preserve all the farmland or pay all the Measure 37 claims, or even to fully satisfy any one of those objectives. For example, the cost for new roads, just to access the 800-acre Bethany expansion, is estimated to be \$250 million.

Therefore, the committee proceeded based on the assumption that the tax rate, whatever it might be, would reflect basic policy questions of balancing the cost to taxpayers and benefits to the taxpayers and to the public.

No Relationship to Regional Excise Tax Approved by the Metro Council in March 2006

In March 2006, the Metro Council approved a construction excise tax for the purpose of funding concept planning for urban growth boundary expansion areas approved in 2002, 2004 and 2005. This excise tax is completely separate from the urbanization gains tax discussed in this report in several respects, including: (1) it is a tax based on construction values, not on gains in land value from UGB expansions; (2) it only pays for planning, not for other infrastructure or any other uses; (3) it funds planning only for already approved UGB expansion areas, not future expansion areas; and (4) it is a temporary funding source that will expire once \$6.3 million is raised (which is estimated to take three years to complete).

Summary of Tax Mechanism Subcommittee Recommendations

The subcommittee endorsed the following statements regarding a tax on urbanization gains:

A. Principles

1. The tax should be based on the increase in value caused by inclusion of the property in the urban growth boundary. The tax might also apply to some of the increase in value caused by planning.
2. This tax would only apply to property to be added to the urban growth boundary in the future and to the industrial lands expansions approved by the Metro Council in November 2005. (The resolution approving these lands for addition to the UGB explicitly provided for any such tax approved by the Council and the voters to apply to those properties.)
3. The tax should *not* apply to increases in value caused by infrastructure investment paid for by the tax itself or nearby private development.
4. The tax should not be due and payable at the time the boundary is moved, because it would be unfair to require landowners to make cash outlays when their only major asset is the land itself.
5. Tax liability should be triggered by some voluntary action of the landowner or developer.
6. The amount of tax and mechanism for its collection should be known as early and as widely as possible so it can be figured into the calculations of people making decisions about the acquisition, sale and development of land in urban growth boundary expansion areas. Other ways of providing predictability about ultimate tax liability should be considered, such as nonbinding tax forecasts.
7. Consistent with the objective of administrative simplicity and clarity, taxpayers should be given flexibility in the timing and form of payment.

B. Legal Requirements

1. The tax should not be a property tax. Metro is authorized to levy property taxes, but they are subject to limitations imposed by Ballot Measure 5 and 50.
2. The tax cannot be a real estate transfer tax. Real estate transfer taxes are generally prohibited to local governments by state statute (ORS 306.815). Real estate transfer taxes are taxes imposed on the transfer of real property or measured by the consideration paid or received upon transfer of the real property. However, the real estate transfer tax prohibition does not include a fee or charge that becomes due or payable at the time of the property transfer, unless that fee or charge is imposed upon the right, privilege or act of transferring title to the real property.
3. The tax should not be a general income tax. Although Metro is specifically authorized to collect a general tax on income the rate is limited to 1%.

4. The tax should not be a system development charge. Those taxes can only be collected for certain specified capital improvements and for planning related to those improvements, so the tax could not be used for paying Measure 37 claims or farmland preservation easements.
5. The tax could be what is known as an excise or privilege tax. It is possible it could be a type of specialized capital gains tax.
6. Because of a requirement in Metro's Charter limiting its spending, this amount of tax must be approved by a majority of the voters within Metro's political boundary.

C. Administrative Objectives

1. Metro does not wish to carry out the tax collection; it prefers to enter into intergovernmental agreements for this service.
2. To achieve the purposes of tax, there must be some means of realizing or anticipating some tax revenues soon after expansion of the urban growth boundary.
3. The tax should be as easy as possible to calculate, collect and enforce, recognizing that this objective is at odds with some of the principles set out previously.

D. Recommended Tax Mechanism

The subcommittee ultimately recommended a one-time windfall tax as their recommended tax mechanism. The tax would have the following characteristics:

- ***Starting date for determining increase in value: January 1 of the year that is five years before UGB expansion is approved***

The subcommittee discussed many options for the starting date against which the run-up in value would be measured. The subcommittee rejected a single date, such as December 2002, because it would be increasingly inappropriate after the next round of urban growth boundary adjustments. Instead, the group agreed that a period of five years prior to an expansion would reflect the cycle of periodic review of the land capacity inside the boundary. The actual date should refer back to January 1 of the fifth year before the expansion to incorporate county tax assessor values calculated as of that date.

- ***Ending date for determining increase in value: January 1, three years after LCDC acknowledgment of comprehensive plan for the expansion area***

A subcommittee member proposed that the logical ending date for measuring the increase in value would be acknowledgment (approval) of the comprehensive plan for the UGB expansion area by the Land Conservation and Development Commission (LCDC). This is the time at which values for the land cease to be the subject for wild speculative fluctuations, but become stabilized to reflect the determination of authorized urban uses.

The period after Metro Council approval of a UGB expansion and the approval of the comprehensive plan for the area by LCDC usually ranges from a few months to a few years.

The date for determining tax liability would be moved forward to January 1, three years after new market value assessments are provided by county tax assessors. Discussion regarding the need to capture the full value brought about by government actions led to the recommendation that calculation of the value should occur three years after the comprehensive plan is acknowledged.

Note: Many of the comprehensive plans for expansion areas would take the form of amendments to existing city and county plans and would not necessarily be reviewed by LCDC, but as a matter of law there is a specific date at which the comprehensive plan is “deemed” acknowledged.

- ***Taxes should be calculated using a model developed and administered by Metro that estimates the increase in value applied to each expansion area, incorporating various factors and data including tracking of assessors’ real market value data.***

After examining alternate approaches, the subcommittee reached agreement around the idea of using a model, developed using Metro’s expertise, which would develop estimates for the increase in value within each expansion area. Data utilized in the model would include assessors’ real market value and real market sales.

The subcommittee identified several factors that should be factored into the model, including terrain, proximity to services and nearby land values. The model should take into account the fair market value assessments that are still produced annually by county assessors. However, those assessments should not be the sole determinants of value for a variety of technical and policy reasons.

- ***A choice of model options***

At the final committee meeting, members of the committee considered, and tentatively endorsed the possibility of offering two options to taxpayers. One option would reflect a simple calculation and would offer certainty in terms of how much tax would be owed. The second option would involve a more complex calculation that would offer less certainty about the final tax amount, but would provide the taxpayer with a comprehensive calculation of the tax.

- ***The details of Metro’s tax calculation model should be publicized and Metro should regularly publish projected tax liabilities in order to provide information to participants in land sale and development activities in future UGB expansion areas.***

The subcommittee endorsed the concepts of transparency regarding the taxation model and the provision of information about potential tax liability, so that participants in the real estate market could use this knowledge to properly structure various land sale and development transactions. By making the methodology and the data available, private sector interests could make their own calculations if those calculations would be helpful.

At the final committee meeting, suggestions for an advisory or citizens oversight committee were made. Other suggestions to increase transparency and fairness were the provision of hearings and running the model in public.

- ***There should be an appeal process for taxpayers to challenge Metro's tax calculations in limited circumstances.***

The subcommittee was concerned about the idea of allowing taxpayers to challenge tax assessments based on modest deviations between projected values and actual values as shown after the fact, since this could lead to an endless and self-reinforcing stream of adjustments to the tax. However, they recognized that it would be fair to allow for appeals in rare cases when later-revealed facts or changed circumstances clearly demonstrated that the tax liability calculation was significantly in error to the detriment of the taxpayer.

- ***Each expansion area would generate its own, segregated fund for use for planning and infrastructure investments in that expansion area.***

The subcommittee came to consensus around the policy and political justification for the designation of a separate fund derived from each expansion area. The share of the tax revenues to be used for concept planning, comprehensive planning and infrastructure investments, would be taken from the revenues generated by that expansion area. (The alternate approach, discussed but not recommended by the subcommittee, would be to pool all the funds derived from each cohort of UGB expansions and distribute them back for permitted uses according to some formula or criteria.)

- ***The voluntary trigger for payment of the tax should be the receipt of land use approval for development.***

The subcommittee endorsed the principle that unless and until voluntary action is taken to develop the property, the windfall tax need not be paid.

Even after land was added to the urban growth boundary, no tax would be due for development allowed on the property if that development was allowed under the prior rural zoning.

The subcommittee discussed several options for triggering the tax, but ultimately reached consensus on the idea that the tax would become due upon approval of an application for development, an application that would be a voluntary act of the landowner and/or a developer.

Only that share of the tax liability properly attributable to that part of the property would become due at that time. For example, if the property was originally 100 acres when added to the property, but later was subdivided into 800 single family lots, then only 1/800th of the tax would be due for development on any one of those lots.

- ***Taxpayers should have both incentives for early payment of estimated taxes and opportunities to defer tax payments subject to interest.***

Members of all the subcommittees expressed concern that it could take years before properties added to the UGB were finally ready for development approvals. Therefore, it would be several years before Metro could receive funds to pay for concept planning and comprehensive planning that must precede development. It would also take several years before funds could be available to invest in infrastructure, farmland protection or to provide financial support for the fairness fund.

The subcommittee acknowledged the issue but did not have time to make more than a general recommendation, which was that early payment tax discounts should be provided at a sufficiently high level of discount to assure some stream of early payments of all or some of the estimated tax liability. For example, a developer who owned five acres might conclude that taxes on the property he planned to develop would be, at an absolute minimum, \$14,000 an acre. The program could provide that a payment made within six months of the UGB expansion would be discounted by 20%. This would allow the developer to pay \$11,200 an acre early and be credited for \$14,000 an acre against his later tax bill.

Some subcommittee members worried about landowners who were not large-scale developers and might not be able to finance the tax payment prior to development. Other subcommittee members noted that many developments, at any scale, faced this problem. However, the subcommittee agreed that taxpayers ought to be allowed to delay tax payments subject to additional interest and the provision of adequate security.

[Note: Something similar to this arrangement is provided for in the statute governing system development charges.]

- ***The action referred to the voters by the Metro Council authorizing the tax and its use should describe the permitted uses of the funds and establish minimum percentages for each category of funds.***

The subcommittee spent some time addressing the question about how much certainty and how much flexibility should be built into the use of the funds. Taxpayers, various groups with an interest in the use of the funds, local governments, and the voters would be skeptical about allowing too much flexibility. On the other hand, too much rigidity might be imprudent, resulting in lost opportunities for better uses of the funds.

Various methods for assuring certainty or allowing flexibility were discussed. The method providing the greatest certainty discussed by the subcommittee was locking in the permitted use of the revenues and percentage allocations to those funds through an amendment of the Metro Charter, approved by the voters. If approved, the only way to alter the permitted uses or to change the distributions would be through another vote of the people. At the opposite extreme of flexibility, the permitted uses and distribution between those uses could be determined at the discretion of the Metro Council.

The subcommittee reached consensus on the following elements of certainty: Whatever type of instrument was referred to the voters for their approval should (1) identify the permitted *categories* of uses of the funds (e.g., “infrastructure for urban growth boundary expansion areas”); (2) identify a list of the kinds of specific uses of the funds within each of those categories; (3) establish minimum allocations to each of the broad categories of use, as measured over a rolling five-year period; and (4) require the creation of separate funds for each expansion area, for the purpose of paying for planning and infrastructure for each expansion area.

Summary of Urban Uses of Revenues Subcommittee Recommendations

A. Costs Related to Planning and Development of UGB Expansion Areas

The members of the three subcommittees agreed that the largest share of the revenues should be spent to benefit the lands from which the taxes were derived: the areas added to the UGB. Most of the subcommittees' members believed that half or more of the funds should be used for this purpose for a variety of reasons, including (1) the logical connection between the source of the funds and the use of the funds; (2) it would seem fair to the payers of the tax, because the investments in infrastructure would offset the cost of the tax; and (3) it supports the principle that "growth should pay its own way."

The urban uses subcommittee's specific recommendations follow:

- *Concept planning for urban growth boundary expansion areas*

Revenues from a tax on UGB expansion profits should fund 80% of the cost of concept planning for urban growth boundary expansion areas, with the remainder provided by local governments or other sources. This planning should include basic capital facilities planning and cost estimates.

- *Comprehensive land use planning and zoning for urban growth boundary expansion areas*

Revenues from the UGB expansion tax should pay for one-half of the cost of city and county comprehensive plans and detailed capital facilities plans (required under statewide planning goal 11). Typically such planning and zoning costs are borne entirely by local taxpayers with possible supplemental state funding. However, the subcommittee felt that additional funding for comprehensive planning from the UGB expansion windfall tax was justified in order to assure and accelerate the proper development of the expansion areas.

- *New roads, sewer lines, school buildings, parks, and other infrastructure and land acquisition for public facilities in UGB expansion areas*

Within the category of investments to benefit the UGB expansion areas, the bulk of the funds that would remain after paying for planning and zoning, should be used for building infrastructure (new schools, roads, water treatment plants, etc.) or for buying land for these purposes. The subcommittee recommended that funds not be allocated or earmarked for particular types or shares of infrastructure investments, but rather be available flexibly to help implement the local government's capital facilities plan for the expansion area.

The subcommittee understood and agreed with the principle that each expansion area would have its own dedicated planning and infrastructure investment fund for these purposes (a recommendation from the tax mechanism subcommittee). However, they felt that it would be illogical and unnecessary to establish an absolute restriction on the use of the funds to the exact limits of the expansion areas themselves, when in reality investments in nearby roads, schools, water and sewer lines, etc. would be a prerequisite to serving the expansion areas themselves.

As a prerequisite to receipt of funds for infrastructure and land, the committee recommended that local governments have reached agreements, pursuant to the Senate Bill 122 (1993) process, regarding which local government or special district will be providing public facilities and services to UGB expansion areas.

- ***Tax credit for affordable housing provided by taxpayers***

The subcommittee recommended that the developers who will pay the tax be allowed to receive a credit against the tax if they build or otherwise provide affordable housing. The subcommittee also believed that this housing need not be built in the expansion areas, but rather should be built according to a regional plan for the proper allocation of that category of needed housing. The subcommittee agreed that there should be a cap on the total amount of the credits that should be permitted for this use, in order to allow sufficient funding for the primary uses of the revenues, but did not discuss what that cap might be.

B. Regionally Important Infrastructure Investments Outside Expansion Areas

The subcommittee reached a high level of agreement, but not consensus, on the idea of using a modest share of the fund for investments in regionally important infrastructure needed to execute the regional plan for growth. The majority believed that there was a logical nexus between using some of the funds for this purpose because growth at the edge was not self-contained, but would in fact impose demands on the regional infrastructure. The highest level of agreement was around the idea of using this share of the funds to help promote development and redevelopment in regional and town centers identified in the 2040 concept plan.

Summary of Farmland Protection and Measure 37 Subcommittee Recommendations

A. Farmland Protection

Members of the subcommittee considering use of the windfall tax revenues for farmland preservation and Measure 37 claims on farmland, articulated the following logical connections between the use of a tax on UGB expansion profits and farmland preservation, including paying Measure 37 claims on farmland:

- (1) The Portland metropolitan urban growth boundary itself would not function well or at all, if it weren't for exclusive farm use zoning, and the farms around it. Reinvesting profits from UGB expansions in farmland protection is a reinvestment in the urban growth boundary itself.
- (2) Some of the value of the urban land at the edge of the urban growth boundary is derived from the proximity of farmland protected by EFU zoning so that an investment in farmland preservation helps maintain the value of that urban land at the edge.
- (3) Should Metro wish to create "urban reserves" (lands needed for urban development 20 to 50 years in the future), this will cause further uncertainty about the long-term economic viability of farming in the region unless it is paired with positive measures to provide long-term protection for farmland.
- (4) Measure 37 requires taxpayers to pay for reductions in value caused by government actions, so the logical sources of funds to pay such claims are increases in value caused by government actions.

The subcommittee made the following recommendations regarding use of funds from a UGB expansion windfall tax to protect farmland and address Measure 37:

- ***Protect farmland through a program of voluntary purchase of development rights from owners of land inside EFU zones***

Farmland preservation should take the form of the voluntary sale and purchase by Metro (or Metro and a partner, see discussion below) of development rights from the owners of land in exclusive farm use zones in Clackamas, Multnomah and Washington counties. The owners would continue to own the land and be free to continue using it for farm uses, but regardless of future changes to laws and rules, the land could not be developed. The legal mechanism for purchasing these development rights would be the purchase of conservation easements from the property owner.

The subcommittee fully understood that owners of land without valid Measure 37 claims had no absolute "right" to development, but only the very limited opportunities to build houses permitted by EFU zoning today. Therefore, the value of these "development rights" was really a highly speculative value related to potential weakening of farmland protections by the Oregon legislature. [Note: According to a representative of the regional office of the American Farmland Trust, the cost of development rights on land in EFU zones in the northern Willamette

Valley might range from \$1,000 to \$2,500/acre. At these prices, a farmland protection fund of \$100 million would provide permanent protection for between 40,000 and 100,000 acres.]

The subcommittee discussed, and the majority agreed that the funds would *not* be used to buy conservation easements, that is, restrictions on certain farm practices, in order to help achieve wildlife, water quality or other environmental objectives.

- ***Development rights should be extinguished by deed restrictions, not treated as “transferable.” The restrictions should be permanent unless the land is brought inside the UGB.***

The subcommittee discussed and rejected the idea that these rights would function like transferable development rights; the idea was that the fund paid for the extinction of the development rights, not their transfer or re-use.

As a general proposition, the elimination of development rights should be permanent. But in the unlikely or far-distant event that the purpose of the acquisition of development rights no longer applied because the land would be added to the UGB, the development rights restriction could be sold or lifted in order to allow urban development of the property.

- ***Farmland development rights should not be purchased in any designated urban reserves.***

Since the purpose of the program is to protect farmland, it would not make sense to spend money to buy development rights in any land that is within an area designated as an urban reserve (lands need for urban development 20 to 50 years in the future.) Note: The subcommittee did not discuss how to determine which lands near the UGB should not be purchased, in the absence of urban reserves.

- ***The purchase of development rights from willing sellers should be based on acquisition criteria and standards, not on a map of important farmland.***

The purchase of development rights program should be administered like Metro’s open space acquisition programs, by relying on a set of criteria and through private negotiations to secure the best terms for the public.

The subcommittee recommended *against* the targeting purchase of farmland development rights through the designation of sub-areas inside EFU zones as “regionally important farmland” because such a designation would have the undesirable consequence of identifying other farmland as less worthy of protection.

The subcommittee made a preliminary list of criteria that should be considered in purchasing development rights, including the importance of blocking up land, the price of the rights and land productivity, recognizing that productivity was not an immutable characteristic of land but reflected economic and technological factors.

- *Payment of valid Measure 37 claims on land in EFU zones should be permitted as part of the farmland preservation program.*

A farmland preservation program should allow for the purchase of development rights from the owners of land that have valid Measure 37 claims. In some cases these properties, if developed through a Measure 37 waiver, may pose a real threat to nearby farming. The subcommittee discussed and recognized the extreme legal uncertainties regarding the nature of whether, where and how much to pay for such claims should be guided by the overall criteria relating to farmland preservation and subject to the same standards designed to protect the taxpayer interest against inflated prices.

- *Metro may desire or need a partner to co-own and administer the development rights it acquires.*

The subcommittee discussed, but left open, the issue of whether Metro alone, or Metro in combination with other governments or a third-party nonprofit organization, should own the development rights. The reasons for Metro to share ownership of the development rights identified by the subcommittee were: (1) provide additional protection for farmland by partially insulating the farmland preservation program from improper political influences, and (2) a third party nonprofit entity could help supplement Metro's farmland preservation programs through grants and gifts and help share responsibility for administration of the restrictions.

- *Some funds should be set aside to cover the cost of administration of the program*

The subcommittee was cautioned by one of its members with experience in the field, that deed restrictions or easements must be enforced and administered, even if county land permitting staff could effectively administer some aspects of those easements or restrictions. Some of the funds should be set aside as an endowment to administer the program, including maintaining contact with owners of lands that have deed restrictions on them, so they understood these restrictions.

Appendix 3 contains some information on administrative costs for the extensive easement program of the Montana Land Reliance.

B. Regional Fairness Fund

The two subcommittees considering potential uses of the tax briefly considered and endorsed the creation of a separate "fairness fund" to (1) provide funding to pay valid Measure 37 claims which, if settled by waiver, might compromise important regional objectives, and (2) address broader particular issues of fairness arising out of the adoption or application of land use regulations that reduced the value of property in ways that raised important issues of fairness. The regional fairness fund could be administered by a panel of citizens given the authority to examine and make recommendations regarding payments from the fund to address fairness issues.

Subcommittee Members' Opinions on Uses of Funds and Next Steps

At the close of the final committee meeting on April 3, 2006, the committee members voted on how they felt potential tax revenues should be allocated, and whether they thought that the Fair Growth and Farmlands project should move forward for further development and possible referral to the ballot.

A. Subcommittee Members Preferences Regarding Allocation of Funds

The committee members voted on how they thought potential revenue from a windfall tax should be allocated as a percentage of a total revenue source. The table below shows the votes for the highest and lowest allocation percentages and the average of all allocation percentages (thirteen members voted on the allocation of the tax revenue).

Committee Member Allocation Preferences for Windfall Tax Revenues

		Infrastructure					
	Expansion area planning and infrastructure	Urban infrastructure in already-urbanized areas (including town and regional centers)	Infrastructure subtotal	Farmland preservation	Fairness fund	Flexible between categories	
Highest	90%	30%	90%	40%	15%	20%	
Average	55%	10%	65%	22%	7%	7%	
Lowest	30%	0%	40%	5%	0%	0%	

B. Next Steps

Of the 13 committee members present at the April 3 meeting, nine voted “yes,” three voted “no” and one voted “maybe” to support the overall recommendations listed on pages 3 and 4 of this report. After placing their votes the members of the committee discussed their votes. Following this discussion, one member changed his vote from “no” to “maybe.”

Of the four committee members unable to attend the final meeting, two members submitted “yes” votes electronically via email.

Several key themes emerged from the discussion following the vote of the committee members:

- The basic concept of the tax makes sense and is worth pursuing.
- There is a need for a solution to fund infrastructure and planning and protect farmland – “something needs to be done.”
- There is a sense of “fairness” about the tax, as the public is recapturing some of the windfall profits to pay for growth.

Concerns about the project articulated by some subcommittee members included:

- Being able clearly and simply explain the tax mechanism and its uses to the public and potential opponents;
- The mechanism is “too complex;”
- Developers are bearing too much of the burden;
- There may be too many “problems” trying to be solved with the tax;
- There are still unanswered questions regarding the tax mechanism and how it will function.

The recommendations of the Fair Growth an Farmlands Project Committee will be presented to the Metro Council on April 18, at which time the Council will decide whether to support further development of the project.

Appendices

Appendix 1: Metro Policies Relevant to Fair Growth & Farmlands Project

A. Metro policy supporting compact, efficient development in UGB expansion areas:

- Future Vision Statement 1995
- 2040 Growth Concept
- Regional Framework Plan 1997
- Urban Growth Management Functional Plan (various years)
- Former Master Planning requirement

B. Metro policy in support of protecting farm and forestlands in surrounding counties:

- Metro Charter 1992
- Future Vision Statement 1995
- Regional Framework Plan 1997
- Urban Growth Management Functional Plan (various years)
- Metro Council Resolution on Measure 37 Task Force (Resolution no. 04-3520, adopted December 16, 2004)

C. Metro policy supporting taxing increases in value in UGB expansion areas:

- Council Resolution no. 02-3255A, adopted December 5, 2002

D. Metro policy and actions related to landowner fairness and implementing Measure 37

- Revisions to proposed Goal 5 program (Resolution no. 04-3506A, adopted December 9, 2004)
- Resolution on Measure 37 (Resolution no. 04-3520, adopted December 16, 2004)
- Measure 37 Task Force Report (August 2005)
- Adoption of Measure 37 Claims Process for claims against Metro (Ordinance no. 05-1087A, adopted September 22, 2005)

Connection to Metro Council Goals and Objectives

A. Great Places

- Natural areas, parkland and outdoor recreation infrastructure are available near housing and employment

B. Environmental Health

- Natural areas are large enough, have the appropriate balance of species and are interconnected with other natural areas so that normal ecological processes are maintained
- Our community is inspired to create a better future for wildlife and the environment
- Urban land is used efficiently and resource land is protected from urban encroachment

C. Economic Vitality

- Land is available to meet the need for housing and employment

Appendix 2: Possible Tax Revenues

How much a tax on urban growth boundary expansion profits depends largely on three factors:

1. The gains in land value caused by the UGB expansion.
2. The tax rate and exemptions.
3. The amount of land added to the boundary.

Below is a table with plausible assumptions for each of the factors and the resulting revenue.

Rural Land Value Per Acre	\$20,000	\$20,000	\$40,000	\$40,000
Land Value Per Acre After Addition to UGB & Planned (Predevelopment)	\$200,000	\$300,000	\$200,000	\$300,000
Exempt Starting Value & <u>First 100% of Profit</u>	<u>-\$40,000</u>	<u>-\$40,000</u>	<u>-\$80,000</u>	<u>-\$80,000</u>
Taxable Urbanization Gain	\$160,000	\$260,000	\$120,000	\$220,000
Tax per Acre:				
Tax Rate of 10%	\$16,000	\$26,000	\$12,000	\$22,000
Tax Rate of 20%	\$32,000	\$52,000	\$24,000	\$44,000
Tax Rate of 30%	\$48,000	\$78,000	\$36,000	\$66,000

Total Revenue (\$million) Based on 10,000 Acres Added To UGB in next 20 Years, by Rate*

10% Rate with Exemption for First 100% of Profit:	\$160	\$260	\$120	\$220
20% Rate with Exemption for First 100% of Profit:	\$320	\$520	\$240	\$440
30% Rate with Exemption for First 100% of Profit:	\$480	\$780	\$360	\$660

Total Revenue (\$million) Based on 20,000 Acres Added To UGB in Next 20 Years, by Rate*

10% Rate with Exempt First 100% of Profit:	\$320	\$520	\$240	\$440
20% Rate; Exempt First 100% of Profit:	\$640	\$1,040	\$480	\$880
30% Rate; Exempt First 100% of Profit:	\$960	\$1,560	\$720	\$1,320

* Cumulative current dollars, not net present value.

Appendix 3: Easement Program Administrative Costs - The Montana Land Reliance Example

The Montana Land Reliance is a 501(c)3 nonprofit organization that oversees 622 conservation easements on 626,000 acres. The purpose of the conservation easements is to preserve agricultural land. The Land Reliance has three offices with staff and three employees that conduct easement monitoring. Additional workers are hired seasonally. The Land Reliance does not proactively manage property, but does conduct education and outreach. By focusing strictly on limiting the number of homesites and the subdivision capacity of land, and not being involved with proactive, conservation easement prescribed management of land, monitoring costs are lower and monitoring is simpler. Monitoring includes a short descriptive narrative of the property condition at the time the CE is recorded, a summary about the intended protection goals, and then relies on aerial photography and maps.

Administrative costs (including outreach, monitoring and education):

The Montana Land Reliance has total assets of \$11,396,041. Of these assets, \$400,000 in a general fund pays for the administration of the program. This equals approximately \$0.64/acre.

Another fund (the Land Protection Fund) has assets of is \$6,215,161. The corpus of the fund is used to defend and protect land already under easement; income is used for stewardship projects, monitoring easements and completing easements for donors who cannot cover these costs. This equals approximately \$10/acre. The Education and Research Fund contains \$2,627,106. This fund finances education for landowners, and equals approximately \$4/acre.

The Montana Land Reliance spends between \$5 and \$15 an acre on administrative, outreach, education and monitoring.