



MODERATOR

Sheila Hamilton, journalist

Let's talk viewpoints

Can we keep it green?

PANELISTS

Mike Houck, urban naturalist, Audubon Society of Portland

Bill Moshofsky, natural resources director, Oregonians In Action

Steve Pfeiffer, partner, Perkins Coie, LLP

Sara Vickerman, director, Defenders of Wildlife West Coast office

James A. Zehren, citizen member, metro Policy Advisory Committee

Panelists were asked to share their vision for keeping the region green taking into account the following questions:

1. What minimum protection standards and/or incentives would you use to adequately protect natural resources in the Portland metropolitan region? Does the Oregon land-use system alone provide adequate protection for fish and wildlife or the habitat that supports these resources?
2. How would you balance the rights of private landowners with the public right to protect and manage fish, wildlife, water and air resources?
3. What is the solution for long-term stable funding for our parks and greenspaces?
4. It is generally recognized that parks and urban natural resources contribute to the region's livability and economic vitality. Considering these benefits, what role should local government, businesses and private landowners play in the protection and management of these resources?

The panelist's written responses are attached.



METRO

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METRO "LET'S TALK" REGIONAL CONFERENCE

March 15, 2002

CAN WE KEEP IT GREEN? PANEL SESSION

Written Materials of Panelist

JAMES A. ZEHREN

1. What minimum protection standards and/or incentives would you employ to adequately protect natural resources in the Portland metropolitan region? Does the Oregon land use system alone provide adequate protection for fish and wildlife or the habitat which supports these resources?

Although significant collaborative work has been done by the region's local parks providers to frame the issues related to park level of service standards to be achieved, no such standards have been established for the region. Only a few local jurisdictions have established true park level of service standards. In fact, when it comes to parks, we as a region don't have data on whether we're doing better than in previous decades, about the same, or worse. Whatever the trend, the parks challenge facing the region in the next 20 years is a daunting one. See the attached chart from the *MPAC Parks Subcommittee Final Report*, April 25, 2001.

Metro should work with the region's local parks providers to develop and formally adopt at least voluntary level of service standards for parks applicable in each of the urban design types in the region--that is, our regional centers, town centers, mainstreets and transit station communities, employment areas, inner neighborhoods, outer neighborhoods, etc. Then Metro should work with those same local parks providers to establish a regional data system so as to enable us to determine whether we are or are not meeting those standards, whether we are getting worse or holding our own or getting better, etc. Otherwise, as we develop and redevelop as a region, we don't know how "green" we should try to be nor how "green" we are or are not.

Our vaunted land use system's Statewide Planning Goals make virtually no references to "parks" *per se* and do not require local governments to take any specific actions to actually provide parks. However, Metro has legal authority to require local governments to amend their local comprehensive plans to require that certain level of service standards for parks be met--and to require local governments to consider the impact of proposed developments on parks. Although such requirements would need to meet the rational and proportional nexus tests of the US Supreme Court decision in *Dolan v. City of Tigard*, Metro and the region's local governments could make use of such regulatory approaches to achieve parks in the region. To date, neither Metro nor our local governments have exercised their legal authority in these ways.

To a considerable extent, however, there is no substitute for collection and expenditure of governmental revenues--in one form or another--as the means for achieving the parks that we want and need to maintain our quality of life.

2. How would you balance the rights of private landowners to use their land with the public's right, as an owner of Oregon's air, water, fish and wildlife, to protect these natural resources?

As mentioned, Metro and our local governments have the legal authority to go farther than they have gone in using regulation as an approach to achieving parks. It would be legally acceptable as well as good public policy for governments to require that certain land be set aside, or money in lieu of land, as a condition of development approval. This is done in other countries such as in Canada. We need to develop the social and political ethos that this is a necessary and acceptable part of the development process--just as is setting aside land for the street grid. To the extent the logical and proportional nexus of *Dolan v. City of Tigard* would be in jeopardy of not being established, the amount of land or money required could be adjusted accordingly.

If landowners are actually denied the ability to use and enjoy their particular property because of governmental regulation, of course, both the Takings Clause of the federal Constitution and simple fairness dictate that public resources be used to compensate the landowners. This extreme loss of use and enjoyment rarely is the case, however.

3. What is the solution for long term, stable funding for our parks and greenspaces?

We could do more with regulatory approaches, as mentioned.

Parks system development charges are overrated as a parks funding mechanism, at least as we currently use that tool. They cannot be used to address parks deficiencies in built-out areas. They cannot be used for operations and maintenance expenses. They generate only a small percentage--typically only 20 to 30 percent--of the full cost of providing the parks they are intended to finance. And development interests often exert political and legal pressures against jurisdictions who try to increase parks SDC rates or spread them onto commercial development.

There is no substitute for using tax dollars *per se*, be they generated by property taxes, construction excise taxes, or other mechanisms, for meeting the funding requirements of the parks we need in order for us to have "green" communities. This is a matter of political leadership--leadership on the need for parks and leadership on the need for equitable systems of public finance so that citizens will be more inclined to support taxation for things like parks. But it also is a matter of we citizens taking responsibility for paying the freight.

Tom Brokaw wrote his book about *The Greatest Generation* that fought and won World War II. One of the things that generation did after that War was pay for the schools, libraries, highways, post offices, and--yes--parks needed for the society's well-being. So it has been at other key times in our history. Now, however, we read about our schools cutting back the number of days of instruction, our historic buildings being torn down because there is no money for preservation, our Outdoor School being scaled back if not shut down, and our park levies commonly being defeated in the region. There is a recession, to be sure, and the economy in Oregon is in as much trouble as anywhere in this country, but these phenomena here in Oregon predate this recession. What will our generation's legacy be? Right now it isn't encouraging.

4. It's generally recognized that parks and urban natural resources contribute to the region's livability and economic vitality. Considering these benefits, what role should local government, business and private landowners play in the protection and management of these resources?

Let's not forget the role of Metro as our regional government in this equation. Metro should take a leadership role in establishing standards or guidelines for parks and what it otherwise means to be "green", and for monitoring and reporting how we are doing as a region in those regards. Metro also should take a leadership role in working with local jurisdictions to develop approaches to parks funding and other mechanisms required to get the job done.

Government, business, and landowners all benefit from parks. All should contribute to acquiring, developing, maintaining, and operating them. The challenge is difficult enough that multiple mechanisms should be used to achieve the outcomes we need and want--regulatory dedication of land and money in lieu thereof, system development charges, general revenues, special levies, bond measures, etc. A balance should be sought and achieved in terms of growth and redevelopment paying its fair share, on the one hand, and existing development paying its fair share, on the other. Both benefit from new and enhanced parks.

Parks virtually always have been at the bottom of the priority list when competing with police, fire, and economic development. That has to change if we are to maintain the quality of life in our communities. We need to take advantage of every opportunity we have and employ every mechanism we can think of to overcome this inertia. We need to keep making the case to each other and to our community and political leaders that investing in "green" is as important a thing as we can do for ourselves and future generations. If we don't succeed at this critical task, the public's support for planning and growth management in general, Metro's 2040 Growth Concept more specifically, and even Metro itself will increasingly be in jeopardy.

TABLE 1
ALLOCATION OF BUILDABLE LAND NEEDED TO BE
SET ASIDE IN PORTLAND REGION TO MAINTAIN
"STATUS QUO" OF PARKS AND RELATED LANDS AND
FACILITIES, 1998-2017, BY JURISDICTION, BASED ON
ALLOCATION OF HOUSING TARGETS IN UGMFP

Jurisdiction	Absolute Number of Housing Units	Percent of Total	Proportionate Share of Acres for New Parks and Related Lands and Facilities
Beaverton	15,021	6.2%	228
Cornelius	1,019	0.4%	15
Durham	262	0.1%	4
Fairview	2,921	1.2%	44
Forest Grove	2,873	1.2%	44
Gladstone	600	0.2%	9
Gresham	16,817	6.9%	255
Happy Valley	2,030	0.8%	31
Hillsboro	14,812	6.1%	225
Johnson City	168	0.1%	3
King City	182	0.1%	3
Lake Oswego	3,353	1.4%	51
Maywood Park	27	0.0%	1
Milwaukie	3,514	1.4%	53
Oregon City	6,157	2.5%	93
Portland	70,704	29.0%	1,072
River Grove	(15)	0.0%	0
Sherwood	5,010	2.1%	76
Tigard	6,073	2.5%	92
Troutdale	3,789	1.6%	57
Tualatin	3,635	1.5%	55
West Linn	2,577	1.1%	39
Wilsonville	4,425	1.8%	67
Wood Village	423	0.2%	6
Clackamas County	19,530	8.0%	296
Multnomah County	3,089	1.3%	47
Washington County	54,999	22.5%	834
TOTALS	243,993	100.0%	3,700

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CAN WE KEEP IT GREEN? PANEL SESSION

Written Materials of Panelist

BILL MOSHOFSKY

I wish to address two basic underlying concerns that need to be considered as the Metro region deals with the "Keeping it Green" issue.

First, regulatory power is being used as a substitute for purchasing "greenspaces."

This is very unfair, and Metro, cities and counties run the risk of incurring liability to pay compensation for "regulatory takings" under Measure 7. A decision by the Oregon Supreme Court on its validity is expected soon. Regardless of the outcome, we believe some kind of compensation will be required for regulatory takings. Also, because of the unfairness of the regulatory approach, there is a growing backlash, as the City of Portland is experiencing with its latest "stream scheme."

Let me hasten to say we recognize government can impose regulations needed to prevent pollution of streams, without any compensation to the owner. Our concerns relate to greenspace regulations aimed at providing public benefits such as wildlife habitat on land, stream buffer areas, tree preservation, open spaces and other esthetic resources.

From a landowner's point of view, there is little difference between the government taking his land outright for greenspaces and restricting use of his land to preserve greenspaces. Land has no value if you can't use it. Unfortunately, so far, courts have allowed government to use regulations to take away the use of land without compensation, so long as the owner can use any part of his land.

From a legal standpoint, environmental overlay restrictions to provide greenspaces are actually "conservation easements" which are legal interests in land. (See ORS 271.715-725). If the public wants to impose conservation easements on private land, the public should pay for them.

I also want to make the point that "public ownership over wildlife," mentioned in question 2, does not give the public the right to force a landowner to provide habitat for them. If the public wants wildlife habitat on private land, the public should pay for it.

In the same vein, we question the fairness and propriety of imposing restrictions on trees and other green growth on private land to provide public benefits. Landowners should be able to control their own landscape.

Also to be considered, are the problems with the overlay restriction approach. For example, some stream buffer area regulations create "no-man lands" -- the owner can't disturb the land, and government can't do anything with it. These conservation easements should be acquired by purchase, donation or condemnation, not by regulatory action. Government should use incentives and educational efforts to achieve such greenspace objectives.

The second concern is that Metro's high density policies are working at cross purposes to "greenspace" objectives

High density policies (1) take away back yard "greenspace," (2) they increase the need for public parks and greenspaces, (3) they drive up the cost of acquiring them, and (4) they use up land that could be used for parks and greenspaces.

Most people in urban areas prefer "greenspace" in their own yard, and they generally want urban parks or greenspace to be nearby -- not outside the urban growth boundary where much of the greenspace bond money is being spent.

High density policies are forcing people to live on lots with little yard space. More small lots and apartments increase the need for nearby parks. Density-driven infilling provides pressure to develop remaining open spaces.

We urge voters in Metro to support Measure 26-11, the Neighborhood Preservation Act to be voted on in May. It prevents Metro from mandating high density, and requires mailed notice to neighborhoods and impact studies if local governments want to increase densities.

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SARA VICKERMAN

1. What minimum protection standards and/or incentives would you employ to adequately protect natural resources in the Portland metropolitan region? Does the Oregon land use system alone provide adequate protection for fish and wildlife or the habitat which supports these resources?

This question raises so many more questions. What is adequate protection? Who decides? What natural resources are we concerned about? What level of natural resource protection is appropriate in developed areas relative to undeveloped areas? How about restoration?

In my view, it is important to address this question in a broader context in which the entire state or at a minimum the Willamette Basin is evaluated relative to conservation values and opportunities. Large connected blocks of land are necessary to maintain functioning ecosystems and viable populations of all native species. Few large connected blocks are available in the metropolitan area, land values are high, and competition for land is intense. Given that the opportunities for conservation in urban areas are limited, I would focus on maintaining hydrologic function where it still exists, addressing endangered species needs, buffering waterways to provide a broad range of ecological and aesthetic values, and protecting landscape linkages to avoid isolating species that may need to migrate through developed areas to get to less disturbed places. In most cases, these values can be addressed through regulation without imposing onerous burdens on landowners. For example, we can avoid building in floodplains and minimize disturbance in riparian areas.

Incentives for landowners should be one option among many for accomplishing ecological goals on private lands. When special resources that are not protected through regulations exist on private lands, the public has some responsibility for compensating landowners for lost value and opportunity. The key here is strategic investment. Incentive payments should not be used to help people comply with the law but to help them meet a higher standard. Incentive payments should be based on the relative importance of the resource protected. For example, Washington State has a public benefits rating system in which property tax rates are calculated based on the environmental values provided by landowners. Tax burden is shifted to those not providing the environmental values. Incentives should supplement, not replace easements and acquisition as conservation tools.

Metro has done an extraordinary job mapping natural resources and acquiring lands using voter approved bond funds. The next challenge will be to expand the tool kit to include more conservation easements, landowner contracts, tiered property taxes, and more technical assistance for landowners. A revolving conservation fund is needed to cover a broader range of activities than capital investment.

Oregon's land use system does not provide adequate protection of fish and wildlife habitat because it has placed a stronger emphasis on containing sprawl and maintaining working farms

and forests. Goal 5 has not received the same level of attention and support. (See *No Place for Nature: The Limits of Oregon's Land Use System in Protecting Fish and Wildlife in the Willamette Valley*, Defenders of Wildlife 2001.)

2. How would you balance the rights of private landowners to use their land with the public's right as an owner of Oregon's air, water, fish and wildlife to protect these resources?

Private landowners should be able to use their land as they see fit as long their activities don't damage public resources. However, the small actions of many people accumulate to cause the death of resources by a thousand cuts. Oregon needs a more coherent approach to environmental management in which our collective actions do not cause unacceptable environmental damage, including habitat conversion that threatens wildlife and ecological processes. Regulations will increase with population as cumulative impacts become greater.

3. What is the solution for long term stable funding for parks and greenspaces?

An important issue relative to funding natural resource conservation in Oregon is the scale at which the funds are collected and expended. In order to facilitate strategic investment in the resources with the highest ecological potential, funds should be collected at the state level and distributed to both rural and urban areas for resource protection. The best mechanism would be a percentage of a state sales tax, statewide real-estate transfer tax, property tax, or gas tax surcharge.

4. Its generally recognized that parks and urban natural resources contribute to the region's livability and economic vitality. Considering these benefits, what role should local government, business and private landowners play in the protection and management of these resources?

Local government, businesses and landowners should make sure that new development does not take place in sensitive environmental areas, and that local land use decisions are consistent with a broader regional conservation strategy. More emphasis should be placed on minimizing the adverse effects of soil erosion, excessive use of chemicals, and control of invasive species. A greater investment should be made in educating people about the importance and proper care of natural resources, and more opportunities provided for direct citizen involvement in monitoring, restoration, and other environmental programs.

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Written Materials of Panelist

MIKE HOUCK

1. What minimum protection standards and/or incentives would you employ to adequately protect natural resources in the Portland metropolitan region? Does the Oregon land use system alone provide adequate protection for fish and wildlife or the habitat which supports these resources?

That Oregon's land use program has protected agricultural and forest commodity lands and contained urban sprawl IS indisputable. The region's population increased by 31% and urban expansion by only 3% from 1990 to 2000. However, natural resources have not been adequately protected inside or outside our cities. Although the Defenders of Wildlife's No Place for Nature correctly points out weaknesses in the state wide planning program, those problems can be overcome with increased political will; additional resources (fiscal, technical, and information sharing); and regional planning. Antipathy toward urban natural resource protection is to blame, not the land use program. Even some Smart Growth advocates have been culpable. Protecting urban natural resources, they have argued, means expanding the UGB. They have seen the UGB as an "end", rather than an important planning tool. Fortunately that view has changed, gradually but dramatically, in the past ten years. One reason for this shift is that regional planning has provided the broader context in which natural resource protection and restoration, parks and trails, and improved water quality are seen as essential elements of the Smart Growth equation.

Metro's 1996 Greenspaces Resolution established as regional policy that providing adequate parks as well as protection and restoration of natural areas is an acceptable rationale for a UGB expansion and is consistent with the region's growth management objectives---so long as the remaining developable land is used more efficiently as well. Taking a chapter from Ian McHarg's Design With Nature, Metro removed over 16,000 acres of sensitive riparian areas, wetlands, floodplains, and steep slopes from the region's buildable lands inventory, thus setting the stage for increased protection and restoration of these areas through new regulatory programs. Metro, the city of Portland, and other progressive local governments are now working to protect additional acreage for fish and wildlife habitat and to respond to requirements of the Clean Water and Endangered Species Acts.

A new environmental ethic, tied to the national Smart Growth debate, is emerging in our region and across the United States. Thoreau's aphorism, "In wildness is the preservation of the world" has driven the conservation agenda for a century. The emphasis has been on the protection of the pristine natural systems. There has, unfortunately, been a concomitant tendency for some to demonize the city as they build a constituency for rural land protection. They see cities as antithetical to nature. Ironically, their anti-urban, anti-regional planning attitudes undermine efforts to protect rural wild lands.

A new environmental mantra should be, "In livable cities is preservation of the wild." Creating livable, compact urban communities will, in turn, protect the rural landscape from urban sprawl.

The quid pro quo, however, must be vastly increased protection and, where necessary, restoration of the urban greeninfrastructure of healthy streams, fish and wildlife habitat, parks, recreational trails, and a healthy urban forest canopy where the 80% of our population lives---in our cities.

The planning program is an essential tool to achieving that goal, but alone is insufficient. We also need to employ federal Endangered Species, Clean Water, and Clean Air Acts, combined with a regional planning program with the legal teeth to create a comprehensive park and recreational trail system, and achieve the optimum, not minimum, level of natural resource protection and restoration. The “minimum” amount of land needed is that which protects and restores the functions and multiple social, ecological, and economic values that riparian areas, upland forests, wetlands, and the urban forest canopy provide by virtue of their ecosystem services and natural capital. We must reverse the “rush to the minimum” that has dominated our planning efforts for the past twenty years. We need to protect beyond the “minimum” of our current state of knowledge; we need to create riparian and upland forest zones large enough to provide ecologically meaningful “interior” habitat to maintain species diversity, and to provide a long-term “buffer” to the urban matrix in which they exist.

2. How would you balance the rights of private landowners to use their land with the public’s right as an owner of Oregon’s air, water, fish and wildlife to protect these resources?

Balancing private and public rights must include a range of tools, including targeted acquisition, increased tax abatements, design and development code incentives, and new and consistently enforced regulatory programs. The trend among some, including a few conservationists, to eschew new regulatory tools is naïve and flies in the face of reality. Without enforcement of existing regulations, and much-needed new regulations, there will be no resource protection or restoration. Yes, we do need to avoid constitutional takings in the process through TDRs, Density Transfers, and where appropriate, very limited exceptions to environmental regulations. The public supports regulation of private property to protect fish and wildlife habitat, water quality, natural resources, and neighborhood quality of life. Yes, it’s politically difficult and a protracted public process is necessary to develop new regulations. That does not obviate the need. Measure 7 was not a repudiation of the land use system or regulatory programs. Landowners do not have the “right” to pollute public waters, take public fish and wildlife, or foul the public air. Neither do they have a “right” to maximize their profits on land speculation.

3. What is the solution for long term stable funding for parks and greenspaces?

We must elevate parks and Greenspaces politically and publicly as “essential” services. We need to tie park and Greenspace acquisition, restoration, and management to those activities that degrade them: a “drip tax” on oil; taxing the transportation system in ways that recognize the tremendous negative impact roads have on water quality, quantity and habitat degradation; SDC’s on both residential and commercial/industrial development. We will continue to rely on property AND other taxes to acquire parks and Greenspaces. We should use heretofore non-traditional revenue sources such as the regional solid waste excise tax to maintain, open, and buy new Greenspaces and to complete an interconnected regional trail system. We must also better educate the public regarding what has been a wildly successful acquisition program. Metro has acquired over 7,500 acres with its share of the \$135.6 million 1995 bond measure. The original target was 6,000 acres. Local park providers have achieved similar results with limited resources. If the public better understood how efficient these programs have been they would support future bond measures.

4. Its generally recognized that parks and urban natural resources contribute to the region’s livability and economic vitality. Considering these benefits, what role should local government, business and private landowners play in the protection and management of these resources?

Progressive local leaders, businesses, and private landowners have begun to recognize that a healthy environment means a healthy economy. They all have an important role in communicating that reality to their peers. But you need to add to your list of important goals and partners. First, restoration is an additional need. Without restoration, particularly OF riparian zones, and reduction of stormwater impacts from impervious surfaces, we will not recover salmonids and avoid future listings of aquatic and terrestrial species. We’ll also fail to create a sustainable and livable urban environment. Second, you must include Metro and regional government. Without a regional perspective and a legally empowered regional government there will be no viable system of parks and natural areas. Natural resource agencies (NMFS, EPA, ODFW, and DEQ,) all have expertise and staff. Likewise, PSU, OSU, and others are invaluable resource to learning more about the evolving urban ecosystem. These institutions and others are creating a collaborative effort to prioritize research needs in the Portland metropolitan region. Citizens, grassroots citizen groups, and non-profit organizations are also critical. The Three Rivers Land Conservancy, The Wetlands Conservancy, and Columbia Land Trust are developing tools for park and Greenspace acquisition. The Coalition For A Livable Future, comprising 60 housing, transit, conservation, religious, and social justice groups has contributed to the regional planning debate since its inception in 1994. PSU, Audubon Society of Portland, Portland Parks, Urban Greenspaces Institute, 40-Mile Loop Land Trust, ASLA, Seattle’s Olmsted Parks, and others will celebrate Olmsted 2003 to refocus our attention on Olmsted’s legacy for park and natural resource planning and build support for future parks and Greenspaces initiatives. THERE will be a yearlong neighborhood celebration, PSU Olmsted course, and a two-day Olmsted Symposium to be held in April, 2003 in conjunction with Seattle’s national Olmsted conference.

