

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING THE METRO) ORDINANCE NO. 83-160
URBAN GROWTH BOUNDARY IN CLACKAMAS)
COUNTY FOR CONTESTED CASE NO. 82-1)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The District Urban Growth Boundary (UGB), as adopted by Ordinance No. 79-77, is hereby amended as indicated in Exhibit "A" of this Ordinance which is incorporated by this reference.

Section 2. In support of the amendment in Section 1 of this Ordinance, the Council hereby adopts Findings, Conclusions and Recommendations in Exhibit "B" of this Ordinance which is incorporated by this reference.

Section 3. This Ordinance is a Final Order in Contested Case No. 82-1.

Section 4. Parties to Contested Case No. 82-1 may appeal this Ordinance under 1979 Or. Laws, ch. 772 as amended.

ADOPTED by the Council of the Metropolitan Service District
this 8th day of September, 1983.



Presiding Officer

ATTEST:



Clerk of the Council

MB/gl
9222B/353

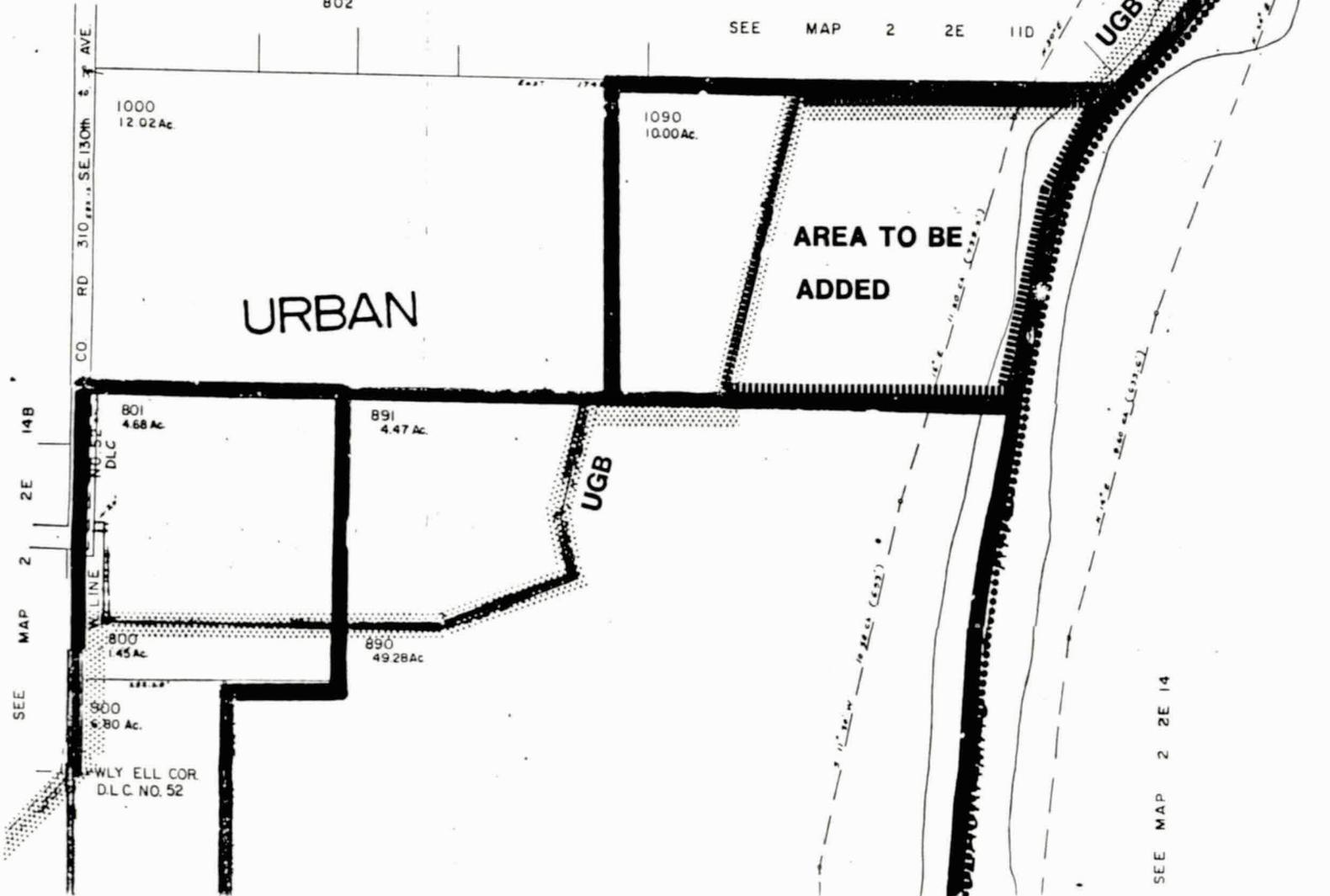
NE 1/4 SEC. 14 T.2S. R.2E. W.M.
CLACKAMAS COUNTY

1" = 200'

D.L.C.
ISAAC CAPPS NO. 52

- CANCELLED NO.
- 100
 - 200
 - 300
 - 400
 - 500
 - 600
 - 700
 - 802

SEE MAP 2 2E 11D



SEE MAP 2 2E 14

BEFORE THE METROPOLITAN SERVICE DISTRICT

In the Matter of a Petition)
of Mutual Materials, Inc.)
for a Locational Adjustment)
to the Portland Metropolitan)
Area Urban Growth Boundary.) FINDINGS, CONCLUSIONS
) AND RECOMMENDATIONS OF
) HEARINGS OFFICER

I

NATURE OF THE CASE

This is an application by Mutual Materials, Inc. for a locational adjustment of the Portland Metropolitan Area Urban Growth Boundary (hereinafter "UGB") to include within the UGB approximately six acres of land owned by Mr. Frank Spangler. The property to be added is located south of Highway 212, east of S. E. 130th, adjacent to the Clackamas Industrial Area and comprises the eastern portion of Tax Lot 1090 (Township 2 South R2E, Section 14A). Tax Lot 1090 is split by the existing UGB and the western portion lies within the existing urban area (see map attached as Appendix C).

This application is submitted pursuant to Metro Ordinance Nos. 81-105 and 82-133 which provide procedures for minor adjustments to the Urban Growth Boundary. On June 21, 1983, a hearing was held on the application before the undersigned hearings officer in the Metropolitan Service District Council Hearing Room. Notice of the June 21 hearing was published and mailed to adjoining property owners and all cities and counties within the Metropolitan Service District.

Following the June 21 hearing, the record was held open until June 30 for the receipt of additional written testimony. The applicant submitted revised proposed findings to the undersigned Hearings Officer on June 29, 1983.

The record in this matter consists of the tape recording of the June 21, 1983 hearing, the documents in support of the application submitted prior to and during the June 21, 1983 hearing, the Metropolitan Service District Staff Report, and the Notice and Certificates of Mailing for Contested Case No. 82-1.

II

FINDINGS OF FACT

The only persons appearing at the June 21, 1983 hearings on this matter were Mr. Frank Spangler (owner), Mr. Timothy Ramis (attorney for the applicant) and Mr. David Chase who owns the adjoining property to the north. There was no testimony in opposition to the proposed UGB adjustment. Following the close of the hearing, the applicant submitted revised proposed findings. (Attached as Appendix A.) The revised proposed findings submitted June 29 appear to be a revision of the findings adopted by the Clackamas County Board of Commissioners following their hearing on this matter on November 15, 1982. There is nothing to show that the revised findings were adopted by the Clackamas County Board of Commissioners and the first paragraph should probably have been omitted, though its inclusion does not affect the substantive validity of the findings.

Prior to the June 21, 1983 hearing, the undersigned hearings officer visited the site. Based on my observation of the site and the evidence and testimony submitted at the June 21, 1983 hearing, I believe that the revised proposed findings submitted by the applicant on June 29 fairly and accurately reflect the actual facts and I adopt those findings as my own. In addition, I found the staff report prepared by the Clackamas County Department of Environmental Services helpful in considering this matter and I adopt that report as part of my findings. The findings and the staff report are attached hereto as Appendicies A and B respectively and are hereby incorporated as part of my recommendation to the Council.

III

STANDARDS FOR APPROVAL

The legal standards applicable to this matter are contained in Metro Ordinance 81-105. Section 5 of Ordinance 81-105 requires that a local position be adopted on the petition prior to consideration by the District. Following a hearing on November 15, 1982, the Clackamas County Board of Commissioners advised the District that it supported the application and, as noted above, adopted findings to support approval. If this petition is approved, county comprehensive plan and zone changes will be required to permit the residential uses proposed by the applicant.

Metro Ordinance 81-105 Sections 8(a)(1) through (5) and (8)(d) (2) and (3) are set forth below:

- 8(a)(1) Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion.
- 8(a)(2) Maximum efficiency of land uses. Considerations shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.
- 8(a)(3) Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.
- 8(a)(4) Retention of agricultural land. When a petition includes land with Class I - IV Soils that is not irrevocably committed to non-farm use, the petition shall not be approved unless the existing location of the UGB is found to have severe negative impacts on service or land-use efficiencies in the adjacent urban area and it is found to be impractical to ameliorate those negative impacts except by means of the particular adjustment requested.
- 8(a)(5) Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

- 8(d)(2) For all other additions, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a).
- 8(d)(3) Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. Except as provided in subsection (4) of this subsection, the larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section.

A. Orderly and Economic Provision of Public Facilities and Services.

The Clackamas Water District has advised that water service must be provided from the existing main on 130th Avenue at the applicant's expense. There is adequate existing water supply capacity. Once in place, this connecting line would allow future connection with existing mains at the end of 135th Avenue which would result in a loop which would improve the system as a whole (October 14, 1982 letter from Ric Cotting).

Sewerage service would be provided, at the applicant's expense, by a new eight inch line from the property to 130th Avenue. The sewerage facilities serving this area were designed with capacity to serve this parcel. 130th Avenue and Capps Road have recently been improved and are designed to serve the Clackamas Industrial Area to the west. Both roads are adequate to provide access to the subject

parcel. Access to the parcel from 130th would be provided by the applicant. There is Tri-Met bus service available at Route 212 and 135th Street with 20 outbound and 18 inbound trips daily. Storm drainage would be directed to the adjacent Clackamas River through natural drainageways and would have no affect on adjoining storm drainage facilities. (December 17, 1982 letter from Walt Tschudy; November 18, 1982 letter from Tim Ramis.)

Fire protection service is provided to the property by the Clackamas Fire Protection District. There is no indication that the proposal will require added fire protection facilities. (November 15, 1982 letter from Conrad Christiansen.) The North Clackamas School District 12 responded that the school enrollment in this area has been declining and there is adequate school space to accommodate residential development of the property. (November 18, 1982 letter from David F. Church.)

On balance, I conclude that the impact of the development that would be permitted by this adjustment on adjoining public facilities and services will be slight and will be positive. There will be improvement to the water system by allowing future construction of a loop between 130th and 135th. This is the only impact of any significance. There is also a slight improvement to the sewerage system and the schools in that development of this site will result in use of presently under utilized facilities.

B. Maximum Efficiency of Land Uses.

The property is presently undeveloped. This application is based in large part on the applicant's contention that the parcel is isolated topographically from the adjoining parcels to the north, west and south and by the Clackamas River on the east. Development for agricultural uses in connection with the parcel to the south is impractical due to a lack of feasible access by farm equipment from the south (see discussion below and Appendix A pp. 1-3). The findings attached as Appendix A contain a lengthy discussion of the need for additional urban land to provide for housing in the Clackamas County subregion. While "need" is not a direct consideration for approval under Ordinances 81-105 and 82-133, the need to provide proximate housing for large employment centers such as the Clackamas Industrial Area does relate to efficiency of land uses.

To the extent that residential development of this parcel will provide housing adjacent to a significant employment center, it will facilitate development on adjoining urban lands. The topography of the parcel will mitigate or eliminate any land use conflicts that might be expected from residential use of the property. For the reasons stated in the findings, residential use of the property is likely to result in fewer land use conflicts than would attempts to use the property for agricultural purposes.

C. Environmental, Energy, Economic and Social Consequences.

This application will require subsequent planning, zoning and development approvals from Clackamas County prior to residential development of the property. The existing physical constraints posed by the ravine along the north and west, the slopes to the south and the steep drop off to the Clackamas River to the east are all capable of being properly addressed by Clackamas County. These constraints are not unique and should be readily resolvable by application of local site planning and development regulations. The environmental consequences of development of this property should be minimal.

The energy, economic and social consequences will be generally positive. The desirability, from a land use perspective, of constructing housing in proximity to employment centers has been discussed above. Such proximity is likely to generate positive energy, economic and social consequences. The impact on regional transit corridor development will be insignificant.

D. Retention of Agricultural Land; Compatibility of Proposed Urban Uses with Nearby Agricultural Activities.

The subject property contains Classes II - IV Soils and is currently planned and zoned for agricultural use. The uncontroverted evidence submitted at the June 21 hearing was that this property is not farmed and has not

been farmed in the past. Fifty to sixty year old trees are located on the property. While property to the south is used for agricultural purposes, the subject parcel is located at a higher elevation and the elevation differential makes access to the portion of the site with agricultural quality soils impractical.

My view of the site suggests that the difficulty of negotiating the slope to the south with agricultural equipment is probably somewhat overstated by the applicant. However, the difference in elevation clearly presents severe access difficulties and there is only a portion of the subject six acres parcel with agricultural quality soils. Based on these two facts, while the issue is a close one, I believe that the applicant has demonstrated that the parcel is irrevocably committed to nonfarm use. The Council should note that Ordinance 81-105 Section 2(i) contains a definition of the term "irrevocably committed to nonfarm use". I read that definition as one that is descriptive rather than limiting. Thus, while the Clackamas County plan has been acknowledged, and a Goal 3 exception was not taken on this parcel and acknowledged by LCDC, I do not believe the definition in Ordinance 81-105 was intended to preclude the applicant from now showing that it is not possible to preserve the parcel for farm use.

The question of compatibility of the proposed urban uses with adjoining agricultural uses to the east and

south is also a close one. The uses are effectively separated by the Clackamas River from the agricultural uses to the east. The agricultural lands to the south are separated by the difference in elevation described above. This elevation differential will not completely isolate the proposed uses from the adjoining agricultural uses. It does, however, provide a sufficient buffer to largely prevent any adverse impacts due to incompatibility of uses. The justification for the amendment described above (taken as a whole) clearly outweighs the potential adverse impacts of any incompatibility.

E. Improvement of the UGB and Inclusion of Similarly Situated Contiguous Land.

My view of the property and the evidence submitted at the hearing strongly suggest that this property would be included within the UGB if the boundary being established today. There is no reason why the property should be left in its natural state and its use for agricultural purposes is restricted by its small size and the slopes, ravines and natural barriers that separate it from adjoining parcels. Inclusion of the property within the UGB would allow its development for urban uses in conjunction with the adjoining urban uses to the west and north. The property is presently surrounded on one side by the Clackamas River, on 2 sides by urban land and on the south by agricultural land from which it is topographically isolated. The proposed adjustment to the UGB to follow the natural boundaries formed by the Clackamas River and the sloping southern property line will result in a superior UGB.

The property to the south is dissimilar from the subject property since it is not separated from adjoining agricultural lands by an elevation differential. The property to the south is currently being farmed and presumably will continue to be farmed unless a major UGB amendment can be justified based on need for additional urban land.

IV

CONCLUSIONS AND RECOMMENDATIONS

Based on all of the above, I conclude that the applicable legal standards are satisfied by the proposed locational adjustment. I recommend that the UGB be adjusted to include the eastern portion of Tax Lot 1090 that is now located outside the UGB.

DATED this 15th day of July, 1983.



Michael A. Holstun
Hearings Officer

ALLIED EQUITIES LOCATIONAL ADJUSTMENT:
PROPOSED FINDINGS REGARDING
MSD LOCATIONAL ADJUSTMENTS ORDINANCE

In addition to the specific factual findings in the staff report, the Board of Commissioners adopts the following findings as a basis for urging the Metropolitan Service District to amend the Urban Growth Boundary as proposed in this application. We find that, under the criteria of Metro's Locational Adjustments Ordinance, all of this property should be included within the UGB rather than splitting a single ownership into urban and nonurban land.

1. Orderly and Economic Provision of Public Facilities and Services.

The proposed locational adjustment will bring the boundaries of the UGB into alignment with the existing boundaries of the Clackamas Water District and Clackamas County Service District No. 1 which provides sewer service. In its current configuration, the map of the various district boundaries shows that the entirety of the 10-acre Tax Lot 1090 is within the service districts, but that only four acres of it is within the UGB. In fact, the service district boundaries follow the property lines of Tax Lot 1090 on the east and south. The UGB should correspond to these boundaries.

The letters from the various service providers which are in the record indicate that the property can be efficiently serviced. The testimony has also indicated that no improvements will be necessary in order to accommodate storm water runoff.

The proposed locational adjustment will result in a net improvement in the efficiency of public facilities and services, particularly delivery of water. Provision of a line through the

property will allow the Clackamas Water District to create a loop system in this area, thus increasing the efficiency of the overall system. By extending a main to the east portion of Tax Lot 1090, it will be possible to connect two mains at the end of 135th Avenue. It is the opinion of the District that this connection will improve service for the whole area.

The inclusion of the property as urban land will also contribute to the orderly and economic provision of sewer service because the system and lines in this area are sized in anticipation of servicing the parcel.

2. Maximum Efficiency of Land Uses.

The current boundary leaves the subject parcel as an isolated piece of land cut off from agricultural land to the south by topography and bounded on the west by industrial use, on the north by residential land, and on the east by a steep 60-foot embankment at the edge of the Clackamas River. With its current resource designation, it is isolated and has no apparent use.

Inclusion of the land within the UGB will relate it topographically to the residential land on the north side. The property is a bench which is at a much higher level than the agricultural land to the south. It is separated from that land by a series of benches and, therefore, the current designation is an inefficient use of land because it is physically impossible to manage the property as a farming unit in conjunction with agricultural land to the south.

The proposed use of the property for residential development will improve the efficiency of land uses because it will reduce potential conflict between resource uses of the property and

residential and industrial activities on the surrounding properties. The residential land to the north would create obvious conflicts in attempting to obtain commercial productivity on an isolated 6-acre parcel of resource land. The impacts of trespass and vandalism, coupled with the incompatibility of spraying and residential use would create conflicts in violation of Goals 14 and 3. Goal 14 calls for an orderly transition between rural and urban use. The guidelines to Goal 3 call for buffering or transitional areas of open space between urban development and active agricultural use. These requirements are not met by the present configuration of the UGB. They would, however, be accomplished by the proposed amendment of the boundary because the difference in elevation between the subject property and the agricultural land to the south would provide the required buffer.

The limited access to the property creates another inherent conflict in using the land for agricultural activities. The parcel cannot be directly reached from the land to the south, which is currently in agricultural use, because of the steepness of the terrain. Farm vehicles and equipment would have to be brought to the property via 135th. This street is currently experiencing great increases in traffic flow because of the rapid development of surrounding industrial lands. It is also impacted by traffic going to and from the residential areas to the north. Transport of slow-moving agricultural vehicles would pose an increasing danger to traffic safety in this area.

The testimony establishes that the proposal will facilitate needed development on adjacent existing urban land in two ways. First, the development of the property will permit looping of

the water system in the area as indicated in the letter from Ric Cushing. The increase in efficiency of the overall water system for the area will be a benefit for the development of all surrounding urban lands.

Second, this land will provide needed developable housing land within close proximity to a rapidly developing industrial center. Clackamas County's need for residential land is discussed in more detail elsewhere in these findings; however, it is important to note here that housing will be needed in close proximity to new job sources. Within the last few years, approximately 1,000 new jobs have been created in the immediate vicinity of the subject parcel. Industrially zoned but undeveloped land in the area is experiencing rapid urbanization. The location of medium density housing in the area will clearly facilitate continued development on nearby industrial lands.

The amendment, therefore, maximizes the efficiency of land uses and better carries out the requirements of Goals 3 and 14 than the present boundary. This conclusion is confirmed by the undisputed testimony of Mr. Spangler and Mr. Chase. They agree that, due to the topography, elevation, uses in the area and the traffic system, the subject parcel relates more logically to the residential lands to the north rather than to the agricultural lands to the south or the industrial lands to the west.

3. Environmental, Energy, Economic and Social Consequences.

Development of this property will not have any adverse environmental, energy, economic or social consequences. The property is amply served by the fire and school districts. Impact on regional transit corridor development will be diminimous.

Resource lands are buffered from the subject property by a difference in elevation and by the Clackamas River and, therefore, will not be affected.

The most important long-term implication of amendments such as this one is the impact on the workability of the UGB in Clackamas County. It has long been recognized by various planning agencies that Clackamas County has the least amount of urbanizable land of any of the three counties in the metropolitan area. Clackamas County has a reasonable concern that the result of the tight boundary in Clackamas County will be a diversion of development to other areas of the region. A policy of growth diversion from Clackamas County to Washington County was considered and rejected by Metro because of the risk of a Goal 10 violation. Clackamas County is concerned that, while an active policy of growth diversion was rejected, this unwise policy could still spring into effect through nonaction on Clackamas County's UGB. If other jurisdictions have ample urbanizable land and Clackamas County is left in short supply, the price of housing in the county may be forced upward and the goal of providing affordable housing for Clackamas County residents may be jeopardized.

The concern over this issue has a long history. The Regional Urban Growth Boundary, adopted by CRAG in November, 1978 and by Metro in November, 1979, was designed to delineate the area in which urban growth would occur over the next 20 years. LCDC acknowledged Metro's UGB. The acknowledged boundary has been the subject of a legal challenge by those who maintain that it is too large to satisfy the goals. There is also an attempt being made to challenge the boundary as being too restrictive, particularly in Clackamas County.

In April of 1980, Metro approved an amendment to the UGB in the Clackamas County area, stating that "Metro has long recognized the need for a boundary adjustment in Clackamas County." The findings for this amendment described its history and noted that the existing boundary did not provide for sufficient urban land in the county. The findings also cite Resolution No. 79-1581, adopted by the Clackamas County Board of Commissioners on August 20, 1979, which expresses support for the Regional UGB, based upon the condition that the boundary for Clackamas County would be reevaluated in response to a proposed amendment. The Metro staff memorandums on the subject of UGB amendments continue to acknowledge the problem of the availability of urban land in Clackamas County. For example, the July 3, 1980 memorandum from the Executive Officer to the Regional Planning Committee states:

"Because proportionately more vacant urban [land] is located in Washington County than in Clackamas or Multnomah Counties, the possibility of land shortages in geographic sub-markets is a real one--particularly Clackamas County... ."

During acknowledgment hearings on the UGB, LCDC heard testimony from a number of homebuilders and other interested parties on the need for more urban land in Clackamas County. The Commission directed Metro to give early attention to amendment requests for the county. This was yet another aspect of the continuing recognition of potential land shortages in Clackamas County.

As a potential solution to this problem, the Metro staff has suggested at some points that consideration should be given to the possibility of diverting Clackamas County growth into Washington County. This approach has not met with favorable

reaction. Informally, LCDC staff has indicated that it may not be prudent to attempt to shift growth to an area which may not immediately be able to accommodate it, given the status of its land use and facilities planning. In April of 1980, the Metro Council rejected this approach more specifically in its findings in support of a UGB amendment in Clackamas County. Metro found that, in order to force growth in this direction, it would need to place such stringent controls on Clackamas County that the cost of housing in that jurisdiction would rise dramatically, thus risking violation of Goal 10. The Council also found that the more likely result of such restrictions would be an increase in development on rural lands rather than diversion to Washington County. More specifically, Metro found:

"The alternative to amending the Boundary in Clackamas County would be to attempt to divert projected growth to areas of Washington County where there may be sufficient land to accommodate some or all of Clackamas County's 'spill-over.'

"The housing market in the Metro region is composed of a number of geographic and other types of sub-markets. The population projected to reside in Clackamas County can be defined as individuals seeking housing in the Clackamas County sub-market. If, as projected, the demand in this sub-market exceeds the supply of housing, then housing prices can be expected to rise. A diversion of growth to other areas of the region could be accomplished only by increases in the cost of housing in this sub-market beyond perceived benefits of residing in that sub-area of the region.

"The case of Seaman v. Durham, drawing on the extensive body of literature in the field, established the principle that, while no government can ensure that sufficient low cost housing will be provided to meet identified needs, the requirements of Goal #10 (Housing) are best met when alternative courses of action are evaluated for their potential impacts on housing costs and the alternative with the least impact on housing costs is selected, provided that alternative is consistent with other goals and stated local objectives.

"Clackamas County, which will create a shortage of land sufficient to raise housing costs to the point that sub-market demand will be diverted elsewhere, is not the least cost alternative. This alternative should, therefore, be preferred, only if necessary for Goal #14 compliance, or to achieve other regional objectives. In this case, which involves final resolution of the UGB, rather than a major new change Metro does not believe that such a course of action is necessary.

"There is insufficient information on the operation of the various sub-markets in the region to provide any assurance that growth would be effectively diverted to the urban areas of Washington County. Available data on past growth trends suggests that the diversion of growth to the rural areas of Clackamas County may be a more likely outcome. During the years 1976 to 1979, the proportion of building permits issued outside the Urban Growth Boundary has been substantially higher in Clackamas County than in either Washington or Multnomah Counties. An average of about 22 percent of all building permits in Clackamas County were issued outside the UGB during this period, while the average for the other two counties has been about three percent. This data suggests that rural lots in Clackamas County may be a more attractive alternative to the Clackamas County urban housing market than urban lots in Washington County. A tight boundary in Clackamas County that promotes an increase in urban land prices could make rural lands still more competitive, as the price of an urban lot would approach more closely the price of five, ten and even twenty-acre lots in close proximity to the urban area.

"Clackamas County has already taken steps to dramatically limit opportunities for rural growth. It is impossible to entirely shut down the potential for growth in rural areas, however, no matter how restrictive the zoning. There are approximately 500,000 acres of rural land in Clackamas County. Approximately 200,000 of these are located in the area described as RUPA II, which includes much, but far from all of the land closest to the urban area. In the RUPA II area, there are approximately 5,000 acres of land which, due to soil classification alone, are not subject to the protection of Goals #3 (Agricultural Lands) or #4 (Forest Lands). Additional lands have been identified by the County as unavailable for farm or forest use due to commitment to rural development. In these areas, average parcel sizes generally range from one to five acres in size. Some of these lands will always be available as an alternative for those wishing to reside in Clackamas County who cannot find a homesite at a comparable price in the urban area.

"While it is impossible to be certain that maintaining a tight Boundary in the County will indeed exacerbate rural growth trends, or that expanding the Boundary to accommodate identified needs will mitigate them, the risks of the former course of action relative to promoting a type of 'rural sprawl,' which is antithetical to the intent of Goal #14, should be taken only if the potential benefits of the latter course of action were outweighed by more severe costs relative to goal compliance in other areas.

"The greatest potential cost would be if expansion of the Boundary in Clackamas County were to in some way promote urban sprawl in either Washington or Clackamas County. The three counties, Metro and LCDC have all committed, however, to take such action as necessary to ensure that strong policies governing the conversion of urbanizable land to urban use are adopted and enforced throughout the region. Clackamas County has already adopted policy establishing a 10-acre minimum lot size for all future urban land and policies controlling its conversion. Metro is now in the process of adopting its own ordinance to provide for comparable regulations in Washington County. These regulations should be adequate to ensure that land in both counties is converted in a timely fashion, and with the efficient provision of services.

"Metro finds, therefore, that maintaining a tight Boundary in Clackamas County in order to attempt to divert growth to Washington County is not necessary to control urban sprawl, and that an expansion of the Boundary in Clackamas County to accommodate projected population growth would have the least impact on housing costs and the best chance of controlling rural sprawl outside the UGB."

Based upon these findings, Metro adopted the UGB amendment which resulted in the boundary that exists today. In adopting the findings, Metro also affirmed a policy that boundary amendments are to be considered under the Goal 14 policies and that schemes for diverting development to Washington County are not a solution to land shortages which are found in Clackamas County.

Clackamas County remains concerned that its limited amount of urban land will result in a de facto diversion of development. We, therefore, urge Metro to respond favorably to our request for this UGB amendment. The economic and social consequences of unfairly limiting the amount of available urban land in Clackamas

County could be disastrous to the County's residents.

4. Retention of Agricultural Land

The subject property is irrevocably committed to nonresource use because of its size, isolation and the impact of residential development. As previously described, the property cannot be managed as a single farming unit with the property to the south because of the differences in elevation. Its small size prevents its use as a productive unit standing on its own. Proximity to urban uses creates specific negative impacts such as frequent trespass and vandalism. The adjoining industrial development also has negative impacts because it encourages a great deal of nearby activity which results in trespass.

The testimony further indicates that it is not possible to put farm equipment on the subject parcel except by obtaining an access easement to 130th and constructing a road and bridge. The estimated cost to accomplish this is \$75,000, thus precluding any economic use of the approximately four acres of land that would theoretically be available for farming. As previously noted, the only access to this property by farm equipment would be over a heavily traveled residential/industrial street. This clear conflict, with its resulting negative impact on traffic safety, further precludes use of the land for agricultural or forestry purposes.

Testimony also established that the land has not been used in the past for farming. Presumably, the topographic constraints that isolate this property today also precluded its use in the past.

The proposed amendment would not result in the loss of
APPENDIX A - 10

agricultural land because the subject parcel cannot be used for that purpose. However, the topographic features along the southern edge of the property create a transition area which buffers the agricultural uses to the south. Those uses will not, therefore, be affected.

5. Compatibility of Proposed Urban Uses with Nearby Agricultural Activities.

The proposed residential use is compatible with nearby agricultural activities to the east because it is buffered from those uses by the Clackamas River. This forms a natural boundary which is the appropriate delimitation of the UGB. The result of the proposed amendment will be to separate urban from resource lands by means of a natural boundary, rather than an arbitrary division that splits a tax lot in half. The agricultural lands to the south will not be affected due to the difference in elevation.

6. Inclusion of All Similarly Situated Contiguous Land

The evidence in the record establishes that there is no similarly situated contiguous land to be included simultaneously with this proposal. The property is uniquely located with urban lands on two sides and the river on the third. The agricultural land to the south is distinguishable for all the reasons discussed above. This property is also unique in the fact that it is the only piece of land within the Clackamas County Service District which is not inside the current Metropolitan Urban Growth Boundary. The contiguous land to the south is distinguishable on this basis as well as for the other reasons noted herein.

CONCLUSION

Based upon the above factors, the proposed Urban Growth Boundary is superior to the Urban Growth Boundary as presently located. We, therefore, urge Metro to adopt the proposed amendment.



REPORT DATE: November 10, 1982
HEARING DATE: November 15, 1982

JOHN C. McINTYRE THOMAS J. VANDERZANDEN
Director Project Development Director
WINSTON W. KURTH DAVID R. SEIGNEUR
Deputy Director Development Agency Director
BENJAMIN R. RAINBOLT
Administrative Services Director

PROJECT AND POLICY DEVELOPMENT DIVISION
STAFF REPORT
TO THE BOARD OF COMMISSIONERS

FACTS

GENERAL INFORMATION

Applicant: Mutual Materials, Inc., 16800 S.E. 130th Clackamas 97015

Proposal: Recommendation to Metro for locational adjustment to the Regional Urban Growth Boundary.

Location: East of S.E. 130th Ave. approximately 500 feet north of Capps Road in the Clackamas area.

Legal Description: T2S, R2E, Section 14A, a portion of Tax Lot 1090, W.M.

SITE DESCRIPTION

The ten acre lot lies west of and adjacent to the Clackamas River. The Regional Urban Growth Boundary (UGB) roughly bisects the property from northeast to southwest (See Exhibit 1). The UGB aligns with a ravine 25 - 30 feet in depth. The eastern portion (that portion of the lot for which the locational adjustment recommendation is requested) is approximately 5 acres, vacant pasture area with scattered patches of Big Leaf Maple, Oregon Oak, Douglas Fir and Western Hemlock. This portion of Tax Lot 1090 is elevated above adjacent land 25 to 30 feet. The eastern edge of the lot is a vertical bank approximately 60 feet in height dropping to the Clackamas River.

The ravine on the western edge of the area of request continues north then turns east. It then cuts across the north side to the Clackamas River. In essence, the area of request is an isolated bench of 0 to 2 percent slope separated from adjacent areas by the Clackamas River on the east and a 25 - 30 foot ravine on the west and north. The lot slopes gently south and continues off site to a bluff located approximately 175 feet south of the requested area.

APPENDIX B - 1



There are no identified natural hazards on the bench area. Slopes do occur on the edge of the ravine on the west side and north sides of the area. Identified floodplain is limited to the 60 foot bank of the east side of the property (see Exhibit 3).

The portion of the lot requested for inclusion in the UGB is planned agriculture and zoned EFU-20. The area was annexed to Clackamas County Service District No. 1 9/18/80 per Annexation Order No. 1639, however, currently is not served. The area requested for locational adjustment is planned and zoned agricultural and is in a sanitary sewer service district.

Soils on the parcel are Briedwell gravelly loam, Briedwell extremely stony loam, Quatama loam and Terrace Escarpments, Classes II, IV, II and VI respectively (see Exhibit 4).

AREA DESCRIPTION

The area can be roughly divided into two terraces; the level of the Clackamas Industrial/Hwy. 212 area and the Clackamas River Floodplain Terrace.

Northwest of the site in the Clackamas Industrial area, industrial uses are mixed with warehousing (storage) and industrial manufacturing. Shadowbrook Mobile Home Park lies to the northeast. Empire Block Company lies immediately west. The Clackamas River is the eastern boundary. Agricultural land lies south. Row crop (intensive) agricultural is confined to the Clackamas River Floodplain on the lower terrace. The area immediately north of the site is largely vacant. One single family home is situated on the southeast corner of S.W. 135th Avenue.

The area is rapidly developing. New industrial development in the area is anticipated as a result of imminent completion of the South Clackamas Area Local Improvement District project. Additional infrastructure investments are expected as a result of the proposed Clackamas Industrial Service District.

Planned/zoned land uses are Industrial/I-2 to the west and north, medium density residential/MR-1 to the north and northeast and Agricultural/EFU-20 to the east and south.

APPLICABLE COMPREHENSIVE PLAN POLICIES

Policy 1.0 page 48 was amended in April 1981 to state, "Recognize the statutory role of MSD" (Metro)" in maintenance of and amendments to the Regional Urban Growth Boundary."

Policy 2.0, page 48 states, "The following area may be designated as Urban:

- b. Land needed for increased housing, employment opportunities and livability from both a regional and subregional view.
- c. Land to which public facilities and services can be provided in an orderly and economic way.

- e. Land which is best suited for urban uses based on consideration of the environmental, energy, economic and social consequences.
- f. Agricultural land only after considering retention of agricultural land as defined, with Class I having the highest priority for retention and Class VI the lowest priority.
- g. Land needed after considering compatibility of proposed urban uses with nearby agricultural activities.

Policy 3.3 page 171 states, "All proposed Comprehensive Plan amendments are to be considered at advertised public hearings before the Planning Commission, in accordance with state law and county requirements."

METRO LOCATIONAL ADJUSTMENT CRITERIA

Standards for petition approval Section 5, 6, and 8 of Metro Ordinance 81-105 are contained in Exhibit 5. A locational adjustment is defined as an addition or deletion of 50 acres or less and consistent with Section 8 of Ordinance 81-105.

Section 5 of the ordinance requires a written action by the governing body prior to consideration of a locational adjustment petition by Metro. The written action must recommend 1) Metro approve, 2) Metro deny or 3) Expresses no opinion on the petition.

Standards for petition approval (Section 8) are

- 1) Orderly and economic provision of public facilities and services,
- 2) Maximum efficiency of land uses,
- 3) Environmental, energy, economic and social consequences,
- 4) Retention of agricultural land, and
- 5) Compatibility of proposed urban uses with nearby agricultural activities.

PROCEDURAL SEQUENCE

The procedural sequence would be action by Metro: If approved, action by the Planning Commission and Board of Commissioners would be necessary to possibly amend the UGB, Comprehensive Plan and Zoning district.

Metro must approve or deny the petition consistent with their adopted criteria. One of the submittal requirements is an approval, denial or no opinion on the petition from the Board of Commissioners.

Since this request is quasi-judicial, pursuant to HB 2225 and OAR 660-18-005, forty-five day notice must be provided. Since the application was submitted in late October and a Metro review of November 4, 1982 requires an action by the local government within 14 days, a quasi-judicial decision could not be legally rendered within that time frame. In addition, a decision from the governing

body at this time may prejudice a possible future quasi-judicial decision necessary at the county level.

CONCLUSIONS

The eastern portion of the tax lot 1090 is proposed for inclusion in the Regional Urban Growth Boundary as a locational adjustment.

The lot is within the boundaries of Clackamas County Service District No. 1, a sanitary sewer service district.

The eastern portion of the lot is adjacent to the UGB, is approximately five acres, is planned and zoned Agricultural and the ownership is bisected by the UGB.

A quasi-judicial decision (approval or denial) prior to the 14 day time frame necessitated by Metro Ordinance 81-105 would violate state and county law and may jeopardize a future quasi-judicial county decision.

An approval, denial or no opinion is necessary within 14 days to meet Metro submittal requirements.

The eastern portion of the lot is isolated from adjacent lands topographically. This is unique as it is the only known lot within a sanitary sewer service district outside the Urban Growth Boundary which is topographically isolated.

STAFF RECOMMENDATION

1. Based on the materials submitted the Board of Commissioners recommends there is sufficient merit for Metro to conduct a hearing to determine consistency of the application with their locational adjustment standards.

GC:elk
3/5-8

LIST OF EXHIBITS

1. Assessors lot line map with UGB regional.
2. Aerial Photograph
3. Montgomery Engineering Preliminary Floodplain map
4. Soils maps and OR-1 sheets.
5. Section 5, 6, and 8, Metro Ordinance 81-105.
6. Metro letter of November 4, 1982
7. Metro application

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

IN THE MATTER OF A PETITION OF)
MUTUAL MATERIALS, INC. FOR AN)
AMENDMENT TO THE REGIONAL URBAN) ORDER
GROWTH BOUNDARY (CONTESTED CASE)
NO. 82-1))

WHEREAS, Mutual Materials, Inc. has submitted a petition (Contested Case No. 82-1) for an amendment to the Urban Growth Boundary (UGB) to add approximately six (6) acres to the urban area; and

WHEREAS, A hearing was held on the proposed amendment before the Metro Hearings Officer on June 21, 1983; and

WHEREAS, The Hearings Officer has submitted Findings, Conclusions and Recommendations recommending approval of the proposed amendment; now therefore,

IT IS ORDERED,

1. That the Council of the Metropolitan Service District approves the petition to add approximately six (6) acres to the Portland metropolitan UGB, as shown in Exhibit "A," and staff is directed to prepare an ordinance amending the UGB accordingly.

2. That the Council accepts and adopts the Findings, Conclusions and Recommendations submitted by the Hearings Officer on Contested Case No. 82-1 and designates as the record in this case all documents submitted to the Hearings Officer.

ADOPTED by the Council of the Metropolitan Service District this 25th day of August, 1983.

STAFF REPORT

Agenda Item No. 7.1

Meeting Date September 8, 1983

CONSIDERATION OF THE MUTUAL MATERIALS INC.
URBAN GROWTH BOUNDARY (UGB) AMENDMENT CONTESTED CASE
NO. 82-1

Date: August 11, 1983

Presented by: Mark Brown

FACTUAL BACKGROUND AND ANALYSIS

Mutual Materials has petitioned Metro to add approximately six (6) acres of land to the UGB. The property is located south of Highway 212 and east of S. E. 130th adjacent to the Clackamas industrial area. On June 21, 1983, Metro's Hearings Officer held a hearing and received evidence in accord with Metro's contested case proceedings. On June 29, 1983, the applicant submitted revised proposed findings.

The Hearings Officer and staff conclude that the applicable standards of Metro Ordinance Nos. 81-105 and 82-133 have been satisfied and recommend approval of this locational adjustment.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval.

COMMITTEE CONSIDERATION AND RECOMMENDATION

Not applicable.

MB/gl
9222B/353
8/11/83

6.4 Resolution No. 83-427, for the purpose of providing comments to Multnomah County on their request for post-acknowledgement amendments to the Framework Plan.

Councilor Bonner said it was not clear to him what the status was on the Council's request for changes in Multnomah County's plan and ordinances with respect to landfills.

Mr. Steven Siegel, Development Services Director, responded that discussions were taking place with Multnomah county under a separate process.

Councilor Bonner asked if that meant there would need to be a request of Multnomah County for a special procedure to look at the standards for landfills in agricultural areas. Mr. Siegel responded that it appeared so. Mr. Andrew Jordan, Legal Counsel, added that the plan update process was well along when the LUBA decision came down on the Wildwood Landfill. He said the County Executive had indicated he would initiate a plan change or zone change, whichever was necessary, as a separate request to the Planning Commission.

Motion: Councilor Kelley moved adoption of Resolution No. 83-427. Councilor Kirkpatrick seconded the motion.

Vote: The vote on the motion resulted in:

Ayes: Councilors Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Absent: Councilor Banzer.

Motion carried.

7.1 Consideration of an Order in the matter of a petition of Mutual Materials, Inc. for an amendment to the Regional Urban Growth Boundary, and Ordinance No. 83-160 amending the Metro Urban Growth Boundary in Clackamas County for Contested Case No. 82-1. (First Reading)

Mr. Mark Brown, Development Services Planner, presented the staff report, as contained in the agenda of the meeting. He said no exceptions to the inclusion of the area in the UGB had been received. He noted that the Hearings Officer for the case,

as well as the applicant's representative, were present to respond to any questions.

Motion: Councilor Hansen moved adoption of the Order.
Councilor Deines seconded the motion.

Councilor Kafoury asked what the proposed use was for the property.

Mr. Tim Ramis, 1727 N.W. Hoyt Street, Portland, applicant's representative, responded that the proposed use was residential.

Vote: The vote on the motion to adopt the Order resulted in:

Ayes: Councilors Bonner, Deines, Etlinger,
Hansen, Kafoury, Kelley, Kirkpatrick,
Oleson, Van Bergen, Waker, and Williamson.

Nays: None.

Absent: Councilor Banzer.

Motion carried, Order adopted.

Ordinance No. 83-160 was then read the first time by title only.

Motion: Councilor Deines moved adoption of Ordinance No. 83-160. Councilor Kafoury seconded the motion.

There was no public testimony.

The ordinance was passed to second reading on September 8, 1983.

Deputy Presiding Officer Oleson noted that the hearing on the West-side Light Rail was scheduled for 8:00 p.m. and there was time before the hearing for the Council to take up Agenda Item 9.1.

9.1 Sublease of Office Space.

Ms. Jennifer Sims, Budget and Administrative Services Manager, reported that negotiations had taken place with Columbia Research Center to sublease approximately 3,000 square feet of Metro space. She said the sublease over the term of Metro's existing lease would net Metro approximately \$50,000 in revenue.



METROPOLITAN SERVICE DISTRICT

Providing Zoo, Transportation, Solid Waste and
other Regional Services

September 9, 1983

Rick Gustafson
Executive Officer

Metro Council

Cindy Banzer
Presiding Officer
District 9

Bob Oleson
Deputy Presiding
Officer
District 1

Richard Waker
District 2

Charlie Williamson
District 3

Corky Kirkpatrick
District 4

Jack Deines
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Ernie Bonner
District 8

Bruce Etlinger
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

County Administrator
Washington County
150 N. First Avenue
Hillsboro, Oregon 97123

Enclosed is a true copy of the following ordinance adopted by
the Council of the Metropolitan Service District on September
8, 1983:

Ordinance No. 83-160, An Ordinance amending the Metro
Urban Growth Boundary in Clackamas County for Contested
Case No. 82-1.

Please file this ordinance in the Metro ordinance files main-
tained by your County.

Sincerely,

Everlee J. Flanigan
Clerk of the Council

Enclosure

527 SW Hall St.
Portland, OR
97201
503/221-1646



METROPOLITAN SERVICE DISTRICT

Providing Zoo, Transportation, Solid Waste and
other Regional Services

September 9, 1983

Rick Gustafson
Executive Officer

Metro Council

Cindy Banzer
*Presiding Officer
District 9*

Bob Oleson
*Deputy Presiding
Officer
District 1*

Richard Waker
District 2

Charlie Williamson
District 3

Corky Kirkpatrick
District 4

Jack Deines
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Ernie Bonner
District 8

Bruce Etlinger
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

Ms. Juanita Orr
County Clerk
Clackamas County
8th & Main
Oregon City, Oregon 97045

Dear Ms. Orr:

Enclosed is a true copy of the following ordinance adopted by
the Council of the Metropolitan Service District on September
8, 1983:

Ordinance No. 83-160, An Ordinance amending the Metro
Urban Growth Boundary in Clackamas County for Contested
Case No. 82-1.

Please file this ordinance in the Metro ordinance files main-
tained by your County.

Sincerely,

Everlee J. Flanigan
Clerk of the Council

Enclosure

527 SW Hall St.
Portland, OR
97201
503/221-1646



METROPOLITAN SERVICE DISTRICT

Providing Zoo, Transportation, Solid Waste and
other Regional Services

September 9, 1983

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Executive Officer

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District 8

Bruce Etlinger
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

Ms. Jane McGarvin
Clerk of the Board
Multnomah County
1021 S.W. Fourth Avenue
Portland, Oregon 97204

Dear Ms. McGarvin:

Enclosed is a true copy of the following ordinance adopted by
the Council of the Metropolitan Service District on September
8, 1983:

Ordinance No. 83-160, An Ordinance amending the Metro
Urban Growth Boundary in Clackamas County for Contested
Case No. 82-1.

Please file this ordinance in the Metro ordinance files main-
tained by your County.

Sincerely,

Eyerlee J. Flanigan
Clerk of the Council

Enclosure

527 SW Hall St.
Portland, OR
97201
503/221-1646

7.1 Ordinance No. 83-160, amending the Metro Urban Growth Boundary in Clackamas County for Contested Case No. 82-1. (Second Reading)

The ordinance was read a second time, by title only.

Mark Brown, Development Services Planner, reported there had been no new information received since the first reading of the ordinance.

*Council mtg
pg. 3
9/8/83*
Vote: The vote on the motion made by Councilors Deines and Kafoury on August 25, 1983 to adopt Ordinance No. 83-160 resulted in:

Ayes: Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Oleson, Van Bergen, and Williamson.

Nays: None.

Absent: Councilor Waker.

Motion carried, Ordinance adopted.

Councilor Williamson noted that he had to leave early and wanted to inform Council members of a Special JPACT meeting to be held on Wednesday, September 14, 1983 at 7:30 p.m. for the purpose of considering ODOT's Six-Year Plan.

8.1 Future Funding.

Rick Gustafson, Executive Officer, presented a memo regarding "Long-Range Financial Policies for Metro" (a copy of the memo is attached to the agenda of the meeting). He outlined four recommended long-range goals for funding sources for general government, local assistance, support services and direct operations, as follows:

1. General Government--a goal to finance general government activities with a general tax source and make the general