

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: September 9, 1999
DAY: Thursday
TIME: 2:00 PM
PLACE: Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. EXECUTIVE OFFICER COMMUNICATIONS

4. AUDITOR COMMUNICATIONS

5. MPAC COMMUNICATIONS

6. CONSENT AGENDA

6.1 Consideration of Minutes for the August 12, 1999 Metro Council Regular Meeting.

7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 99-814**, For the Purpose of Renewing the Solid Waste License for Operation of the Wastech Materials Recovery Facility.

7.2 **Ordinance No. 99-815**, For the Purpose of Transferring the Solid Waste Franchise for Operation of the Recycle America Reload/Materials Recovery Facility from Waste Management of Oregon, Inc. To USA Waste of Oregon, Inc.

7.3 **Ordinance No. 99-818**, For the Purpose of Amending the Metro Code Requirements for Urban Growth Boundary Amendments, Urban Reserve Planning Requirements in Title 11 of the Urban Growth Management Functional Plan and Appendices A and B of the Regional Framework Plan and Metro Code Requirements for Local Government Boundary Changes and Declaring an Emergency.

8. **ORDINANCES - FIRST READING - QUASI JUDICIAL PROCEEDINGS**

- 8.1 **Ordinance No. 99-816**, Denying Urban Growth Boundary Locational Adjustment Case 98-7: Jenkins/Kim, and Adopting the Hearing's Officer's Report Including Findings and Conclusions. (*Presentation of Hearing's Officer's Report and Recommendation*) Valone/
Epstein

9. **ORDINANCES - SECOND READING**

- 9.1 **Ordinance No. 99-812**, For the Purpose of Amending the Metro Urban Growth Boundary and the 2040 Growth Concept Map in Ordinance No. 95-625A in Urban Reserve Area 65 in Washington County. Monroe

10. **RESOLUTIONS**

- 10.1 **Resolution No. 99-2836**, For the Purpose of Approving a Memorandum of Understanding regarding the Expansion of the Oregon Convention Center. Washington

11. **CONTRACT REVIEW BOARD**

- 11.1 Deliberation on Appeal by SSI Compaction Systems of Executive Officer's Rejection of Appeal of Award of contract for Compaction System. (*Public Hearing and Council Action*) Fjordbeck

12. **COUNCILOR COMMUNICATION**

ADJOURN

Cable Schedule for September 9, 1999 Metro Council Meeting

	Sunday (9/12)	Monday (9/13)	Tuesday (9/14)	Wednesday (9/15)	Thursday (9/9)	Friday (9/10)	Saturday (9/11)
CHANNEL 11 (Community Access Network) (most of Portland area)		4:00 P.M.					
CHANNEL 21 (TVCA) (Washington Co., Lake Oswego, Wilsonville)							
CHANNEL 30 (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)							
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 P.M.						
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)		12:00 P.M. (previous meeting)	7:00 P.M. (previous meeting)	12:00 P.M. (current or previous meeting)	6:00 P.M. (previous meeting)	7:00 P.M. (previous meeting)	7:00 A.M. (previous meeting)
CHANNEL 19 (Milwaukie TCI) (Milwaukie)	4:00 P.M. (previous meeting)					10:00 P.M. (previous meeting)	9:00 A.M. (previous meeting)

PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES.

PUBLIC HEARINGS: Public Hearings are held on all Ordinances second read and on Resolutions upon request of the public.
Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542.
For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 6.1

Consideration of the August 12, 1999 Metro Council Meeting minutes.

Metro Council Meeting
Thursday, September 9, 1999
Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

August 12, 1999

Council Chamber

Councilors Present: Rod Monroe (Presiding Officer), Susan McLain, Ed Washington, Rod Park, Bill Atherton, David Bragdon, Jon Kvistad

Councilors Absent:

Presiding Officer Monroe convened the Regular Council Meeting at 2:07 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

Alexis Dow, Metro Auditor, briefed the Council on the annual survey on the Status of Audit Recommendations and highlighted the essential components. The Report may be found in the permanent record of this meeting.

Councilor Atherton asked about the establishment of Oregon Convention Center construction costs.

Ms. Dow said that due to the costs incurred during the construction of the Expo center expansion, she noted that was questionable whether they should be charged against the project or against ongoing operations. She said they were suggesting that there be guidelines for record keeping.

5. MPAC COMMUNICATION

Councilor McLain said MPAC met last night. There were four basic pieces of work, 1) the Metro Code update and timeline, which could come before the Metro Council in September, 2) Growth Report update, 3) an Endangered Species Act (ESA) resolution, which was passed out of MPAC with recommended changes, and 4) a presentation on an independent Industrial Land Supply Report, which verified Metro's need assessment. She encouraged any councilor who had not seen the presentation to do so individually.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the July 29, 1999 and August 5, 1999 Regular Council Meetings.

Motion: Councilor Atherton moved to adopt the meeting minutes of July 29, 1999 and August 5, 1999 Regular Council Meetings.

Seconded: Councilor Washington seconded the motion.

Councilor Washington requested a correction on page 8 under Councilor Communication. He noted that his statement that "these decisions would impact the workers," referred to the facility owners or the industry owners.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

7. RESOLUTIONS

7.1 **Resolution No. 99-2817**, For the Purpose of Re-appointing Steve Sechrist to MCCI in a new Councilor District.

Motion: Councilor Atherton moved to adopt Resolution No. 99-2817.

Seconded: Councilor McLain seconded the motion.

Councilor Atherton said the Steve Sechrist was a member of the MCCI for a number of years. Mr. Sechrist moved into District 6, leaving vacancies in District 4.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

7.2 **Resolution No. 99-2819**, For the Purpose of Amending the Cooper Mountain Target Area Refinement Plan.

Motion: Councilor Kvistad moved to adopt Resolution No. 99-2819.

Seconded: Councilor McLain seconded the motion.

Councilor Kvistad presented the resolution. He said the 200 additional acres which would be added to the refinement area by the resolution would give access to Scholls Ferry Road and Tile Flat Road. He recommended Council approval of Resolution No. 99-2819.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

7.3 **Resolution No. 99-2824**, For the Purpose of Approving the Intergovernmental Agreement with the City of Troutdale for Management of Properties in the Beaver Creek Canyon Greenway Target Area and Approving an Agricultural Lease to one property in such Target Area.

Motion: Councilor Park moved to adopt Resolution No. 99-2824.

Seconded: **Councilor Atherton** seconded the motion.

Councilor Park presented the resolution. A staff report to Resolution No. 99-2824 included information presented by Councilor Park and was included in the meeting record. Councilor Park recommended approval of Resolution No. 99-2824.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

8. CONTRACT REVIEW BOARD

8.1 Resolution No. 99-2822, For the Purpose of Amending Contract No. 904021 with Parametrix, Inc., for the North Corridor (Interstate Max) Final Environmental Impact Statement (FEIS).

Motion: **Councilor Kvistad** moved to adopt Resolution No. 99-2822.

Seconded: **Councilor Washington** seconded the motion.

Councilor Kvistad presented the resolution. A staff report to Resolution No. 99-2822 included information presented by Councilor Kvistad and was included in the meeting record.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

8.2 Resolution No. 99-2828, For the Purpose of Authorizing Extension to the Personal Services Agreement with Pac/West Communications.

Motion: **Councilor McLain** moved to adopt Resolution No. 99-2828.

Seconded: **Councilor Washington** seconded the motion.

Councilor McLain presented Resolution No. 99-2828. She noted that while the legislative session was over, the work was not. She said the ten-month extension to the contract would allow Pac/West to work with the interim committees, and talk with legislators who were in office or running for office. A staff report to Resolution No. 99-2828 included information presented by Councilor McLain and was included in the meeting record.

Councilor Atherton asked about the work program.

Councilor McLain said it was her understanding that Dan Cooper, General Counsel, Jeff Stone, Council Chief of Staff, and Bruce Warner, Chief Operating Officer, were updating the work plan and would have that available soon.

Mr. Cooper said this document continued the existing provision of the contract; it only amended the time period and the amount.

Councilor Kvistad said Pac/West helped with some difficult issues throughout the year and he would encourage continuing to work with them.

Councilor Atherton noted new activities under the work program in the contract, and he asked if the contract provided those activities.

Mr. Cooper said yes.

Presiding Officer Monroe said that work program was going to be done as soon as possible.

Councilor McLain urged Council approval of Resolution No. 99-2828.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

**9. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e).
DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL
PROPERTY TRANSACTIONS.**

**9.1 Resolution No. 99-2825, For the Purpose of Amending the Fanno Creek Greenway
Target Area Refinement Plan.**

Members Present: Tim McNeil, Council staff and interns, Alexis Dow, members of the Parks Department and members of the media.

Motion: **Councilor Bragdon** moved to adopt Resolution No. 99-2825.

Seconded: **Councilor Washington** seconded the motion.

Councilor Bragdon said this target area would expand the Fanno Creek target area for a greenspaces acquisition. He noted that this added two tributaries to the creek for further acquisition. He said Resolution No. 99-2825 was supported by local jurisdictions.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

10. COUNCILOR COMMUNICATION

Councilor Washington said Gerry Uba, Program Supervisor, Growth Management Services, requested that the Council lobby the federal government relative to potential cuts in the 1999-2000 HUD Budget. He noted two tables that were provided from the HUD local offices, which were included in the meeting record. Mr. Uba asked that Presiding Officer Monroe consider working with the Executive Officer to send a letter to the Oregon Congressional Delegation stating Metro's support for the HUD Budget. He said he would forward the information to Mr. Stone.

Presiding Officer Monroe said he would be happy to enter into a joint effort with the Executive Officer.

Presiding Officer Monroe asked Mr. Morrissey to follow up on the issue.

Councilor Park said thanked staff for their work on Resolution No. 99-2824. He said it was a complex deal, and he thanked Jim Desmond, Senior Manager, and Charles Ciecko, Senior Director, Regional Parks and Greenspaces, for their efforts.

Councilor McLain said Growth Management Committee was sending a letter to all jurisdictions concerning upcoming issues in September. She said Mr. Morrissey had extra copies.

Councilor Bragdon added to the vocabulary debate of the word "jitney."

Councilor Kvistad brought attention to two transportation issues. First, in regard to North Light Rail, he wanted to pursue the option that would terminate at the northern front door of the Expo Center, turning it to the eastern part of the parking lot. Second, he said he was sending a letter to the Bi-State Task Force on Transportation requesting that they begin a study on a congestion pilot program across the river. He said it was time to do something with the commuters coming from Washington to work in Oregon. He noted that they were not paying Oregon road taxes, were not buying their fuel in Oregon, and they were congesting the roads to the north. He said as chair of the Joint Policy Advisory Committee on Transportation (JPACT), he would request that the Task Force consider the effects of Washington commuters on Oregon transportation infrastructure and some options. He said it was impossible to travel in North and Northeast Portland, and was causing significant problems for trucking companies and small businesses in the area.

Councilor Kvistad said he would send the letter to the Bi-State Commission as chair of JPACT, in order to start setting an agenda for the Task Force, which would start meeting in September. He said it was critical to look at both replacement of the Interstate bridge and Washington commuter traffic issue together.

Presiding Officer Monroe said he understood the bi-state committee was formed to address that topic, and he appreciated Councilor Kvistad's input.

Councilor Atherton said during the recent discussion at MPAC on the industrial land supply, it was pointed out that the overwhelming majority of industrial sites available in the region were in Clark County. He asked if the Bi-State Commission was making the land-use/transportation connection and was considering that situation as it looked at transportation problems.

Presiding Officer Monroe said the commission had not yet held its first meeting, but he would not be surprised if that discussion happened.

Councilor Park said when the Growth Management Committee begins looking at a sub-regional analysis, the committee would look at where in the region the commuters from Washington were working. He said Councilor Kvistad raised an excellent point regarding the difference in taxation and registration systems between the two states, and how it was creating an income in one area and an expense in the other. He agreed there needed to be an examination to determine what could be done to help even that out and to even the burden out across the region. He said the topic was critically important to the region in terms of fairness, especially with the new weight mileage tax and the potential change in how that would affect truck traffic.

Presiding Officer Monroe noted that an upcoming ballot measure in Washington could affect how the state paid for roads and highways.

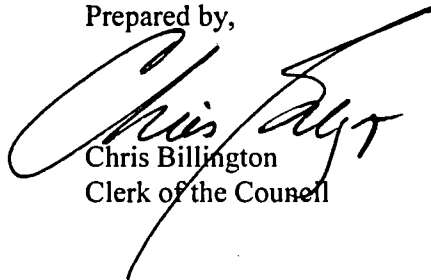
Councilor McLain invited the Council and the public to the Clackamas County Fair the next week. She said over 1,200 individuals came through the Metro booth at the Washington County Fair.

Presiding Officer Monroe said the next Council meeting would be on September 9, 1999.

11. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting at 3:10 p.m.

Prepared by,



Chris Billington
Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
081299c-01	7/1/99	1999 Status of Audit Recommendations	TO Metro Council/FROM Alexis Dow	
081299c-02	7/29/99	Presentation Materials Minutes of the Metro Council Meeting, July 29, 1999	TO Metro Council/ FROM Chris Billington	
081299c-03	8/5/99	Minutes of the Metro Council Meeting, August 5, 1999	TO Metro Council/ FROM Chris Billington	
081299c-04	8/11/99	Tables provided by Portland HUD Office	TO Metro Council / FROM Gerry Uba	

Agenda Item Number 9.6

Resolution No. 99-2804A, For the Purpose of Endorsing the Interstate Max Light Rail Transit Project and South Corridor Financing Strategy and Amending the Metropolitan Transportation Improvement Plan.

Public Hearing

Metro Council Meeting
Thursday, June 24, 1999
Council Chamber

Agenda Item Number 7.1

**Ordinance No. 99-814, For the Purpose of Renewing the Solid Waste License for Operation of the
Wastech Materials Recovery Facility.**

First Reading

**Metro Council Meeting
Thursday, September 9, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RENEWING THE SOLID) ORDINANCE NO. 99-814
WASTE LICENSE FOR OPERATION OF THE)
WASTECH MATERIALS RECOVERY FACILITY) Introduced by Mike Burton,
) Executive Officer
)

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own and operate a solid waste processing facility, transfer station, or resource recovery facility; and

WHEREAS, Wastech was granted a franchise by the Metro Council in September 1989; and

WHEREAS, that franchise was exchanged for a Solid Waste License under the provisions of section 5.01.400(b) of the Code; and

WHEREAS, Wastech's Solid Waste License will expire on September 14, 1999; and

WHEREAS, USA Waste of Oregon, Inc. has duly filed an application for renewal of the Wastech Solid Waste License in accordance with Metro Code Section 5.01.087; and

WHEREAS, Metro Code Section 5.01.087 specifies that Solid Waste Facility Licenses shall be renewed unless the Executive Officer determines that the proposed renewal is not in the public interest; and

WHEREAS, the Executive Officer has determined that the proposed renewal is in the public interest; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

USA Waste of Oregon shall be granted a renewed Solid Waste License to operate the Wastech facility. The Solid Waste License shall be in a form substantially similar to the attached "Exhibit A."

ADOPTED by the Metro Council this ____ day of _____, 1999.

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit "A"

SOLID WASTE FACILITY LICENSE

Number L-009-99

Issued by

Metro

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

LICENSEE: USA Waste of Oregon, Inc. dba Wastech, Inc. 701 N Hunt Street Portland, OR 97217 (503) 331-2221	FACILITY NAME AND LOCATION: Wastech, Inc. 701 N. Hunt Street Portland, Oregon 97217 (503) 285-5261
OPERATOR: USA Waste of Oregon, Inc. dba Wastech, Inc. 701 N Hunt Street Portland, OR 97217 (503) 331-2221	PROPERTY OWNER: USA Waste of Oregon, Inc. dba Wastech, Inc. 701 N. Hunt Street Portland, Oregon 97217

This License is issued to the Licensee named above and is not transferable. Subject to the conditions stated in this License document, the Licensee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

License begins: September 14,1999

Expiration: September 14, 2004

Signed:

Acceptance & Acknowledgement of Receipt:

Signature

Signature of Licensee

Mike Burton, Metro Executive Officer
Print name and title

Print name and title

Date

Date



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1.0 ISSUANCE

- | | | | |
|------------|--|--|----------------|
| 1.1 | Licensee | USA Waste of Oregon, Inc.
701 N. Hunt Street
Portland, OR 97217 | (503) 331-2221 |
| 1.2 | Contact | Adam Winston, District Manager | |
| 1.3 | License Number | When referring to this License, please cite:
Metro Solid Waste Facility License Number L-009-99 | |
| 1.4 | Term | License effective: September 14, 1999

License expires: September 14, 2004 | |
| 1.5 | Facility name and mailing address | Wastech, Inc.
701 N. Hunt Street
Portland, OR 97217 | (503) 331-2221 |
| 1.6 | Operator | USA Waste of Oregon, Inc. dba Wastech, Inc.
701 N. Hunt Street
Portland, OR 97217 | (503) 331-2221 |
| 1.7 | Facility legal description | Blocks 1 and 2, Swinton. Block 3, Swinton except south 72.5'.
Plus vacated portions of N. Albina and N. Kirby Streets.
Multnomah County, State of Oregon | |
| 1.8 | Property owner | USA Waste of Oregon, Inc. dba Wastech, Inc.
701 N. Hunt Street
Portland, Oregon 97217 | |
| 1.9 | Permission to operate | Licensee warrants that it has obtained the property owner's consent to operate the facility as specified in this License. | |



2.0 CONDITIONS AND DISCLAIMERS

- | | | |
|-------------|-----------------------------|--|
| 2.1 | Guarantees | The granting of this License shall not vest any right or privilege in the Licensee to receive specific quantities of solid waste at the direction of Metro during the term of the License. |
| 2.2 | Property rights | The granting of this License does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights. |
| 2.3 | No recourse | The Licensee shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this License or because of the enforcement of the License or in the event the License or any part thereof is determined to be invalid. |
| 2.4 | Release of liability | Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this License or on account of the construction, maintenance, or operation of the facility pursuant to this License. |
| 2.5 | Binding nature | The conditions of this License are binding on the Licensee. The Licensee is liable for all acts and omissions of the Licensee's contractors and agents. |
| 2.6 | Waivers | To be effective, a waiver of any terms or conditions of this License must be in writing and signed by the Metro Executive Officer. |
| 2.7 | Effect of waiver | Waiver of a term or condition of this License shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition. |
| 2.8 | Choice of law | The License shall be construed, applied and enforced in accordance with the laws of the State of Oregon. |
| 2.9 | Enforceability | If any provision of this License is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this License shall not be affected. |
| 2.10 | License not a waiver | Nothing in this License shall be construed as relieving any owner, operator, or Licensee from the obligation of obtaining all required |



permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.

- | | | |
|------|-----------------------------|--|
| 2.11 | License not limiting | Nothing in this License is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer. |
| 2.12 | Definitions | Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. |

3.0 AUTHORIZATIONS

- | | | |
|-----|---|---|
| 3.1 | Purpose | This section of the License describes the wastes that the Licensee is authorized to accept at the facility, and the activities the Licensee is authorized to perform at the facility. |
| 3.2 | General conditions on solid wastes | The Licensee is authorized to accept at the facility only the solid wastes described in this section. The Licensee is prohibited from knowingly receiving any solid waste not authorized in this section. |
| 3.3 | General conditions on activities | The Licensee is authorized to perform at the facility only those activities that are described in this section. |
| 3.4 | Non-putrescible waste | The Licensee is authorized to accept "dry" non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, for the purpose of material recovery. |
| 3.5 | Source-separated recyclables | The Licensee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for marketing. |
| 3.6 | Inert materials | The Licensee is authorized to accept inert materials for purposes of classifying, consolidating, transfer, and other similar functions related to preparing these materials for useful purposes. |



- 3.7 **Source-separated yard debris** The Licensee is authorized to accept source-separated yard debris for transfer to a yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility. The Licensee shall keep source-separated yard debris separate from other solid waste at the facility and shall provide records showing that source-separated yard debris is delivered to a composting or processing facility, and not disposed of.
- 3.8 **Deliveries not limited** This License does not limit the quantity of authorized solid wastes or other materials that may be accepted at the facility.

4.0 **LIMITATIONS AND PROHIBITIONS**

- 4.1 **Purpose** This section of the License describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.
- 4.2 **Disposal not limited** The Licensee shall not be limited as to the number of tons of processing residual that may be disposed.
- 4.3 **Prohibited waste** The Licensee shall not knowingly accept or retain any material amounts of the following types of wastes: putrescible wastes, materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the Licensee's DEQ Disposal Site Permit.
- 4.4 **Material recovery required** The Licensee shall perform material recovery on "dry" non-putrescible wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, or deliver said "dry" non-putrescible wastes to a solid waste facility whose primary purpose is to recover useful materials from solid waste.
- 4.5 **Prohibition on mixing** The Licensee shall not mix any source-separated recyclable materials or yard debris materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling.



- | | | |
|-----|--|---|
| 4.6 | No disposal of recyclable materials | Source-separated recyclable materials, yard debris or organic materials accepted at the facility may not be disposed of by landfilling or incineration. |
| 4.7 | Limits not exclusive | Nothing in this section of the License shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this License document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit. |

5.0 OPERATING CONDITIONS

- | | | |
|-----|-----------------------------------|--|
| 5.1 | Purpose | This section of the License describes criteria and standards for the operation of the facility. |
| 5.2 | Qualified Operator | The Licensee shall provide an operating staff qualified to carry out the functions required by this License and to otherwise ensure compliance with Metro Code Chapter 5.01. |
| 5.3 | Operating plan | <p>The Licensee shall establish and follow procedures for accepting, managing and processing loads of solid waste received at the facility. Such procedures must be in writing and in a location where facility personnel and the Executive Officer can readily reference them. The Licensee may, from time to time, modify such procedures. The procedures shall include at least the following:</p> <ul style="list-style-type: none">a. Methods of notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility;b. Methods of inspecting incoming loads for the presence of prohibited or unauthorized waste;c. Methods for managing and transporting for disposal at an authorized disposal site each of the prohibited or unauthorized wastes if they are discovered at the facility;d. Objective criteria for accepting or rejecting loads. |
| 5.4 | Managing prohibited wastes | Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with procedures established in the Operating Plan. |



- 5.5 Managing authorized wastes** All authorized solid wastes received at the facility must, within 24-hours from receipt, be either (a) processed, (b) appropriately stored, or (c) properly disposed of.
- 5.6 Storage** Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.
- 5.7 Litter and airborne debris** The Licensee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The Licensee shall:
- a. Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.
 - b. Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.
 - c. Keep all areas within the site free of litter and debris.
- 5.8 Odor** The Licensee shall operate the facility in a manner that is not conducive to the generation of odors. The Licensee shall:
- a. Clean the areas and equipment that come into contact with solid waste on a regular basis.
 - b. Establish and follow procedures for minimizing odor at the facility. Such procedures must be in writing and in a location where facility personnel and Metro inspectors can readily reference them. The Licensee may modify such procedures from time to time. The procedures shall include at least the following: (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the facility, (2) procedures for receiving and recording odor complaints, and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the facility.



- 5.9 Vectors** The Licensee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
- 5.10 Noise** The Licensee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.11 Water quality** The Licensee shall:
- a. Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.
 - b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.
- 5.12 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.13 Signage** The Licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- a. Name of the facility
 - b. Address of the facility;
 - c. Emergency telephone number for the facility;
 - d. Operating hours during which the facility is open for the receipt of authorized waste;
 - e. Fees and charges;
 - f. Metro's name and telephone number 797-1650; and
 - g. A list of all authorized and prohibited wastes.
- 5.14 Complaints** The Licensee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Licensee receives a complaint, Licensee shall:
- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - b. Log all such complaints by name, date, time and nature of



complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.

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| 5.15 | Access to License document | The Licensee shall maintain a copy of this Metro Solid Waste Facility License on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it. |
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6.0 FEES AND RATE SETTING

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| 6.1 | Purpose | This section of the License specifies fees payable by the Licensee, and describes rate regulation by Metro. |
| 6.2 | Annual fee | The Licensee shall pay an annual License fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the License fee at any time by action of the Metro Council. |
| 6.3 | Fines | Each violation of a License condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council. |
| 6.4 | Rates not regulated | The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro. |
| 6.5 | Metro fee imposed on disposal | The Licensee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01. |

7.0 INSURANCE REQUIREMENTS

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| 7.1 | Purpose | The section describes the types of insurance that the Licensee shall purchase and maintain at the Licensee's expense, covering the Licensee, its employees, and agents. |
| 7.2 | General liability | The Licensee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, |



with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.

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| 7.3 | Automobile | The Licensee shall carry automobile bodily injury and property damage liability insurance. |
| 7.4 | Coverage | Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000. |
| 7.5 | Additional insureds | Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED. |
| 7.6 | Worker's Compensation Insurance | The Licensee, its subcontractors, if any, and all employers working under this License, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Licensee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation. |
| 7.7 | Notification | The Licensee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage. |

8.0 Enforcement

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| 8.1 | Generally | Enforcement of this License shall be as specified in Metro Code. |
| 8.2 | Authority vested in Metro | The power and right to regulate, in the public interest, the exercise of the privileges granted by this License shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against Licensee. |
| 8.3 | Inspections | The Executive Officer may make such inspection or audit as the Executive Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during |



business hours with or without notice or at such other times with 24 hours notice to assure compliance with this License, Metro Code, and administrative procedures adopted pursuant to Metro Code Chapter 5.01.

**8.4 No
Enforcement
Limitations**

Nothing in this License shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this License be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this License or the Licensee's operation of the facility.

9.0 MODIFICATIONS

9.1 Modification

At any time during the term of the License, either the Executive Officer or the Licensee may propose amendments or modifications to this License.

**9.2 Modification,
suspension or
revocation by
Metro**

The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this License in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

- a. Violation of the terms or conditions of this License, Metro Code, or any applicable statute, rule, or standard;
- b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this License;
- c. Failure to disclose fully all relevant facts;
- d. A significant release into the environment from the facility;
- e. Significant change in the character of solid waste received or in the operation of the facility;
- f. Any change in ownership or control, excluding transfers among subsidiaries of the Licensee or Licensee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations.
- h. Compliance history of the Licensee.



10.0 General Obligations

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| 10.1 | Compliance with law | Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this License, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this License as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the License document, as well as any existing at the time of the issuance of the License but not cited or attached, and permits or conditions issued or modified during the term of the License. |
| 10.2 | Indemnification | The Licensee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the Licensee's performance or failure to perform under this License, including patent infringement and any claims or disputes involving subcontractors. |
| 10.3 | Deliver waste to appropriate destinations | The Licensee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits; |
| 10.4 | Provide access | The Licensee shall allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this License, Metro Code, and the administrative procedures adopted pursuant to Metro Code Chapter 5.01. |
| 10.5 | Record-keeping and reporting. | The Licensee shall comply with the recordkeeping and reporting requirements as provided in Metro Code Chapter 5.01 and in administrative procedures adopted pursuant to Metro Code Chapter 5.01. |



10.6

**Compliance
by agents**

The Licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this License.

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EXECUTIVE SUMMARY
ORDINANCE 99-814
RENEWING A SOLID WASTE LICENSE FOR THE WASTECH FACILITY

PROPOSED ACTION

- Grants a renewed Solid Waste License to USA Waste of Oregon to continue to operate its existing Wastech materials recovery facility located in Portland, Oregon. The license has a term of five years and replicates the authorities Wastech already has under its existing license.

WHY NECESSARY

- Metro Code Section 5.01.030 requires a Metro franchise, license, or certificate for any person to own and operate a processing facility, transfer station, or resource recovery facility.
- Wastech's existing solid waste license will expire on September 14, 1999.
- Under the terms and conditions of the license, the facility will continue to assist the region in accomplishing the goals and objectives of the Regional Solid Waste Management Plan.

DESCRIPTION

- The facility conducts materials recovery of recyclables from dry commercial and industrial solid waste. The majority of the waste processed at the facility is from the licensee's own collection vehicles.
- Material recovery is done by hand-sorting from loads tipped onto an asphalt pad. The residual is top-loaded for disposal at various landfills.
- Wood is reloaded for transport to another location where it is chipped for fuel.

ISSUES/CONCERNS

- None.

BUDGET/FINANCIAL IMPACTS

- Metro solid waste planning and projections have assumed that Wastech's operations will continue as part of the region's solid waste and recycling system. Renewal of the Wastech License is not anticipated to have any budget or financial impacts.

IN CONSIDERATION OF ORDINANCE NO. 99-814, FOR THE PURPOSE OF
RENEWING THE SOLID WASTE LICENSE FOR OPERATION OF THE WASTECH
MATERIALS RECOVERY FACILITY

July 15, 1999

Presented by: Terry Petersen,
Leann Linson

I. Summary and Recommendation

A. Effect of Passage

Approval of Ordinance No. 99-814 will authorize the Executive Officer to issue a Solid Waste License for operation of the Wastech facility located at 701 Hunt St. in Portland, Oregon. Wastech is presently licensed by Metro to operate as a dry waste materials recovery facility. The proposed license constitutes a renewal of the facility's existing license that will expire on September 14, 1999 and replicates the authorities granted in the existing license.

B. Executive Officer Recommendation

The Executive Officer recommends approval of Ordinance No. 99-814, renewing the Wastech Solid Waste License subject to the terms and conditions that are incorporated into the license document attached as "Exhibit A" to Ordinance No. 99-814.

II. Background

A. History of the Facility

The Wastech facility was first franchised by Metro in December of 1984 for a term of five years. The name of the facility at that time was Oregon Processing and Recovery Center (OPRC) and the franchisee was Oregon Waste Management, Inc. and Genstar Conservation Systems, Inc., a joint venture. At its inception, OPRC accepted only source-separated recyclables and paper-rich commercial loads. The facility charged for loads based on a sliding scale with the most recoverable loads paying the lowest rate. Though the facility accepted only dry high-grade waste, the franchise agreement also authorized the acceptance of putrescible waste.

In July 1988, OPRC was acquired by Wastech, Inc. and a new franchise was issued, again for a five-year term. Shortly thereafter, Wastech requested that its franchise be amended to a term of ten years in order to better secure financing for a major expansion of the facility. At that time, OPRC was the Metro region's primary recovery facility and the proposed expansion represented a significant potential increase in the region's recovery capacity. On September 14, 1989, a new franchise was issued with a term of ten years. However, the market value of recyclables experienced a decline, and the proposed expansion was never implemented.

In January 1998, the facility was acquired by USA Waste Services, Inc. Soon after, the facility began accepting commercial and industrial wastes with a low recoverable content and a significant amount of putrescible waste. The facility greatly increased its tonnage and began operating largely as a reload. Sorting and reloading was performed on an uncovered asphalt pad in front of the facility's building and adjacent to the Columbia Slough. The facility was also discovered delivering waste to the North Wasco County Landfill without the required Metro Non-system License.

In December of 1998, USA Waste voluntarily exchanged its franchise for a license under the newly adopted Code Chapter 5.01 and became a dry waste only facility. The license was issued with the same expiration date as the franchise it was exchanged for; September 14, 1999. The switch to dry waste and the resulting boost in recovery resolved a series of compliance issues that had arisen upon USA Waste's acquisition of the facility. In 1999, USA Waste and Waste Management merged to form a new company. Within the state of Oregon, the new company is named USA Waste of Oregon.

B. The Applicant and the Applicant's Request

The applicant, USA Waste of Oregon, has applied for a renewal of the Wastech Solid Waste Facility License. The proposed license will replicate the authorities the facility presently has to accept non-putrescible wastes, source-separated recyclables, and yard debris. The applicant is in the process of seeking land use authority from the City of Portland to add a 10,000-square foot building to the facility in order to expand its ability to process recyclable materials and to bring all operations, except for wood recovery, within enclosed buildings. The plan for this proposed expansion is consistent with the authority granted by the proposed Solid Waste Facility License renewal.

III. Application Procedure

A. Metro Code Provisions Related to the Applicant's Request

Section 5.01.087(a) of the Metro Code governs the renewal of licenses:

Solid Waste Facility Licenses shall be renewed unless the Executive Officer determines that the proposed renewal is not in the public interest, provided that the Licensee files a completed application for renewal accompanied by payment of an application fee of three hundred dollars (\$300) not less than 60 days prior to the expiration of the License term, together with a statement of proposed material changes from its initial application for the License and any other information required by the Executive Officer. The Executive Officer may attach conditions or limitations to any renewed License.

The Wastech facility performs materials recovery and assists the region in achieving its recycling goals. The Executive Officer finds that it is in the public interest to renew

Wastech's Solid Waste License. Further, USA Waste submitted its application more than 60 days prior to the expiration of its existing license and included a statement of proposed material changes (detailed plans for the proposed new building) and the required \$300 application fee. The Executive Officer does not recommend that any special conditions or limitations be attached to the proposed license renewal.

IV. Fiscal Impact

Ordinance No. 99-814 renews an existing license without any changes in authorizations. The facility will only process waste of the same type of material as presently authorized by its existing license. Thus, it is anticipated that approval of Ordinance No. 99-814 will have no fiscal impact on Metro.

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Agenda Item Number 7.2

Ordinance No. 99-815, For the Purpose of Transferring the Solid Waste Franchise for Operation of the Recycle America Reload/Materials Recovery Facility from Waste Management of Oregon, Inc. to USA Waste of Oregon, Inc.

First Reading

Metro Council Meeting
Thursday, September 9, 1999
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF TRANSFERRING THE	)	ORDINANCE NO. 99-815
SOLID WASTE FRANCHISE FOR OPERATION)	
OF THE RECYCLE AMERICA	)	Introduced by Mike Burton,
RELOAD/MATERIALS RECOVERY FACILITY	)	Executive Officer
FROM WASTE MANAGEMENT OF OREGON,)	
INC. TO USA WASTE OF OREGON, INC.)	

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own and operate a solid waste processing facility, transfer station, or resource recovery facility; and

WHEREAS, the Recycle America facility was granted a franchise by the Metro Council in November of 1998; and

WHEREAS, USA Waste of Oregon, Inc. is acquiring the Recycle America solid waste facility from Waste Management of Oregon, Inc.; and

WHEREAS, Section 5.01.090 of the Metro Code allows for the transfer of a franchise if an application has been filed in accordance with Metro Code Section 5.01.060; and

WHEREAS, USA Waste of Oregon, Inc. has filed an application in accordance with Section 5.01.060; and

WHEREAS, the applicant has met all the requirements set forth in Section 5.01.060; and

WHEREAS, Section 5.01.090 specifies that the Council shall not unreasonably deny an application for transfer of a franchise; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

USA Waste of Oregon, Inc. shall be granted a Solid Waste Franchise in a form substantially similar to the attached "Exhibit A" to operate the Recycle America facility.

ADOPTED by the Metro Council this ____ day of _____, 1999.

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

SOLID WASTE FACILITY FRANCHISE**Number F-001-99****Issued by****Metro****600 NE Grand Avenue****Portland, OR 97232****Telephone: (503) 797-1650****Issued in accordance with the provisions of Metro Code Chapter 5.01**

FRANCHISEE: USA of Waste Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 (503) 331-2221	FACILITY NAME AND LOCATION: Recycle America 869 NW Eastwind Drive Troutdale, Oregon 97060
OPERATOR: USA Waste of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 (503) 331-2221	PROPERTY OWNER: TDK Corp. P.O. Box 566 Troutdale, Oregon 97060 (503) 666-2896

This franchise is granted to the franchisee named above and is not transferable. Subject to the conditions stated in this franchise document, the franchisee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

Franchise begins: December 31, 1998
(Replaces franchise F-001-98)

Expiration: December 31, 2003

Signed:

Acceptance & Acknowledgement of Receipt: .

Signature

Signature of Franchisee

Mike Burton, Metro Executive Officer
Print name and title

Print name and title

Date

Date



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1.0 ISSUANCE

- | | | | |
|------------|--|--|----------------|
| 1.1 | Franchisee | USA of Waste Oregon, Inc.
869 NW Eastwind Drive
Troutdale, OR 97060 | (503) 667-5264 |
| 1.2 | Contact | Adam Winston, District Manager | |
| 1.3 | Franchise Number | When referring to this franchise, please cite:
Metro Solid Waste Facility Franchise Number F-001-98 | |
| 1.4 | Term | Franchise effective: December 31, 1998

Franchise expires: December 31, 2003 | |
| 1.5 | Facility name and mailing address | Recycle America
869 NW Eastwind Drive
Troutdale, OR 97060 | (503) 667-5264 |
| 1.6 | Operator | Waste Management
7227 NE 55 th Avenue
Portland, OR 97218 | (503) 331-2221 |
| 1.7 | Facility legal description | Charles Fezett Donation Land Claim lying within Section 27,
Township 1N, Range 3E, Willamette Meridian
Multnomah County, State of Oregon | |
| 1.8 | Facility owner | TDK Corp.
P.O. Box 566
Troutdale, OR 97060 | (503) 666-2896 |
| 1.9 | Permission to operate | Franchisee warrants that it has obtained the property owner's consent to operate the facility as specified in this franchise. | |



2.0 CONDITIONS AND DISCLAIMERS

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| 2.1 | Guarantees | The granting of this franchise shall not vest any right or privilege in the franchisee to receive specific quantities of solid waste at the direction of Metro during the term of the franchise. |
| 2.2 | Non-exclusive franchise | The granting of this franchise shall not in any way limit Metro from granting other solid waste franchises within the District. |
| 2.3 | Property rights | The granting of this franchise does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights. |
| 2.4 | No recourse | The franchisee shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid. |
| 2.5 | Release of liability | Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this franchise or on account of the construction, maintenance, or operation of the facility pursuant to this franchise. |
| 2.6 | Binding nature | The conditions of this franchise are binding on the franchisee. The franchisee is liable for all acts and omissions of the franchisee's contractors and agents. |
| 2.7 | Waivers | To be effective, a waiver of any terms or conditions of this Franchise must be in writing and signed by the Metro Executive Officer. |
| 2.8 | Effect of waiver | Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition. |
| 2.9 | Choice of law | The Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon. |
| 2.10 | Enforceability | If any provision of this Franchise is determined by a court of |



competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

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| 2.11 | Franchise not a waiver | Nothing in this franchise shall be construed as relieving any owner, operator, or franchisee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies. |
| 2.12 | Franchise not limiting | Nothing in this franchise is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer. |
| 2.13 | Inadvertent composting | Nothing in this franchise is intended to authorize or establish standards or otherwise approve of inadvertent composting resulting from the storage of organic materials. |
| 2.14 | Definitions | Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. |

3.0 AUTHORIZATIONS

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| 3.1 | Purpose | This section of the franchise describes the wastes that the franchisee is authorized to accept at the facility, and the activities the franchisee is authorized to perform at the facility. |
| 3.2 | General conditions on solid wastes | The franchisee is authorized to accept at the facility only the solid wastes described in this section. The franchisee is prohibited from knowingly receiving any solid waste not authorized in this section. |
| 3.3 | General conditions on activities | The franchisee is authorized to perform at the facility only those activities that are described in this section. |
| 3.4 | Putrescible waste | The franchisee is authorized to accept putrescible waste for the purpose of delivering said putrescible waste to a disposal site authorized by this franchise; or for the purpose of transfer to a solid waste facility or disposal site designated by Metro Code Chapter 5.05 to accept putrescible waste. |



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| 3.5 | Non-putrescible waste | The franchisee is authorized to accept "dry" non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, for the purpose of material recovery. |
| 3.6 | Source-separated recyclables | The franchisee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for marketing. |
| 3.7 | Inert materials | The franchisee is authorized to accept inert materials for purposes of classifying, consolidating, transfer, and other similar functions related to preparing these materials for useful purposes. |
| 3.8 | Source-separated yard debris | The franchisee is authorized to accept source-separated yard debris for transfer to a yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility. The franchisee shall keep source-separated yard debris separate from other solid waste at the facility and shall provide records showing that source-separated yard debris is delivered to a composting or processing facility, and not disposed of. |
| 3.9 | Source-separated organic materials | The franchisee is authorized to accept organic materials for the purpose of transfer to a DEQ-permitted composting facility or other DEQ-permitted processing facility. Organic materials may be accepted only if they (a) have been separated from other solid waste by the generator prior to delivery to the facility, and (b) are suitable for controlled biological decomposition such as for making compost. The franchisee shall keep source-separated organic material separate from other solid waste at the facility and shall provide records showing that the source-separated organic materials are delivered to a composting or processing facility, and not disposed of. |
| 3.10 | Contaminated soils | The franchisee is authorized to accept contaminated soil for transfer to a DEQ permitted disposal site that is authorized to accept contaminated soil. |
| 3.11 | Special wastes and other wastes | The franchisee is authorized to accept various special wastes for transfer as authorized by DEQ Disposal Site Permit Number 459 including but not limited to filter cake, zircon sand and other sandblasting media, dewatered industrial sludge residue, waste from pollution control devices, charcoal air/water filters, ceramic |



castings, metal shavings, and refractory brick and other wastes with similar characteristics; and other wastes such as street sweepings, catch basin residue, and similar clean-up wastes.

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| 3.12 | Direct haul | The franchisee is authorized to deliver putrescible waste directly from the facility to Metro's contract operator for disposal of putrescible waste, subject to any conditions, limitations or performance standards specified in this franchise document, in Metro Code or in administrative procedures adopted pursuant to Metro Code Chapter 5.01. |
| 3.13 | Incidental recovery | The franchisee is authorized to perform "low-level" material recovery on putrescible waste, provided that these material recovery efforts are incidental to the activity of transferring the putrescible waste, and are limited to the gleaning of easily-extractable recyclable or reusable materials from the waste. |
| 3.14 | Deliveries not limited | This franchise does not limit the quantity of authorized solid wastes or other materials that may be accepted at the facility. |

4.0 LIMITATIONS AND PROHIBITIONS

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| 4.1 | Purpose | This section of the franchise describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility. |
| 4.2 | Limit on disposal | The franchisee shall dispose of no more than 50,000 tons of putrescible waste and processing residual, as a combined total, within each calendar year. |
| 4.3 | Prohibited waste | The franchisee shall not knowingly accept or retain any material amounts of the following types of wastes: materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the franchisee's DEQ Disposal Site Permit. |
| 4.4 | Material recovery required | The franchisee shall perform material recovery on "dry" non-putrescible wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, or deliver said "dry" non-putrescible wastes to a solid waste facility whose primary purpose is to recover useful materials from |



solid waste.

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| 4.5 | Prohibition on mixing | The franchisee shall not mix any source-separated recyclable materials, yard debris or organic materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling. |
| 4.6 | No disposal of recyclable materials | Source-separated recyclable materials, yard debris or organic materials accepted at the facility may not be disposed of by landfilling or incineration. |
| 4.7 | Origin of putrescible waste | The franchisee shall accept putrescible waste that originates within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste. |
| 4.8 | Limits not exclusive | Nothing in this section of the franchise shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this franchise document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit. |

5.0 OPERATING CONDITIONS

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| 5.1 | Purpose | This section of the franchise describes criteria and standards for the operation of the facility. |
| 5.2 | Qualified Operator | The franchisee shall provide an operating staff qualified to carry out the functions required by this franchise and to otherwise ensure compliance with Metro Code Chapter 5.01. |
| 5.3 | Enclosed operations | All handling, processing, compaction or other forms of managing putrescible wastes shall occur inside facility buildings. |
| 5.4 | Operating plan | The franchisee shall establish and follow procedures for accepting, managing and processing loads of solid waste received at the facility. Such procedures must be in writing and in a location where facility personnel and the Executive Officer can readily reference them. The franchisee may, from time to time, modify such procedures. The procedures shall include at least the |



following:

- a. Methods of notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility;
- b. Methods of inspecting incoming loads for the presence of prohibited or unauthorized waste;
- c. Methods for managing and transporting for disposal at an authorized disposal site each of the prohibited or unauthorized wastes if they are discovered at the facility;
- d. Objective criteria for accepting or rejecting loads.

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| 5.5 | Managing prohibited wastes | Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with procedures established in the Operating Plan. |
| 5.6 | Managing authorized wastes | All authorized solid wastes received at the facility must, within 24-hours from receipt, be either (a) processed, (b) appropriately stored, or (c) properly disposed of. |
| 5.7 | Storage | Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter. |
| 5.8 | Litter and airborne debris | <p>The franchisee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The franchisee shall:</p> <ol style="list-style-type: none">a. Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.b. Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.c. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris. |
| 5.9 | Odor | <p>The franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The franchisee shall:</p> <ol style="list-style-type: none">a. Clean the areas and equipment that come into contact with solid waste on a regular basis.b. Establish and follow procedures for minimizing odor at the |



facility. Such procedures must be in writing and in a location

where facility personnel and Metro inspectors can readily reference them. The franchisee may modify such procedures from time to time. The procedures shall include at least the following: (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the facility, (2) procedures for receiving and recording odor complaints, and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the facility.

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| 5.10 | Vectors | The franchisee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another. |
| 5.11 | Noise | The franchisee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations. |
| 5.12 | Water quality | <p>The franchisee shall:</p> <ul style="list-style-type: none">a. Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations. |
| 5.13 | Public Access | Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping. |
| 5.14 | Signage | <p>The franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:</p> <ul style="list-style-type: none">a. Name of the facilityb. Address of the facility;c. Emergency telephone number for the facility;d. Operating hours during which the facility is open for the receipt of authorized waste;e. Fees and charges;f. Metro's name and telephone number 797-1650; and |



g. A list of all authorized and prohibited wastes.

- 5.15 Complaints** The franchisee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If franchisee receives a complaint, franchisee shall:
- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.
- 5.16 Access to franchise document** The franchisee shall maintain a copy of this Metro Solid Waste Facility Franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

6.0 PERFORMANCE STANDARDS FOR DIRECT HAULING

- 6.1 Purpose** This section of the franchise describes the standards with which the franchisee must comply for putrescible waste that is delivered directly from the facility to Metro's contract operator for disposal of putrescible waste.
- 6.2 Compliance with Arlington regulations** All solid waste transported through the city limits of Arlington, Oregon, shall be subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
- 6.3 Compliance with other regulations** All equipment shall fulfill all federal, state, and local regulations. In addition, the use of exhaust brakes shall be prohibited altogether.



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| 6.4 | Transport in sealed containers | Pursuant to the authority granted as a variance to Metro Code Section 5.01.127(c)(3) by the Metro Council, the franchisee may conduct a six-month test of the use of tarped containers to transport authorized waste. Thereafter, unless the Franchisee is granted an additional variance or unless the Metro Council provides otherwise, all solid waste shall be transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and shall be capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. |
| 6.5 | Average payloads | The average weight of solid waste payloads transported during each calendar month shall be no less than 25 tons. |
| 6.6 | Limits on staging areas | Any staging areas used shall be located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA). |
| 6.7 | Limits on stopping points | All transport vehicles shall use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency. |
| 6.8 | Limits on use of public facilities | Use of rest areas, turnouts, scenic vista points, and state parks shall be limited to cases of emergency. |
| 6.9 | Limits on hours of transport | Transportation shall not be conducted in the Columbia River Gorge NSA during the following times: <ul style="list-style-type: none">a. 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.b. Daylight hours on Saturdays in June, July, August, and September.c. All hours on Sunday in June, July, August, and September. |
| 6.10 | Splash and spray suppression | All solid waste shall be transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles. |
| 6.11 | Vehicle appearance | All solid waste shall be transported by use of vehicles and equipment that shall be suitably painted and present an acceptable appearance. |



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| 6.12 | Public meetings | A representative of the franchisee and its transportation carrier shall annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste. |
| 6.13 | Reporting requirements for carrier | The franchisee shall report to Metro any accidents, citations, and vehicle inspections involving vehicles of their transportation carrier during the transporting of solid waste on behalf of the Franchisee. |
| 6.14 | Meeting with Metro | A representative of the franchisee and its transportation carrier shall meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences. |
| 6.15 | Other reporting requirements | The franchisee shall immediately report any violations of this section of the franchise to Metro. |

7.0 FEES AND RATE SETTING

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| 7.1 | Purpose | This section of the franchise specifies fees payable by the franchisee, and describes rate regulation by Metro. |
| 7.2 | Annual fee | The franchisee shall pay an annual franchise fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the franchise fee at any time by action of the Metro Council. |
| 7.3 | Fines | Each violation of a franchise condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council. |
| 7.4 | Rates not regulated | The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro. |
| 7.5 | Metro fee imposed on disposal | The franchisee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01. |



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| 7.6 | Credit | Until the franchisee has made application for credit from Metro, and said application has been granted, the franchisee shall not transport putrescible waste directly from the facility to Metro's contract operator for disposal of putrescible waste. |
| 7.7 | Direct haul disposal charge | The franchisee shall remit to Metro the direct haul disposal charge as established in Metro Code Chapter 5.02 on each ton of putrescible waste that is transported directly from the facility to Metro's contract operator for disposal of putrescible waste, on the terms and conditions of the grant of credit from Metro. |
| 7.8 | Tax in lieu | The franchisee shall remit to Metro the "in lieu of" tax as established in Metro Code Chapter 7.01 on each ton of putrescible waste that is transported directly from the facility to Metro's contract operator for disposal of putrescible waste, on the terms and conditions of the grant of credit from Metro. |

8.0 INSURANCE REQUIREMENTS

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| 8.1 | Purpose | The section describes the types of insurance that the franchisee shall purchase and maintain at the franchisee's expense, covering the franchisee, its employees, and agents. |
| 8.2 | General liability | The franchisee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage. |
| 8.3 | Automobile | The franchisee shall carry automobile bodily injury and property damage liability insurance. |
| 8.4 | Coverage | Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000. |
| 8.5 | Additional insureds | Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED. |



- 8.6 Worker's Compensation Insurance** The franchisee, its subcontractors, if any, and all employers working under this franchise, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation.
- 8.7 Notification** The franchisee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage.

9.0 ENFORCEMENT

- 9.1 Generally** Enforcement of this franchise shall be as specified in Metro Code.
- 9.2 Authority vested in Metro** The power and right to regulate, in the public interest, the exercise of the privileges granted by this franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against franchisee.
- 9.3 Inspections** The Executive Officer may make such inspection or audit as the Executive Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times with 24 hours notice to assure compliance with this franchise, Metro Code, and administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 9.4 No Enforcement Limitations** Nothing in this franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such



ordinances may have upon the terms of this franchise or the franchisee's operation of the facility.

10.0 MODIFICATIONS

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| 10.1 | Modification | At any time during the term of the franchise, either the Executive Officer or the franchisee may propose amendments or modifications to this franchise. |
| 10.2 | Modification, suspension or revocation by Metro | <p>The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:</p> <ul style="list-style-type: none">a. Violation of the terms or conditions of this franchise, Metro Code, or any applicable statute, rule, or standard;b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this franchise;c. Failure to disclose fully all relevant facts;d. A significant release into the environment from the facility;e. Significant change in the character of solid waste received or in the operation of the facility;f. Any change in ownership or control, excluding transfers among subsidiaries of the franchisee or franchisee's parent corporation;g. A request from the local government stemming from impacts resulting from facility operations.h. Compliance history of the franchisee. |

11.0 GENERAL OBLIGATIONS

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| 11.1 | Compliance with law | Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions |
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imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this franchise as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the franchise document, as well as any existing at the time of the issuance of the franchise but not cited or attached, and permits or conditions issued or modified during the term of the franchise.

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| 11.2 | Indem-
nification | The franchisee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the franchisee's performance or failure to perform under this franchise, including patent infringement and any claims or disputes involving subcontractors. |
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| 11.3 | Deliver waste
to appropriate
destinations | The franchisee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits; |
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| 11.4 | Provide access | The franchisee shall allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this franchise, Metro Code, and the administrative procedures adopted pursuant to Metro Code Chapter 5.01. |
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| 11.5 | Record-
keeping and
reporting. | The franchisee shall comply with the recordkeeping and reporting requirements as provided in Metro Code Chapter 5.01 and in administrative procedures adopted pursuant to Metro Code Chapter 5.01. |
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| 11.6 | Compliance
by agents | The franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this franchise. |

EXECUTIVE SUMMARY
ORDINANCE 99-815
TRANSFERRING A SOLID WASTE FRANCHISE FOR THE RECYCLE
AMERICA FACILITY

PROPOSED ACTION

- Transfers the Recycle America Direct-Haul Solid Waste Franchise from Waste Management of Oregon (the “old” Waste Management) to USA Waste of Oregon (the “new” Waste Management).
- The new license replicates the authority granted by the existing franchise to process, perform materials recovery, and reload putrescible waste for direct-haul to the Columbia Ridge Landfill.

WHY NECESSARY

- The “old” Waste Management was the franchisee for the Recycle America direct-haul solid waste franchise. However, the merger of Waste Management into USA Waste created a new company and constituted a change in ownership of the facility.
- Section 5.01.090 of the Metro Code requires the proposed franchise transferee to submit a franchise transfer application and for the Metro Council to act on the application within 120 days after filing.

DESCRIPTION

- The facility conducts materials recovery from dry commercial solid waste. The residual from recovery operations, along with municipal solid waste unsuitable for sorting, is reloaded into transfer trailers for direct-haul to the Columbia Ridge Landfill.

ISSUES/CONCERNS

- None.

BUDGET/FINANCIAL IMPACTS

- Since the existing franchise would be transferred without a change in authorizations, it is not expected to have a financial impact on Metro.

IN CONSIDERATION OF ORDINANCE NO. 99-815, FOR THE PURPOSE OF TRANSFERRING THE SOLID WASTE FRANCHISE FOR OPERATION OF THE RECYCLE AMERICA RELOAD/MATERIALS RECOVERY FACILITY FROM WASTE MANAGEMENT OF OREGON, INC. TO USA WASTE OF OREGON, INC.

August 5, 1999

Presented by: Terry Petersen,
Leann Linson

I. Summary and Recommendation

A. Effect of Passage

Approval of Ordinance No. 99-815 will transfer a Solid Waste Franchise for operation of the Recycle America facility from Waste Management of Oregon Inc. (WMO) to USA Waste of Oregon, Inc. (USAO) following the merger of the two companies. The franchise authorizes the facility to accept solid waste, including putrescible waste, for recovery and direct-haul to the Columbia Ridge Landfill. The facility is authorized to dispose of up to 50,000 tons annually.

B. Executive Officer Recommendation

The Executive Officer recommends approval of Ordinance No. 99-815, transferring the Recycle America franchise from Waste Management of Oregon, Inc. to USA Waste of Oregon, Inc. subject to the terms and conditions that are incorporated into the franchise document attached as "Exhibit A" to Ordinance No. 99-815.

II. Background

A. History of the Facility

Recycle America is a materials recovery facility and reload located at 869 NW Eastwind Drive in Troutdale. The Metro Council originally granted the facility a Solid Waste Franchise on June 20, 1996 through the approval of Ordinance 96-644-B. The original franchise agreement authorized the facility to perform materials recovery on non-putrescible waste and to reload and transfer some special wastes. The franchise itself was issued on July 14, 1996. On August 14, 1998, the facility's Solid Waste Franchise was exchanged for a Solid Waste License under the provisions of section 5.01.400(b) of the newly adopted Solid Waste Facility Regulation chapter of the Code. Waste Management then applied for a direct-haul franchise to accept putrescible waste and deliver it directly to Columbia Ridge Landfill. The Council approved the direct-haul franchise on November 24, 1998.

B. The Applicant and the Applicant's Request

Waste Management, Inc. (the "old" Waste Management) was recently merged into USA Waste Services, Inc. The merged company then changed its name to Waste

Management, Inc. (the "new" Waste Management). However, USA Waste of Oregon, Inc. (USAO) is the name presently used by the new company within the state of Oregon.

In an application delivered on June 22, 1999, Frank Hammond, representing USAO requested that the facility's franchise be transferred from Waste Management of Oregon, Inc. (the Oregon subsidiary of the "old" Waste Management) to USAO. During a later phase of the restructuring, the company will change its Oregon corporate name to Waste Management of Oregon, Inc. (the "new" Oregon Waste Management).

III. Application Procedure

A. Reason for the Ordinance and Metro Code Provisions Related to the Applicant's Request

Section 5.01.090

Section 5.01.090 of the Metro Code governs transfer of franchises. Section 5.01.090 has three parts, as follows:

- (a) A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with section 5.01.060 and has been granted. The proposed transferee must meet the requirements of this chapter.*

On June 22, 1999, Metro received from USAO a formal franchise application. The application was determined to be in accordance with section 5.01.060. Details are presented below.

- (b) The council shall not unreasonably deny an application for transfer of a franchise. If the council does not act on the application for transfer within 90 days after filing of a complete application, the application shall be deemed granted.*

The proposed ordinance is being presented to Council in a timely manner, and well within the 90-day limit.

- (c) The term for any transferred Franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.*

The current franchise has an expiration date of December 31, 2003. The proposed new franchise, presented as "Exhibit A," to Ordinance No. 99-815, has the same expiration date.

Section 5.01.060

Section 5.01.060 specifies eight items to be addressed in any franchise application.

- (a) *Applications for a franchise or license or for transfer of any interest in, modification, expansion, or renewal of an existing franchise or license shall be filed on forms provided by the executive officer. Franchises and licenses are subject to approval by the council.*

As mentioned above, on June 22, 1999, Metro received from USAO a formal application for transfer of the Recycle America franchise. The application was filed in the format prescribed by the Executive Officer.

- (b) *In addition to the information required on the forms, franchise applicants must submit the following to the executive officer:*

- (1) *Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the executive officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of failure of service, and any other factor material to the operation of the franchise;*

The applicant has obtained the necessary corporate surety bond.

- (2) *In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee;*

A letter and application for a franchise transfer was submitted by Frank Hammond, attorney for the new merged company, USAO.

- (3) *Proof that the applicant can obtain the liability insurance required by this chapter;*

The applicant has provided proof of insurance.

- (4) *If the applicant is not an individual, a list of stockholders holding more than 5 percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of 5 percent of ownership thereof must be reported within 10 days of such changes of ownership to the executive officer;*

USA Waste of Oregon, Inc. is a wholly owned subsidiary of Waste Management of North America, Inc.

- (5) *A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;*

The Recycle America facility is fully permitted by the DEQ. The DEQ permit and all related information have been provided to Metro and are on file in the REM Department.

- (6) *Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall read and agree to be bound by the provisions of section 5.01.180(e) of this chapter if the franchise is revoked or franchise renewal is refused;*

The owner of the real property on which the Recycle America facility is built, TDK Corporation, has signed such a consent.

- (7) *Proof that the applicant has received proper land use approval;*

The City of Troutdale has granted the Recycle America facility a Conditional Use Permit (CUP). The CUP has been provided to Metro and is on file in the REM Department.

- (8) *and such other information as the executive officer deems necessary to determine an applicant's qualifications.*

The applicant is a major solid waste company that operates other authorized facilities in the Metro Region and is well known to the REM Department. No additional information is necessary to determine the applicant's qualifications.

B. Analysis of Application

The application is for a transfer of a solid waste franchise from Waste Management of Oregon to USA Waste of Oregon following the merger of the two companies. It is USAO's intent to continue to operate the facility in the same manner as presently authorized by the facility's Conditional Use Permit, DEQ permit and Metro franchise. USAO has filed a complete application in conformance with the Metro Code that has been found by staff to meet the requirements of Code chapter 5.01.

IV. Fiscal Impact

Ordinance No. 99-815 transfers an existing franchise to a new facility owner without any changes in authorizations. The facility will continue to process waste of the same type and in the same quantity as presently authorized by its existing franchise. Thus, it is anticipated that approval of Ordinance No. 99-815 will have no fiscal impact.

Agenda Item Number 7.3

Ordinance No. 99-818, For the Purpose of Amending the Metro Code Requirements for Urban Growth Boundary Amendments, Urban Reserve Planning Requirements in Title 11 of the Urban Growth Management Functional Plan and Appendices A and Be of the Regional Framework Plan and Metro Code Requirements for Local Government Boundary Changes and Declaring an Emergency.

First Reading

Metro Council Meeting
Thursday, September 9, 1999
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE	)	ORDINANCE NO 99-818
REQUIREMENTS FOR URBAN GROWTH)	
BOUNDARY AMENDMENTS, URBAN RESERVE	)	Introduced by Councilors
PLANNING REQUIREMENTS IN TITLE 11 OF THE	)	McLain and Monroe
URBAN GROWTH MANAGEMENT FUNCTIONAL)	
PLAN AND APPENDICES A AND B OF THE)	
REGIONAL FRAMEWORK PLAN AND METRO)	
CODE REQUIREMENTS FOR LOCAL)	
GOVERNMENT BOUNDARY CHANGES AND)	
DECLARING AN EMERGENCY)	

WHEREAS, in March 1997, the Metro Code was amended in Ordinance 96-655E to require Urban Reserve Plans prior to all major amendments and legislative amendments of the regional Urban Growth Boundary; and

WHEREAS, in September 1998, the Urban Growth Management Functional Plan adopted by Ordinance 96-647C was amended to add a new Title 11 by Ordinance 98-772B which allowed major amendments and legislative amendments of the Urban Growth Boundary to occur prior to completion of Urban Reserve Plans. Appendix A of the Regional Framework Plan adopted in Ordinance 97-715B restates the Urban Growth Management Functional Plan and was also amended by Ordinance 98-772B; and

WHEREAS, the Oregon Legislature transferred the functions of the Portland Metropolitan Boundary Commission to Metro by Chapter 516, Section 11, Oregon Laws 1997 which took effect December 31, 1998; and

WHEREAS, the Oregon Legislature authorized Metro to review and approve annexations to Metro's jurisdictional boundary under Chapter 282, Oregon Laws 1999 (Senate Bill 1031) effective June 18, 1999; and

WHEREAS, notice of this ordinance was sent to the Department of Land Conservation and Development on August 6, 1999, more than 45 days before the first evidentiary hearing on this ordinance; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 3.01 is amended in Sections 3.01.010, 3.01.012, 3.01.015, 3.01.020, 3.01.025, 3.01.033, 3.01.035, 3.01.040, 3.01.050 and 3.01.070 and Section 3.01.012 to read as set forth in attached Exhibit A. These amendments constitute amendments to the current acknowledged Metro Code Chapter 3.01 Urban Growth Boundary and Urban Reserve Procedures.

2. Appendix B of the Regional Framework Plan, adopted by Ordinance 97-715B which restates Metro Code 3.01 Concerning Urban Reserves and Expansion of the UGB is amended to read as set forth in attached Exhibit A.

3. Title 11 of the Urban Growth Management Functional Plan which is also Metro Code 3.07 is amended in Sections 3.07.1110, 3.07.1120 and 3.07.1130 and 3.07.1140 to read as set forth in attached Exhibit A.

4. Appendix A of the Regional Framework Plan adopted by Ordinance 97-715B which restates the Urban Growth Management Functional Plan is also amended to read as set forth in attached Exhibit A.

5. Metro Code 3.09 Local Government Boundary Changes Section 3.09.120 is amended to read as set forth in attached Exhibit A.

6. This ordinance is necessary for the immediate preservation of public health, safety and welfare because revisions to requirements for Urban Growth Boundary amendments should be effective immediately in order to allow Metro to comply with the State of Oregon mandate to

move the Urban Growth Boundary; an emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this ____ day of _____ 1999.

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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8/25/99

EXHIBIT A

**DRAFT METRO CODE AMENDMENTS: COMPREHENSIVE PLAN REQUIREMENTS
FOR URBAN GROWTH BOUNDARY AMENDMENT AREAS URBAN RESERVE PLANS**

Redline version of:

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3.01 PLANNING

3.01.010 Definitions

(a) "Administrative adjustment" means an addition of five net acres or less to the UGB to adjust the UGB where the current UGB is coterminous with a transportation right-of-way that is changed by a modification to the alignment of the transportation facility.

(b) "Council" has the same meaning as in chapter 1.01.

(c) "Compatible," as used in this chapter, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses. Any such interference or adverse impacts must be balanced with the other criteria and considerations cited.

(d) "District" has the same meaning as in chapter 1.01.

~~————(e)—— "First tier urban reserves" means those urban reserves to be first urbanized because they can be most cost effectively provided with urban services by affected cities and service districts as so designated and mapped in a Metro council ordinance.~~

(~~f~~e) "Goals" means the statewide planning goals adopted by the Oregon Land Conservation and Development Commission at OAR 660-15-000.

(~~g~~f) "Gross developable vacant land" means the total buildable land area within the UGB, as compiled by Metro for the purpose of determining the need for changes in the urban land supply. These are lands that can be shown to lack significant barriers to development, Gross developable vacant lands including include, but are not limited to, all recorded lots on file with the county assessors equal to or larger than either the minimum lot size of the zone in which the lot is located or the minimum lot size which will be applied in an urban holding zone which:

- (1) Are without any structures as corroborated through examination of the most recent aerial photography at the time of inventory; or
- (2) Have no ~~improvement value~~ improvements according to the most recent assessor records.

(hg) "Gross redevelopable land" means the total area of redevelopable land and infill parcels within the UGB including:

- (1) That portion of all partially developed recorded lots, where one-half acre or more of the land appears unimproved through examination of the most recent aerial photography at the time of inventory; and
- (2) All recorded lots on file with the county assessors ~~that are~~ 20,000 square feet or larger where the value of the improvement(s) is significantly less than the value of the land, as established by the most recent assessor records at the time of inventory. Standard measures to account for the capability of infill and redevelopment properties will be developed by the district to provide a means to define what is significant when comparing structure value and land values; or, when a city or county has more detailed or current gross redevelopable land inventory data, for all or a part of their jurisdiction, it can request that the district substitute that data for inclusion in the gross developable land inventory.

(ih) "Gross developable land" means the total of gross developable vacant land and gross redevelopable land.

(ji) "Legislative amendment" means an amendment to the UGB initiated by the district, which is not directed at a particular site-specific situation or relatively small number of persons.

(kj) "Locational adjustment" means a limited quasi-judicial change to the UGB which is either an addition or deletion of 20 net acres or less outside of an urban reserve, pursuant to the criteria found in Section 3.01.035 of this chapter considered by quasi-judicial procedures.

(lk) "Major amendment" means a quasi-judicial change of the UGB of any size from within an urban reserve, or more than 20 net acres if outside an urban reserve, more than twenty net acres, pursuant to the criteria found in section 3.01.030 of this chapter considered by quasi-judicial procedures.

(ml) "Natural area" means an area exclusively or substantially without any human development, structures, and paved areas which is wholly or substantially in a native and unaffected state. Further, it shall be identified in a city, county or district open space inventory or plan, prior to the initiation of an amendment.

(nm) "Net acre" for purposes of calculating the total land area within a proposal to amend the UGB means an area ~~measuring 43,560 square feet~~ measured in acres which excludes:

- (1) Any developed road rights-of-way through or on the edge of ~~which the existing or proposed UGB would run~~ an amendment; and
- (2) Environmentally constrained areas, including any open water areas, floodplains, natural resource areas protected ~~under statewide planning Goal 5~~ in the comprehensive plans of cities and counties in the region, slopes in excess of 25 percent and wetlands requiring a federal fill and removal permit under Section 404 of the Clean Water Act. These excluded areas do not include lands for which the local zoning code

provides a density bonus or other mechanism which allows the transfer of the allowable density or use to another area or to development elsewhere on the same site; and,

(3) All publicly-owned land designated for park and open space uses.

(en) "Net developable land" means the total of net developable vacant land and net redevelopable land.

(po) "Net developable vacant land" means the amount of land remaining when gross developable vacant land is reduced by the amount of the estimated land needed for the provision of additional roads, schools, parks, private utilities and other public facilities.

(ep) "Net redevelopable land" means the amount of land remaining when gross redevelopable land is reduced by the estimated land needed for the provision of additional roads, schools, parks, private utilities and other public facilities. The district shall determine the appropriate factor to be used for each jurisdiction in consultation with the jurisdiction within which the specific redevelopable land is located.

(rq) "Nonurban land" means land currently outside the ~~most recently amended~~ UGB.

(sr) "Party" means any individual, agency, or organization who participates orally or in writing in the creation of the record established at a public hearing.

(ts) "Petition" means a petition to amend the UGB either as a major amendment or as a locational adjustment.

(ut) "Planning period" means the period covered by the most recent officially adopted district forecasts, which is approximately a 20-year period.

(vu) "Property owner" means a person who owns the primary legal or equitable interest in the property.

(wv) "Regional forecast" means a 20-year forecast of employment and population by specific areas within the region, which has been adopted by the district.

(xw) "Site" means the subject property for which an amendment or locational adjustment is being sought.

(yx) "Special land need" means a specific type of identified land needed which complies with Goal 14, Factors 1 and 2 that cannot be reasonably accommodated on first-tier urban reserve land.

(zy) "UGB" means the Urban Growth Boundary for the district pursuant to ORS 268.390 and 197.005 through 197.430.

(az) "Urban land" means that land inside the UGB.

(baa) "Urban reserve" means an area designated as an urban reserve pursuant to Section 3.01.012 of this code and applicable statutes and administrative rules ~~adjacent to the present UGB defined to be a priority location for any future UGB amendments when needed. Urban reserves are defined as the land likely to be needed including all developable land inside the current urban growth boundary, for a 30 to 50 year period.~~

~~(cbb) "Urban facilities" means those public urban facilities for which state law allows system development charges to be imposed including transportation, water supply and treatment, sewage, parks and storm drainage facilities.~~

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 97-711, Sec. 2.)

3.01.012 Urban Reserve Areas

(a) Purpose. The purpose of this section is to comply with ORS 197.298 by identifying lands designated urban reserve land by Metro as the first priority land for inclusion in the Metro Urban Growth Boundary.

(b) Designation of Urban Reserves~~Amount of Land Required.~~

(1) The Council shall designate the amount of urban reserves estimated to accommodate the forecast need.

~~(+2)~~ The areas designated as urban reserves shall be sufficient to accommodate expected urban development for a 30 to 50 year period, taking into account an including an estimate of all potential developable and redevelopable land in within the current urban areagrowth boundary.

~~(23)~~ ~~Metro-~~The Council shall estimate the capacity of the urban reserves consistent with the procedures for estimating capacity of the urban area set forth in section 3.01.020~~as defined in section 3.01.010.~~

~~(34)~~ The minimum residential density to be used in ~~calculating the need for urban reserves,~~ estimating the capacity of the areas designated as urban reserves ~~and required in concept plans shall be an average of at least 10 dwelling units per net developable acre or lower densities which conform to the 2040 Growth Concept Plan design type designation for the urban reserve area.~~

- ~~_____ (4) Metro shall designate the amount of urban reserves estimated to accommodate the forecast need.~~
- (5) ~~Metro~~ The Council may designate a portion of the land required for urban reserves in order to phase designation of urban reserves.

~~_____ (c) Mapped Urban Reserves.~~

- (~~1~~6) Metro has designated as urban reserve areas those lands indicated on the 2040 Growth Concept map which was adopted as part of the Regional Urban Growth Goals and Objectives.

- ~~_____ (2) Urban Growth Boundary amendments shall include only land designated as urban reserves consistent with unless designated urban reserve lands are inadequate to meet the need. If land designated as urban reserves is inadequate to meet the need, the priorities in ORS 197.298 shall be followed.~~

~~Prior to adding land to the Urban Growth Boundary, the Metro Council shall modify the Metro 2040 Growth Concept to designate regional design types consistent with the Metro 2040 Growth Concept for the land added.~~

- ~~_____ (d) First Tier. First tier urban reserves shall be considered for inclusion in the Metro Urban Growth Boundary prior to other urban reserves unless a special land need is identified which cannot be reasonably accommodated on first tier urban reserves.~~

~~_____ (c) Plans For Urban Reserve Areas. Subject to applicable law, cities and counties may prepare and adopt comprehensive plan amendments for urban reserve areas consistent with all provisions of the Urban Growth Management Functional Plan prior to the inclusion of an urban reserve area within the Urban Growth Boundary. At the request of a city or county, the~~

Council shall establish the 2040 Growth Concept design types and the boundaries of the area to be planned.

~~———— (e) ——— Urban Reserve Plan Required. A conceptual land use plan and concept map which demonstrates compliance with Goal 2 and Goal 14 and section 3.01.020 or section 3.01.030, with the RUGGO and with the 2040 Growth Concept design types and any applicable functional plan provisions shall be required for all major amendment applications and legislative amendments of the Urban Growth Boundary. Except as provided in section 3.01.015(e), the plan and map shall include at least the following, when applicable:~~

~~———— (1) ——— Provision for either annexation to a city and any necessary service districts at the time of the final approval of the Urban Growth Boundary amendment consistent with section 3.01.065 or an applicable city-county planning area agreement which requires at least the following:~~

~~———— (A) ——— City or county agreement to adopt comprehensive plan provisions for the lands added to the Urban Growth Boundary which comply with all requirements of urban reserve plan conditions of the Urban Growth Boundary approval;~~

~~———— (B) ——— City and county agreement that lands added to the Urban Growth Boundary shall be rezoned for urban development only upon annexation or agreement for delayed annexation to the city and any necessary service district identified in the approved Concept Plan or incorporation as a new city; and~~

~~———— (C) ——— County agreement that, prior to annexation to the city and any necessary service districts, rural zoning that ensures a range of opportunities for the orderly, economic, and efficient provision of urban services when these lands are included in the Urban Growth~~

Boundary remains in place until city annexation and the adoption of urban zoning.

- ~~(2) Notwithstanding (1) above, the Metro Council may approve a major or legislative amendment to the Urban Growth Boundary if the proposed amendment is required to assist the region to comply with the 2040 Growth Concept or to assist the region, a city or county in demonstrating compliance with statute, rule, or statewide goal requirements for land within the Urban Growth Boundary. These requirements include ORS 197.296, 197.299 and 197.303, the statewide planning goals and Regional Urban Growth Goals and Objectives. An urban services agreement consistent with ORS 195.065 shall be required as a condition of approval for any amendment under this subsection.~~
- ~~(3) The areas of Urban Reserve Study Areas #11, 14 and 65 are so geographically distant from existing city limits that annexation to a city is difficult to achieve. If the county and affected city and any necessary service districts have signed an urban service agreement or an urban reserve agreement coordinating urban services for the area, then the requirements for annexation to a city in (1)(B) and (1)(C) above shall not apply.~~
- ~~(4) Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities which conform to the 2040 Concept Plan design type designation for the area.~~
- ~~(5) Demonstrable measures that will provide a diversity of housing stock that will fulfill needed housing requirements as defined by ORS 197.303. Measures may include, but are not limited to, implementation of~~

recommendations in Title 7 of the Urban Growth Management Functional Plan:

- (6) ——— Demonstration of how residential developments will include, without public subsidy, housing affordable to households with incomes at or below area median incomes for home ownership and at or below 80 percent of area median incomes for rental as defined by U.S. Department of Housing and Urban Development for the adjacent urban jurisdiction. Public subsidies shall not be interpreted to mean the following: density bonuses, streamlined permitting processes, extensions to the time at which systems development charges (SDCs) and other fees are collected, and other exercises of the regulatory and zoning powers.
- (7) ——— Provision for sufficient commercial and industrial development for the needs of the area to be developed and the needs of adjacent land inside the Urban Growth Boundary consistent with 2040 Growth Concept design types.
- (8) ——— A conceptual transportation plan consistent with the Regional Transportation Plan, and consistent with protection of natural resources as required by Metro functional plans.
- (9) ——— Identification, mapping and a funding strategy for protecting areas from development due to fish and wildlife habitat protection, water quality enhancement and mitigation, and natural hazards mitigation. A natural resource protection plan to protect fish and wildlife habitat, water quality enhancement areas and natural hazard areas shall be completed as part of the comprehensive plan and zoning for lands added to the Urban Growth Boundary prior to urban development. The plan shall include cost estimates to implement a strategy to fund resource protection.

- ~~_____ (10) A conceptual public facilities and services plan, including rough cost estimates for the provision of sewer, water, storm drainage, transportation, fire and police protection facilities and parks, including financing strategy for those costs.~~
- ~~_____ (11) A conceptual school plan which provides for the amount of land and improvements needed for school facilities. Estimates of the need shall be coordinated among affected school districts, the affected city or county, and affected special districts consistent with the procedures in ORS 195.110(3), (4) and (7).~~
- ~~_____ (12) An Urban Reserve Plan map showing, at least, the following, when applicable:~~
- ~~_____ (A) Major roadway connections and public facilities;~~
- ~~_____ (B) Location of unbuildable lands including but not limited to steep slopes, wetlands, floodplains and riparian areas;~~
- ~~_____ (C) General locations for commercial and industrial lands;~~
- ~~_____ (D) General locations for single and multi family housing;~~
- ~~_____ (E) General locations for public open space, plazas and neighborhood centers; and~~
- ~~_____ (F) General locations or alternative locations for any needed school, park or fire hall sites.~~

- ~~(13) The urban reserve plan shall be coordinated among the city, county, school district and other service districts, including a dispute resolution process with an MPAC report and public hearing consistent with RUGGO Objective 5.3. The urban reserve plan shall be considered for local approval by the affected city or by the county, if subsection (3), above, applies in coordination with any affected service district and/or school district. Then the Metro Council shall consider final approval of the plan.~~

(Ordinance No. 96-655E, Sec. 1. Amended by Ordinance No. 98-772B, Sec. 1.)

3.01.015 Legislative Amendment Procedures

(a) The process for determination of need and location of lands for amendment of the UGB is provided in section 3.01.020.

(b) Notice shall be provided as described in section 3.01.050.

~~(c) Metro shall consult with the appropriate city and/or county concerning comprehensive plan changes that may be needed to implement a legislative amendment.~~

~~(d) Metro shall consult with the appropriate city, county, school and service districts to identify lands inside first tier urban reserves which are the most capable of being served by extension of service from existing service providers for the purpose of preparing concept plans in advance for any short term need for inclusion of additional lands in the Urban Growth Boundary.~~

(ec) ~~When the~~ The Metro Council shall initiate Legislative Amendments when it determines pursuant to Goal 14 and section 3.01.020 that there is a need to add land to the Urban Growth Boundary, ~~it shall initiate legislative amendments to do so. In determining which lands to add to the boundary to meet the identified need, the Council shall consider all applicable~~

~~criteria including Goal 2 and Goal 14, section 3.01.012(d), and the urban reserve planning requirements set forth in section 3.01.012(e). If insufficient land is available that satisfies the requirements for an urban reserve plan as specified in section 3.01.012(e), then the Metro Council may consider first tier lands where a city or county commits to complete and adopt such an urban reserve plan and provides documentation to support this commitment in the form of a work program, timeline for completion, and identified funding for the program adopted by the city or county.~~

~~(d) Metro shall consult with cities, counties and MPAC to determine which cities and counties are prepared to initiate comprehensive plan amendments for urban reserve areas, if they are included within the Urban Growth Boundary.~~

~~(e) Where a city or county has adopted comprehensive plan amendments for an urban reserve area to Section 3.01.012(c), the Metro Council shall rely upon the planned status of that urban reserve in considering applicable criteria.~~

~~(f) All land added to the Urban Growth Boundary to meet a need for land shall be subject to the urban reserve plan requirements of Title 11 of the Urban Growth Management Functional Plan, Metro Code section 3.07.1110 et seq.~~

~~(gff) Legislative amendment decisions shall be accompanied by a based upon substantial evidence in the decision record which demonstrates how the Urban Growth Boundary amendment complies with applicable state and local law and statewide goals as interpreted by section 3.01.020 and subsequent appellate decisions and includes applicable concept plans and maps demonstrating consistency with RUGGO including the 2040 Growth Concept and compliance with any applicable functional plan provisions.~~

~~(hgg) The following public hearings process shall be followed for legislative amendments:~~

- (1) The district council shall refer a proposed amendment to the appropriate council committee at the first council reading of the ordinance.
- (2) The committee shall take public testimony at as many public hearings as necessary. At the conclusion of public testimony, the committee shall deliberate and make recommendations to the council.
- (3) The council shall take public testimony at its second reading of the ordinance, discuss the proposed amendment, and approve the ordinance with or without revisions or conditions, or refer the proposed legislative amendment to the council committee for additional consideration.
- (4) Testimony before the council or the committee shall be directed to Goal 14 and Goal 2 considerations interpreted at section 3.01.020 of this chapter.
- (5) ~~When~~ Prior to the council acts acting to approve a legislative amendment, including land outside the district, the council shall annex the territory to the district. The annexation decision shall be consistent with the requirements of section 3.09.120 of this Code. If the annexation decision becomes the subject of a contested case pursuant to Chapter 3.09 of this code, the Legislative amendment to the Urban Growth Boundary shall not be approved until the contested case is either withdrawn or the annexation is approved by the Boundary Appeals Commission, whichever occurs first.

(A) ~~Initial action shall be by resolution expressing intent to amend the UGB if and when the affected property is annexed to the district within six months of the date of adoption of the resolution; or,~~

~~(B) The district may initiate a district boundary annexation concurrent with a proposed UGB amendment;~~

~~(C) The council shall take final action, within 30 calendar days of notice that annexation to the district has been approved~~

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No 98-772B, Sec. 1.)

3.01.020 Legislative Amendment Criteria

(a) The purpose of this section is to address ORS 197.298, Goals 2 and 14 of the statewide planning goals and RUGGO. This section details a process which is intended to interpret Goals 2 and 14 for specific application to the district UGB. Compliance with this section shall constitute compliance with ORS 197.298, statewide planning Goals 2 and 14 and the Regional Urban Growth Goals and Objectives.

(b) While all of the following Goal 14 factors must be addressed, the factors cannot be evaluated without reference to each other. Rigid separation of the factors ignores obvious overlaps between them. Demonstration of compliance with one factor or subfactor may not constitute a sufficient showing of compliance with the goal, to the exclusion of the other factors when making an overall determination of compliance or conflict with the goal. For legislative amendments, if need has been addressed, the district shall demonstrate that the priorities of ORS 197.298 have been followed and that the recommended site was better than alternative sites, balancing factors 3 through 7.

(1) Factor 1: Demonstrated need to accommodate long-range urban population growth.

- (A) The district shall develop 20-year Regional Forecasts of Population and Employment, which shall include a forecast of net developable land need, providing for review and comment by cities, counties, special districts and other interested parties. After deliberation upon all relevant facts the district shall adopt a forecast. This forecast shall be completed at least every five years or at the time of periodic review, whichever is sooner. Concurrent with the adoption of the district's growth forecast, the district shall complete an inventory of net developable land, providing the opportunity for review and comment by all cities and counties in the district.
- (B) The forecast and inventory, along with all other appropriate data shall be considered by the district in determining the need for urban developable land. The results of the inventory and forecast shall be compared, and if the net developable land equals or is larger than the need forecast, then the district council shall hold a public hearing, providing the opportunity for comment. The council may conclude that there is no need to move the UGB and set the date of the next five-year review or may direct staff to address any issues or facts which are raised at the public hearing.
- (C) If the inventory of net developable land is less than the need forecast, the district shall conduct a further analysis of the inventory to determine whether any significant surplus of developable land in one or more land use categories could be suitable to address the unmet forecasted need. Council shall hold a public hearing prior to its determination of whether any estimated deficit of net developable land is sufficient to justify an analysis of locations for a legislative amendment the UGB.

(D) For consideration of a legislative UGB amendment, the district council shall review an analysis of land outside the present UGB to determine those areas best suited for expansion of the UGB to meet the identified need.

~~E) Consistent with 3.01.012(e) areas included in a legislative amendment of the UGB shall have completed an urban reserve conceptual plan. If suitable lands with completed urban reserve plans are not sufficient to meet the identified need, additional legislative amendments of the UGB may be adopted as urban reserve plans are completed. This legislative review process for the regional UGB shall continue to consider legislative UGB amendments until the identified need is fully met.~~

(FE) The district must find that the identified need cannot reasonably be met within the UGB, consistent with the following considerations:

- (i) That there is not a suitable site with an appropriate comprehensive plan designation.
- (ii) All net developable land with the appropriate plan designation within the existing UGB shall be presumed to be available for urban use during the planning period.
- (iii) Market availability and level of parcelization shall not render an alternative site unsuitable unless justified by findings consistent with the following criteria:

(I) Land shall be presumed to be available for use at some time during the planning period of the UGB

unless legal impediments, such as deed restrictions, make it unavailable for the use in question.

- (II) A parcel with some development on it shall be considered unavailable if the market value of the improvements is not significantly less than the value of the land, as established by the most recent assessor records at the time of inventory. Standard measures to account for the capability of infill and redevelopment will be developed by the district to provide a means to define what is significant when comparing structure value and land values. When a city or county has more detailed or current gross redevelopable land inventory data, for all or a part of their jurisdiction, it can request that the district substitute that data in the district gross developable land inventory.
 - (III) Properly designated land in more than one ownership shall be considered suitable and available unless the current pattern or level of parcelization makes land assembly during the planning period unfeasible for the use proposed.
- (2) Factor 2: Need for housing, employment opportunities and livability may be addressed under either subsection (A) or (B) or both, as described below.
- (A) For a proposed amendment to the UGB based upon housing or employment opportunities the district must demonstrate that a need

based upon an economic analysis can only be met through a change in the location of the UGB. For housing, the proposed amendment must meet an unmet need according to statewide planning Goal 10 and its associated administrative rules. For employment opportunities, the proposed amendment must meet an unmet long-term need according to statewide planning Goal 9 and its associated administrative rules. The amendment must consider adopted comprehensive plan policies of jurisdictions adjacent to the site, when identified by a jurisdiction and must be consistent with the district's adopted policies on urban growth management, transportation, housing, solid waste, and water quality management.

- (B) To assert a need for a UGB amendment based on livability, the district must:
 - (i) factually define the livability need, including its basis in adopted local, regional, state, or federal policy;
 - (ii) factually demonstrate how the livability need can best be remedied through a change in the location of the UGB;
 - (iii) identify both positive and negative aspects of the proposed UGB amendment on both the livability need and on other aspects of livability; and
 - (iv) demonstrate that, on balance, the net result of addressing the livability need by amending the UGB will be positive.

- (3) Factor 3: Orderly and economic provision of public facilities and services.
An evaluation of this factor shall be based upon the following:

- (A) For the purposes of this section, economic provision shall mean the lowest public cost provision of urban services. When comparing alternative sites with regard to factor 3, the best site shall be that site which has the lowest net increase in the total cost for provision of all urban services. In addition, the comparison may show how the proposal minimizes the cost burden to other areas outside the subject area proposed to be brought into the boundary.
- (B) For the purposes of this section, orderly shall mean the extension of services from existing serviced areas to those areas which are immediately adjacent and which are consistent with the manner of service provision. For the provision of gravity sanitary sewers, this could mean a higher rating for an area within an already served drainage basin. For the provision of transit, this would mean a higher rating for an area which could be served by the extension of an existing route rather than an area which would require an entirely new route.

- (4) Factor 4: Maximum efficiency of land uses within and on the fringe of the existing urban area. An evaluation of this factor shall be based on at least the following:

- (A) The subject area can be developed with features of an efficient urban growth form including residential and employment densities capable of supporting transit service; residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and the ability to provide for a mix of land uses to

meet the needs of residents and employees. If it can be shown that the above factors of compact form can be accommodated more readily in one area than others, the area shall be more favorably considered.

- (B) The proposed UGB amendment will facilitate achieving an efficient urban growth form on adjacent urban land, consistent with local comprehensive plan policies and regional functional plans, by assisting with achieving residential and employment densities capable of supporting transit service; supporting the evolution of residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and improving the likelihood of realizing a mix of land uses to meet the needs of residents and employees.

- (5) Factor 5: Environmental, energy, economic and social consequences. An evaluation of this factor shall be based upon consideration of at least the following:

- (A) If the subject property contains any resources or hazards subject to special protection identified in the local comprehensive plan and implemented by appropriate land use regulations, findings shall address how urbanization is likely to occur in a manner consistent with these regulations.
- (B) Complementary and adverse economic impacts shall be identified through review of a regional economic opportunity analysis, if one has been completed. If there is no regional economic opportunity analysis, one may be completed for the subject land.

- (C) The long-term environmental, energy, economic, and social consequences resulting from the use at the proposed site. Adverse impacts shall not be significantly more adverse than would typically result from the needed lands being located in other areas requiring an amendment of the UGB.

- (6) Factor 6: Retention of agricultural land. This factor shall be addressed through the following:
 - (A) Prior to the designation of urban reserves, the following hierarchy shall be used for identifying priority sites for urban expansion to meet a demonstrated need for urban land:
 - (i) Expansion on rural lands excepted from statewide planning Goals 3 and 4 in adopted and acknowledged county comprehensive plans. Small amounts of rural resource land adjacent to or surrounded by those "exception lands" may be included with them to improve the efficiency of the boundary amendment. The smallest amount of resource land necessary to achieve improved efficiency shall be included;
 - (ii) If there is not enough land as described in (i) above to meet demonstrated need, secondary or equivalent lands, as defined by the state, should be considered;
 - (iii) If there is not enough land as described in either (i) or (ii) above, to meet demonstrated need, secondary agricultural resource lands, as defined by the state should be considered;

- (iv) If there is not enough land as described in either (i), (ii) or (iii) above, to meet demonstrated need, primary forest resource lands, as defined by the state, should be considered;
- (v) If there is not enough land as described in either (i), (ii), (iii) or (iv) above, to meet demonstrated need, primary agricultural lands, as defined by the state, may be considered.
- (B) After urban reserves are designated and adopted, consideration of factor 6 shall be considered satisfied if the proposed amendment is wholly within an area designated as an urban reserve.
- (C) After urban reserves are designated and adopted, a proposed amendment for land not wholly within an urban reserve must also demonstrate that the need cannot be satisfied within urban reserves.
- (7) Factor 7: Compatibility of proposed urban development with nearby agricultural activities.

The record shall include an analysis of the potential impact on nearby agricultural activities including the following:

- (i) A description of the number, location and types of agricultural activities occurring within one mile of the subject site;

- (ii) An analysis of the potential impacts, if any, on nearby agricultural activities taking place on lands designated for agricultural use in the applicable adopted county or city comprehensive plan, and mitigation efforts, if any impacts are identified. Impacts to be considered shall include consideration of land and water resources which may be critical to agricultural activities, consideration of the impact on the farming practices of urbanization of the subject land, as well as the impact on the local agricultural economy.
- (c) The requirements of statewide planning Goal 2 will be met by addressing all of the requirements of section 3.01.020(b), above, and by factually demonstrating that:
 - (1) The land need identified cannot be reasonably accommodated within the current UGB; and
 - (2) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts; and
 - (3) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas than the proposed site and requiring an exception.
- (d) The proposed location for the UGB shall result in a clear transition between urban and rural lands, using natural and built features, such as roads, drainage divides, floodplains, powerlines, major topographic features, and historic patterns of land use or settlement.

(e) Satisfaction of the requirements of section 3.01.020(a) and (b) does not mean that other statewide planning goals do not need to be considered. If the proposed amendment involves other statewide planning goals, they shall be addressed.

(f) Section 3.01.020(a), (b), (c) and (d) shall be considered to be consistent with and in conformance with the Regional Urban Growth Goals and Objectives.

(g) Where efficiencies in the future development of an existing urban reserve are demonstrated, the Metro Council may amend the urban reserve in the same UGB amendment process to include additional adjacent nonresource lands up to 10 percent of the total acreage. Any urban reserve amendment shall demonstrate compliance with the Urban Reserve Rule (OAR 660-021-0030).

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1; Ordinance No. 97-711, Sec. 1.)

3.01.025 Major Amendment Procedures

(a) ~~All major amendments shall be solely upon lands designated in urban reserves, when designated consistent with 3.01.012. All major amendments shall demonstrate compliance with the following: The first priority for all major amendment petitions shall be lands designated in urban reserves. All major amendments shall demonstrate compliance with the following:~~

- (1) The criteria in section 3.01.030 of this Code as well as the procedures in OAR 660-18-000;
- (2) Notice of public hearings for major amendments as described in section 3.01.050;

- (3) Public hearings procedures as described in sections 3.01.055 through 3.01.065;

~~(4) The urban reserve plan requirements in section 3.01.012(e); and
3.01.015(e); and~~

- (54) Final action on major amendments shall be taken as described in section 3.01.070.

(b) Where efficiencies in the future development of an urban reserve are demonstrated by the applicant, petitions may include a request that the Metro Council amend the urban reserves in the same UGB amendment process to include additional adjacent nonresource lands up to 10 percent of the total acreage in the petition. Any requested urban reserve amendment shall demonstrate compliance with the Urban Reserve Rule (OAR 660-021-0030).

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1)

3.01.033 Applications for Major Amendments and Locational Adjustments

(a) Petitions for Major Amendments or Locational Adjustments may be filed by:

(1) A county with jurisdiction over the property or a city with a planning area that includes or is contiguous to the property; or

(2) The owners of the property included in the petition or a group of more than 50 percent of the property owners who own more than 50 percent of the land area in each area included in the petition.

(ab) ~~All A petitions filed pursuant to this chapter for amendment of the UGB must include a completed petition shall be on a form provided by the district. Petitions which do not include the appropriate completed form provided by the district will not be considered for approval and must be complete before it will be considered.~~

~~———— (b) ——— Major Amendments or Locational Adjustments may be filed by:~~

~~———— (1) ——— A county with jurisdiction over the property or a city with a planning area that includes or is contiguous to the property; or~~

~~———— (2) ——— The owners of the property included in the petition or a group of more than 50 percent of the property owners who own more than 50 percent of the land area in each area included in the petition.~~

(c) Completed petitions for amending the UGB through either a major amendment or locational adjustment, shall be considered by the district if ~~must be~~ filed ~~annually prior to between~~ February 1st and March 15. No petition shall be accepted under this chapter if the ~~The~~ proposed amendment or locational adjustment to the UGB ~~would~~ shall not result in an island of urban land outside the existing UGB, or if ~~the proposed addition contains within it~~ result in the creation of an island of non-urban land ~~excluded from the petition~~. The district will determine not later than seven working days after the ~~filing deadline~~ whether a petition is complete and notify the petitioner of any deficiencies. The petitioner must remedy any identified deficiencies within 14 days of notification, or the petition and fees shall be returned to the petitioner and no further consideration shall be given. Completeness of petitions shall be the petitioners' responsibility.

(d) Upon request by a councilor or the executive officer, the council may, by an affirmative vote of two-thirds of the full council, waive the filing deadline for a ~~particular petition or petitions and hear such petition or petitions at any time~~. Such waiver shall not waive any other requirement of this chapter.

(e) The district shall give notice of the March 15 deadline for acceptance of petitions for UGB major amendments and locational adjustments under this chapter not less than 90 calendar days before a deadline and again ~~20-60~~ calendar days before a deadline in a newspaper of general circulation in the district and in writing to each city and county in the district. A copy of the notice shall be mailed not less than 90 calendar days before a deadline to anyone who has requested notification. The notice shall explain the consequences of failing to file before the deadline and shall specify the district officer or employee from whom additional information may be obtained.

(f) All petitions shall be reviewed by district staff and a report and recommendation submitted to the hearings officer. For locational adjustments, the staff report shall be submitted not less than 10 calendar days before the hearing. For major amendments, the staff report shall be submitted not less than 21 calendar days before the hearing. A copy of the staff report and recommendation shall simultaneously be sent to the petitioner(s) and others who have requested copies. Any subsequent staff report used at the hearing shall be available at least seven days prior to the hearing.

(g) ~~It shall be the responsibility of the~~ The petitioner ~~to shall~~ provide a list of names and addresses for notification purposes, consistent with section 3.01.055, when submitting a petition. Said list of names and addresses shall be certified in one of the following ways:

- (1) A list attested to by a title company as a true and accurate list of property owners as of a specified date; or
- (2) A list attested to by a county assessor, or designate, pledging that the list is a true and accurate list of property owners as of a specified date; or
- (3) A list with an attached affidavit completed by the proponent affirming that the names and addresses are a true and accurate list of property owners as of a specified date.

(h) Upon request of the applicant, the executive officer may postpone the scheduling of the hearing for no more than 90 days. The applicant shall request rescheduling of the hearing within 90 days or the petition shall be considered inactive and withdrawn. The applicant shall be refunded the portion of the fee deposit not required for costs as outlined in 3.01.045.

(hi) Local Position on Petition:

(1) Except as provided in subsection 4 of this section, a petition shall not be considered completed for hearing unless the petition includes a written statement by the governing body of each city or county with land use jurisdiction over the area included in the petition that:

(A) recommends that Metro approve the petition; or

(B) recommends that Metro deny the petition; or

(C) expresses no preference on the petition.

(2) Except as provided in subsection 4 of this section, a petition shall not be considered completed for hearing unless the petition includes a written statement by any special district which has an agreement with the governing body of each city or county with land use jurisdiction over the area included in the petition to provide one or more urban services to the subject area that:

(A) recommends that Metro approve the petition; or

(B) recommends that Metro deny the petition; or

- (C) expresses no preference on the petition.
- (3) If a city, county or special district holds a public hearing to establish its position on a petition, the city or county shall:
- (A) provide notice of such hearing to the district and to any city or county whose municipal boundaries or urban planning area boundary abuts the area affected; and
 - (B) provide the district with a list of the names and addresses of parties testifying at the hearing and copies of any exhibits or written testimony submitted for the hearing.
- (4) Upon request by an applicant, the executive officer shall waive the requirements of subsections (1) and (2) of this section regarding written recommendations from the city or county with land use jurisdiction or a special district which provides one or more urban services if the applicant shows that a request for comment was filed with the local government at least 120 calendar days previously and that the local government or service provider has not yet adopted a position.
- (ii) Petitions outside district boundary:
- (1) Petitions to extend the UGB to include land outside the district shall not be accepted unless accompanied by a copy of a petition for annexation to the district.
- ~~(A) A copy of a petition for annexation to the district to be submitted to the Portland Metropolitan Area Local Government Boundary Commission pursuant to ORS chapter 199; and~~

~~(B) A statement of intent to file the petition for annexation within 90 calendar days of Metro action, or after the appeal period following final action by a court concerning a Metro action, to approve the petition for UGB major amendment or locational adjustment.~~

(2) A city or county may, in addition to the action required in subsection B of this section, approve a plan or zone change to implement the proposed adjustment in the area included in a petition prior to a change in the district UGB if:

(A) The district is given notice of the local action;

(B) The notice of the local action states that the local action is contingent upon subsequent action by the district to amend its UGB; and

(C) The local action to amend the local plan or zoning map becomes effective only if the district amends the UGB consistent with the local action.

(3) If the city or county has not contingently amended its plan or zoning map to allow the land use category of the proposed amendment proposed in a petition, and if the district does approve the UGB amendment, the local plan or map change shall be changed to be consistent with the UGB amendment within one year.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 98-732, Sec. 1.)

3.01.035 Locational Adjustment Procedures

(a) It is the purpose of sections 3.01.035 and 3.01.037 to establish procedures to be used by the district in making minor UGB amendments. The sections are intended to incorporate relevant portions of statewide goals 2 and 14, and, by restricting the location, size, character, and annual acreage of UGB adjustments that may be approved under this chapter, this section obviates the need to specifically apply these goal provisions to UGB amendments approved hereunder.

(b) Locational adjustments shall be limited to areas outside designated urban reserve areas. All locational adjustment additions and administrative adjustments for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres. Natural areas adjustments shall not be included in the annual total of 100 acres, and shall not be limited to 20 acres, except as specified in 3.01.035(g), below. Completed locational adjustment applications shall be processed on a first come, first served basis.

(c) All petitions for locational adjustments except natural area petitions shall meet the following criteria:

- (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, parks and open space in the adjoining areas within the UGB. Any area to be added must be capable of being served in an orderly and economical fashion.
- (2) Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.

(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.

(4) Retention of agricultural land. When a petition includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable.

(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 all factors of this subsection must clearly outweigh the adverse impact of any incompatibility.

(6) Demonstrate average residential densities of at least 10 dwelling units per net developable residential acre, or lower densities, which conform to the 2040 Growth Concept concept, plan designation for the area.

(d) Petitions for locational adjustments shall demonstrate compliance with the 2040 Growth Concept and other applicable regional goals and objectives.

(de) Petitions for locational adjustments to remove land from the UGB may be approved under the following conditions:

- (1) Consideration of the factors in section 3.01.035(c) demonstrate that it is appropriate the land be excluded from the UGB.
- (2) The land is not needed to avoid short-term urban land shortages for the district and any long-term urban land shortage that may result can reasonably be expected to be alleviated through the addition of urban land in an appropriate location elsewhere in the region.
- (3) Removals should not be granted if existing or planned capacity of major facilities such as sewerage, water and transportation facilities will thereby be significantly under-utilized.

(ef) A petition for a locational adjustment to remove land from the UGB in one location and add land to the UGB in another location (trades) may be approved if it meets the following criteria:

- (1) The requirements of paragraph 3.01.035(c)(4) are met.
- (2) The net amount of vacant land proposed to be added may not exceed 20 acres; nor may the net amount of vacant land removed exceed 20 acres.
- (3) The land proposed to be added is more suitable for urbanization than the land to be removed, based on a consideration of each of factors of section 3.01.035 (c)(1-3 and 5) of this chapter.

(fg) Petitions for locational adjustments to add land to the UGB may be approved under the following conditions:

- (1) An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the existing UGB.
 - (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 (c) of this section.
 - (3) The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors ~~above~~in subsection (c).
- (gh) All natural area petitions for locational adjustments must meet the following conditions:
- (1) Any natural area locational adjustment petition shall be proposed at the initiative of the property owner, with concurrence from the agency proposed to accept the land.
 - (2) At least 50 percent of the land area in the petition, and all land in excess of 40 acres, shall be owned by or donated to a county, city, parks district or the district, in its natural state, without mining, logging or other extraction of natural resources, or alteration of watercourses, water bodies or wetlands.

- (3) Any developable portion of the lands included in the petition, not designated as a natural area, shall not exceed twenty acres and shall lie between the existing UGB and the area to be donated.
- (4) The natural area portion owned by or to be donated to a county, city, parks district, or the district must be identified in a city or county comprehensive plan as open space or natural area or equivalent, or in the district's natural areas and open space inventory.
- (5) The developable portion of the petition shall meet the criteria set out in parts (b), (c)(1), (c)(2) and (c)(3) of section 3.01.035.

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 98-732, Sec. 2.)

3.01.040 Metro Conditions of Approval Requirements For Areas Added To The Urban Growth Boundary By A Legislative or Major Amendment

(a) All land added to the Urban Growth Boundary shall be subject to the Urban Growth Boundary area comprehensive plan requirements of Title 11 of the Urban Growth Management Functional Plan (Metro Code section 3.07.1110 et seq.).

(b) Unless a comprehensive plan amendment has been previously approved for the land pursuant to 3.01.012(d), when it adopts a Legislative or major amendment adding land to the UGB, the Council shall take the following actions:

- (1) The Council shall consult with affected local governments and MPAC to determine which local government shall have jurisdiction to develop comprehensive plan amendments for the area consistent with requirements of the Urban Growth Management Functional Plan (Metro Code Chapter 3.07) and in particular, Title 11 thereof (Metro Code Section 3.07.1110 et seq.). Where the affected local governments agree as to which local

government or governments shall be responsible, the Council shall so designate. If there is no agreement, then the Council shall establish a process to determine which local government or governments shall be responsible and at the conclusion of the process, so designate.

- (2) The Council shall establish the 2040 Growth Concept design type designations applicable to the land added to the Urban Growth Boundary, including the special land need, if any, that is the basis for the amendment.
- (3) The Council shall establish the boundaries of the area that shall be included in the conceptual level of planning required by Title 11 of the Urban Growth Management Functional Plan (Metro Code Section 3.07.1110 et seq.). The boundary of the planning area may include all or part of one or more designated urban reserves.
- (4) The Council shall also establish the time period for city or county compliance with the requirements of the Urban Growth Management Functional Plan (Metro Code Chapter 3.07) and in particular, Title 11 thereof (Metro Code Section 3.07.1110 et seq.); however, the time period shall not be less than two (2) years from the time a local government is designated pursuant to Section 3.01.40 (b) (1) above.
- (5) The Council may adopt text interpretations of the requirements of Urban Growth Management Functional Plan (Metro Code Chapter 3.07) and in particular, Title 11 thereof (Metro Code Section 3.07.1110 et seq.) that shall be applicable to the required City or County comprehensive plan amendments. These interpretations may address special land needs that are the basis for the amendment but otherwise such interpretations shall not impose specific locational development requirements. Text interpretations may include determinations that certain provisions of Title

11 are not applicable to specific areas because of the size or physical characteristics of land added to the Urban Growth Boundary.

~~———— (a) ——— The district may attach conditions of approval which may be needed to assure compliance of the developed use with statewide goals and regional land use planning, including, but not limited to, the following:~~

~~———— (1) ——— Conditions which may relate to findings of need for a particular type of use and for which the district finds a need to protect the opportunity for development of this type of use at the proposed site;~~

~~———— (2) ——— Those conditions to assist in the provision of urban services as may be recommended by cities, counties with land use jurisdiction or special districts which have agreements with cities or counties to provide urban services to the area proposed for amendment.~~

~~———— (b) ——— The district may determine that certain conditions of approval are so important to inclusion of land into the urban growth boundary that if those conditions are not met the urban growth boundary approval may be revoked automatically or by action of the district.~~

~~———— (c)(b) ——— Amendments to conditions of approval for a major amendment, including modifications of time to complete an approval condition, may be considered by the district council upon a petition by the property owner which includes evidence substantiating a change in a condition of approval; or upon the council's own motion if the approval condition states that further Metro review is required.~~

~~———— (d)(c) ——— Petitions for amendments to conditions of approval for a major amendment shall follow the procedures for applications for major amendment and council action on quasi-judicial amendments, except for the following:~~

- ~~_____ (1) Petitions for amendments to conditions of approval may be filed at any time following council approval of a major amendment;~~
- ~~_____ (2) Petitions for amendments to conditions of approval shall be heard by the council unless referred to the hearings officer by the council.~~

(Ordinance No. 92-450A, Sec. 1. Amended by Ordinance No. 96-655E, Sec. 1)

3.01.050 Hearing Notice Requirements

(a) 45-Day Notice. A proposal to amend the UGB by a legislative amendment, major amendment or locational adjustment shall be submitted to the director of the Department of Land Conservation and Development at least 45 days before the final hearing on adoption. The notice shall be accompanied by the appropriate forms provided by the department and shall contain a copy of a map showing the location of the proposed amendment. A copy of the same information shall be provided to the city and county, representatives of recognized neighborhoods, citizen planning organizations and/or other recognized citizen participation organizations adjacent to the location of the proposed amendment.

(b) Newspaper Ads. A 1/8 page advertisement in a newspaper of general circulation of the district for all legislative amendments and major amendments. For legislative amendments and major amendments the initial newspaper advertisements shall be published at least 45 days prior to the public hearing and shall include the same information listed in subsection (a). For locational adjustments, a 1/8 page newspaper advertisement shall be published not more than 20, nor less than 10 calendar days prior to the hearing.

(c) Notice of public hearing shall include:

- (1) The time, date and place of the hearing.

- (2) A description of the property reasonably calculated to give notice as to its actual location. A street address or other easily understood geographical reference can be utilized if available.
- (3) For major amendments and locational adjustments,
 - (A) An explanation of the proposed action, including the nature of the application and the proposed boundary change.
 - (B) A list of the applicable criteria for approval of the petition at issue.
 - (C) A statement that the failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes an appeal based on the issue.
- (4) Notice that interested persons may submit written comments at the hearing and appear and be heard.
- (5) Notice that the hearing will be conducted pursuant to district rules and before the hearings officer unless that requirement is waived by the Metro council;
- (6) Include the name of the Metro staff to contact and telephone number for more information;
- (7) State that a copy of the staff report will be available for inspection at no cost at least seven calendar days prior to the final hearing, and that a copy will be made available at no cost or reasonable cost. Further that if

additional documents or evidence is provided in support of the application any party shall be entitled to a continuance of the hearing; and

- (8) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings; and

(d) Not less than 20 calendar days before the hearing, notice shall be mailed to the following persons:

- (1) The petitioner(s) and to owners of record of property on the most recent property tax roll where the property is located.
- (2) All property owners of record within 500 feet of the site. For purposes of this subsection, only those property owners of record within the specified distance from the subject property as determined from the maps and records in the county departments of taxation and assessment are entitled to notice by mail. Failure of a property owner to receive actual notice will not invalidate the action if there was a reasonable effort to notify owners of record.
- (3) Cities and counties in the district, or cities and counties whose jurisdictional boundaries either include or are adjacent to the subject property, and affected agencies who request regular notice.
- (4) The neighborhood association, community planning organization or other citizen group, if any, which has been recognized by the city or county with land use jurisdiction for the subject property.
- (5) Any neighborhood associations, community planning organizations, or other vehicles for citizen involvement in land use planning processes

whose geographic areas of interest either include or are adjacent to the site and which are officially recognized as being entitled to participate in land use planning processes by the cities and counties whose jurisdictional boundaries either include or are adjacent to the site.

(6) The regional representatives of the director of the Oregon Department of Land Conservation and Development and the Oregon Department of Transportation.

(7) Any other person requesting notification of UGB changes.

(e) At the conclusion of the hearing, the hearings officer may continue the hearing to a time, place and date certain, without additional notice.

3.01.070 Notice of Decision

(a) The district shall give each county and city in the district notice of each amendment of the UGB. Mailing the notice required by Ballot Measure 56 (Nov. 1998) [ORS Chapter 268] or ORS 197.615 shall satisfy this subsection.

(b) For the local government designated as having the responsibility for land use planning for the area(s) added to the UGB. ~~The district shall also notify the government with jurisdiction, which notice shall include a statement of~~ provide an additional notice stating the time period for completing comprehensive plan amendments for the area local action that will be required to make local comprehensive plans consistent with the amended UGB and the date by which that action must be taken.

3.07 TITLE 11: URBAN GROWTH BOUNDARY AMENDMENT AREA COMPREHENSIVE URBAN RESERVE PLAN REQUIREMENTS

3.07.1105 Purpose and Intent

It is the purpose of this Title 11 to require that all territory added to the Urban Growth Boundary shall be included within a city or county's comprehensive plan prior to urbanization. The comprehensive plan amendment must be consistent with the Functional Plan. The intent of this Title is that comprehensive plan amendments shall promote the integration of the new land added to the Urban Growth Boundary into existing communities or provided for the establishment of new communities.

3.07.1110 Interim Protection of Areas Brought Inside Urban Growth Boundary

Prior to the approval by report to the Metro Council and adoption by all local governments having jurisdiction over any territory added to the Urban Growth Boundary of comprehensive plan amendments consistent with an urban reserve consistent with section 3.07.1130 of this title which plan meetsing all requirements of the Urban Growth Boundary amendment urban reserve plan requirements set forth in section 3.07.1120 of this title, a city or county shall not approve of:

- A. Any land use regulation or zoning map amendments specific to the territory allowing higher residential density than allowed by acknowledged provisions in effect prior to the adoption of the Urban Growth Boundary amendment;
- B. Any land use regulation or zoning map amendments specific to the territory allowing commercial or industrial uses not allowed under acknowledged provisions in effect prior to the adoption of the Urban Growth Boundary Amendment;
- C. Any land division or partition that would result in the creation of any new parcel which would be less than 20 acres in total size.

(Ordinance No. 98-772B, Sec. 2.)

3.07.1120 Urban Growth Boundary Amendment Urban Reserve Plan Requirements

All territory that is added to the Metro region Urban Growth Boundary as either a major amendment or a legislative amendment pursuant to Metro Code chapter 3.01 shall be ~~is~~ subject to adopted comprehensive plan provisions an Urban Growth Boundary amendment urban reserve plan by Metro Code 3.01.012(d) adopted by the city or county which will exercise urban land use planning authority over the territory and approved by the Metro Council as consistent with the applicable requirements of all applicable Titles of the Metro Urban Growth Management Functional Plan and in particular this Title 11. The comprehensive plan provisions shall be fully coordinated with all other applicable plans. chapter 3.01 of the Metro Code. Such plans ~~The comprehensive plans provision~~ shall contain a conceptual land use plan and concept map urban growth plan diagram and policies that which demonstrates compliance with the RUGGO, including and the 2040 Growth Concept design types, and all applicable functional plan provisions. ~~Urban reserve Comprehensive plan amendments~~ shall demonstrate compliance with either subsections A, or B or C, and shall also include all details required in subsections B-K DC ML:

A. Provision for ~~either annexation to a city and or~~ any necessary service districts prior to urbanization of the territory or incorporation of a city or necessary service districts to provide all required urban services at the time of the final approval of the Urban Growth Boundary amendment consistent with section 3.01.065 or an applicable city county planning area agreement which requires at least the following:

~~1. City or county agreement to adopt comprehensive plan provisions for the lands added to the Urban Growth Boundary which comply with all requirements of urban reserve plan conditions of the Urban Growth Boundary approval;~~

- ~~2. City and county agreement that lands added to the Urban Growth Boundary shall be rezoned for urban development only upon annexation or agreement for delayed annexation to the city and any necessary service district identified in the approved Concept Plan or incorporation as a new city; and~~
- ~~3. County agreement that, prior to annexation to the city and any necessary service districts, rural zoning that ensures a range of opportunities for the orderly, economic, and efficient provision of urban services when these lands are included in the Urban Growth Boundary remains in place until city annexation and the adoption of urban zoning.~~
- B. ~~The Metro Council may approve an urban reserve plan where the Urban Growth Boundary amendment was required to assist the region to comply with the 2040 Growth Concept or to assist the region, a city or county in demonstrating compliance with statute, rule, or statewide goal requirements for land within the Urban Growth Boundary. These requirements include ORS 197.296, 197.299 and 197.303, the statewide planning goals and Regional Urban Growth Goals and Objectives. An urban services agreement consistent with ORS 195.065 shall be required as a condition of approval for any urban reserve plan under this subsection.~~
- C. ~~The areas of Urban Reserve Study Areas #11, 14 and 65 are so geographically distant from existing city limits that annexation to a city is difficult to achieve. If the county and affected city and any necessary service districts have signed an urban service agreement or an urban reserve agreement coordinating urban services for the area, then the requirements for annexation to a city in A(2) and A(3) above shall not apply.~~
- DB. Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities which conform to the 2040 Growth Concept Plan design type designation for the area.

- EC. Demonstrable measures that will provide a diversity of housing stock that will fulfill needed housing requirements as defined by ORS 197.303. Measures may include, but are not limited to, implementation of recommendations in Title 7 of the Urban Growth Management Functional Plan.
- FD. Demonstration of how residential developments will include, without public subsidy, housing affordable to households with incomes at or below area median incomes for home ownership and at or below 80 percent of area median incomes for rental as defined by U.S. Department of Housing and Urban Development for the adjacent urban jurisdiction. Public subsidies shall not be interpreted to mean the following: density bonuses, streamlined permitting processes, extensions to the time at which systems development charges (SDCs) and other fees are collected, and other exercises of the regulatory and zoning powers.
- GE. Provision for sufficient commercial and industrial development for the needs of the area to be developed and the needs of adjacent land inside the Urban Growth Boundary consistent with 2040 Growth Concept design types. Commercial and industrial designations in nearby areas inside the Urban Growth Boundary shall be considered in comprehensive plans to maintain design type consistency.
- HF. A conceptual transportation plan consistent with the applicable provision of the Regional Transportation Plan, Title 6 of the Urban Growth Management Functional Plan and that is also consistent with the protection of natural resources either identified in acknowledged comprehensive plan inventories or as required by Metro functional plans Title 3 of the Urban Growth Management Functional Plan. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.
- IG. Identification, mapping and a funding strategy for protecting areas from development due to fish and wildlife habitat protection, water quality enhancement and mitigation, and

natural hazards mitigation. A natural resource protection plan to protect fish and wildlife habitat, water quality enhancement areas and natural hazard areas shall be completed as part of the comprehensive plan and zoning for lands added to the Urban Growth Boundary prior to urban development. The plan shall include ~~cost estimates to implement a strategy to fund resource protection~~ a preliminary financing estimate and funding strategy, including likely financing approaches, for options such as mitigation, site acquisition, restoration, enhancement, or easement dedication to ensure that all significant natural resources are protected.

- JH. A conceptual public facilities and services plan, ~~including rough cost estimates for the provision of sanitary sewer, water, storm drainage, transportation, parks and police and fire protection. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches, facilities and parks, including financing strategy for those costs.~~
- KI. A conceptual school plan ~~that which~~ provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the Urban Growth Boundary. ~~Estimates~~ The estimates of the need shall be coordinated among affected school districts, the affected city or county, and affected special districts consistent with the applicable procedures in ORS 195.110(3), (4) and (7).
- LJ. ~~An Urban Reserve Plan map~~ An urban growth diagram for the designated planning area showing, at least, the following, when applicable:

1. General locations of arterial, collector and essential local streets ~~Major roadway connections and necessary public facilities such as sanitary sewer, storm sewer and water to demonstrate that the area can be served;~~
2. Location of steep slopes and unbuildable lands including but not limited to ~~steep slopes, wetlands, floodplains and riparian areas;~~

3. General locations for commercial and industrial lands;
4. General locations for single and multi-family housing;
5. General locations for public open space, plazas and neighborhood centers; and
6. General locations or alternative locations for any needed school, park or fire hall sites.

~~MK. The urban reserve plan amendments shall be coordinated among the city, county, school district and other service districts, including a dispute resolution process with an MPAC report and public hearing consistent with RUGGO Objective 5.3. The urban reserve plan shall be considered for local approval by the affected city or by the county, if subsection C, above, applies, in coordination with any affected service district and/or school district. Then the Metro Council shall consider final approval of the plan.~~

(Ordinance No. 98-772B, Sec. 2.)

3.07.1130 Implementation of Urban Growth Boundary Amendment Urban Reserve Comprehensive Plan Requirements

~~Urban Growth Boundary urban reserve plans shall be adopted as components of city or county comprehensive plans. The adopted plan shall be a conceptual plan and concept map consistent with the applicable adopted 2040 Growth Concept design types that shall govern comprehensive plan, land use regulation and map amendments that implement the Urban Growth Boundary amendment urban reserve plan after the territory is included in the Urban Growth Boundary.~~

A. On or before 60 days prior to the adoption of any comprehensive plan amendment subject to this Title 11, the local government shall transmit to Metro the following:

1. A copy of the comprehensive plan amendment proposed for adoption;
 2. An evaluation of the ~~urban reserve~~ comprehensive plan amendment for compliance with ~~urban reserve plan~~ the Functional Plan and 2040 Growth Concept design types requirements and any additional conditions of approval of the urban growth boundary amendment. This evaluation shall include an explanation of how the plan implements the 2040 Growth Concept;
 3. Copies of all applicable comprehensive plan provisions and implementing ordinances as proposed to be amended.
- B. The Council may grant an extension of time for adoption of the required Comprehensive Plan Amendment if the local government has demonstrated substantial progress or good cause for failing to adopt the amendment on time. Requests for extensions of time may accompany the transmittal under subsection A of this section.

(Ordinance No. 98-772B, Sec. 2.)

3.07.1140 Effective Date and Notification Requirements

The provisions of this Title 11 are effective immediately. Prior to making any amendment to any comprehensive plan or implementing ordinance for any territory that has been added to the Urban Growth Boundary after the effective date of this code amendment, a city or county shall comply with the notice requirements of section 3.07.830 and include in the required staff report.. an explanation of how the proposed amendment complies with the requirements of this Title 11 in addition to the other requirements of this functional plan.

(Ordinance No. 98-772B, Sec. 2.)

3.09 LOCAL GOVERNMENT BOUNDARY CHANGES

3.09.120 Minor Boundary Changes To Metro's Boundary

(a) Minor boundary changes to the Metro Boundary may be initiated by property owners and electors, or as otherwise provided by law. Petitions shall meet the minimum requirements of section 3.09.040 above. The Executive Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

(b) Notice of proposed minor boundary changes to the Metro Boundary shall be given as required pursuant to section 3.09.030.

(c) Hearings will be conducted consistent with the requirements of section 3.09.050. When it takes action on a minor boundary change, the Metro Council shall consider the requirements of section 3.09.050 and all provisions of applicable law.

(d) Minor boundary changes to the Metro Boundary are not subject to an expedited process.

(e) Contested case appeals of decisions regarding minor boundary changes to the Metro Boundary are subject to appeal as provided in section 3.09.070.

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Agenda Item Number 8.1

**Ordinance No. 99-816, Denying Urban Growth Boundary Locational Adjustment Case 98-7:
Jenkins/Kim, and Adopting the Hearing's Officer's Report Including Findings and Conclusions.
(Presentation of Hearing's Officer's Report and Recommendations).**

First Reading - Quasi Judicial Proceedings

Metro Council Meeting
Thursday, September 9, 1999
Council Chamber

BEFORE THE METRO COUNCIL

DENYING URBAN GROWTH BOUNDARY	)	ORDINANCE NO. 99-816
LOCATIONAL ADJUSTMENT CASE 98-7:)	
JENKINS/KIM, AND ADOPTING THE HEARINGS)	
OFFICER'S REPORT INCLUDING FINDINGS	)	Introduced by Mike Burton,
AND CONCLUSIONS	)	Executive Officer

WHEREAS, Metro received a petition for a locational adjustment for 18.85 acres located southeast of the intersection of Kaiser and Springville roads in unincorporated Washington County, as shown in Exhibit A; and

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearings Officer, recommending approval of the petition; and

WHEREAS, Metro held a hearing to consider the petition on May 24, 1999, conducted by an independent Hearings Officer; and

WHEREAS, The Hearings Officer submitted his report on July 1, 1999, 30 days after the close of the record on June 1, 1999, recommending denial of the petition; and; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. To accept the Hearings Officer's *Report and Recommendation*, as attached herein as Exhibit B; and

2. The Hearing Officer's *Findings, Conclusions & Final Order*, attached herein as Exhibit C, be adopted denying the petition in Case 98-7:

Jenkins/Kim

ADOPTED by the Metro Council this ____ day of _____, 1999.

Rod Monroe
Presiding Officer

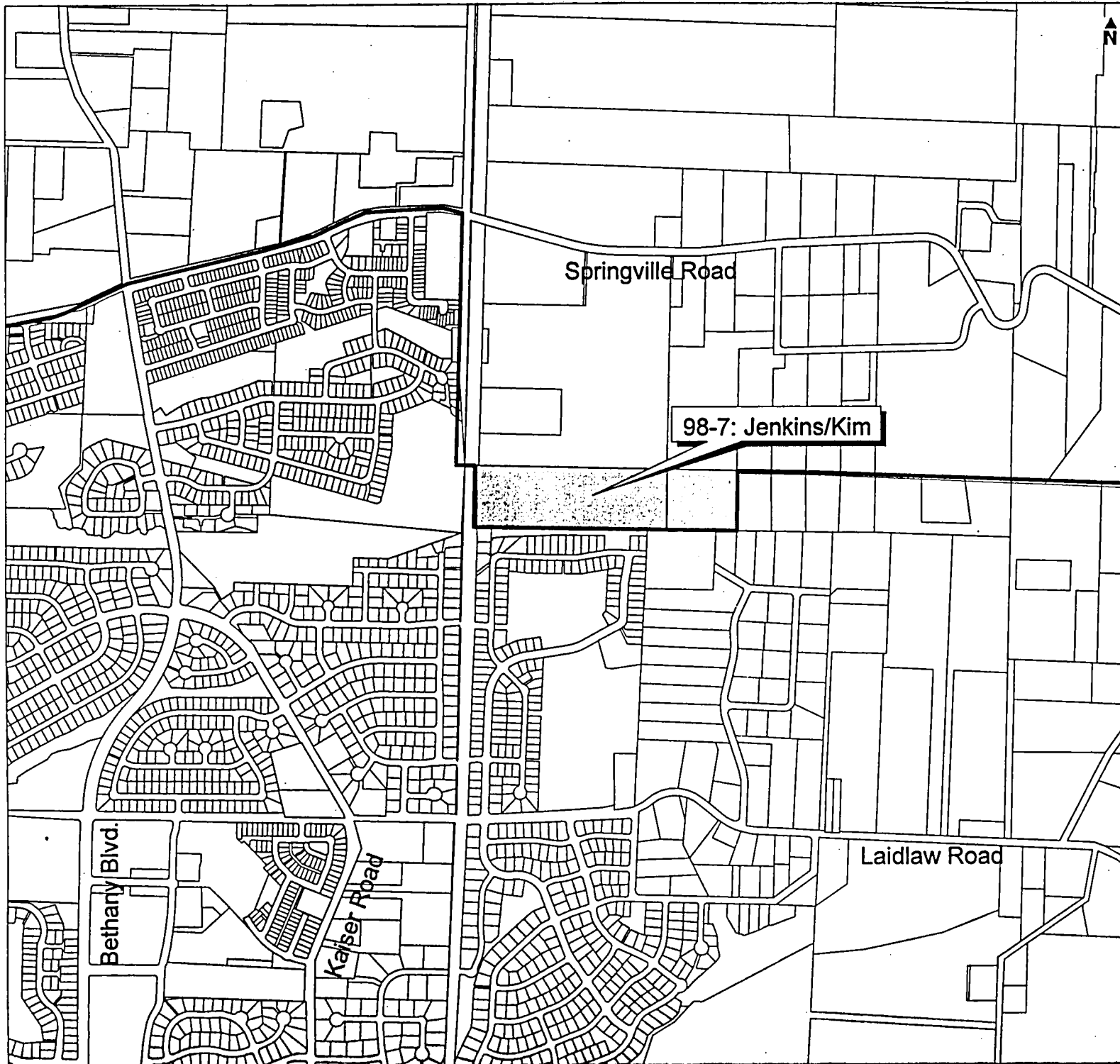
ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper
General Counsel

I:\GM\CommDev\Projects\UGBadmt98\98-7,Jenkins\Kim\MCordinance



R L I S

REGIONAL LAND INFORMATION SYSTEM

Proposed Adjustment

UGB Case 98-7
Jenkins/Kim

 Urban Growth Boundary

 Subject Property

0 500 1000 1500 Feet

1" = 1000 feet



METRO

800 NE Grand Ave.
Portland, OR 97232-2738
503 797-1742 FAX 503 797-1909
Email: drc@metro.dst.or.us

Plot date: Apr 29, 1999; c:\projects\jenkins.apr

JUL 01 1999

BEFORE THE METRO COUNCIL

In the matter of the petition of Michael Jenkins and Sang) HEARINGS OFFICER'S
Kim for a Locational Adjustment to the Urban Growth) REPORT AND
Boundary between Laidlaw and Springville Roads, east) RECOMMENDATION
of Kaiser Road in unincorporated Washington County) Contested Case No. 98-07

I. INTRODUCTION AND SUMMARY

This report summarizes the findings the hearings officer recommends to the Metro Council regarding a proposed locational adjustment to the Urban Growth Boundary ("UGB"). After balancing the relevant factors in the approval criteria, the hearings officer to conclude that the petitioners failed to bear the burden of proof that the petition complies with those criteria. A different balance could be struck, but the hearings officer believes the recommendation is consistent with Council action on other petitions for locational adjustments. The petition in this case raises the following major issues:

1. Whether public services and facilities can be provided to the subject property in an orderly and economical fashion. The hearings officer found the petition failed to show that school services can be provided in an efficient manner.

2. Whether the petition includes all contiguous similarly situated lands. If as much as 26 feet of the adjoining land is included in the petition, it would exceed the 20 acres maximum permitted for locational adjustments. The hearings officer found that the evidence in the record is insufficient to distinguish the subject property from the adjoining land to the north, and that the subject property is similarly situated with at least the adjoining 26 feet of land to the north.

3. Whether granting the petition results in a superior UGB and a net improvement in the efficiency of public facilities and services relevant to the adjustment. The hearings officer found that it does not result in sufficient net improvement and that more land is proposed to be included in the UGB than is necessary to provide any service efficiency. Therefore the proposed UGB is not superior to the existing one.

4. Whether retaining the subject property as agricultural land would preclude urbanization of an adjacent area already inside the UGB or make the provision of urban

1 services to an adjacent area inside the UGB impracticable. The hearings officer found that,
2 although including a portion of the subject property in the UGB would provide more
3 efficient sewer service to land already in the UGB, less efficient service could be provided
4 if the subject property is not included in the UGB.

5
6 5. Whether efficiencies created by including the subject property in the UGB
7 clearly outweigh any incompatibility with existing agricultural activities. The hearings
8 officer found that the increased efficiencies potentially provided by the petition do not
9 outweigh adverse impacts of increased urban development adjoining farm uses.

10 11 II. SUMMARY OF BASIC FACTS AND PROCEDURE

12
13 1. December 1, 1998, Michael Jenkins and Sang Kim ("petitioners") filed a
14 petition for a locational adjustment to the metropolitan area UGB. The petitioners propose
15 to add to the UGB an 18.85-acre parcel identified as Tax Lot 1100, Section 21, T1N-R1W
16 and Tax Lot 101, Section 21BA, T1N-R1W, WM, Washington County (the "subject
17 property"). The subject property is situated in unincorporated Washington County. The
18 UGB forms the south, west and east boundaries of the subject property. The Washington/
19 Multnomah County line is the north edge of the subject property. The subject property was
20 originally included in the UGB. In 1982 the site was removed from the UGB as a trade
21 with another property located adjacent to Tualatin. See Metro Ordinance 82-149.

22
23 a. The Washington County Comprehensive Plan designation and zoning
24 for the subject property is EFU (Exclusive Farm Use). Adjoining land inside the UGB is
25 zoned R6 (Residential, 6 units per acre) and R5 (Residential, 5 units per acre).

26
27 b. The subject property is now undeveloped pasture, wetlands and forest.
28 It slopes to the southwest at less than five percent. It is not served by public services. The
29 petition was accompanied by comments from the relevant service providers who certified
30 they can, with certain exceptions, provide urban services in an orderly and timely manner.
31 If the locational adjustment is approved, petitioners propose to develop the subject property
32 as a residential subdivision and to extend a public road through the site as a loop street with
33 stubs to the east boundary, to extend public water through the site to form a looped system
34 with existing off-site lines, to extend public sewer into the site with stubs to the east
35 boundary, and to dedicate or reserve a portion of the site as open space.

1 2. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed
2 public hearing on May 24, 1999 to receive testimony and evidence regarding the petition.
3 Eleven witnesses testified in person or in writing, including Metro staff, the petitioners'
4 representatives, and seven area residents. The hearings officer held the record open for one
5 week to allow the petitioners to submit a closing statement. The hearings officer closed
6 record in this case at 5:00 pm on June 1, 1999. The hearings officer submitted this report
7 and recommendation together with a draft final order to Metro on July 1, 1999.

8
9 **III. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS**
10

11 1. A locational adjustment to add land to the UGB must comply with the relevant
12 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). The following findings
13 highlight the principal policy issues disputed in the case.
14

15 2. MC § 3.01.035(c)(1) requires a petitioner to show (1) that granting the petition
16 would result "in a net improvement in the efficiency of public facilities and services" and
17 (2) that the area to be added can be served "in an orderly and economic fashion."
18

19 a. There was a dispute about whether school services can be provided to
20 the subject site in an orderly and economic fashion. The hearings officer concluded that
21 there is insufficient evidence that school services can be provided, because the enrollment at
22 elementary and high schools serving the subject property currently exceeds capacity. The
23 school district declined to certify that it could provide services in an orderly and economic
24 fashion, prejudicing the case for the petition.
25

26 b. There is a dispute whether granting the petition results in a net
27 improvement in efficiency of transportation, sanitary sewer, open space and police and fire
28 services. The hearings officer found including the subject property in the UGB would
29 have a positive effect on the efficiency with which sewer service could be provided to land
30 already in the UGB, would have no net effect on the efficiency of transportation services,
31 open space or emergency services, and would have a negative effect on efficiency of school
32 services. On balance, the hearings officer found that the increased efficiency of providing
33 gravity flow sewer service to abutting properties is outweighed by the reduced efficiency in
34 providing school services, particularly because including only a small portion of the subject
35 property would achieve the positive sewer efficiency. It is not necessary to include most of
36 the subject property to achieve a net increase in efficiency of urban services.

1
2 3. MC § 3.01.035(c)(2) is entitled “maximum efficiency of land use” and requires
3 the amendment to facilitate permitted development of adjacent land already in the UGB.
4

5 a. There is a dispute about whether development on abutting properties is
6 “needed” when the owners have no desire to develop their property for urban uses. The
7 hearings officer found that development is “needed” as that term is used in the Code
8 because the abutting property is designated for urban development by the Washington
9 County Comprehensive plan.
10

11 b. The hearings officer further found that granting the petition would
12 facilitate needed development on properties east of the subject parcel which already are in
13 the UGB. The hearings officer found the petition does comply with § 3.01.035(c)(2),
14 based in part on prior Council decisions in other cases.
15

16 4. MC § 3.01.035(c)(3) requires an analysis of environmental, energy, social and
17 economic impacts of granting the petition, particularly with regard to transit corridors and
18 hazard or resource land. There is a dispute about the impacts of existing wetlands and a
19 natural gas pipeline on the subject property. The hearings officer concluded that any
20 development constraints created by these existing conditions can be addressed when the
21 property is developed and therefore the petition does comply with §3.01.035(c)(3), based
22 in part on prior Council decisions in other cases.
23

24 5. MC § 3.01.035(c)(4) requires retention of agricultural land, such as the subject
25 property, unless retaining that land as such makes it impracticable to provide urban services
26 to adjacent properties inside the UGB. The hearings officer concluded that retaining the
27 subject property as agricultural will not make provision of urban services to land already in
28 the UGB impracticable, because all urban services except gravity flow sewer can be
29 provided to abutting properties within the UGB by other means. Sewer service can be
30 provided to abutting properties by means of a pumped system. Therefore including the
31 subject property is not necessary to practicably serve land in the UGB, and the petitioners
32 failed to bear the burden of proof sufficient to comply with MC § 3.01.035(c)(4).
33

34 6. MC § 3.01.035(c)(5) requires urban development of the subject property to be
35 compatible with nearby agricultural activities. There is a dispute about whether the petition
36 complies with this standard. The hearings officer finds that the petition does not comply

1 with this standard based on the testimony regarding conflicts between existing agricultural
2 and urban uses. Urban development on the subject property will increase the potential for
3 such conflicts. Therefore the petitioners failed to bear the burden of proof sufficient to
4 comply with MC § 3.01.035(c)(5).

5
6 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
7 UGB. The hearings officer found the proposed UGB is not superior to the extent it does
8 not comply with the other relevant approval criteria cited above.

9
10 8. MC § 3.01.035(f)(3) requires a proposed locational adjustment to include all
11 contiguous similarly situated lands. Petitioners argued that the site is not similarly situated
12 to contiguous lands based on jurisdictional boundaries and soil types. The hearings officer
13 found that jurisdictional boundaries are irrelevant, and the petitioners failed to introduce
14 sufficiently probative substantial evidence regarding soil types of abutting properties to
15 support a finding that soil types are different. The hearings officer found land to the north
16 of the subject property is similarly situated based on the factors listed in MC § 3.01.035(c).
17 Although the exact limit of such similarly situated land is uncertain, at least 26 feet of the
18 adjoining property to the north is similarly situated. If the similarly situated lands are
19 included in the petition, it will exceed 20 acres, which is the maximum permitted area for a
20 locational adjustment under MC section 3.01.035(b). Therefore the hearings officer found
21 the petition does not comply with MC sections 3.01.035(b) and (f)(3).

22
23 IV. ULTIMATE CONCLUSION AND RECOMMENDATION

24
25 For the foregoing reasons, the hearings officer concludes the petitioners failed to bear the
26 burden of proof that granting the petition would comply with all of the relevant approval
27 standards in Metro Code section 3.01.035 for a locational adjustment. Therefore the
28 hearings officer recommends the Metro Council deny the petition, based on this Report and
29 Recommendation and the Findings, Conclusions and Final Order attached hereto.

30
31 Respectfully submitted this 1st day of July, 1999.

32 
33 _____

34 Larry Epstein, AICP
35 Metro Hearings Officer

BEFORE THE METRO COUNCIL

In the matter of the petition of Michael Jenkins and Sang Kim for a Locational Adjustment to the Urban Growth Boundary between Laidlaw and Springville Roads, east of Kaiser Road in unincorporated Washington County) FINDINGS,
) CONCLUSIONS &
) FINAL ORDER
) Contested Case No. 98-07

I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD

1. On December 1, 1998, Michael Jenkins and Sang Kim ("petitioners") completed filing a revised petition for a locational adjustment to the Urban Growth Boundary ("UGB"), including exhibits required by Metro rules for locational adjustments. See Exhibit 3 for the original petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The land to be added to the UGB is described as Tax Lot 1100, Section 21, T1N-R1W and Tax Lot 101, Section 21BA, T1N-R1W, WM, Washington County (the "subject property").¹ It is located roughly 1800 feet south of Springville Road, roughly 2100 feet north of Laidlaw Road and roughly 2200 feet east of Kaiser Road in unincorporated Washington County. The present UGB forms the east, west and south edges of the subject property. The Washington/Multnomah County line forms the north boundary of the site. Land to the east, west and south is inside the UGB and unincorporated Washington County. Land to the north is outside the UGB and in unincorporated Multnomah County. See Exhibits 3, 8 and 17 for maps showing the subject property. Land to the south, east and west is zoned R6 (Residential, 6 units per acre). Land to the southeast is zoned R5 (Residential, 5 units per acre). Land to the northwest is zoned EFU (Exclusive Farm Use, 80 acre minimum lot size). Land to the northeast is zoned MUA-20 (Multiple Use Agriculture, 20 acre minimum lot size). See Exhibit 1E of the petition, Exhibit 3.

b. The subject property is a rectangularity-shaped parcel 450 feet north-south by about 1900 feet east-west. The site contains 18.85 acres. It is designated and zone EFU (Exclusive Farm Use) on the acknowledged Washington County Comprehensive Plan and zoning map.

¹ The subject property was originally included in the UGB. In 1982 the site was removed from the UGB as a trade with another property located adjacent to Tualatin. See Metro Ordinance 82-149.

1
2 c. The subject property slopes southwest from a high of about 410 feet
3 above mean sea level ("msl") at the northeast corner to a low of about 360 feet msl along
4 the southwest corner. Average slope is less than five percent (Attachment C of exhibit 3).

5
6 d. The petition was accompanied by comments from affected jurisdictions
7 and service providers. See Exhibits 1, 2, 6, 7, 9.

8
9 i. The Washington County Board of Commissioners adopted an
10 order in which it made no recommendation on the merits of the petition. See Exhibit 16.

11
12 ii. The Tualatin Valley Water District ("TVWD") testified that it
13 could serve the subject property, and that approval of the petition would improve water
14 service delivery in the UGB. TVWD expressed support for the petition. See Exhibit 2.

15
16 iii. The Beaverton School District testified that it would review the
17 status of school facilities in response to an application for Comprehensive Plan Amendment
18 on the subject property. The School District adopted a neutral position regarding the
19 petition. See Exhibit 3H to the petition, Exhibit 3.

20
21 iv. The Unified Sewerage Agency of Washington County ("USA")
22 testified that the subject property is not located within the Agency's service area, but is
23 located within the drainage basin. USA could not "definitively state that there is or isn't
24 [sanitary sewer] capacity for this parcel," because the site is located outside of USA's
25 current service area. However approval of the petition would result in a net increase in
26 efficiency of sanitary sewer service within the UGB. Approval of the petition would not
27 result in a net deficiency of storm water services. See Exhibits 1 and 7.

28
29 v. Tualatin Valley Fire & Rescue ("TVFR") commented that it could
30 serve the subject property, and that approval of the petition would have "very little impact
31 on fire department services." TVFR adopted a neutral position regarding the petition.

32
33 vi. The Washington County Sheriff's Office commented that it
34 could serve the subject property, and that approval of the petition would improve efficiency
35 of service delivery in the UGB. See Exhibit 3C to the petition, Exhibit 3.

1 vii. The Tualatin Hills Parks and Recreation District ("THPRD")
2 commented that it has sufficient capacity to serve the subject property if it is annexed into
3 the park district. See Exhibit 10. THPRD's comment letter did not discuss efficiency.
4

5 viii. Tri-Met did not comment on this petition.
6

7 2. Metro staff mailed notices of a hearing to consider the petition by certified mail
8 to the owners of property within 500 feet of the subject property, to the petitioners, to
9 Washington County, the Department of Land Conservation and Development ("DLCD"),
10 service providers, the local Citizen Planning Organization (CPO-7) and persons, agencies
11 and organizations who requested notice. See Exhibits 15, 19 and 28. A notice of the
12 hearing also was published in *The Oregonian* at least 10 days before the hearing.
13

14 3. On May 24, 1999, Metro hearings officer Larry Epstein (the "hearings officer")
15 held a public hearing at the Washington County Public Services Building Auditorium to
16 consider the petition. All exhibits and records of testimony have been filed with the
17 Growth Management Division of Metro. The hearings officer announced at the beginning
18 of the hearing the rights of persons with an interest in the matter, including the right to
19 request that the hearings officer continue the hearing or hold open the public record, the
20 duty of those persons to testify and to raise all issues to preserve appeal rights, the manner
21 in which the hearing will be conducted, and the applicable approval standards. The
22 hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. Eleven
23 witnesses testified in person.
24

25 a. Metro senior regional planner Ray Valone verified the contents of the
26 record and summarized the staff report (Exhibit 18), including basic facts about the subject
27 property, the UGB and urban services, and comments from neighboring property owners.
28 He testified that the petitioners showed that the proposed locational adjustment complies
29 with all of the applicable approval criteria.
30

31 i. He noted that the approval of the petition would result in a net
32 improvement in efficiency of sewer, water, park and police services, will have no impact
33 on fire and transportation services and will reduce efficiency of school services.
34

1 ii. He noted that approval of the petition will facilitate needed
2 development of the abutting property east of the site which is located within the existing
3 UGB (the Malinowski property).

4
5 iii. He corrected two minor errors in the Staff Report. The THPRD
6 letter referenced on page 6 of the Staff Report was dated September 25, 1998. On page 7
7 the Staff Report should include storm water in the list of services with which the subject
8 property can served in an orderly and economic fashion.

9
10 b. Eric Eisman, Ryan O'Brien and Michael Jenkins appeared on behalf of
11 the petitioners, Michael Jenkins and Sang Kim.

12
13 i. Mr. Eisman noted that the subject property was previously
14 included in the UGB. The property was removed in 1982, because the subject property
15 and surrounding area were not expected to be developed with urban services in the near
16 future. Circumstances have changed since that time.

17
18 (1) He argued that there are no "similarly situated"
19 properties based on the soils classifications on the site and the ability to provide services to
20 land within the existing UGB. He introduced a service provider "matrix" summarizing the
21 service provider statements submitted in response to the petition. Exhibit 27.

22
23 (2) He argued that this petition allows maximum efficiency
24 of land use by providing access around the Dogwood Park Area of Special Concern
25 ("ASC"), permitting properties to the east to develop at urban densities.

26
27 (3) He argued that "on-balance," retention of this site as
28 agricultural land would make the provision of urban services to adjacent areas inside the
29 UGB impracticable. Although there are alternative means of providing services, they are
30 not practicable due to cost, environmental impacts, timing and lack of willing buyers and
31 sellers. He argued that urban services are "needed" to serve abutting properties based on
32 their urban designation in the County's Comprehensive Plan. The current plans of the
33 property owners are not relevant.

34
35 (4) He testified that the site plan is only intended to show
36 that the property can be developed consistent with the County's minimum density

1 standards. The petition responded to the Goal 5 issues based on the Goal 5 resources
2 identified in the Washington County inventory. The petitioners delineated the wetlands on
3 the site. Development on this site may impact wetlands to some extent. But such impacts
4 are permitted subject to mitigation. The petitioners' traffic study considered all
5 intersections identified as intersections of concern by Washington County. He argued that
6 the site can be developed around the natural gas pipeline.

7
8 (5) He argued that the alleged comments from USA staff
9 regarding the feasibility of alternative sewer extensions are not in the record and therefore
10 are not substantial evidence.

11
12 (6) He argued that the petition is consistent with the
13 Dogwood Park ASC and the Bethany Community Plan. Adding this site to the UGB will
14 allow development while minimizing impacts on the ASC.

15
16 ii. Mr. O'Brien argued that inclusion of this property in the UGB is
17 necessary to provide urban services to properties within the existing UGB within 5 to 10
18 years. It is unlikely that urban services will be provided to the abutting properties through
19 alternative means within this time period. Therefore retention of the subject property as
20 agricultural land will make it impracticable to provide urban services to properties within
21 the existing UGB.

22
23 (1) He noted that, although the wetlands on the subject
24 property limit development, it is feasible to develop this site. Development on this property
25 will provide an opportunity for enhancement of the existing wetlands. State law prohibits
26 development on this site from causing flooding on adjacent properties.

27
28 (2) He argued that the land within the powerline right of
29 way south of the subject property is entirely wetlands. The Oregon Division of State Lands
30 ("DSL") and the Army Corps of Engineers (the "Corps") do not want sewers located in
31 wetlands. The electrical utilities do not want other public services located within the right
32 of way due to concerns about equipment near the powerlines. In addition, the Greenwood
33 Hills development was not required to extend sewer stubs to the north and east boundaries
34 of that site.

1 (3) Sewers could be extended in the low areas within
2 Dogwood Park. But that would require easements across several private properties. USA
3 prefers that sewers be located in public streets. Public services are unlikely to be extended
4 through Dogwood Park in the near future.

5
6 iii. Dr. Jenkins argued that development on this site will not impact
7 the farm operation on his property north of the site: the cultivated areas shown in the aerial
8 photographs. He currently leases the property for grass seed production, but it has been
9 planted with a variety of crops by different farmers during the 19 years he has owned the
10 property. The owners of adjacent properties have never complained about impacts from
11 farm practices. He argued that the subject property is not useable for farming or pasture
12 due to the urban development to the west. "They're not going to want cow manure and
13 flies in their backyards." People cut his fences to prevent use of his property for cattle
14 grazing. He argued that the Malinowskis are not aggressively farming their property east
15 of the subject site. They use it for limited grazing. They do not harvest hay. Most of their
16 pastures are further north, in Multnomah County and separated from the subject property
17 by intervening properties.

18
19 (i) He summarized the development potential in the area.
20 He argued that the areas southeast of the site will develop in the near future as sanitary
21 sewer service is extended. Development on the subject property will assist development in
22 the area by enhancing east-west circulation around the Dogwood Park ASC. He argued
23 that the Teufel letter (exhibit 20) demonstrates that, unless this petition is approved, the
24 Malinowski property will remain isolated for many years. Road and sewer access through
25 this site will be lost, because the abutting property south of the site (the Bosa North
26 subdivision) will be developed.

27
28 (2) He argued that development on this site will extend
29 sanitary sewers within public streets rather than in private easements, consistent with
30 USA's preferences. He testified that Don Scholander, the owner of the Greenwood Hill
31 subdivision, will not grant an easement to allow sanitary sewer extension to the
32 Malinowski property. He opined that sanitary sewers are unlikely to be extended through
33 the Dogwood Park ASC, because it would removal of numerous trees.

34
35 c. Chris Warren testified on behalf of Lexington Homes, the owner of the
36 Bosa North subdivision south of the site, in support of the petition. He argued the petition

1 needs to be approved to enhance cross circulation in the area. If this petition is denied
2 Lexington Homes will develop the proposed street stubs south of the subject property as
3 residential lots within one year.

4
5 d. Greg and Richard Malinowski, the owners of the property east of the
6 site, testified in opposition to the petition.

7
8 i. Greg Malinowski summarized his written testimony (Exhibit 21).

9
10 (1) He testified that they are farming their property. They
11 have no plans to develop it. Development on the subject property would threaten the
12 continued operation of their farm. He argued that the subject property should be retained in
13 agricultural use and as a natural wetland. He summarized their farm operations. He
14 testified that they are seeking to "trade" their property out of the UGB. Approval of this
15 petition could eliminate that option.

16
17 (2) He argued that the property north of the site (outlined in
18 blue on the aerial photo attached to exhibit 21) is similarly situated and owned by petitioner
19 Jenkins. If this petition is approved, petitioner Jenkins will argue that the abutting property
20 is too small to farm and therefore should also be included in the UGB.

21
22 (3) He argued that the majority of the subject site is wetland
23 based on Metro's "flood prone soils" maps. This site (and their property to the east) are
24 wet for three months of the year. He introduced photographs showing standing water on
25 the site, exhibits 25a and b. He expressed concern that development on this site will
26 increase flooding on their property east of the site. They cut hay on their property and
27 graze cattle during the summer and fall.

28
29 (4) He argued that approval of this petition is not required to
30 provide sanitary sewer service to their property. Equally efficient alternatives are available.
31 Sanitary sewers can be extended to their property within the powerline right of way south
32 of the site, within the existing UGB. The petitioners do not own the right of way, and it is
33 not part of the subject property. There are no trees or slopes which might interfere with
34 extension of sanitary sewer lines. Allen Lindell, the owner of the property southeast of the
35 site, is willing to grant an easement allowing extension of sanitary sewers across his
36 property. A sewer line in this location would also serve future redevelopment of Mr.

1 Lindell's property. Sewer lines in the Greenwood Hills development would be too high to
2 serve future development on lands east of Greenwood Hills.

3
4 (5) He testified that issues regarding public services and
5 access to their property were addressed when the subject property was removed from the
6 UGB in 1982. The subject property would not have been removed at that time if it would
7 have prevented extension of services to their property.

8
9 ii. Richard Malinowski argued that approval of this petition will
10 have an adverse impact on their active farm operations due to increasing conflicts with
11 urban uses. He testified that they frequently run their equipment in the early mornings and
12 late evenings during the summer. They have received complaints and threats from
13 neighbors regarding noise and dust under existing conditions. He expressed concern that
14 urban residents will use their fields for playgrounds; leaving debris which could damage
15 harvesting equipment, knocking down crops and opening gates allowing animals to escape.
16 In the past people have cut their fences in order to ride motorcycles and four-wheel drive
17 vehicles on their fields. These impacts will increase with increasing development on
18 abutting properties.

19
20 e. Mary Manseau opined that the ASC designation will not prevent
21 extension of urban services and future development in the area. Greenwood Drive will be
22 extended in the future when adequate sight distance is available at the 137th/Laidlaw Road
23 intersection. She argued that orderly extension of public services can occur without this
24 locational adjustment. Extending sewers through this site will only provide service to the
25 western portion of the Malinowski site. She argued that area schools are already over
26 capacity. Elementary students are being bussed to other schools. Development on the
27 subject property will add to the problem if this petition is approved. She argued that the
28 transportation report is incomplete, because it failed to address impacts on streets to the
29 south and east. She argued that roads to access this site would impact open space and
30 wetland mitigation sites within the Bosa North development. She argued that this petition
31 is inconsistent with the Bethany Community plan which recommends that powerline
32 corridors, streams, wetlands and similar features to define the boundaries of the
33 community. She questioned whether the site can be developed with 80 lots as proposed
34 due to the large wetlands on the site. She argued that the Staff Report overstates the
35 potential adverse environmental impacts of continued agricultural use and fails to consider

1 the impacts to the wetlands of urban development on this site. The forested upland areas of
2 the site must be clear cut to allow development on the site.

3
4 f. April Debolt argued that the wetlands on this site are an important natural
5 resource, and they form a natural boundary on this site. Red-legged frogs and western
6 pond turtles, listed as endangered or threatened species in Oregon, live in the wetlands on
7 the site. She opined that livestock grazing on the site, during the right time of year, can
8 enhance the complexity of the wetland ecosystem. She argued that development on this site
9 is inefficient. It is located several hundred feet from existing urban development and it
10 abuts existing agricultural uses. Access to this site through Bosa North will impact the
11 open space/wetlands areas preserved on that site. She argued that the applicant ignored the
12 existing 16-inch high pressure natural gas line which crosses this site. She argued that
13 sewer lines could be extended within the open space on the north edge of the Bosa North
14 development without removing any trees.

15
16 g. Tom Hamann argued that the subject property should remain rural.
17 Development on this site will put pressure on other lands outside the UGB to convert to
18 urban uses.

19
20 h. Ted Nelson expressed concerns that development on this site could
21 impact his property to the north. His property is roughly 100 feet higher in elevation, and
22 it is very wet during the winter. Development on this site may block natural storm water
23 flows and cause increased flooding on his property.

24
25 i. George and Susan Teufel submitted written testimony in opposition to
26 the petition. Exhibit 20.

27
28 j. Mary Kyle McCurdy submitted written testimony in opposition to the
29 petition on behalf of 1000 Friends of Oregon. Exhibit 23.

30
31 k. The hearings officer held the record open for 1 week to allow the
32 petitioners an opportunity to submit a closing statement. The record in this case closed at
33 5:00 pm on June 1, 1999.

34
35 5. On July 1, 1999, the hearings officer filed with the Council a report,
36 recommendation, and draft final order denying the petition for the reasons provided therein.

1 Copies of the report and recommendation were timely mailed to parties of record together
2 with an explanation of rights to file exceptions thereto and notice of the Council hearing to
3 consider the matter.

4
5 6. The Council held a duly noticed public hearing to consider testimony and timely
6 exceptions to the report and recommendation. After considering the testimony and
7 discussion, the Council voted to deny the petition for Contested Case No. 98-7
8 (Jenkins/Kim), based on the findings in this final order, the report and recommendation of
9 the hearings officer, and the public record in this matter.

10
11 **II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS**

12
13 1. Metro Code section 3.01.035(b) and (c) contains approval criteria for all
14 locational adjustments. Metro Code section 3.01.035(f) contains additional approval
15 criteria for locational adjustments to add land to the UGB. The relevant criteria from those
16 sections are reprinted below in italic font. Following each criterion are findings explaining
17 how the petition does or does not comply with that criterion.

18
19 The relevant goals, rules and statutes are implemented by the procedures in Chapter
20 3.01. Metro Code section 3.01.005.

21
22 *Area of locational adjustments. All locational adjustment additions*
23 *and administrative adjustments for any one year shall not exceed 100 net*
24 *acres and no individual locational adjustment shall exceed 20 net acres...*
25 Metro Code section 3.01.035(b)

26
27 2. No locational adjustments or administrative adjustments have been
28 approved in 1999. Therefore not more than 100 acres has been added to the UGB
29 this year. The petition in this case proposes to add 18.85 acres to the UGB, which
30 is less than 20 acres. Therefore, as proposed, the petition complies with Metro
31 Code section 3.01.035(b). However, if all similarly situated land is included in the
32 adjustment, the area of the adjustment would exceed 20 acres. See the findings
33 regarding Metro Section 3.01.035(f)(3) for more discussion of the "similarly
34 situated" criterion.

1 *Orderly and economic provisions of public facilities and*
2 *services. A locational adjustment shall result in a net improvement in the*
3 *efficiency of public facilities and services, including but not limited to,*
4 *water, sewerage, storm drainage, transportation, parks and open space in*
5 *the adjoining areas within the UGB; and any area to be added must be*
6 *capable of being served in an orderly and economical fashion.*
7 Metro Code section 3.01.035(c)(1)

8
9 3. The Council finds that the subject property can be served in an orderly and
10 economic manner by most public facilities and services, including water, sanitary sewers,
11 roads, storm drainage, transit and emergency services, based on the comments in the
12 record from the service providers. However the Council further finds that the petitioner
13 failed to demonstrate that school services can be provided to the subject property in an
14 orderly and economic fashion.

15
16 a. USA testified that it could not “definitively state that there is or isn’t
17 [sanitary sewer] capacity for this parcel.” However if the petition is approved, the
18 developer would be required to pay for any necessary upgrades to the capacity of collection
19 system and treatment facilities. Therefore the Council finds that adequate sewer capacity
20 can be provided to serve this property.

21
22 b. There is no substantial evidence that school services can be provided to
23 the subject property in an orderly and economical fashion. The applicant testified (page 18
24 of the petition, Exhibit 3) that the elementary school and high school which would serve
25 this site are both currently over capacity. The middle school which is currently under
26 construction south of the site is projected to reach capacity within two years after
27 completion.² Development on the subject property is projected to generate 59 students (33
28 elementary, 14 middle and 12 high school), Exhibit 4. The Beaverton School District
29 testified that it would address school capacity issues through the Comprehensive Plan
30 Amendment process. Exhibit 3H of the Petition, Exhibit 3. Therefore Council finds that
31 there is no substantial evidence that school services can be provided to the subject property
32 in an orderly and economical fashion.

33

2 Findley Elementary School has a capacity of 691 students and 1998-99 enrollment of 787. Sunset High School has a capacity of 1,508 students and 1998-99 enrollment of 1,617.

1 i. Schools are not expressly included in the list of services in this
2 criteria. However the list is expressly non-exclusive. Therefore the Council finds that
3 school capacity is a relevant service and this criteria is not met.
4

5 4. Metro rules do not define how to calculate net efficiency of urban services. In
6 the absence of such rules, the Council must construe the words in practice. It does so
7 consistent with the manner in which it has construed those words in past locational
8 adjustments. The Council concludes that the locational adjustment proposed in this case
9 does not result in a net improvement in the efficiency of services sufficient to comply with
10 Metro Code section 3.01.035(c)(1), based on the following findings:
11

12 a. Including the subject property in the UGB will reduce the net efficiency
13 of school services, because there is insufficient capacity to accommodate students, and
14 residential development on this site will increase the burden on the School District.
15

16 b. Including the subject property in the UGB increases the net efficiency of
17 sewer service, because it enables the petitioners to serve properties east of the subject
18 property (the Malinowski properties) with a gravity flow sewer line. Based on the
19 testimony of Nora Curtis with USA, if the subject property is not included in the UGB,
20 then the Malinowski properties would have to be served with a pump station. Exhibit 1.
21 That is inherently less efficient than a gravity flow line, because a pump station contains
22 mechanical and hydraulic parts that require maintenance and repair and relies on electricity
23 to operate instead of gravity. This finding is consistent with the Council action in UGB
24 Case 8-04 (Bean) and UGB Case 94-01 (Starr/Richards) where locational adjustments
25 allowed gravity flow systems instead of pump stations.
26

27 i. There is no substantial evidence that alternative routes for gravity
28 flow sewer service are practicable or available. It was alleged that sewers could be
29 extended to the Malinowski properties through the powerline right of way south of the
30 subject property within the existing UGB. However sewer lines do not extend to the
31 powerline right of way now. Sewer lines serving the Greenwood Hill subdivision were
32 stubbed in NW Greenwood Drive south of the site. Gravity sewers could be extended to
33 the Malinowski properties from this stub ("Option 2" identified by the applicant in
34 Attachment C of the Staff Report, Exhibit 18). However there is no substantial evidence
35 that this sewer extension could serve the western portion of the Malinowski properties,
36 which are a lower elevation, with gravity flow sewers.

1
2 ii. It is not necessary to include all of the subject property in the
3 UGB to provide gravity flow sewer service to the Malinowski property. A sewer line
4 could be extended from within the eastern portion of the subject site. More than the eastern
5 half of the subject property is not necessary to provide gravity flow sewer service to the
6 Malinowski property. Consequently, although sewer service would be more efficient if the
7 eastern portion of the subject property is included in the UGB, including the western
8 portion of the subject property in the UGB provides no net efficiencies to sewer service or
9 other urban services. See pp. 2-3 of Exhibit 23; also see, *Parklane v. Metro*, __ Or LUBA
10 __ (LUBA No. 97-48, 2/25/99).

11
12 c. The Council finds that including the subject property in the UGB has no
13 effect on the net efficiency of park and open space services and facilities. The April 12,
14 1999 letter from the THPRD states that the Park District “welcomes the proposed
15 development area into the District...” It does not state that approval of this petition results
16 in increased efficiency of park and open space services.

17
18 i. Approval of the petition could increase the amount of open space
19 within the Park District because the wetland areas of the subject property could be dedicated
20 to the THPRD when the subject property is developed. The area proposed to be dedicated
21 is adjacent to the existing open space within the Kaiser Woods subdivision to the west.³
22 Therefore approval of this petition will expand the amount of contiguous open space area in
23 the Park District. Increasing the area of open space increases the efficiency of open space
24 services for purposes of this section.

25
26 ii. However the Council also recognizes that, under existing
27 zoning, use of the subject property is so constrained that it is reasonably likely to remain
28 undeveloped and substantially in an open space even if it is not included in the UGB. If the
29 petition is approved, roughly one third of the subject property, about 7.33 acres, will be
30 cleared and developed for urban uses, substantially reducing the amount of actual open
31 space in the area. Therefore, including the subject property in the UGB actually may
32 reduce the area of open space in fact if not in designation. Given these facts, the Council
33 concludes that, on balance, including the subject property has no net effect on open space

³ Although the Kaiser Woods open space is separated from this site by the intervening powerline right of way, the right of way is designated open space in the Bethany Community Plan.

1 efficiency. This is consistent with prior Council decisions. See UGB Case 95-02 (Knox
2 Ridge).

3
4 d. Council finds the petitioner failed to bear the burden of proof that
5 including the subject property in the UGB increases the net efficiency of transportation
6 services for land already in the UGB. The Council finds that including the subject property
7 in the UGB has no net increase in transportation efficiency.

8
9 i. The Council finds that development on the subject property
10 would create an opportunity for additional cross-circulation in the area by extending a stub
11 street that could serve the Malinowski properties.

12
13 ii. The Council further finds that east-west cross-circulation will be
14 provided through the Dogwood Park ASC by the future extension of NW Greenwood
15 Drive. The Bethany Community Plan requires that this area be “protected” but it also
16 assumes that this area will eventually redevelop. Although NW Greenwood Drive is
17 currently barricaded, it is clearly intended to be extended in the future. This street was
18 stubbed to the east and west boundaries of the Dogwood Park ASC. Washington County
19 required the developer of the Greenwood Hill subdivision to connect to this street. Future
20 development to the east will presumably be required to extend this street further east and
21 south, enhancing cross-circulation in the area.

22
23 iii. Whether including the subject property in the UGB results in
24 increased transportation efficiency depends on whether the Malinowski property is
25 developed before the barriers are removed and Greenwood Drive is extended to the east.
26 There is no certainty when the adjoining land in the UGB will develop or when the barriers
27 in Greenwood Drive will be removed. Including the property in the UGB may or may not
28 increase transportation efficiency. There is no substantial evidence that including the
29 subject property will necessarily enhance transportation efficiency.

30
31 e. The Council concludes that the petitioner failed to bear the burden of
32 proof that approval of this petition will increase efficiency of emergency services. As
33 discussed above, approval of this petition may enhance east-west circulation in the area.
34 However this petition will result in a substantial efficiency only if the Malinowski
35 properties redevelop and extend streets to the east before the barriers are removed and
36 Greenwood Drive is extended to the east.

1
2 f. The Council cannot make a finding regarding the efficiency of transit
3 services, as the petition submittal does not include comments from Tri-Met.
4

5 g. The Council concludes that the petitioner failed to bear the burden of
6 proof that this locational adjustment will result in a net improvement in the efficiency of
7 water services in the adjoining area already in the UGB. TVWD testified that this locational
8 adjustment would allow the creation of a looped water system through the site and provide
9 for future extension to properties to the east within the existing UGB. However there is no
10 substantial evidence that a similar efficiency cannot be achieved by construction of a looped
11 water system through lands southeast of the subject property within the existing UGB
12 when they are redeveloped in the future.
13

14 h. It is not apparent from the record that including the subject property in
15 the UGB will increase the net efficiency of surface water management/storm drainage,
16 natural gas, electricity and fire protection for land already in the UGB, except by marginally
17 increasing the population served by those facilities and thereby spreading their cost over a
18 slightly larger population base, making them somewhat more economical to residents of
19 land already in the UGB. However this impact is not enough by itself to conclude these
20 services will be more efficient if the property is included in the UGB based on prior
21 locational adjustment cases (see, e.g., UGB Case 88-02 (Mt. Tahoma) and UGB Case 95-
22 02 (Knox Ridge)).
23

24 i. Under these circumstances, Council finds that including the subject
25 property in the UGB does not result in net improvement in public facilities and services.
26 Approval of this petition will result in a net increase in the efficiency of sewer services.
27 However approval of this petition will result in a net decrease in the efficiency of school
28 services. Other services may or may not be more efficient as a result of including the
29 subject property. Council concludes the petitioner failed to carry the burden of proof that
30 the petition complies with Metro section 3.01.035(c)(1).
31

32 *Maximum efficiency of land uses. The amendment shall facilitate*
33 *needed development on adjacent existing urban land. Needed development,*
34 *for the purposes of this section, shall mean consistent with the local*
35 *comprehensive plan and/or applicable regional plans.*
36

Metro Code section 3.01.035(c)(2)

1
2 5. Including the subject property in the UGB facilitates needed development on
3 adjacent existing urban land, (i.e., the Malinowski properties), because it makes it possible
4 to serve that property with a gravity flow sewer.
5

6 a. The Malinowskis' stated lack of desire to develop their property is
7 irrelevant to this criteria. The Malinowski properties are designated for urban residential
8 development in the Washington County Comprehensive Plan. Sewer service must be
9 provided to the Malinowski properties if they are to be developed consistent with the
10 comprehensive plan. Therefore the Council finds that including the subject property in the
11 UGB facilitates needed development on adjacent existing urban land.
12

13 b. The Council acknowledges that it is not necessary to include the subject
14 property in the UGB to provide any form of sewer service to the Malinowski properties.
15 The Malinowski properties could be served by extending a sewer line from the southwest,
16 from the existing stub in Greenwood Drive or from the south up 137th Avenue. However,
17 based on the topography in the area and the statement from USA, alternative routes for
18 sewer lines would require pumping of sewage from portions of the Malinowski properties.
19

20 c. Given the importance of the efficiency of service delivery in section
21 3.01.035(c)(1), the Council finds that the availability of a less efficient means of sewer
22 service, (i.e., a system that relies on a pump station), does not preclude and is not
23 inconsistent with a finding that the locational adjustment in this case facilitates development
24 on the Malinowski properties by enabling it to be served with a more efficient sewer
25 system. This is consistent with and similar to the Council's action in the matter of UGB
26 Case 88-04 (Bean) and UGB Case 94-01 (Starr/Richards).
27

28 6. The Council further finds that including the subject property in the UGB does
29 not otherwise facilitate needed development on adjacent existing urban land. Urban
30 services other than gravity flow sewers can be provided to adjoining properties within the
31 existing UGB without approving the petition.
32

33 a. Development on this site would require extension of urban services,
34 sewer, water, etc., through the site to the west edge of the Malinowski properties. But
35 these extensions can be accomplished whether or not the subject property is developed.
36 Public services, other than gravity flow sewer, will be extended to the Malinowski

1 properties as properties to the southeast are redeveloped in the future. The fact that it may
2 take longer for services to reach the Malinowski properties through redevelopment within
3 the existing UGB is irrelevant to this criteria. In addition, there is no substantial evidence
4 that providing services to the Malinowski properties through this site will encourage the
5 Malinowski properties to redevelop any sooner than will otherwise occur.

6
7 *Environmental, energy, social & economic consequences. Any*
8 *impact on regional transit corridor development must be positive and any*
9 *limitations imposed by the presence of hazard or resource lands must be*
10 *addressed. Metro Code section 3.01.035(c)(3)*

11
12 7. Council finds including the subject property in the UGB would not have any
13 impact on regional transit corridor development, because the nearest regional corridor is
14 more than one-quarter mile from the site. Council further finds that the subject property is
15 not subject to hazards identified by Washington County. The presence of a wetlands can
16 be addressed through compliance with state laws. Although development on this site is
17 likely to impact these wetlands, such impacts are not prohibited so long as adequate
18 mitigation is provided. Development constraints created by the existing natural gas pipeline
19 on the subject property also can be addressed.

20
21 *Retention of agricultural land. When a petitioners includes land with*
22 *Agricultural Class I-IV soils designated in the applicable comprehensive*
23 *plan for farm or forest use, the petition shall not be approved unless it is*
24 *factually demonstrated that:*

25
26 *(A) Retention of any agricultural land would preclude urbanization*
27 *of an adjacent area already inside the UGB, or*

28
29 *(B) Retention of the agricultural land would make the provision of*
30 *urban services to an adjacent area inside the UGB impracticable.*

31 Metro Code section 3.03.035(c)(4)

32
33 8. The subject property contains Class III and IV soils, and it is designated and
34 zoned EFU. Therefore Council finds this criterion does apply. The fact that the petitioners
35 are not actively farming the subject property is irrelevant to this criteria.

1 a. The Council finds that retaining the subject property as agricultural land
2 will not preclude urbanization of adjacent lands. Public services and facilities can be
3 provided to the Malinowski properties through lands within the existing UGB, just not as
4 efficiently. However efficiency is not relevant to the findings under this section; only
5 practicability of service is relevant.

6
7 b. The Council further finds that retaining the subject property as
8 agricultural land will not make the provision of urban services to adjacent properties inside
9 the UGB impracticable. Sewer service can be provided to the Malinowski properties by
10 means of a pump station. The Council finds that, although pumping sewage is less
11 efficient than gravity flow, it is a practicable alternative. All other urban services will be
12 provided to abutting properties within the UGB as properties to the south and east are
13 redeveloped in the future.

14
15 *Compatibility of proposed urban uses with nearby agricultural*
16 *activities. When a proposed adjustment would allow an urban use in*
17 *proximity to existing agricultural activities, the justification in terms of this*
18 *subsection must clearly outweigh the adverse impact of any incompatibility.*
19 Metro Code section 3.01.035(c)(5)

20
21 9. The Council finds, based largely on the testimony of the Malinowskis and Mr.
22 Jenkins at the hearing, that the proposed adjustment will be incompatible with ongoing
23 agricultural activities on the Malinowski properties. The minimal service efficiencies
24 achieved by including subject property in the UGB do not “clearly outweigh” the adverse
25 impacts of its urban development on existing agricultural activities.

26
27 a. The Malinowskis testified that their property abutting the east boundary
28 of the subject property is in active agricultural use. They harvest hay and graze cattle on
29 this portion of their property. The petitioner, Dr. Jenkins, testified based on his own
30 experience that these activities are incompatible with urban development on abutting
31 properties. Both Dr. Jenkins and the Malinowskis testified that their fences have been cut,
32 allowing their livestock to escape. The Malinowskis testified that they receive complaints
33 about noise and dust from their harvesting activities under existing conditions.

34
35 b. The Council finds that urban development on this site will increase the
36 potential for such conflicts by allowing urban residential development abutting the west

1 boundary of the Malinowski property. The Malinowski property is largely buffered from
2 urban development under existing conditions. The powerline right of way along the south
3 boundary of their property provides a buffer between their property and abutting urban
4 lands. Properties to the north are outside the UGB and designated for rural development in
5 the Multnomah County Comprehensive Plan. Properties to the east are within the UGB,
6 but they are not currently developed with urban uses. The subject property, abutting the
7 west boundary of the Malinowski property, is designated exclusive farm use by the
8 Washington County Comprehensive plan. Approval of this petition would bring urban
9 development closer to the Malinowski property, thereby increasing the likelihood of
10 conflicts between urban and farm uses.

11
12 c. The fact that the Malinowski properties are located within the UGB is
13 irrelevant to this criterion. The Code does not distinguish between existing agricultural
14 uses based on their location within or outside the UGB.

15
16 *Superiority. [T]he proposed UGB must be superior to the UGB as*
17 *presently located based on a consideration of the factors in subsection (c) of*
18 *this section. Metro Code section 3.01.035(f)(2)*

19
20 10. Based on the evidence in the record, Council finds that the proposed UGB is
21 not superior to the existing UGB, because:

22
23 a. There is no evidence that public services (schools) can be provided to the
24 subject property in an orderly and economic fashion;

25
26 b. The proposed UGB would not result in a net increase in service and land
27 use efficiencies for the public commensurate with the size and nature of the locational
28 adjustment;

29
30 c. Retention of the subject property as agricultural land would not preclude
31 urbanization of adjacent land already inside the UGB or make the provision of urban
32 services adjacent urban land impracticable;

33
34 d. The benefits including the subject property in the UGB do not clearly
35 outweigh impacts on existing agricultural uses; and
36

1 e. It does not include all similarly situated land.

2
3 *Similarly situated land. The proposed UGB amendment must include*
4 *all similarly situated contiguous land which could also be appropriately*
5 *included within the UGB as an addition based on the factors above. Metro*
6 *Code section 3.01.035(f)(3)*
7

8 11. Council finds the evidence in the record shows insufficient difference between
9 the subject site and the adjoining land to the north to conclude that such lands are not
10 similarly situated.
11

12 a. Based on the aerial photographs in the record, the southern portion of the
13 abutting property is not being actively farmed and appears indistinguishable from the
14 subject property (the area outlined in blue on the aerial photograph attached to Exhibit 21).
15

16 b. The adjoining property also is owned by petitioner Jenkins and zoned
17 EFU. The adjoining property is similar physically to the subject property in terms of soils
18 and slopes. If anything, the adjoining land to the north is better suited for urban use,
19 because it does not contain extensive wetlands found on the subject property, and it adjoins
20 a water district reservoir to the north and urban subdivisions to the west.
21

22 c. Although the adjoining land to the north is not necessary to extend urban
23 services to the adjoining land already in the UGB (i.e., the Malinowski property), neither is
24 inclusion of most of the subject property necessary to provide that service.
25

26 d. The petitioner distinguishes the adjoining land to the north largely
27 because it is in a different county; but such jurisdictional boundaries are not relevant to the
28 criteria regarding similarly situated lands. That boundary does not create an obstacle to
29 development between the subject site and abutting properties. There is no physical barrier
30 between the subject property and the adjoining 26 feet to the north, such as a highway,
31 street or railroad track, that distinguishes the subject property from adjoining land.
32

33 e. The petitioner did not demonstrate that the soil conditions on this site and
34 the adjoining land to the north are different. On the contrary the petitioner testified that
35 such lands have been farmed or grazed in the past together with the subject site. The
36 petitioner argued that the abutting property contains "better quality agricultural soils."

1 Petition at page 30. However there is no substantial evidence in the record to support this
2 statement. The petition does not include a soils map or similar evidence of the soils on this
3 and the abutting properties. In addition, this statement conflicts with petitioners' statement
4 that "[s]eed production is limited on the Class IV soils immediately adjacent to the
5 Jenkins/Kim site because of poor drainage." Petition at page 27. This statement is
6 consistent with the aerial photographs in the record which show the northern portion of the
7 abutting property is cultivated while the southern portion is undisturbed.
8

9 f. The Council finds the evidence in this case can be distinguished from the
10 evidence in prior cases regarding the "similarly situated" criterion. Many of the properties
11 proposed for addition in prior cases had some natural or man-made physical feature that
12 separated the subject property from adjoining non-urban land. See, e.g., UGB Case 94-01
13 (Starr/Richards) (I-5 freeway), UGB Case 95-01 (Harvey) (railroad tracks) and UGB Case
14 87-4 (Brennt) (steep slopes). In this case, the subject property is not physically
15 distinguishable from adjoining non-urban land, similar to the situation in UGB Case 95-02
16 (Knox Ridge).
17

18 g. Therefore the Council concludes the petition does not include all
19 similarly situated properties. If it did include all such lands, it would exceed 20 acres. It is
20 not evident to Council how far north similarly situated lands go, but they include at least
21 1.15 acres of the land north of the subject site. If as little as 26 feet of the land adjoining
22 the north edge of the subject property is included in the UGB, the petition would include
23 more than 20 acres. The evidence is insufficient to show the adjoining 26 feet of land is
24 not similarly situated to the subject site based on the relevant criteria.
25

26 III. CONCLUSIONS

27

28 Based on the foregoing findings, the Council adopts the following conclusions.
29

30 1. Public services and facilities, including water, sanitary sewer, storm drainage,
31 transportation, and police and fire protection, can be provided to the subject property in an
32 orderly and economical fashion.
33

34 2. School services cannot be provided to the subject property in an orderly and
35 economical fashion.
36

1 3. On balance, Council concludes the petition does not comply with MC section
2 3.01.035(c)(1), because the petitioners did not carry the burden of proof that including all
3 of the subject site in the UGB will result in a net improvement in the efficiency of public
4 services and facilities. The petition includes more land than necessary to provide service
5 efficiencies that could result from granting the petition.
6

7 4. The petitioners showed that the proposed addition will facilitate needed
8 development on adjacent existing urban land. Therefore Council concludes the petition
9 does comply with MC section 3.01.035(c)(2).
10

11 5. The petitioners showed that including the subject property in the UGB will not
12 affect regional transit corridor development and that limitations imposed by the presence of
13 wetlands and a natural gas transmission pipeline can be addressed. Therefore Council
14 concludes the petition does comply with MC section 3.01.035(c)(3).
15

16 6. The petitioners failed to carry the burden of proof that retention of the subject
17 property as agricultural land would preclude urbanization of an adjacent area already inside
18 the UGB, or make the provision of urban services to an adjacent area inside the UGB
19 impracticable. Thus the petition does not comply with MC section 3.03.035(c)(4).
20

21 7. The petitioners failed to carry the burden of proof that efficiencies created by
22 including the subject property in the UGB clearly outweigh the adverse impact of any
23 incompatibility with existing agricultural activities. Thus the petition does not comply with
24 MC section 3.01.035(c)(5).
25

26 8. The petitioners failed to show that the proposed addition will result in a superior
27 UGB. Thus the petition does not comply with MC section 3.01.035(f)(2)
28

29 9. The petition does not include all similarly situated contiguous land outside the
30 UGB. If it did include all such lands, the area in question would exceed 20 acres, which is
31 the maximum area permitted as a locational adjustment.
32

1 IV. DECISION

2
3 Based on the findings and conclusions adopted herein and on the public record in
4 this matter, the Metro Council hereby denies the petition in Contested Case 98-07
5 (Jenkins/Kim).

6 DATED: _____

7 By Order of the Metro Council

8 By

9 _____

ATTACHMENT A TO THE FINAL ORDER IN THE
MATTER OF CONTESTED CASE 98-07 (Jenkins/Kim) :
EXHIBITS

Exhibit No. Subject matter

Ex #	Date	Source	Subject
1	11/05/98	USA	Service provider comment
2	11/24/98	TVWD	Service provider comment
3	12/01/98	Applicants	Petition for locational adjustment and attachments
4	01/07/99	Winterowd (WPS)	Beaverton School District capacity
5	01/19/99	Pacific Hab.Serv.	Wetland permitting & mitigation
6	01/22/99	TVFRD	Service provider comment
7	04/12/99	USA	Service provider comment
8	2/23/99	Washington County	Staff report to planning comm'n & attachments
9	04/14/99	Washington County	Addendum to the Staff report to planning comm'n & attachments
10	04/21/99	THPRD	Service provider comment
11	04/23/99	LDC Design Group	Supplemental information to Washington County
12	04/26/99	Malinowski	Letter in opposition
13	04/27/99	WPS	Summary of 4/27/99 BCC hrg
14	04/27/99	Washington County	Addendum Staff Report to BCC
15	04/28/99	Metro	Notice to DLCD
16	05/03/99	Washington County	Cover letter for county comment
17	05/04/99	Metro	Notice to Washington County special districts and agencies
18	05/13/99	Metro	Staff Report to hearings officer
19	05/24/99	Metro	Public notice
20	05/17/99	Teufel	Letter in opposition
21	05/24/99	Malinowski	Letter in opposition & attachments
22	n.d.	M. Manseau	Letter in opposition
23	05/24/99	1000 Friends	Letter in opposition
24	n.d.	LDC Design Group	11"x14" maps of site and surrounding area
25a	n.d.	Malinowski	Photo of site
25b	n.d.	Malinowski	Photos of site
26	n.d.	LDC Design Group	Aerial photo of site
27	05/24/99	Winterowd (WPS)	Service provider table
28	n.d.	Metro	Mailing list
29	10/20/98	Metro	Reactivation notice
30	06/1/99	Winterowd (WPS)	Final argument
31	06/1/99	Cox	Final argument

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 99-816 DENYING URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT CASE 98-7: JENKINS/KIM AND ADOPTING HEARING OFFICER'S REPORT INCLUDING FINDINGS AND CONCLUSIONS

Date: September 9, 1999

Presented by: Larry Epstein, Hearings Officer
Prepared by: Ray Valone, Growth Management

PROPOSED ACTION

Adoption of Ordinance 99-816, denying *Case 98-7: Jenkins/Kim*, a locational adjustment to the urban growth boundary (UGB). The proposed adjustment is shown on Attachment 1.

SUMMARY OF PROCESS

According to Metro Code 3.01.065, the Metro Council may act to approve, deny or remand to the Hearings Officer a petition in whole or in part. When the Council renders a decision that reverses or modifies the proposed order of the Hearings Officer, then the Council shall set forth its findings and state its reasons for taking the action in its order.

The Hearings Officer, Larry Epstein, submitted a report recommending denial of Case 98:7 (Attachment 2). The petitioners filed an exception to the Hearings Officer's Report and Recommendation (Attachment 3). According to Metro Code 3.01.060, parties to the case may file an exception related directly to the interpretation made by the Hearings Officer of the ways in which the petition satisfies the standards for approving a petition for a UGB amendment. According to Metro Code 2.05.045(b), the Council shall, upon receipt of a proposed ordinance and consideration of exceptions, adopt the proposed ordinance, revise or replace the findings or conclusions in a proposed order, or remand the matter to the Hearings Officer.

If the Council votes to deny Case 98-7 and adopt this ordinance, the decision will be consistent with the Hearings Officer's recommendation and findings. If the Council votes to approve the petition, the decision will be consistent with the staff report. If the Council votes to remand the petition to the Hearings Officer, the decision will be consistent with the petitioners' exception request.

In addition, the petitioners filed an Offer of Proof requesting that the Council consider additional evidence before rendering a decision (Attachment 4). Please see the memo from Larry Shaw, dated August 30, 1999, for further explanation of this submittal (Attachment 5).

BACKGROUND AND ANALYSIS

Proposal Description:

On December 1, 1998, Michael Jenkins and Sang Kim completed filing a petition for an 18.85-acre locational adjustment to the UGB for the purpose developing the site for residential use. The site is approximately one-half mile southeast of the Springville Road/Kaiser Road intersection (Attachment 1). The subject property is located in Washington County with the UGB as its western, southern and eastern boundary, and the Washington/Multnomah County line as a northern boundary. It consists of Tax Lot 1100, Section 21, T1N-R1W and Tax Lot

101, Section 21BA, T1N-R1W. The subject property is zoned for Exclusive Farm Use by Washington County. Land to the west, south and east is zoned R-5 and R-6 residential by Washington County. Land to the north is zoned for exclusive farm use by Multnomah County.

The petitioners propose to adjust the UGB for the purpose of developing the site with residential uses. The applicants intend for the property to be developed with approximately 80 residential dwelling units. On April 27, 1999, the Washington County Board of Commissioners voted 3-0 to forward no recommendation to Metro.

Hearings Officer Recommendation and Proposed Findings

The Hearings Officer, Larry Epstein, conducted a public hearing at the Washington County Public Service Building on May 24, 1999. He submitted a report and recommendation to Metro on July 1, 1999, recommending denial of the petition. The case record contains the petitioners' submittals, Metro staff report, notification lists and the Hearings Officer's report. The complete record list is included as part of the Hearings Officer's Report and Recommendation.

The criteria from Metro Code 3.01.035 include: 1) Locational adjustments shall not exceed 20 net acres; 2) The site can be served with public facilities and services in an orderly and economic manner, and the adjustment would result in a net improvement in their efficiency; 3) The amendment will facilitate needed development on adjacent existing urban land; 4) The environmental, energy, economic and social consequences of amending the UGB have been considered; 5) Designated agricultural lands will be retained unless land inside the UGB cannot be developed, or service provision to that would be impracticable; 6) The proposed use would be compatible with nearby agricultural activities; 7) The proposed UGB location would be superior to the existing UGB location; and 8) The proposed adjustment must include all similarly situated contiguous land which could also be appropriately included within the UGB.

The Hearings Officer recommends denial of *Case 98-7: Jenkins/Kim* based upon the findings and conclusions in his report that:

- All application and noticing requirements are met; and
- A public hearing was conducted according the requirements and rules of Metro Code 3.01.050 and 3.01.055; and
- Criteria 2, 5, 6 and 8 for a locational adjustment to the UGB are not met by the petitioners.

The Hearings Officer states in his report that criterion 2 is not met because the petition does not result in a net improvement in the efficiency of services due to there being no substantial evidence that school services can be provided to the site in an orderly and economical fashion (Attachment 2, pages 16-20). Criterion 5 is not met because inclusion of the site into the UGB will not make the provision of services, sewer in particular, to the adjacent Malinowski properties to the east impracticable (Attachment 2, pages 22-23). These adjacent sites could be served by means of a sewer pump station. Criterion 6 is not met because development of the site would be incompatible with ongoing agricultural activities on the Malinowski properties within the UGB (Attachment 2, pages 23-24). Criterion 8 is not met because the southern portion of the Jenkins' property to the north of the subject site is indistinguishable from the subject site. The petition does not include, therefore, all similarly situated land. If as little as 26 feet of land adjoining the northern edge of the subject property is included in the proposal, the petition would be for more than 20 acres and not eligible under the locational adjustment standard (Attachment 2, pages 25-26).

Comparison of Staff Report and Hearings Officer's Recommendation

According to Metro Code 3.01.033(f), Metro staff shall review all petitions and submit a report to the Hearings Officer. Based on a review of all submitted material from the petitioners, public service providers and Washington County, staff concludes that all criteria are satisfied (Attachment 6).

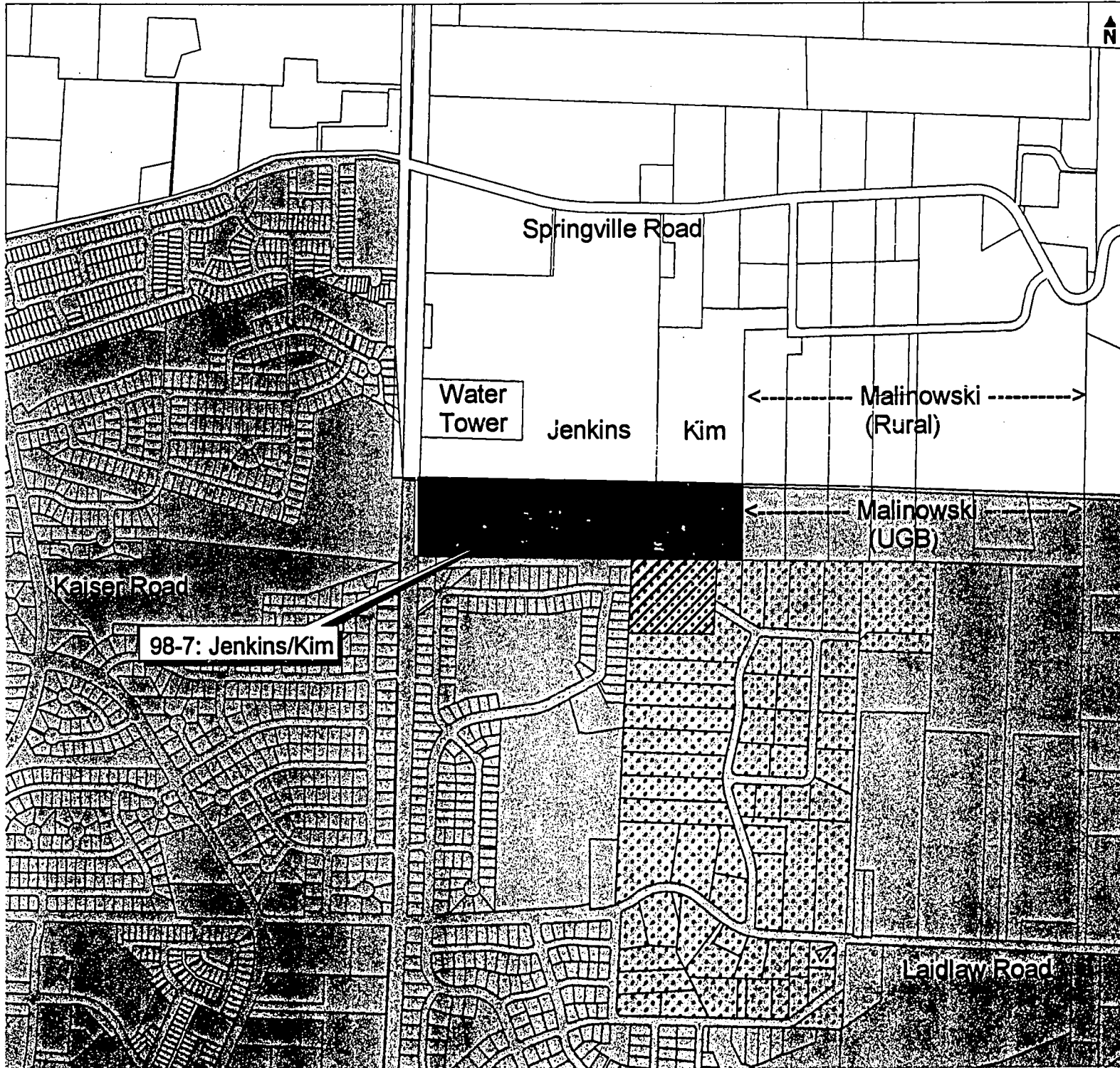
Staff conclusions differ from the Hearings Officer's recommendation in the following ways:

- Staff concludes that Criterion 2 is satisfied because the petitioners have demonstrated that, on balance, inclusion of the site would result in a net improvement in the efficiency of services to adjoining areas within the UGB. There would be an improvement of efficiency for five services, no change in efficiency for four services and a decrease in efficiency only for school services. Further, the school district has not performed an evaluation of school facilities for the petition (Attachment 6, pages 56-59).
The Hearings Officer concludes that this criterion is not met because approval of the petition would result in net decrease in efficiency of school services.
- Criterion 5 is contingent upon interpretation of what constitutes "impracticable". Staff concludes this criterion is satisfied because without inclusion of the subject property, provision of sewer service to the Malinowski properties within the UGB is impracticable. The options put forth by the petitioners, Washington County and the Malinowskis for providing sewer service to the Malinowski properties without use of the subject property were judged to not be practicable or feasible. The gravity service options require easements across private residential property; and construction and maintenance of a pump station is not only impracticable, but also not allowed by the Unified Sewerage Agency when a property is within 5000 feet of a public sewer line (Attachment 6, pages 62-63).
The Hearings Officer concludes that providing sewer service to the Malinowski properties via a pump station is a practicable alternative. The petitioners, therefore, have not demonstrated that retention of the subject property as agricultural land would make provision of urban services to adjacent urban land impracticable.
- Staff concludes that Criterion 6 is satisfied because there would be a limited impact to the agricultural activities, located approximately 300 feet outside the UGB to the north of the site, which would be outweighed by the benefits to the adjoining urban land to the east (Attachment 6, page 64).
The Hearings Officer concludes that development of the subject property would be incompatible with the agricultural activities taking place on the Malinowski properties within the UGB to the east.
- Staff concludes that Criterion 8 is satisfied because any additional land to the north of the subject site is not an appropriate addition based on the case in criteria 2 through 6.
The Hearings Officer concludes that the petitioners did not demonstrate that the subject property is different than adjoining land to the north. For this reason, the petition does not include all similarly situated land. If as little as 26 feet of land adjoining the north edge of the subject site is included with the petition, it would exceed the 20-acre limit for locational adjustments.

BUDGET IMPACT





There is no budget impact from adopting this ordinance.

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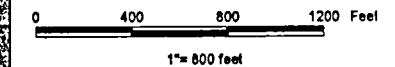


Proposed Adjustment

UGB Case 98-7:
Jenkins/Kim

-  Subject Property
-  UGB Area
-  Dogwood Park Area of Special Concern
-  Greenwood Hill Subdivision

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



800 NE Grand Ave.
Portland, OR 97232-2738
503 797-1742 FAX 503 797-1909
Email: drc@metro.dst.or.us

Plot date: Aug 24, 1999; c:\projects\jenkins2

JUL 01 1999

BEFORE THE METRO COUNCIL

In the matter of the petition of Michael Jenkins and Sang) HEARINGS OFFICER'S
Kim for a Locational Adjustment to the Urban Growth) REPORT AND
Boundary between Laidlaw and Springville Roads, east) RECOMMENDATION
of Kaiser Road in unincorporated Washington County) Contested Case No. 98-07

I. INTRODUCTION AND SUMMARY

This report summarizes the findings the hearings officer recommends to the Metro Council regarding a proposed locational adjustment to the Urban Growth Boundary ("UGB"). After balancing the relevant factors in the approval criteria, the hearings officer to conclude that the petitioners failed to bear the burden of proof that the petition complies with those criteria. A different balance could be struck, but the hearings officer believes the recommendation is consistent with Council action on other petitions for locational adjustments. The petition in this case raises the following major issues:

1. Whether public services and facilities can be provided to the subject property in an orderly and economical fashion. The hearings officer found the petition failed to show that school services can be provided in an efficient manner.

2. Whether the petition includes all contiguous similarly situated lands. If as much as 26 feet of the adjoining land is included in the petition, it would exceed the 20 acres maximum permitted for locational adjustments. The hearings officer found that the evidence in the record is insufficient to distinguish the subject property from the adjoining land to the north, and that the subject property is similarly situated with at least the adjoining 26 feet of land to the north.

3. Whether granting the petition results in a superior UGB and a net improvement in the efficiency of public facilities and services relevant to the adjustment. The hearings officer found that it does not result in sufficient net improvement and that more land is proposed to be included in the UGB than is necessary to provide any service efficiency. Therefore the proposed UGB is not superior to the existing one.

4. Whether retaining the subject property as agricultural land would preclude urbanization of an adjacent area already inside the UGB or make the provision of urban

1 services to an adjacent area inside the UGB impracticable. The hearings officer found that,
2 although including a portion of the subject property in the UGB would provide more
3 efficient sewer service to land already in the UGB, less efficient service could be provided
4 if the subject property is not included in the UGB.

5
6 5. Whether efficiencies created by including the subject property in the UGB
7 clearly outweigh any incompatibility with existing agricultural activities. The hearings
8 officer found that the increased efficiencies potentially provided by the petition do not
9 outweigh adverse impacts of increased urban development adjoining farm uses.

10 11 II. SUMMARY OF BASIC FACTS AND PROCEDURE

12
13 1. December 1, 1998, Michael Jenkins and Sang Kim ("petitioners") filed a
14 petition for a locational adjustment to the metropolitan area UGB. The petitioners propose
15 to add to the UGB an 18.85-acre parcel identified as Tax Lot 1100, Section 21, T1N-R1W
16 and Tax Lot 101, Section 21BA, T1N-R1W, WM, Washington County (the "subject
17 property"). The subject property is situated in unincorporated Washington County. The
18 UGB forms the south, west and east boundaries of the subject property. The Washington/
19 Multnomah County line is the north edge of the subject property. The subject property was
20 originally included in the UGB. In 1982 the site was removed from the UGB as a trade
21 with another property located adjacent to Tualatin. See Metro Ordinance 82-149.

22
23 a. The Washington County Comprehensive Plan designation and zoning
24 for the subject property is EFU (Exclusive Farm Use). Adjoining land inside the UGB is
25 zoned R6 (Residential, 6 units per acre) and R5 (Residential, 5 units per acre).

26
27 b. The subject property is now undeveloped pasture, wetlands and forest.
28 It slopes to the southwest at less than five percent. It is not served by public services. The
29 petition was accompanied by comments from the relevant service providers who certified
30 they can, with certain exceptions, provide urban services in an orderly and timely manner.
31 If the locational adjustment is approved, petitioners propose to develop the subject property
32 as a residential subdivision and to extend a public road through the site as a loop street with
33 stubs to the east boundary, to extend public water through the site to form a looped system
34 with existing off-site lines, to extend public sewer into the site with stubs to the east
35 boundary, and to dedicate or reserve a portion of the site as open space.

1 2. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed
2 public hearing on May 24, 1999 to receive testimony and evidence regarding the petition.
3 Eleven witnesses testified in person or in writing, including Metro staff, the petitioners'
4 representatives, and seven area residents. The hearings officer held the record open for one
5 week to allow the petitioners to submit a closing statement. The hearings officer closed
6 record in this case at 5:00 pm on June 1, 1999. The hearings officer submitted this report
7 and recommendation together with a draft final order to Metro on July 1, 1999.
8

9 III. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS 10

11 1. A locational adjustment to add land to the UGB must comply with the relevant
12 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). The following findings
13 highlight the principal policy issues disputed in the case.
14

15 2. MC § 3.01.035(c)(1) requires a petitioner to show (1) that granting the petition
16 would result "in a net improvement in the efficiency of public facilities and services" and
17 (2) that the area to be added can be served "in an orderly and economic fashion."
18

19 a. There was a dispute about whether school services can be provided to
20 the subject site in an orderly and economic fashion. The hearings officer concluded that
21 there is insufficient evidence that school services can be provided, because the enrollment at
22 elementary and high schools serving the subject property currently exceeds capacity. The
23 school district declined to certify that it could provide services in an orderly and economic
24 fashion, prejudicing the case for the petition.
25

26 b. There is a dispute whether granting the petition results in a net
27 improvement in efficiency of transportation, sanitary sewer, open space and police and fire
28 services. The hearings officer found including the subject property in the UGB would
29 have a positive effect on the efficiency with which sewer service could be provided to land
30 already in the UGB, would have no net effect on the efficiency of transportation services,
31 open space or emergency services, and would have a negative effect on efficiency of school
32 services. On balance, the hearings officer found that the increased efficiency of providing
33 gravity flow sewer service to abutting properties is outweighed by the reduced efficiency in
34 providing school services, particularly because including only a small portion of the subject
35 property would achieve the positive sewer efficiency. It is not necessary to include most of
36 the subject property to achieve a net increase in efficiency of urban services.

1
2 3. MC § 3.01.035(c)(2) is entitled “maximum efficiency of land use” and requires
3 the amendment to facilitate permitted development of adjacent land already in the UGB.
4

5 a. There is a dispute about whether development on abutting properties is
6 “needed” when the owners have no desire to develop their property for urban uses. The
7 hearings officer found that development is “needed” as that term is used in the Code
8 because the abutting property is designated for urban development by the Washington
9 County Comprehensive plan.
10

11 b. The hearings officer further found that granting the petition would
12 facilitate needed development on properties east of the subject parcel which already are in
13 the UGB. The hearings officer found the petition does comply with § 3.01.035(c)(2),
14 based in part on prior Council decisions in other cases.
15

16 4. MC § 3.01.035(c)(3) requires an analysis of environmental, energy, social and
17 economic impacts of granting the petition, particularly with regard to transit corridors and
18 hazard or resource land. There is a dispute about the impacts of existing wetlands and a
19 natural gas pipeline on the subject property. The hearings officer concluded that any
20 development constraints created by these existing conditions can be addressed when the
21 property is developed and therefore the petition does comply with §3.01.035(c)(3), based
22 in part on prior Council decisions in other cases.
23

24 5. MC § 3.01.035(c)(4) requires retention of agricultural land, such as the subject
25 property, unless retaining that land as such makes it impracticable to provide urban services
26 to adjacent properties inside the UGB. The hearings officer concluded that retaining the
27 subject property as agricultural will not make provision of urban services to land already in
28 the UGB impracticable, because all urban services except gravity flow sewer can be
29 provided to abutting properties within the UGB by other means. Sewer service can be
30 provided to abutting properties by means of a pumped system. Therefore including the
31 subject property is not necessary to practicably serve land in the UGB, and the petitioners
32 failed to bear the burden of proof sufficient to comply with MC § 3.01.035(c)(4).
33

34 6. MC § 3.01.035(c)(5) requires urban development of the subject property to be
35 compatible with nearby agricultural activities. There is a dispute about whether the petition
36 complies with this standard. The hearings officer finds that the petition does not comply

1 with this standard based on the testimony regarding conflicts between existing agricultural
2 and urban uses. Urban development on the subject property will increase the potential for
3 such conflicts. Therefore the petitioners failed to bear the burden of proof sufficient to
4 comply with MC § 3.01.035(c)(5).

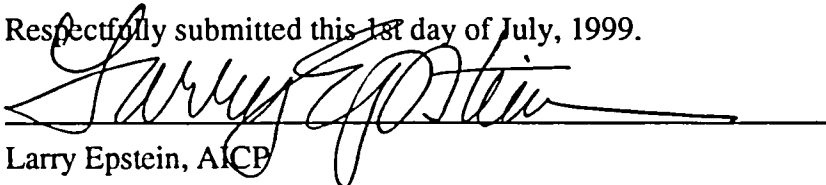
5
6 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
7 UGB. The hearings officer found the proposed UGB is not superior to the extent it does
8 not comply with the other relevant approval criteria cited above.

9
10 8. MC § 3.01.035(f)(3) requires a proposed locational adjustment to include all
11 contiguous similarly situated lands. Petitioners argued that the site is not similarly situated
12 to contiguous lands based on jurisdictional boundaries and soil types. The hearings officer
13 found that jurisdictional boundaries are irrelevant, and the petitioners failed to introduce
14 sufficiently probative substantial evidence regarding soil types of abutting properties to
15 support a finding that soil types are different. The hearings officer found land to the north
16 of the subject property is similarly situated based on the factors listed in MC § 3.01.035(c).
17 Although the exact limit of such similarly situated land is uncertain, at least 26 feet of the
18 adjoining property to the north is similarly situated. If the similarly situated lands are
19 included in the petition, it will exceed 20 acres, which is the maximum permitted area for a
20 locational adjustment under MC section 3.01.035(b). Therefore the hearings officer found
21 the petition does not comply with MC sections 3.01.035(b) and (f)(3).

22
23 IV. ULTIMATE CONCLUSION AND RECOMMENDATION

24
25 For the foregoing reasons, the hearings officer concludes the petitioners failed to bear the
26 burden of proof that granting the petition would comply with all of the relevant approval
27 standards in Metro Code section 3.01.035 for a locational adjustment. Therefore the
28 hearings officer recommends the Metro Council deny the petition, based on this Report and
29 Recommendation and the Findings, Conclusions and Final Order attached hereto.

30
31 Respectfully submitted this 1st day of July, 1999.

32 
33

34 Larry Epstein, AICP
35 Metro Hearings Officer

BEFORE THE METRO COUNCIL

In the matter of the petition of Michael Jenkins and Sang Kim for a Locational Adjustment to the Urban Growth Boundary between Laidlaw and Springville Roads, east of Kaiser Road in unincorporated Washington County) FINDINGS, CONCLUSIONS & FINAL ORDER Contested Case No. 98-07

I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD

1. On December 1, 1998, Michael Jenkins and Sang Kim ("petitioners") completed filing a revised petition for a locational adjustment to the Urban Growth Boundary ("UGB"), including exhibits required by Metro rules for locational adjustments. See Exhibit 3 for the original petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The land to be added to the UGB is described as Tax Lot 1100, Section 21, T1N-R1W and Tax Lot 101, Section 21BA, T1N-R1W, WM, Washington County (the "subject property").¹ It is located roughly 1800 feet south of Springville Road, roughly 2100 feet north of Laidlaw Road and roughly 2200 feet east of Kaiser Road in unincorporated Washington County. The present UGB forms the east, west and south edges of the subject property. The Washington/Multnomah County line forms the north boundary of the site. Land to the east, west and south is inside the UGB and unincorporated Washington County. Land to the north is outside the UGB and in unincorporated Multnomah County. See Exhibits 3, 8 and 17 for maps showing the subject property. Land to the south, east and west is zoned R6 (Residential, 6 units per acre). Land to the southeast is zoned R5 (Residential, 5 units per acre). Land to the northwest is zoned EFU (Exclusive Farm Use, 80 acre minimum lot size). Land to the northeast is zoned MUA-20 (Multiple Use Agriculture, 20 acre minimum lot size). See Exhibit 1E of the petition, Exhibit 3.

b. The subject property is a rectangularity-shaped parcel 450 feet north-south by about 1900 feet east-west. The site contains 18.85 acres. It is designated and zone EFU (Exclusive Farm Use) on the acknowledged Washington County Comprehensive Plan and zoning map.

¹ The subject property was originally included in the UGB. In 1982 the site was removed from the UGB as a trade with another property located adjacent to Tualatin. See Metro Ordinance 82-149.

1
2 c. The subject property slopes southwest from a high of about 410 feet
3 above mean sea level ("msl") at the northeast corner to a low of about 360 feet msl along
4 the southwest corner. Average slope is less than five percent (Attachment C of exhibit 3).

5
6 d. The petition was accompanied by comments from affected jurisdictions
7 and service providers. See Exhibits 1, 2, 6, 7, 9.

8
9 i. The Washington County Board of Commissioners adopted an
10 order in which it made no recommendation on the merits of the petition. See Exhibit 16.

11
12 ii. The Tualatin Valley Water District ("TVWD") testified that it
13 could serve the subject property, and that approval of the petition would improve water
14 service delivery in the UGB. TVWD expressed support for the petition. See Exhibit 2.

15
16 iii. The Beaverton School District testified that it would review the
17 status of school facilities in response to an application for Comprehensive Plan Amendment
18 on the subject property. The School District adopted a neutral position regarding the
19 petition. See Exhibit 3H to the petition, Exhibit 3.

20
21 iv. The Unified Sewerage Agency of Washington County ("USA")
22 testified that the subject property is not located within the Agency's service area, but is
23 located within the drainage basin. USA could not "definitively state that there is or isn't
24 [sanitary sewer] capacity for this parcel," because the site is located outside of USA's
25 current service area. However approval of the petition would result in a net increase in
26 efficiency of sanitary sewer service within the UGB. Approval of the petition would not
27 result in a net deficiency of storm water services. See Exhibits 1 and 7.

28
29 v. Tualatin Valley Fire & Rescue ("TVFR") commented that it could
30 serve the subject property, and that approval of the petition would have "very little impact
31 on fire department services." TVFR adopted a neutral position regarding the petition.

32
33 vi. The Washington County Sheriff's Office commented that it
34 could serve the subject property, and that approval of the petition would improve efficiency
35 of service delivery in the UGB. See Exhibit 3C to the petition, Exhibit 3.

1 vii. The Tualatin Hills Parks and Recreation District ("THPRD")
2 commented that it has sufficient capacity to serve the subject property if it is annexed into
3 the park district. See Exhibit 10. THPRD's comment letter did not discuss efficiency.
4

5 viii. Tri-Met did not comment on this petition.
6

7 2. Metro staff mailed notices of a hearing to consider the petition by certified mail
8 to the owners of property within 500 feet of the subject property, to the petitioners, to
9 Washington County, the Department of Land Conservation and Development ("DLCD"),
10 service providers, the local Citizen Planning Organization (CPO-7) and persons, agencies
11 and organizations who requested notice. See Exhibits 15, 19 and 28. A notice of the
12 hearing also was published in *The Oregonian* at least 10 days before the hearing.
13

14 3. On May 24, 1999, Metro hearings officer Larry Epstein (the "hearings officer")
15 held a public hearing at the Washington County Public Services Building Auditorium to
16 consider the petition. All exhibits and records of testimony have been filed with the
17 Growth Management Division of Metro. The hearings officer announced at the beginning
18 of the hearing the rights of persons with an interest in the matter, including the right to
19 request that the hearings officer continue the hearing or hold open the public record, the
20 duty of those persons to testify and to raise all issues to preserve appeal rights, the manner
21 in which the hearing will be conducted, and the applicable approval standards. The
22 hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. Eleven
23 witnesses testified in person.
24

25 a. Metro senior regional planner Ray Valone verified the contents of the
26 record and summarized the staff report (Exhibit 18), including basic facts about the subject
27 property, the UGB and urban services, and comments from neighboring property owners.
28 He testified that the petitioners showed that the proposed locational adjustment complies
29 with all of the applicable approval criteria.
30

31 i. He noted that the approval of the petition would result in a net
32 improvement in efficiency of sewer, water, park and police services, will have no impact
33 on fire and transportation services and will reduce efficiency of school services.
34

1 ii. He noted that approval of the petition will facilitate needed
2 development of the abutting property east of the site which is located within the existing
3 UGB (the Malinowski property).
4

5 iii. He corrected two minor errors in the Staff Report. The THPRD
6 letter referenced on page 6 of the Staff Report was dated September 25, 1998. On page 7
7 the Staff Report should include storm water in the list of services with which the subject
8 property can served in an orderly and economic fashion.
9

10 b. Eric Eisman, Ryan O'Brien and Michael Jenkins appeared on behalf of
11 the petitioners, Michael Jenkins and Sang Kim.
12

13 i. Mr. Eisman noted that the subject property was previously
14 included in the UGB. The property was removed in 1982, because the subject property
15 and surrounding area were not expected to be developed with urban services in the near
16 future. Circumstances have changed since that time.
17

18 (1) He argued that there are no "similarly situated"
19 properties based on the soils classifications on the site and the ability to provide services to
20 land within the existing UGB. He introduced a service provider "matrix" summarizing the
21 service provider statements submitted in response to the petition. Exhibit 27.
22

23 (2) He argued that this petition allows maximum efficiency
24 of land use by providing access around the Dogwood Park Area of Special Concern
25 ("ASC"), permitting properties to the east to develop at urban densities.
26

27 (3) He argued that "on-balance," retention of this site as
28 agricultural land would make the provision of urban services to adjacent areas inside the
29 UGB impracticable. Although there are alternative means of providing services, they are
30 not practicable due to cost, environmental impacts, timing and lack of willing buyers and
31 sellers. He argued that urban services are "needed" to serve abutting properties based on
32 their urban designation in the County's Comprehensive Plan. The current plans of the
33 property owners are not relevant.
34

35 (4) He testified that the site plan is only intended to show
36 that the property can be developed consistent with the County's minimum density

1 standards. The petition responded to the Goal 5 issues based on the Goal 5 resources
2 identified in the Washington County inventory. The petitioners delineated the wetlands on
3 the site. Development on this site may impact wetlands to some extent. But such impacts
4 are permitted subject to mitigation. The petitioners' traffic study considered all
5 intersections identified as intersections of concern by Washington County. He argued that
6 the site can be developed around the natural gas pipeline.

7
8 (5) He argued that the alleged comments from USA staff
9 regarding the feasibility of alternative sewer extensions are not in the record and therefore
10 are not substantial evidence.

11
12 (6) He argued that the petition is consistent with the
13 Dogwood Park ASC and the Bethany Community Plan. Adding this site to the UGB will
14 allow development while minimizing impacts on the ASC.

15
16 ii. Mr. O'Brien argued that inclusion of this property in the UGB is
17 necessary to provide urban services to properties within the existing UGB within 5 to 10
18 years. It is unlikely that urban services will be provided to the abutting properties through
19 alternative means within this time period. Therefore retention of the subject property as
20 agricultural land will make it impracticable to provide urban services to properties within
21 the existing UGB.

22
23 (1) He noted that, although the wetlands on the subject
24 property limit development, it is feasible to develop this site. Development on this property
25 will provide an opportunity for enhancement of the existing wetlands. State law prohibits
26 development on this site from causing flooding on adjacent properties.

27
28 (2) He argued that the land within the powerline right of
29 way south of the subject property is entirely wetlands. The Oregon Division of State Lands
30 ("DSL") and the Army Corps of Engineers (the "Corps") do not want sewers located in
31 wetlands. The electrical utilities do not want other public services located within the right
32 of way due to concerns about equipment near the powerlines. In addition, the Greenwood
33 Hills development was not required to extend sewer stubs to the north and east boundaries
34 of that site.

1 (3) Sewers could be extended in the low areas within
2 Dogwood Park. But that would require easements across several private properties. USA
3 prefers that sewers be located in public streets. Public services are unlikely to be extended
4 through Dogwood Park in the near future.

5
6 iii. Dr. Jenkins argued that development on this site will not impact
7 the farm operation on his property north of the site: the cultivated areas shown in the aerial
8 photographs. He currently leases the property for grass seed production, but it has been
9 planted with a variety of crops by different farmers during the 19 years he has owned the
10 property. The owners of adjacent properties have never complained about impacts from
11 farm practices. He argued that the subject property is not useable for farming or pasture
12 due to the urban development to the west. "They're not going to want cow manure and
13 flies in their backyards." People cut his fences to prevent use of his property for cattle
14 grazing. He argued that the Malinowskis are not aggressively farming their property east
15 of the subject site. They use it for limited grazing. They do not harvest hay. Most of their
16 pastures are further north, in Multnomah County and separated from the subject property
17 by intervening properties.

18
19 (1) He summarized the development potential in the area.
20 He argued that the areas southeast of the site will develop in the near future as sanitary
21 sewer service is extended. Development on the subject property will assist development in
22 the area by enhancing east-west circulation around the Dogwood Park ASC. He argued
23 that the Teufel letter (exhibit 20) demonstrates that, unless this petition is approved, the
24 Malinowski property will remain isolated for many years. Road and sewer access through
25 this site will be lost, because the abutting property south of the site (the Bosa North
26 subdivision) will be developed.

27
28 (2) He argued that development on this site will extend
29 sanitary sewers within public streets rather than in private easements, consistent with
30 USA's preferences. He testified that Don Scholander, the owner of the Greenwood Hill
31 subdivision, will not grant an easement to allow sanitary sewer extension to the
32 Malinowski property. He opined that sanitary sewers are unlikely to be extended through
33 the Dogwood Park ASC, because it would removal of numerous trees.

34
35 c. Chris Warren testified on behalf of Lexington Homes, the owner of the
36 Bosa North subdivision south of the site, in support of the petition. He argued the petition

1 needs to be approved to enhance cross circulation in the area. If this petition is denied
2 Lexington Homes will develop the proposed street stubs south of the subject property as
3 residential lots within one year.

4
5 d. Greg and Richard Malinowski, the owners of the property east of the
6 site, testified in opposition to the petition.

7
8 i. Greg Malinowski summarized his written testimony (Exhibit 21).

9
10 (1) He testified that they are farming their property. They
11 have no plans to develop it. Development on the subject property would threaten the
12 continued operation of their farm. He argued that the subject property should be retained in
13 agricultural use and as a natural wetland. He summarized their farm operations. He
14 testified that they are seeking to "trade" their property out of the UGB. Approval of this
15 petition could eliminate that option.

16
17 (2) He argued that the property north of the site (outlined in
18 blue on the aerial photo attached to exhibit 21) is similarly situated and owned by petitioner
19 Jenkins. If this petition is approved, petitioner Jenkins will argue that the abutting property
20 is too small to farm and therefore should also be included in the UGB.

21
22 (3) He argued that the majority of the subject site is wetland
23 based on Metro's "flood prone soils" maps. This site (and their property to the east) are
24 wet for three months of the year. He introduced photographs showing standing water on
25 the site, exhibits 25a and b. He expressed concern that development on this site will
26 increase flooding on their property east of the site. They cut hay on their property and
27 graze cattle during the summer and fall.

28
29 (4) He argued that approval of this petition is not required to
30 provide sanitary sewer service to their property. Equally efficient alternatives are available.
31 Sanitary sewers can be extended to their property within the powerline right of way south
32 of the site, within the existing UGB. The petitioners do not own the right of way, and it is
33 not part of the subject property. There are no trees or slopes which might interfere with
34 extension of sanitary sewer lines. Allen Lindell, the owner of the property southeast of the
35 site, is willing to grant an easement allowing extension of sanitary sewers across his
36 property. A sewer line in this location would also serve future redevelopment of Mr.

1 Lindell's property. Sewer lines in the Greenwood Hills development would be too high to
2 serve future development on lands east of Greenwood Hills.

3
4 (5) He testified that issues regarding public services and
5 access to their property were addressed when the subject property was removed from the
6 UGB in 1982. The subject property would not have been removed at that time if it would
7 have prevented extension of services to their property.

8
9 ii. Richard Malinowski argued that approval of this petition will
10 have an adverse impact on their active farm operations due to increasing conflicts with
11 urban uses. He testified that they frequently run their equipment in the early mornings and
12 late evenings during the summer. They have received complaints and threats from
13 neighbors regarding noise and dust under existing conditions. He expressed concern that
14 urban residents will use their fields for playgrounds; leaving debris which could damage
15 harvesting equipment, knocking down crops and opening gates allowing animals to escape.
16 In the past people have cut their fences in order to ride motorcycles and four-wheel drive
17 vehicles on their fields. These impacts will increase with increasing development on
18 abutting properties.

19
20 e. Mary Manseau opined that the ASC designation will not prevent
21 extension of urban services and future development in the area. Greenwood Drive will be
22 extended in the future when adequate sight distance is available at the 137th/Laidlaw Road
23 intersection. She argued that orderly extension of public services can occur without this
24 locational adjustment. Extending sewers through this site will only provide service to the
25 western portion of the Malinowski site. She argued that area schools are already over
26 capacity. Elementary students are being bussed to other schools. Development on the
27 subject property will add to the problem if this petition is approved. She argued that the
28 transportation report is incomplete, because it failed to address impacts on streets to the
29 south and east. She argued that roads to access this site would impact open space and
30 wetland mitigation sites within the Bosa North development. She argued that this petition
31 is inconsistent with the Bethany Community plan which recommends that powerline
32 corridors, streams, wetlands and similar features to define the boundaries of the
33 community. She questioned whether the site can be developed with 80 lots as proposed
34 due to the large wetlands on the site. She argued that the Staff Report overstates the
35 potential adverse environmental impacts of continued agricultural use and fails to consider

1 the impacts to the wetlands of urban development on this site. The forested upland areas of
2 the site must be clear cut to allow development on the site.

3
4 f. April Debolt argued that the wetlands on this site are an important natural
5 resource, and they form a natural boundary on this site. Red-legged frogs and western
6 pond turtles, listed as endangered or threatened species in Oregon, live in the wetlands on
7 the site. She opined that livestock grazing on the site, during the right time of year, can
8 enhance the complexity of the wetland ecosystem. She argued that development on this site
9 is inefficient. It is located several hundred feet from existing urban development and it
10 abuts existing agricultural uses. Access to this site through Bosa North will impact the
11 open space/wetlands areas preserved on that site. She argued that the applicant ignored the
12 existing 16-inch high pressure natural gas line which crosses this site. She argued that
13 sewer lines could be extended within the open space on the north edge of the Bosa North
14 development without removing any trees.

15
16 g. Tom Hamann argued that the subject property should remain rural.
17 Development on this site will put pressure on other lands outside the UGB to convert to
18 urban uses.

19
20 h. Ted Nelson expressed concerns that development on this site could
21 impact his property to the north. His property is roughly 100 feet higher in elevation, and
22 it is very wet during the winter. Development on this site may block natural storm water
23 flows and cause increased flooding on his property.

24
25 i. George and Susan Teufel submitted written testimony in opposition to
26 the petition. Exhibit 20.

27
28 j. Mary Kyle McCurdy submitted written testimony in opposition to the
29 petition on behalf of 1000 Friends of Oregon. Exhibit 23.

30
31 k. The hearings officer held the record open for 1 week to allow the
32 petitioners an opportunity to submit a closing statement. The record in this case closed at
33 5:00 pm on June 1, 1999.

34
35 5. On July 1, 1999, the hearings officer filed with the Council a report,
36 recommendation, and draft final order denying the petition for the reasons provided therein.

1 Copies of the report and recommendation were timely mailed to parties of record together
2 with an explanation of rights to file exceptions thereto and notice of the Council hearing to
3 consider the matter.
4

5 6. The Council held a duly noticed public hearing to consider testimony and timely
6 exceptions to the report and recommendation. After considering the testimony and
7 discussion, the Council voted to deny the petition for Contested Case No. 98-7
8 (Jenkins/Kim), based on the findings in this final order, the report and recommendation of
9 the hearings officer, and the public record in this matter.
10

11 II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

12

13 1. Metro Code section 3.01.035(b) and (c) contains approval criteria for all
14 locational adjustments. Metro Code section 3.01.035(f) contains additional approval
15 criteria for locational adjustments to add land to the UGB. The relevant criteria from those
16 sections are reprinted below in italic font. Following each criterion are findings explaining
17 how the petition does or does not comply with that criterion.
18

19 The relevant goals, rules and statutes are implemented by the procedures in Chapter
20 3.01. Metro Code section 3.01.005.
21

22 *Area of locational adjustments. All locational adjustment additions*
23 *and administrative adjustments for any one year shall not exceed 100 net*
24 *acres and no individual locational adjustment shall exceed 20 net acres...*
25 Metro Code section 3.01.035(b)
26

27 2. No locational adjustments or administrative adjustments have been
28 approved in 1999. Therefore not more than 100 acres has been added to the UGB
29 this year. The petition in this case proposes to add 18.85 acres to the UGB, which
30 is less than 20 acres. Therefore, as proposed, the petition complies with Metro
31 Code section 3.01.035(b). However, if all similarly situated land is included in the
32 adjustment, the area of the adjustment would exceed 20 acres. See the findings
33 regarding Metro Section 3.01.035(f)(3) for more discussion of the "similarly
34 situated" criterion.
35

1 *Orderly and economic provisions of public facilities and*
2 *services. A locational adjustment shall result in a net improvement in the*
3 *efficiency of public facilities and services, including but not limited to,*
4 *water, sewerage, storm drainage, transportation, parks and open space in*
5 *the adjoining areas within the UGB; and any area to be added must be*
6 *capable of being served in an orderly and economical fashion.*
7 Metro Code section 3.01.035(c)(1)

8
9 3. The Council finds that the subject property can be served in an orderly and
10 economic manner by most public facilities and services, including water, sanitary sewers,
11 roads, storm drainage, transit and emergency services, based on the comments in the
12 record from the service providers. However the Council further finds that the petitioner
13 failed to demonstrate that school services can be provided to the subject property in an
14 orderly and economic fashion.

15
16 a. USA testified that it could not “definitively state that there is or isn’t
17 [sanitary sewer] capacity for this parcel.” However if the petition is approved, the
18 developer would be required to pay for any necessary upgrades to the capacity of collection
19 system and treatment facilities. Therefore the Council finds that adequate sewer capacity
20 can be provided to serve this property.

21
22 b. There is no substantial evidence that school services can be provided to
23 the subject property in an orderly and economical fashion. The applicant testified (page 18
24 of the petition, Exhibit 3) that the elementary school and high school which would serve
25 this site are both currently over capacity. The middle school which is currently under
26 construction south of the site is projected to reach capacity within two years after
27 completion.² Development on the subject property is projected to generate 59 students (33
28 elementary, 14 middle and 12 high school), Exhibit 4. The Beaverton School District
29 testified that it would address school capacity issues through the Comprehensive Plan
30 Amendment process. Exhibit 3H of the Petition, Exhibit 3. Therefore Council finds that
31 there is no substantial evidence that school services can be provided to the subject property
32 in an orderly and economical fashion.

33

2 Findley Elementary School has a capacity of 691 students and 1998-99 enrollment of 787. Sunset High School has a capacity of 1,508 students and 1998-99 enrollment of 1,617.

1 i. Schools are not expressly included in the list of services in this
2 criteria. However the list is expressly non-exclusive. Therefore the Council finds that
3 school capacity is a relevant service and this criteria is not met.
4

5 4. Metro rules do not define how to calculate net efficiency of urban services. In
6 the absence of such rules, the Council must construe the words in practice. It does so
7 consistent with the manner in which it has construed those words in past locational
8 adjustments. The Council concludes that the locational adjustment proposed in this case
9 does not result in a net improvement in the efficiency of services sufficient to comply with
10 Metro Code section 3.01.035(c)(1), based on the following findings:
11

12 a. Including the subject property in the UGB will reduce the net efficiency
13 of school services, because there is insufficient capacity to accommodate students, and
14 residential development on this site will increase the burden on the School District.
15

16 b. Including the subject property in the UGB increases the net efficiency of
17 sewer service, because it enables the petitioners to serve properties east of the subject
18 property (the Malinowski properties) with a gravity flow sewer line. Based on the
19 testimony of Nora Curtis with USA, if the subject property is not included in the UGB,
20 then the Malinowski properties would have to be served with a pump station. Exhibit 1.
21 That is inherently less efficient than a gravity flow line, because a pump station contains
22 mechanical and hydraulic parts that require maintenance and repair and relies on electricity
23 to operate instead of gravity. This finding is consistent with the Council action in UGB
24 Case 8-04 (Bean) and UGB Case 94-01 (Starr/Richards) where locational adjustments
25 allowed gravity flow systems instead of pump stations.
26

27 i. There is no substantial evidence that alternative routes for gravity
28 flow sewer service are practicable or available. It was alleged that sewers could be
29 extended to the Malinowski properties through the powerline right of way south of the
30 subject property within the existing UGB. However sewer lines do not extend to the
31 powerline right of way now. Sewer lines serving the Greenwood Hill subdivision were
32 stubbed in NW Greenwood Drive south of the site. Gravity sewers could be extended to
33 the Malinowski properties from this stub ("Option 2" identified by the applicant in
34 Attachment C of the Staff Report, Exhibit 18). However there is no substantial evidence
35 that this sewer extension could serve the western portion of the Malinowski properties,
36 which are a lower elevation, with gravity flow sewers.

1
2 ii. It is not necessary to include all of the subject property in the
3 UGB to provide gravity flow sewer service to the Malinowski property. A sewer line
4 could be extended from within the eastern portion of the subject site. More than the eastern
5 half of the subject property is not necessary to provide gravity flow sewer service to the
6 Malinowski property. Consequently, although sewer service would be more efficient if the
7 eastern portion of the subject property is included in the UGB, including the western
8 portion of the subject property in the UGB provides no net efficiencies to sewer service or
9 other urban services. See pp. 2-3 of Exhibit 23; also see, *Parklane v. Metro*, __ Or LUBA
10 __ (LUBA No. 97-48, 2/25/99).

11
12 c. The Council finds that including the subject property in the UGB has no
13 effect on the net efficiency of park and open space services and facilities. The April 12,
14 1999 letter from the THPRD states that the Park District "welcomes the proposed
15 development area into the District..." It does not state that approval of this petition results
16 in increased efficiency of park and open space services.

17
18 i. Approval of the petition could increase the amount of open space
19 within the Park District because the wetland areas of the subject property could be dedicated
20 to the THPRD when the subject property is developed. The area proposed to be dedicated
21 is adjacent to the existing open space within the Kaiser Woods subdivision to the west.³
22 Therefore approval of this petition will expand the amount of contiguous open space area in
23 the Park District. Increasing the area of open space increases the efficiency of open space
24 services for purposes of this section.

25
26 ii. However the Council also recognizes that, under existing
27 zoning, use of the subject property is so constrained that it is reasonably likely to remain
28 undeveloped and substantially in an open space even if it is not included in the UGB. If the
29 petition is approved, roughly one third of the subject property, about 7.33 acres, will be
30 cleared and developed for urban uses, substantially reducing the amount of actual open
31 space in the area. Therefore, including the subject property in the UGB actually may
32 reduce the area of open space in fact if not in designation. Given these facts, the Council
33 concludes that, on balance, including the subject property has no net effect on open space

³ Although the Kaiser Woods open space is separated from this site by the intervening powerline right of way, the right of way is designated open space in the Bethany Community Plan.

1 efficiency. This is consistent with prior Council decisions. See UGB Case 95-02 (Knox
2 Ridge).

3
4 d. Council finds the petitioner failed to bear the burden of proof that
5 including the subject property in the UGB increases the net efficiency of transportation
6 services for land already in the UGB. The Council finds that including the subject property
7 in the UGB has no net increase in transportation efficiency.

8
9 i. The Council finds that development on the subject property
10 would create an opportunity for additional cross-circulation in the area by extending a stub
11 street that could serve the Malinowski properties.

12
13 ii. The Council further finds that east-west cross-circulation will be
14 provided through the Dogwood Park ASC by the future extension of NW Greenwood
15 Drive. The Bethany Community Plan requires that this area be “protected” but it also
16 assumes that this area will eventually redevelop. Although NW Greenwood Drive is
17 currently barricaded, it is clearly intended to be extended in the future. This street was
18 stubbed to the east and west boundaries of the Dogwood Park ASC. Washington County
19 required the developer of the Greenwood Hill subdivision to connect to this street. Future
20 development to the east will presumably be required to extend this street further east and
21 south, enhancing cross-circulation in the area.

22
23 iii. Whether including the subject property in the UGB results in
24 increased transportation efficiency depends on whether the Malinowski property is
25 developed before the barriers are removed and Greenwood Drive is extended to the east.
26 There is no certainty when the adjoining land in the UGB will develop or when the barriers
27 in Greenwood Drive will be removed. Including the property in the UGB may or may not
28 increase transportation efficiency. There is no substantial evidence that including the
29 subject property will necessarily enhance transportation efficiency.

30
31 e. The Council concludes that the petitioner failed to bear the burden of
32 proof that approval of this petition will increase efficiency of emergency services. As
33 discussed above, approval of this petition may enhance east-west circulation in the area.
34 However this petition will result in a substantial efficiency only if the Malinowski
35 properties redevelop and extend streets to the east before the barriers are removed and
36 Greenwood Drive is extended to the east.

1
2 f. The Council cannot make a finding regarding the efficiency of transit
3 services, as the petition submittal does not include comments from Tri-Met.
4

5 g. The Council concludes that the petitioner failed to bear the burden of
6 proof that this locational adjustment will result in a net improvement in the efficiency of
7 water services in the adjoining area already in the UGB. TVWD testified that this locational
8 adjustment would allow the creation of a looped water system through the site and provide
9 for future extension to properties to the east within the existing UGB. However there is no
10 substantial evidence that a similar efficiency cannot be achieved by construction of a looped
11 water system through lands southeast of the subject property within the existing UGB
12 when they are redeveloped in the future.
13

14 h. It is not apparent from the record that including the subject property in
15 the UGB will increase the net efficiency of surface water management/storm drainage,
16 natural gas, electricity and fire protection for land already in the UGB, except by marginally
17 increasing the population served by those facilities and thereby spreading their cost over a
18 slightly larger population base, making them somewhat more economical to residents of
19 land already in the UGB. However this impact is not enough by itself to conclude these
20 services will be more efficient if the property is included in the UGB based on prior
21 locational adjustment cases (see, e.g., UGB Case 88-02 (Mt. Tahoma) and UGB Case 95-
22 02 (Knox Ridge)).
23

24 i. Under these circumstances, Council finds that including the subject
25 property in the UGB does not result in net improvement in public facilities and services.
26 Approval of this petition will result in a net increase in the efficiency of sewer services.
27 However approval of this petition will result in a net decrease in the efficiency of school
28 services. Other services may or may not be more efficient as a result of including the
29 subject property. Council concludes the petitioner failed to carry the burden of proof that
30 the petition complies with Metro section 3.01.035(c)(1).
31

32 *Maximum efficiency of land uses. The amendment shall facilitate*
33 *needed development on adjacent existing urban land. Needed development,*
34 *for the purposes of this section, shall mean consistent with the local*
35 *comprehensive plan and/or applicable regional plans.*
36

Metro Code section 3.01.035(c)(2)

1
2 5. Including the subject property in the UGB facilitates needed development on
3 adjacent existing urban land, (i.e., the Malinowski properties), because it makes it possible
4 to serve that property with a gravity flow sewer.
5

6 a. The Malinowskis' stated lack of desire to develop their property is
7 irrelevant to this criteria. The Malinowski properties are designated for urban residential
8 development in the Washington County Comprehensive Plan. Sewer service must be
9 provided to the Malinowski properties if they are to be developed consistent with the
10 comprehensive plan. Therefore the Council finds that including the subject property in the
11 UGB facilitates needed development on adjacent existing urban land.
12

13 b. The Council acknowledges that it is not necessary to include the subject
14 property in the UGB to provide any form of sewer service to the Malinowski properties.
15 The Malinowski properties could be served by extending a sewer line from the southwest,
16 from the existing stub in Greenwood Drive or from the south up 137th Avenue. However,
17 based on the topography in the area and the statement from USA, alternative routes for
18 sewer lines would require pumping of sewage from portions of the Malinowski properties.
19

20 c. Given the importance of the efficiency of service delivery in section
21 3.01.035(c)(1), the Council finds that the availability of a less efficient means of sewer
22 service, (i.e., a system that relies on a pump station), does not preclude and is not
23 inconsistent with a finding that the locational adjustment in this case facilitates development
24 on the Malinowski properties by enabling it to be served with a more efficient sewer
25 system. This is consistent with and similar to the Council's action in the matter of UGB
26 Case 88-04 (Bean) and UGB Case 94-01 (Starr/Richards).
27

28 6. The Council further finds that including the subject property in the UGB does
29 not otherwise facilitate needed development on adjacent existing urban land. Urban
30 services other than gravity flow sewers can be provided to adjoining properties within the
31 existing UGB without approving the petition.
32

33 a. Development on this site would require extension of urban services,
34 sewer, water, etc., through the site to the west edge of the Malinowski properties. But
35 these extensions can be accomplished whether or not the subject property is developed.
36 Public services, other than gravity flow sewer, will be extended to the Malinowski

1 properties as properties to the southeast are redeveloped in the future. The fact that it may
2 take longer for services to reach the Malinowski properties through redevelopment within
3 the existing UGB is irrelevant to this criteria. In addition, there is no substantial evidence
4 that providing services to the Malinowski properties through this site will encourage the
5 Malinowski properties to redevelop any sooner than will otherwise occur.

6
7 *Environmental, energy, social & economic consequences. Any*
8 *impact on regional transit corridor development must be positive and any*
9 *limitations imposed by the presence of hazard or resource lands must be*
10 *addressed. Metro Code section 3.01.035(c)(3)*

11
12 7. Council finds including the subject property in the UGB would not have any
13 impact on regional transit corridor development, because the nearest regional corridor is
14 more than one-quarter mile from the site. Council further finds that the subject property is
15 not subject to hazards identified by Washington County. The presence of a wetlands can
16 be addressed through compliance with state laws. Although development on this site is
17 likely to impact these wetlands, such impacts are not prohibited so long as adequate
18 mitigation is provided. Development constraints created by the existing natural gas pipeline
19 on the subject property also can be addressed.

20
21 *Retention of agricultural land. When a petitioners includes land with*
22 *Agricultural Class I-IV soils designated in the applicable comprehensive*
23 *plan for farm or forest use, the petition shall not be approved unless it is*
24 *factually demonstrated that:*

25
26 (A) *Retention of any agricultural land would preclude urbanization*
27 *of an adjacent area already inside the UGB, or*

28
29 (B) *Retention of the agricultural land would make the provision of*
30 *urban services to an adjacent area inside the UGB impracticable.*

31 Metro Code section 3.03.035(c)(4)
32

33 8. The subject property contains Class III and IV soils, and it is designated and
34 zoned EFU. Therefore Council finds this criterion does apply. The fact that the petitioners
35 are not actively farming the subject property is irrelevant to this criteria.
36

1 a. The Council finds that retaining the subject property as agricultural land
2 will not preclude urbanization of adjacent lands. Public services and facilities can be
3 provided to the Malinowski properties through lands within the existing UGB, just not as
4 efficiently. However efficiency is not relevant to the findings under this section; only
5 practicability of service is relevant.
6

7 b. The Council further finds that retaining the subject property as
8 agricultural land will not make the provision of urban services to adjacent properties inside
9 the UGB impracticable. Sewer service can be provided to the Malinowski properties by
10 means of a pump station. The Council finds that, although pumping sewage is less
11 efficient than gravity flow, it is a practicable alternative. All other urban services will be
12 provided to abutting properties within the UGB as properties to the south and east are
13 redeveloped in the future.
14

15 *Compatibility of proposed urban uses with nearby agricultural*
16 *activities. When a proposed adjustment would allow an urban use in*
17 *proximity to existing agricultural activities, the justification in terms of this*
18 *subsection must clearly outweigh the adverse impact of any incompatibility.*
19 Metro Code section 3.01.035(c)(5)
20

21 9. The Council finds, based largely on the testimony of the Malinowskis and Mr.
22 Jenkins at the hearing, that the proposed adjustment will be incompatible with ongoing
23 agricultural activities on the Malinowski properties. The minimal service efficiencies
24 achieved by including subject property in the UGB do not “clearly outweigh” the adverse
25 impacts of its urban development on existing agricultural activities.
26

27 a. The Malinowskis testified that their property abutting the east boundary
28 of the subject property is in active agricultural use. They harvest hay and graze cattle on
29 this portion of their property. The petitioner, Dr. Jenkins, testified based on his own
30 experience that these activities are incompatible with urban development on abutting
31 properties. Both Dr. Jenkins and the Malinowskis testified that their fences have been cut,
32 allowing their livestock to escape. The Malinowskis testified that they receive complaints
33 about noise and dust from their harvesting activities under existing conditions.
34

35 b. The Council finds that urban development on this site will increase the
36 potential for such conflicts by allowing urban residential development abutting the west

1 boundary of the Malinowski property. The Malinowski property is largely buffered from
2 urban development under existing conditions. The powerline right of way along the south
3 boundary of their property provides a buffer between their property and abutting urban
4 lands. Properties to the north are outside the UGB and designated for rural development in
5 the Multnomah County Comprehensive Plan. Properties to the east are within the UGB,
6 but they are not currently developed with urban uses. The subject property, abutting the
7 west boundary of the Malinowski property, is designated exclusive farm use by the
8 Washington County Comprehensive plan. Approval of this petition would bring urban
9 development closer to the Malinowski property, thereby increasing the likelihood of
10 conflicts between urban and farm uses.

11
12 c. The fact that the Malinowski properties are located within the UGB is
13 irrelevant to this criterion. The Code does not distinguish between existing agricultural
14 uses based on their location within or outside the UGB.

15
16 *Superiority. [T]he proposed UGB must be superior to the UGB as*
17 *presently located based on a consideration of the factors in subsection (c) of*
18 *this section. Metro Code section 3.01.035(f)(2)*

19
20 10. Based on the evidence in the record, Council finds that the proposed UGB is
21 not superior to the existing UGB, because:

22
23 a. There is no evidence that public services (schools) can be provided to the
24 subject property in an orderly and economic fashion;

25
26 b. The proposed UGB would not result in a net increase in service and land
27 use efficiencies for the public commensurate with the size and nature of the locational
28 adjustment;

29
30 c. Retention of the subject property as agricultural land would not preclude
31 urbanization of adjacent land already inside the UGB or make the provision of urban
32 services adjacent urban land impracticable;

33
34 d. The benefits including the subject property in the UGB do not clearly
35 outweigh impacts on existing agricultural uses; and
36

1 e. It does not include all similarly situated land.

2
3 *Similarly situated land. The proposed UGB amendment must include*
4 *all similarly situated contiguous land which could also be appropriately*
5 *included within the UGB as an addition based on the factors above. Metro*
6 *Code section 3.01.035(f)(3)*
7

8 11. Council finds the evidence in the record shows insufficient difference between
9 the subject site and the adjoining land to the north to conclude that such lands are not
10 similarly situated.
11

12 a. Based on the aerial photographs in the record, the southern portion of the
13 abutting property is not being actively farmed and appears indistinguishable from the
14 subject property (the area outlined in blue on the aerial photograph attached to Exhibit 21).
15

16 b. The adjoining property also is owned by petitioner Jenkins and zoned
17 EFU. The adjoining property is similar physically to the subject property in terms of soils
18 and slopes. If anything, the adjoining land to the north is better suited for urban use,
19 because it does not contain extensive wetlands found on the subject property, and it adjoins
20 a water district reservoir to the north and urban subdivisions to the west.
21

22 c. Although the adjoining land to the north is not necessary to extend urban
23 services to the adjoining land already in the UGB (i.e., the Malinowski property), neither is
24 inclusion of most of the subject property necessary to provide that service.
25

26 d. The petitioner distinguishes the adjoining land to the north largely
27 because it is in a different county; but such jurisdictional boundaries are not relevant to the
28 criteria regarding similarly situated lands. That boundary does not create an obstacle to
29 development between the subject site and abutting properties. There is no physical barrier
30 between the subject property and the adjoining 26 feet to the north, such as a highway,
31 street or railroad track, that distinguishes the subject property from adjoining land.
32

33 e. The petitioner did not demonstrate that the soil conditions on this site and
34 the adjoining land to the north are different. On the contrary the petitioner testified that
35 such lands have been farmed or grazed in the past together with the subject site. The
36 petitioner argued that the abutting property contains "better quality agricultural soils."

1 Petition at page 30. However there is no substantial evidence in the record to support this
2 statement. The petition does not include a soils map or similar evidence of the soils on this
3 and the abutting properties. In addition, this statement conflicts with petitioners' statement
4 that "[s]eed production is limited on the Class IV soils immediately adjacent to the
5 Jenkins/Kim site because of poor drainage." Petition at page 27. This statement is
6 consistent with the aerial photographs in the record which show the northern portion of the
7 abutting property is cultivated while the southern portion is undisturbed.

8
9 f. The Council finds the evidence in this case can be distinguished from the
10 evidence in prior cases regarding the "similarly situated" criterion. Many of the properties
11 proposed for addition in prior cases had some natural or man-made physical feature that
12 separated the subject property from adjoining non-urban land. See, e.g., UGB Case 94-01
13 (Starr/Richards) (I-5 freeway), UGB Case 95-01 (Harvey) (railroad tracks) and UGB Case
14 87-4 (Brennt) (steep slopes). In this case, the subject property is not physically
15 distinguishable from adjoining non-urban land, similar to the situation in UGB Case 95-02
16 (Knox Ridge).

17
18 g. Therefore the Council concludes the petition does not include all
19 similarly situated properties. If it did include all such lands, it would exceed 20 acres. It is
20 not evident to Council how far north similarly situated lands go, but they include at least
21 1.15 acres of the land north of the subject site. If as little as 26 feet of the land adjoining
22 the north edge of the subject property is included in the UGB, the petition would include
23 more than 20 acres. The evidence is insufficient to show the adjoining 26 feet of land is
24 not similarly situated to the subject site based on the relevant criteria.

25 26 III. CONCLUSIONS

27
28 Based on the foregoing findings, the Council adopts the following conclusions.

29
30 1. Public services and facilities, including water, sanitary sewer, storm drainage,
31 transportation, and police and fire protection, can be provided to the subject property in an
32 orderly and economical fashion.

33
34 2. School services cannot be provided to the subject property in an orderly and
35 economical fashion.

1 3. On balance, Council concludes the petition does not comply with MC section
2 3.01.035(c)(1), because the petitioners did not carry the burden of proof that including all
3 of the subject site in the UGB will result in a net improvement in the efficiency of public
4 services and facilities. The petition includes more land than necessary to provide service
5 efficiencies that could result from granting the petition.
6

7 4. The petitioners showed that the proposed addition will facilitate needed
8 development on adjacent existing urban land. Therefore Council concludes the petition
9 does comply with MC section 3.01.035(c)(2).
10

11 5. The petitioners showed that including the subject property in the UGB will not
12 affect regional transit corridor development and that limitations imposed by the presence of
13 wetlands and a natural gas transmission pipeline can be addressed. Therefore Council
14 concludes the petition does comply with MC section 3.01.035(c)(3).
15

16 6. The petitioners failed to carry the burden of proof that retention of the subject
17 property as agricultural land would preclude urbanization of an adjacent area already inside
18 the UGB, or make the provision of urban services to an adjacent area inside the UGB
19 impracticable. Thus the petition does not comply with MC section 3.03.035(c)(4).
20

21 7. The petitioners failed to carry the burden of proof that efficiencies created by
22 including the subject property in the UGB clearly outweigh the adverse impact of any
23 incompatibility with existing agricultural activities. Thus the petition does not comply with
24 MC section 3.01.035(c)(5).
25

26 8. The petitioners failed to show that the proposed addition will result in a superior
27 UGB. Thus the petition does not comply with MC section 3.01.035(f)(2)
28

29 9. The petition does not include all similarly situated contiguous land outside the
30 UGB. If it did include all such lands, the area in question would exceed 20 acres, which is
31 the maximum area permitted as a locational adjustment.
32

1 IV. DECISION

2
3 Based on the findings and conclusions adopted herein and on the public record in
4 this matter, the Metro Council hereby denies the petition in Contested Case 98-07
5 (Jenkins/Kim).

6 DATED: _____

7 By Order of the Metro Council

8 By
9 _____

ATTACHMENT A TO THE FINAL ORDER IN THE
MATTER OF CONTESTED CASE 98-07 (Jenkins/Kim) :
EXHIBITS

Exhibit No. Subject matter

Ex #	Date	Source	Subject
1	11/05/98	USA	Service provider comment
2	11/24/98	TVWD	Service provider comment
3	12/01/98	Applicants	Petition for locational adjustment and attachments
4	01/07/99	Winterowd (WPS)	Beaverton School District capacity
5	01/19/99	Pacific Hab.Serv.	Wetland permitting & mitigation
6	01/22/99	TVFRD	Service provider comment
7	04/12/99	USA	Service provider comment
8	2/23/99	Washington County	Staff report to planning comm'n & attachments
9	04/14/99	Washington County	Addendum to the Staff report to planning comm'n & attachments
10	04/21/99	THPRD	Service provider comment
11	04/23/99	LDC Design Group	Supplemental information to Washington County
12	04/26/99	Malinowski	Letter in opposition
13	04/27/99	WPS	Summary of 4/27/99 BCC hrg
14	04/27/99	Washington County	Addendum Staff Report to BCC
15	04/28/99	Metro	Notice to DLCD
16	05/03/99	Washington County	Cover letter for county comment
17	05/04/99	Metro	Notice to Washington County special districts and agencies
18	05/13/99	Metro	Staff Report to hearings officer
19	05/24/99	Metro	Public notice
20	05/17/99	Teufel	Letter in opposition
21	05/24/99	Malinowski	Letter in opposition & attachments
22	n.d.	M. Manseau	Letter in opposition
23	05/24/99	1000 Friends	Letter in opposition
24	n.d.	LDC Design Group	11"x14" maps of site and surrounding area
25a	n.d.	Malinowski	Photo of site
25b	n.d.	Malinowski	Photos of site
26	n.d.	LDC Design Group	Aerial photo of site
27	05/24/99	Winterowd (WPS)	Service provider table
28	n.d.	Metro	Mailing list
29	10/20/98	Metro	Reactivation notice
30	06/1/99	Winterowd (WPS)	Final argument
31	06/1/99	Cox	Final argument

Metro Growth Mgmt.
JUL 22 1999

BEFORE THE METRO COUNCIL
OF THE STATE OF OREGON

MICHAEL JENKINS AND SANG KIM
PETITIONERS

EXCEPTION TO
HEARINGS OFFICER DECISION

METRO CONTESTED CASE
No. 98-07

I

COMES NOW PETITIONERS who take exception to the Hearings Officer Decision in petitioners' request for a LOCATIONAL ADJUSTMENT to the URBAN GROWTH BOUNDARY. The decision to which these exceptions are taken was issued on July 1, 1999.

II

Please consider the following as an exception to the Hearings Officer decision. If the Metro Council is so inclined Petitioners also use this opportunity to **request that Metro Council remand the decision to the Hearings**

William C. Cox, Attorney
0244 S.W. California Street
Portland, Oregon 97219
(503) 246-5499

Officer for the purpose of considering additional evidence which was either not available at the time of the hearing or which was unnecessary to submit but for new interpretations given to Metro standards by the Hearings Officer. Those new interpretations seem to be inconsistent with the Metro Staff report and past practices. Thus the need for the evidence came as a surprise to the Petitioners.

III

The interpretations by the Hearings Officer to which petitioners take exception and which would need review by the Hearings Officer of additional evidence relate to the following issues:

1. Whether agriculture activities being conducted on land within the UGB are to be considered in applying Metro Code Section 3.01.035(c)(5) which is entitled **"Compatibility of proposed urban uses with nearby agricultural activities"** and states:

"When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of this subsection must clearly outweigh the adverse impact of any incompatibility."

The Hearings officer interpreted this provision to include activities on neighboring urban property which is being used for agricultural purposes. Such an interpretation ignores the applicable zoning of the neighboring property

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and relies instead on its present use. Existing use of Urban Property should not be the basis for denial of a request for urban zoning or inclusion of land within the UGB. Such a basis for decision renders the differentiation between urban and resource zoning moot and effectively prevents Urban Growth expansion when use of neighboring Urban Land has yet to be brought into compliance with the zoning on the property. (See Hearings Officer decision pages 18 and 19).

2. The Hearings Officer decision assumes facts not in the record. On the issue of need for the subject property to facilitated development on existing urban land the Hearings Officer concluded that urban services other than gravity flow sanitary sewers can be provided to adjoining properties within the existing UGB without approving the petition (Decision page 16). That conclusion assumes facts not in the record, ignores the applicable standard of **practicability**, and ignores facts in the record which are directly contrary to such a conclusion.

A. On the issue of connectivity the hearings officer decision concludes options to serve the adjacent urban property with transportation access will exist sometime in the future despite evidence from petitioners that such alternative access is not now available nor is it likely to become available due to existing traffic patterns and connectivity restrictions. It also ignores

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the fact that Washington County Department of Land Use and Transportation staff has declared the proposed connection as appropriate and consistent with the purposes achieved by the concept of connectivity. The Hearings Officer conclusion is based upon an assumption for which no substantial or credible evidence exists in the record. It is also based upon a presumption that the existing urban property adjacent to the subject site may not redevelop to meet its zoning but rather will remain in agricultural use (see Decision page 14, line 34-36). Such presumptions, even if based upon testimony of the urban land owner, if allowed to stand, render the zoning and urban nature of the adjacent property irrelevant and allows a non-conforming use to control future urban growth boundary expansion.

B. On the issue of sanitary sewer service the contested decision concludes that the existence of the possibility of using a pump station is enough to defeat evidence that the subject site is necessary to provide gravity sewer service to adjacent UGB land. Again, this assumes facts not in the record and ignores the evidence introduced by petitioners' that the sewer service provider opposes use of pump stations. The USA has informed the Petitioners it will not support development dependent upon a pump station. The USA

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considers pump stations a temporary measure and are opposed to the cost of construction and maintenance. The Hearings Officer ignored that evidence and in doing so made a decision which violates the letter and intent of ORS 195.020 through 195.085 which dictate coordination of activities between Metro and special districts and service providers.

C. On the issue of water service the evidence indicates that the subject property is necessary for looping of water systems and extension of that water system to adjacent urban land. The Hearings Officer seems to assume that to connect these services less than the total of the subject site is necessary. That assumption improperly applies the appropriate test. The test for inclusion is whether provision of urban services to neighboring urban property without the subject site would be *impracticable*, not as the Hearing Officer appears to be concluding, impossible. There is no evidence that less than the subject site will come in the UGB and to so assume is without basis in the record or in the law.

3. The contested decision improperly equates the existing land outside the UGB with open space. On decision page 13, starting at line 26, the Hearings Officer assumed that the present use of the subject property was open space

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when he said that development of the site will "substantially reduc[e] the amount of actual open space in the area" (page 13, line 30). The subject property is zoned EFU, not Open Space. While the DLCD definition of open space under statewide goal 5 can include agricultural land, open space is a term of law which, if interpreted as chosen by the Hearings Officer, works to prevent the inclusion of any agricultural land within the UGB, regardless of its soil classification or productivity. In order to conclude the subject property is in fact open space, findings addressing the 7 elements of open space contained in the Goal 5 definition must be made. Those findings do not exist.

4. The contested decision improperly concludes that the failure or intentional refusal of the school provider to take a position on the application for locational adjustment shall be treated as an declaration that school capacity is lacking. Not only is this an inappropriate use of the applicable Metro standard since schools are not an appropriate consideration, evidence in the record indicates that two schools presently exist or will exist in the immediate vicinity of the subject property at the time that the subject property is brought within the UGB. The requested adjustment does not create any demand for schooling. It is only when there is a development request

before the governing authority that school capacity is relevant as attested by the School District.

5. The hearings officer interpretation of the **Similarly Situated Land** provision, decision page 20, fails to recognize evidence in the record. The Hearings Officer found on page 21, lines 2 through 4 that no soils maps or similar evidence of the soils on this and abutting properties was in the record. That is simply not true. Soils maps and supporting testimony are in the record and apparently the Hearings Officer missed them. In addition, the conclusion there is no physical barrier that distinguishes the subject property from the adjacent 26 feet is based upon reasoning which was not announced as a pre requisite to the approval being sought. If the matter is remanded that issue can be properly addressed with evidence from the people presently and previously farming the property (see offer of proof). Much of the existing UGB is differentiated from EFU land by lot lines and jurisdictional boundaries. The subject property was once within the UGB with the line establishing the boundary being the Multnomah County line. The Hearings Officer disregard for that reality is inconsistent with prior Metro action.

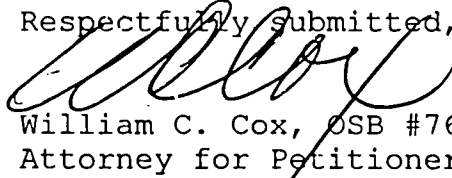
III

In summary, Petitioners request that Metro accept the above as a statement of exception. In addition, Petitioners'

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request that the matter be remanded to the Hearings Officer for additional hearings which should substantially reduce the number of issues which will need review by the Metro Council if not eliminate them altogether.

Respectfully submitted,



William C. Cox, OSB #76110
Attorney for Petitioners

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Metro Growth Mgmt.

JUL 22 1999

BEFORE THE METRO COUNCIL
OF THE STATE OF OREGON

MICHAEL JENKINS AND SANG KIM
PETITIONERS

OFFER OF PROOF
METRO CONTESTED CASE
No. 98-07

I

Comes Now Petitioners and moves the Metro Council to consider additional evidence which directly bears on the outcome of Petitioners' application for a locational adjustment. Petitioners were unable to present the evidence at the time of hearing by the Hearings Officer due to surprise at the interpretations offered to Metro Standards for the first time by the Hearings Officer. Those interpretations were inconsistent with the Metro Staff report. In addition, Petitioners' attorney was not available at the time of the hearing before the Hearings Officer.

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II

Petitioners request that this offer of proof be reviewed by the Metro Staff and that the Metro Staff be requested to comment of this offer of proof.

III

The following items are offered as proof. They should be considered by the Metro Council unless the matter is remanded for further proceedings as requested by Petitioners in their Exception memorandum.

1. The Council is requested to take official notice of the Oregon Department of Revenue Opinion and Order No. 91-1610, dated October 12, 1993 (Copy attached as Exhibit A) wherein the Department of Revenue found the construction of a Wolf Creek Water District Reservoir on the Jenkins property left the portion of subject property immediately to the north of the Washington County line unsuitable to farm. This finding was based in part on testimony of adjacent property owner and farmer Malinowski who stated that the property will take several years and a great deal of nutrients and fertilizer before it becomes fertile ground. This goes to the issue of similarly situated lands.

2. The Council is requested to accept evidence in the form of affidavits from previous and present farmers cultivating the Jenkins farm which indicate the property the Hearings Officer refused to accept as a natural boundary has been abandoned as a farm use "due to its extremely poor production of cover crops and its inability to support any

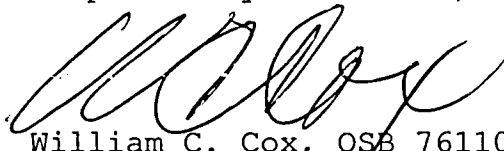
*William C. Cox, Attorney
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Portland, Oregon 97219
(503) 246-5499*

other types of cultivation." (Attached affidavit of Alan Schaff and Sam Van Dyke -Exhibit B). This goes to the issue of similarly situated lands.

3. The Council is requested to accept additional evidence in the form of documents regarding the Connectivity indicating only local streets serve the site. The Hearings Officer decision in effect assumes that a connector or arterial which does not exist will serve the adjacent Urban land (Attached as Exhibit C). This goes to the issue of impracticability and need to service urban land.

4. The Council is requested to accept additional evidence in the form of documents regarding the issue similarly situated lands and soils classifications (Attached as Exhibit D)

Respectfully submitted,



William C. Cox, OSB 76110
Attorney for Petitioners

William C. Cox, Attorney
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Portland, Oregon 97219
(503) 246-5499



STATE OF OREGON

DEPARTMENT OF REVENUE

In the Matter of the Appeal

of

Michael H. and Joann S. Jenkins Con-
cerning Certain Multnomah County Real
Property Tax Assessments for the
1991-92 Tax Year.

OPINION AND ORDER

No. 91-1610

A hearing was held before W. Scott Phinney, Hearings Officer for the Oregon Department of Revenue, at 10 a.m., on April 23, 1992. The hearing was continued at 10 a.m., on May 22, 1992. The hearing was conducted in the Department of Revenue offices in the state office building in Portland, Oregon. Michael Jenkins, petitioner, appeared and testified on his own behalf. Richard L. King, attorney-at-law, represented the petitioners. Greg Malinowski, Gary Pippin, and Frank Leonard testified on behalf of the petitioners. Sandra Duffy, Multnomah County assistant counsel, represented the Multnomah County Division of Assessment and Taxation. Bob Alcantara and Steve Blixt testified on behalf of the Multnomah County Division of Assessment and Taxation.

The issue in this case is whether the subject property was properly disqualified from farm-use special assessment for the 1991-92 tax year. The subject property consists of two parcels located in Multnomah County. Account No. R-96116-0070 consists of 19.82 acres. Account No. R-96116-0300 consists of 16.74 acres.

The county took action to disqualify the subject property from farm-use special assessment in June 1991. Notice of this action was provided to the petitioners in July 1991. Petitioners' appeal, filed on October 15, 1991, was within 90 days of their knowledge of the assessor's action. The department's jurisdiction is provided by ORS 305.275 and 305.280.

Mr. Malinowski, Mr. Pippin, and Mr. Leonard all testified concerning the condition of and farm activity on the subject property. The subject property was farmed from approximately 1963 until 1988. All parties involved agree that this is marginal farmland. However, until 1988 the property was able to be put to a productive use. It was also indicated that in more recent years the farmability of the property has been hindered and it would be very difficult to find someone to farm the property at this point. Mr. Leonard specifically indicated that it would probably not be economical at this point to farm the property.

Mr. Jenkins testified concerning activities on the property since 1988. During 1989 and 1990 a portion of the property was sold to the Wolf Creek water district for the development of a water holding tank. During this time a portion of the property was developed for that purpose and access was provided across the remainder of the property. While this activity did interfere with farming operations, it appears that a large portion of the

property was suitable for farm activity during this period. As part of the construction project the water district filled much of the remaining portion of the property with subsoil from its excavations. This was done to "recontour the land." Unfortunately, this soil is unsuitable for farm purposes and will take several years of reclamation before it is usable. The fill is 15 to 20 feet deep in some areas. Both the petitioner and the county's witness indicated that recontouring is not standard farm practice, especially when subsoil is used. Mr. Malinowski testified that while some farmers practice recontouring, he would not do it. The property will take several years and a great deal of nutrients and fertilizer before it becomes fertile ground.

Mr. Jenkins also indicated that the death of his daughter, illness, and his participation in the Desert Storm Operation prevented the active farming of this parcel through the spring of 1991.

The witnesses for Multnomah County did not dispute much of the testimony presented by the petitioner and his witnesses. They noted that the property had been used for farming purposes for over 25 years before its farm use stopped in 1988. The county indicated that the use must have stopped in 1988 since the construction project had begun in 1989. Mr. King's analysis of the situation would tend to support that conclusion. Based on the testimony in evidence in the record, the department finds that the property has not been farmed since the summer of 1988.

The next question raised is whether or not the disuse of the property can be excused and the farm-use special assessment retained. Mr. King argues that allowing the property to lay fallow is an acceptable farming practice. Moreover, the hardships experienced by Mr. Jenkins and the difficulties presented by the construction project all combine to allow this extended period of disuse. Ms. Duffy argued that there is no provision for combining disuse provisions and that the period of disuse is simply too long to allow the farm-use special assessment to continue.

By allowing special assessment for land in farm use the legislature was seeking to protect bona fide farm activities from the encroachment of a market which is constantly finding higher and better uses for the property. Lindfoot v. Dept. of Rev., 4 OTR 489 (1971). The dominant note of the farm-use special assessment statutes is that active, current use of land for farm purposes is essential to a claim for farm-use exemption. Kelless v. Dept. of Rev., 4 OTR 561 (1971). Land which is incapable of profitable use for farm purposes because of poor husbandry does not qualify for special assessment. Taylor v. Dept. of Rev., 5 OTR 496 (1976).

With respect to exemptions, taxation of property is the rule and exemptions are the exception. Corporation of Sisters of Mercy v. Lane County, 123 Or 144, 261 P 694 (1927). Since exemptions are a matter of legislative grace, exemption statutes are to be strictly, but reasonably, construed.

*C. KLEIER 591-5656 "SELL OR WE CONDEMN" (1988).

Emmanuel Lutheran Charity Board v. Dept. of Rev., 263 Or 287, 502 P2d 251 (1972). Since farm-use special assessments are in the nature of a partial exemption from taxation it is absolutely essential that the application falls squarely within the terms of the qualifications in the statute. Masters v. Dept. of Rev., 5 OTR 134 (1972).

In this case, the county took steps to disqualify the subject property from farm-use special assessment pursuant to ORS 308.397(1) which provides for the removal of the special assessment when the assessor discovers that the property is no longer being used as farmland. While the disqualification under this procedure will require the assessment of the property at its real market value, additional penalties for back taxes will not be assessed so long as the land is not converted to a use which is inconsistent with its return to use as farmland. ORS 308.382(1).

The definition of farmland and farm uses are set out in Chapter 215 of the Oregon statutes. ORS 215.203(2)(b)(B) provides that land lying fallow for one year as a normal and regular requirement of good agricultural husbandry can be considered the current employment of land for farm use. While certain cases have allowed a somewhat longer period of time for land to lay fallow when required by reasons of good agricultural husbandry, that is not the situation in this case. The record establishes that recontouring land with subsoil is not a good agricultural husbandry practice and therefore an extended fallow period does not fall squarely within the definitions of farm use as set forth in the statute. Moreover, while it is clear that the petitioner has suffered several set backs which have hindered the use of this property over the past few years, there is no provision in the statute for combining reasons for disuse. Disuse periods cannot be added together to justify a three-year period during which the property was not farmed.

In a property tax appeal the burden of proof is on the party seeking affirmative relief. This means that the petitioner must show that the assessor's actions were incorrect and that the requested action is correct. A preponderance of the evidence is required to meet the burden of proof. OAR 150-305.115-(B)(9). In this case, the county appears to have acted properly, according to statute, in taking the action to disqualify the subject property because of its lack of a qualifying farm use. In order to meet the burden of proof, the petitioner must clearly show that the extended period of disuse is allowed by the statutes. This has not been done. The department can find no authority which would allow it reinstate the farm-use special assessment for the subject property for the years at issue which is within the confines of the statutory scheme set forth by the legislature.

NOW, THEREFORE, IT IS ORDERED that the appeal is denied. The assessor's action of disqualification is sustained. The real property shall remain taxable at real market value for the 1991-92 tax year.

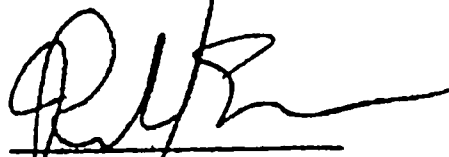
Dated and mailed at Salem, Oregon, this 12th day of October, 1993.

CERTIFIED TO BE A TRUE COPY

Mary Gexabaons

Offices Services Center
DEPARTMENT OF REVENUE

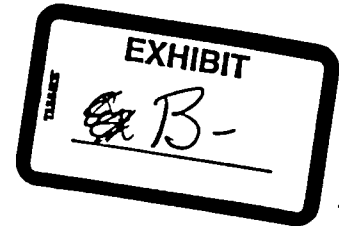
DEPARTMENT OF REVENUE



RICHARD A. MUNN, DIRECTOR

Notice:

If you want to appeal this decision, file a complaint in the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310. **YOUR COMPLAINT MUST BE FILED WITHIN 60 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.**



AFFIDAVIT OF ALAN SCHAFF

STATE OF OREGON)
County of Washington) ss.
)

I, Alan Schaff, being first duly sworn say:

1. I am a commercial farmer and have been a farmer for many years.
2. I leased Tax Lot 7 in Multnomah County located directly north and adjacent to Tax Lot 1100 Section 21 T1N R1W W.M. in Washington County, from Dr. Jenkins from the fall of 1998 to the present. I am currently farming the property.
3. Initially, I cultivated the entire property for grass seed.
4. I abandoned farming the lower portion of Tax Lot 7 described as the area south and east of the reservoir to the southern property line due to its extremely poor production of cover crops and its inability to support any other types of cultivation.
5. I tilled the entire property in the fall of 1998 and found that there was no valuable top soil on the backside of the hill that faces southeast towards the Washington County line.
6. Additionally, it appears as if fill may have been deposited there. Underneath the fill (made up of mostly clay soils), soils containing large amounts of rocky shale were found rendering this portion of the farm very unproductive. It currently is covered in wild /native grasses. Therefore, this area, south and east of the reservoir to the southern property line, is too wet and soils are too poor to farm productively.

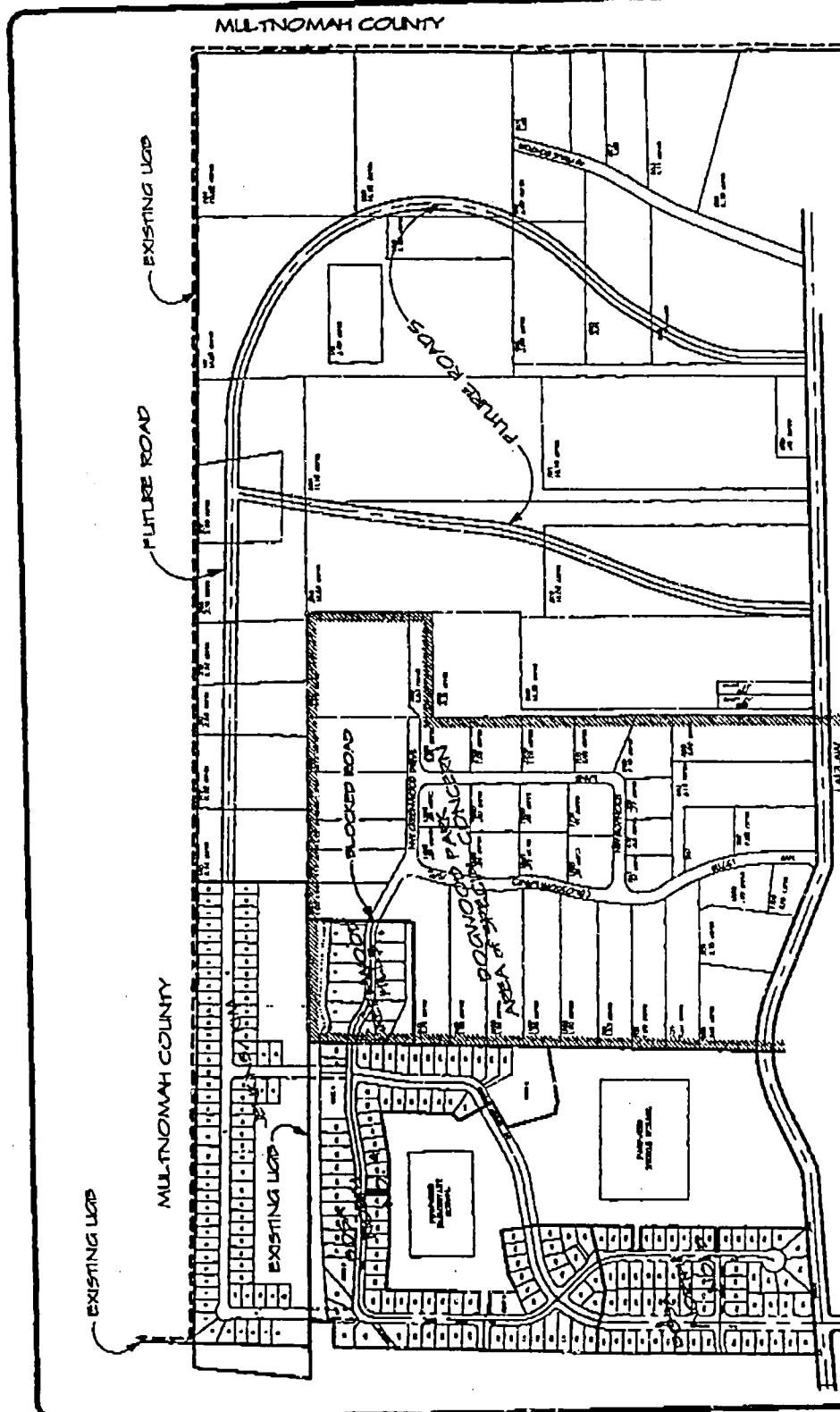
DATED THIS 22 day of July, 1999.

Alan Schaff
Alan Schaff

Subscribed and sworn to before me this ___ day of July, 1999.

Notary Public for the State of Oregon
My Commission Expires: _____

EXHIBIT



ALL STREETS SHOWN ABOVE ARE LOCAL EXCEPT LAIDLAW
LAIDLAW IS DESIGNATED AS A MAJOR COLLECTOR

Street Volume Limits

Local Street	1,500 vpd
--------------	-----------

Major Collector 1,500 - 3,000 vpd



**Planners
Engineers
Surveyors** 233 S.E. WASHINGTON ST.
MILLSBORO, OREGON 97123
PHONE (503) 848-4881
FAX (503) 881-7846
www.localcivl.com

MAKING IT

JENKINS/KIM OFFER
OF PROOF GRAPHIC #1
CONNECTIVITY

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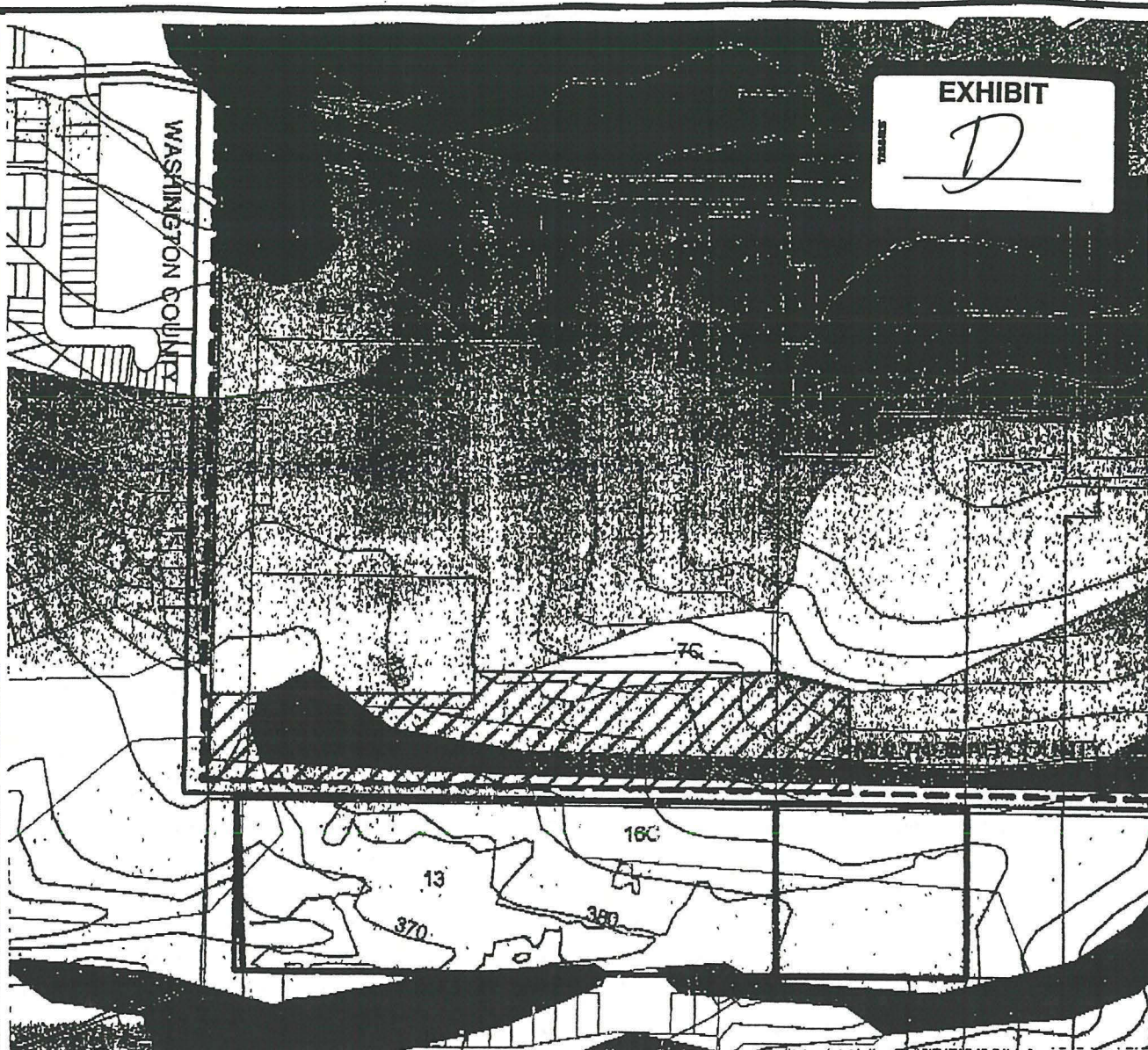
RELEASE NO.

1.

JUL 22 1999 12:23PM

LAND DEV CONSULTANTS

NO. 9037 P. 2/2



Jenkins/Kim Offer of Proof Graphic 2 Similarly Situated Lands



1"=400'

Legend

- UGB
- Site
- Wetland
- County line
- Overburden soil

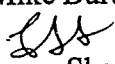
Type	Name	Capability Unit	Fertility
7B	Cascade silt loam, 3-7% slopes	IIIw-1	Moderate
7C	Cascade silt loam, 7-12% slopes	IIIe-4	Moderate
10B	Chehalis silt loam	Iiw-3	High
13	Cove silty clay loam	IVw-1	Low
14C	Clove clay	IVw-1	Low
16C	Delena silt loam, 3-12% slopes	IVw-3	Moderate
55	Wapato silt loam	IIIw	Moderate

**METRO**

ATTACHMENT 5

DATE: August 30, 1999

TO: Metro Council
Mike Burton, Executive Officer

FROM: 
Larry Shaw
Office of General Counsel

RE: Process For "Offer of Proof"

Introduction

Petitioners in Contested Case 98-07 have filed exceptions to the Hearings Officer Recommendation that include an "offer of proof" to support their request for a remand to the Hearings Officer. This 18.85-acre locational adjustment south of Springville Road is an unusual case. The Hearings Officer differs from the staff report on how to balance several serviceability issues. A criterion issue not raised by staff became the Hearings Officer conclusion that some adjacent land is "similarly situated," making applicant's 18.85 acres, plus the adjacent land, greater than the 20-acre maximum size. Based on this and how the Hearings Officer balanced approval factors in the Metro Code, the Hearings Officer recommends denial of the application. Applicant, basically, seeks to reopen the record to (1) include evidence to respond to the "similarly situated" criterion, and (2) have the Hearings Officer rebalance the Code factors using requested Metro Council interpretations of the Code factors.

Metro Code 2.05 Hearing Process

As indicated in the staff report, the Metro Council may approve, deny or send the application back to the Hearings Officer, with or without specific instructions. The only Metro Code procedures for hearings before the Metro Council are dated ones which apply to all "contested case" administrative hearings on any subject. At Metro Code 2.05.025(i) is the usual process for a limited Motion to "reopen the hearing" (record) "for receipt of new evidence which could not have been introduced earlier and is otherwise admissible" I believe that applicant's position is that the evidence in their "offer of proof" would have been available for the hearing if it had known of the "similarly situated" issue.

Offer of Proof - Metro Code 2.05.050 Reconsideration, Rehearing

The Metro Council does not have to limit itself to this hearing process rule on adding new evidence in deciding whether to send an application back to the Hearings Officer. The Council has the inherent authority to do so, with or without ruling or applicant's requested Code interpretations, and with or without allowing the record to be reopened.

This inherent authority is recognized by Metro Code 2.05.050 Reconsideration, Rehearing. Even after the Metro Council has adopted a final order, the Metro Council may "grant a reconsideration (or rehearing) petition if sufficient reason is made to appear. Metro Code 2.05.050(c)(d). "The rehearing may be limited by the (Metro Council) to (any) specific matters." The Metro Council need not adopt a final order before deciding whether "sufficient reason is made to appear" for a rehearing. Only in this context is an "offer of proof" usable. Otherwise, the Code standard for new evidence, above, would be violated.

The "offer of proof" mechanism is used in courts to support motions. Here it is offered as a demonstration of what evidence could be put in a rehearing record, if the "exception" request is granted. Metro Code 2.05.046 gives the Council broad discretion about submission and consideration of motions in contested cases. The Metro Council sits as a "quasi-judicial" decision maker (like a judge) in this contested case. Therefore, despite the lack of an explicit process in the Metro Code, this material presented by the applicant can be considered by the Metro Council for the purpose of deciding whether to allow a rehearing. This new evidence would not be admitted into this decision record unless a rehearing that reopens the decision record is approved by the Metro Council.

Conclusion

The Metro Council sits like a judge in these contested cases. The Council may or may choose not to consider an "offer of proof" for the limited purpose of deciding whether to allow a rehearing with or without Code interpretations requested by the applicant.

cc: Dan Cooper
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METRO

Date: May 24, 1999

**STAFF REPORT TO THE
HEARINGS OFFICER OF METRO**

SECTION I: APPLICATION SUMMARY

CASE: FILE NAME: Jenkins/Kim
UGB Locational Adjustment Case 98-7

PETITIONERS: Michael Jenkins Sang Kim
14120 NW Springville Road 13630 NW Springville Road
Portland, OR 97229 Portland, OR 97229

REPRESENTATIVES: Ryan O'Brien Eric Eisemann
LDC Design Group Winterowd Planning Services, Inc.
233 SE Washington Street 310 SW 4th Avenue, Suite 1000
Hillsboro, OR 97123 Portland, OR 97204

PROPOSAL: The petitioners request a 18.85-acre locational adjustment to the Urban Growth Boundary (UGB).

LOCATION: The property is located between Springville and Laidlaw roads, east of Kaiser Road (Attachment A).

PLAN/ZONING
DESIGNATION: Washington County EFU (Exclusive Farm Use).

APPLICABLE
REVIEW CRITERIA: Metro Code 3.01.035

SECTION II: STAFF RECOMMENDATION

Staff recommends that the Hearings Officer forward a recommendation to the Metro Council for APPROVAL of Case 98-7: Jenkins/Kim.

SECTION III: BACKGROUND INFORMATION

Site Information: The 18.85-acre site is located within Washington County approximately one half mile southeast of the intersection of Kaiser and Springville roads. It consists of Tax Map/Lot 1N1 21/1100 (Jenkins - 13.6 acres) and 1N1 21BA/101 (Kim - 5.25 acres). The site is bound on the north by Multnomah County land zoned EFU (Exclusive Farm Use) and MUA20 (Mixed Use Agriculture, 20-acre lot size), on the east and south by R-5 and R-6 residential land, and on the west by the Bonneville Power Administration (BPA) right-of-way and a recorded Natural Area. Zoned EFU under Washington County's plan, the site is currently vacant.

Case History: The subject properties were originally included within the UGB. Mr. Jenkins agreed to remove the property in a 1982 action that was part of a trade with another property located adjacent to Tualatin (Metro Ordinance 82-149). The applicants originally submitted a petition for inclusion of the subject property on March 3, 1998. The application was subsequently deemed complete on March 27, 1998. The applicants requested, and Metro granted, a postponement of the Hearings Officer meeting to provide additional findings and information. Subsequently, the applicants resubmitted the petition on December 1, 1998.

Proposal Description: The petitioners propose to adjust the UGB to develop the site with residential uses. If the proposal is approved, the site would likely be zoned as Washington County R-6 (six dwelling units per acre). The petitioners intend to develop the site with approximately 80 single-family residential units. If 80 units were developed, the density would be approximately 12 units per net developable acre. This density would meet Metro's target of 10 dwelling units per net acre for new urban land.

Local Government Statement: The original statement by the Washington County Board of Commissioners, adopted on March 10, 1998, was a 3-1 vote recommending denial of the petition to Metro. The Board of Commissioners considered the applicants revised petition on April 27, 1999, and voted 3 to 0 to forward no recommendation to Metro.

SECTION IV: APPLICABLE REVIEW CRITERIA

The criteria for a locational adjustment to the UGB are contained in Metro Code 3.01.035. The criteria with citation, petitioner responses (*italics*), and staff analysis follow.

Petitions to add land to the UGB may be approved under the following conditions:

- 1. An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the existing UGB. [3.01.035(f)(1)]**

The petitioners state that the proposal is greater than two acres, therefore, this criterion does not apply.

Staff Response

The petition includes the entirety of two legal parcels and consists of 18.85 acres. This criterion, therefore, is not applicable.

2. For all other locations, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section. [3.01.035(f)(2)]

The petitioners state that much has changed in the surrounding area since 1982 when the land was removed from the UGB. Due to the heavy urbanization of the properties surrounding the site, this proposal is a logical and orderly revision of the UGB to where it was in 1982. The proposal will provide the following benefits over the existing location:

- 1. Bring all Washington County land within 2000' radius into the UGB*
- 2. Straighten the UGB to provide more logical boundary consistent with Multnomah/Washington county line.*
- 3. Allow extension of a looped water system and gravity flow sanitary sewer system through the site to the UGB land to the east of site.*
- 4. Provide traffic circulation to adjacent lands within UGB by providing a stub street connection to those lands and direct access to the public street network.*
- 5. Enhance the provisions of police and fire protection to lands within the UGB.*
- 6. Continue to create acceptable transportation levels of service through the year 2015.*
- 7. Allow the needed development of adjacent lands within the UGB.*

Staff Response

Criterion 2 relates to how approval of the petition would improve the existing UGB line through the factors in criteria 5 through 9. These factors include more efficient public facility and service provision, facilitating needed development of adjacent land within the UGB, environmental, energy, economic and social consequences, and compatibility with agricultural activities. The first two arguments put forth by the petitioners (see 1 and 2 above) are not relevant to this criterion. Having all the adjacent Washington County land within the UGB and straightening the UGB line to run along the county border are not sufficient arguments to meet the burden of this criterion.

Arguments 3 - 7 above are relevant to this criterion. They are a partial summary of the petitioners' responses to criteria 5 - 9 below. Based upon the petitioners' responses to these criteria, staff concludes that there is sufficient evidence to support a finding that the proposed UGB is superior to the UGB as presently located. For this reason, staff concludes that Criterion 2 is satisfied.

3. The proposed UGB amendment must include all similarly situated contiguous land that could also be appropriately included within the UGB as an addition based on the factors below (criteria 5-9). [3.01.035(f)(3)]

The petitioners state that land that is similarly situated would have the following characteristics:

- be outside the UGB*
- be located in Washington County*
- have similar soil characteristics*
- have a similar ability to connect to existing public facilities and services*
- provide orderly and efficient access to public services to land already within the UGB*
- was already within the UGB*

The petitioners conclude that the subject properties are unique in their size, location, use and history within Washington County and, therefore, are the only properties that are similar and contiguous.

Staff Response

This criterion sets a condition for the amount of acreage that must be included in a petition for an UGB amendment. The basis for deciding on the amount of land is consideration of the factors in criteria 5-9 below. The intent of this criterion is twofold: First, to prevent carving out a piece of land 20 acres or less from a larger parcel or area in order to qualify for a locational adjustment; and second, to minimize subsequent petitions for locational adjustments on adjacent land that should have been considered together with the original proposal. These reasons are intended to prevent using the locational adjustment process as a tool for expansion of the UGB without demonstrating regional land need and without undertaking necessary urban reserve plans.

The fact that the subject properties are the only ones outside the UGB, located in Washington County and have inferior soils are irrelevant to this criterion. 'Similarly situated contiguous land', as used in Criterion 3, is based on criteria 5-9 below. Based on the petitioners' responses to these criteria, however, staff agrees that contiguous land to the proposed site is not appropriate for inclusion with this proposal.

All petitions for a locational adjustment must meet the following criteria:

4. Locational adjustments shall not exceed 20 net acres. [3.01.035(b)]

The petitioner proposes to include Tax Lots 1100 (13.6 acres) and 101 (5.25 acres) which total 18.85 acres.

Staff Response

Staff confirms the proposal comprises 18.85 acres and, therefore, complies with the 20-acre restriction. This criterion is satisfied.

5. 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, parks and open space in the adjoining areas within the UGB. Any area to be added must be capable of being served in an orderly and economical fashion. [3.01.035(c)(1)]

The petitioners state that the adjustment will provide for an orderly and economic provision of services. Overall, the adjustment will result in a net increase in efficiency of sanitary sewer, water, fire flow and circulation, law enforcement, electricity, school transportation and general circulation in adjacent areas within the UGB. The following is a summary of the petitioners' and service providers' responses to Criterion 5. The Unified Sewerage Agency (USA) takes no position on the proposal. The Tualatin Valley Water District (TVWD) supports approval of the petition. All the remaining providers take a neutral position.

- Sanitary Sewer – Upon annexation to the district, the site would be served by the Unified Sewerage Agency (USA). The agency states that including the site within the UGB could result in a net increase in efficiency of sewer service to lands currently within the UGB. Currently, USA is able to provide gravity sewer service to all properties within the UGB that are adjacent to the site except the properties to the east (Malinowski properties) and Dogwood Park subdivision to the southeast (Attachment B). Only by means of a pump station can sewer service be provided to the Malinowski properties. If the subject site is brought into the UGB, USA can then provide gravity sewer to these

properties. The closest sewer line to the site will be located along the southern edge of the Jenkins property to serve the developing subdivision to the south (BOSA North #4).

As part of an alternatives analysis, the petitioners recently submitted additional information showing three options for providing sewer service to the Malinowski properties (Attachment C). These alignments are based on drainage basins. Option 1 is the extension of a future sewer line stub that would be within the development of the Jenkins/Kim site. This would extend approximately 300 feet. Option 2 would be an approximately 950-foot extension of the future sewer line within the Greenwood Hill subdivision. This would require easements from property owners in the Dogwood Park subdivision. Option 3 is an approximate 4000-foot to 4,600-foot extension of sewer line from Laidlaw Road to the south running up along 137th Avenue and then through parcels along the northern Dogwood Park subdivision. Option 2 could be very expensive and consent from property owners would be needed for the easements, which would run through tree-covered land. Option 3 would be very expensive, need easements and be impractical.

- Stormwater – Drainage for the site generally occurs within a small stream along the southern portion of the site. The Malinowski lots to the east collect and pass stormwater through the subject site, where it is then passed onto the urban land to the west. Due to the topography, the petitioners claim that there is no other reasonable way to provide stormwater collection service than through the site. For this reason, they state, use of the site is a logical and orderly way to provide this service to the UGB land to the east. USA's states that due to this drainage pattern, it is unlikely that including the site in the UGB will result in a net deficiency in its ability to provide stormwater service.
- Water – Upon annexation to the district, the site would be served by the Tualatin Valley Water District (TVWD). TVWD currently provides service to the Kaiser Woods and BOSA No. 4 subdivisions, and will provide service to the Cedar Mountain Estates to the south of the Kim property. The district states that approval of the adjustment would make provision of service efficient and could result in an economic and orderly provision of that service. The water reservoir located to the north of the site, in conjunction with a pump station in the BPA right-of-way, allows for service at 50 psi to properties below 460-foot elevation. At this level, service could be provided to the subject site as well as three Malinowski properties to the east. Though there are no current plans to serve the Malinowski properties, service could be provided to them through the subject site. In addition, water service could be looped from BOSA No. 4 through the site and back down to the BOSA subdivision. For these reasons, the petitioners state that inclusion of the site would result in an orderly and economic provision of water service and a net increase in the efficiency of that service.
- Police Protection – Police services are provided by the Washington County Sheriff's Office. The Sheriff's Office indicates that it could provide adequate and efficient service to the site, and that inclusion of the site would improve the efficiency of serving adjacent land within the UGB.
- Fire Protection and Rescue – Tualatin Valley Fire and Rescue (TVFR) is the provider of fire protection and emergency rescue in the area. TVFR states that the site would have very little impact on department services. It could not determine whether inclusion of the site would make it more or less efficient to serve other adjacent areas within the UGB. The petitioners state that stubbing a road to the Malinowski properties would provide this area with orderly and economic access for fire and rescue services and will not result in a net decrease in the effectiveness of these services.

- Parks/Open Space – In their original response dated February 11, 1998, the Tualatin Hills Park & Recreation District (THPRD) indicates that the service level is adequate for the project, there would be no efficiency impact and service would be provided after the site is annexed into the district. A second response, dated September 28, 1999, notes concern for the potential impacts to the stream corridors and other natural resources in the area that could be affected by future roads. THPRD strongly recommends that every effort be made to avoid impacts to these areas so their functions and values are preserved for residents and wildlife. The petitioners state that significant resource areas, including the identified wetlands on site, will be established as open space areas and might later be annexed to the district. This action will expand the network of open spaces in the area, thereby resulting in a net improvement in the efficiency of parks and open spaces within the UGB. In follow-up letters to the County, dated April 21, 1999, THPRD states that after the site is annexed into the district there will be an orderly and economic provision of park and recreation services that would result in a net improvement and efficiency of services.
- Public Transit – The petitioners state that development of the site will provide the properties to the east with improved access to the bus service along Kaiser Road, thereby resulting in a net improvement in efficiency of transit service.
- Transportation – The existing and planned roads near the site are under the jurisdiction of Washington and Multnomah counties. Access to the site, if developed, would be through Washington County roads to the south since the land to the north is outside the UGB and zoned EFU. The petitioners' have signed an agreement with the owner of the BOSA No.4 subdivision to the south to provide public street access to the site. The agreement will provide for two access points from BOSA. The petitioners also plan to provide a road stub to the UGB land to the east of the site. This configuration would create a looped circulation system for the site and would allow for future connection to the land to the east. For this reason, approval of the proposal would result in an orderly and economic extension of roadways and a net improvement in efficiency of the transportation services.

The November 1998 traffic analysis by Lancaster Engineering concludes that the proposed 80-unit subdivision will not increase level of service at three of four intersections studied. The fourth intersection, Kaiser Road at Bethany Boulevard, will have a slight increase in delay due to the proposal, degrading the level of service from B to C during the evening peak hour in 2015. The analysis also concludes that the additional trips generated by development of the site would not alter the functional classification of the local roadways.

- Electrical Service – PGE indicates that approval of the petition would have no efficiency impact and the site could be served in an orderly and economic fashion.
- Schools – The Beaverton School District No. 48J states that the issue of public facilities would be addressed at the comprehensive plan amendment stage. According to the district demographer and planner, the capacity issue by grade level for the area schools is as follows: Findley Elementary School has a capacity of 691 students and a 1998-1999 enrollment of 787 students; the middle school being built within the BOSA No.4 subdivision will have a capacity of 930 students with a potential enrollment in fall 1999 of 725 students; and the Sunset High School has a capacity of 1,508 students and a 1998-1999 enrollment of 1,617 students. The proposed development of an 80-unit subdivision on the subject site could result in 24-56 students in the K-12 grade range.

The petitioners state that providing road access from the land to the east of the site to the new middle school in the BOSA No. 4 subdivision will allow direct circulation between the two areas.

This link will result, therefore, in an orderly and economic provision of school transportation services.

Based on the foregoing responses, the petitioners conclude that the proposed adjustment will provide for an orderly and economic provision of public services. They state that an overall net increase in efficiency would be realized for sanitary sewer, water, fire flow and circulation, law enforcement, electricity, school transportation and general circulation in adjacent areas already within the UGB. The proposal would have a neutral effect, they claim, on the efficiency of stormwater management, though allowing for orderly and economic provision of that service.

Staff Response

There are two parts to this criterion. First, any area to be added to the UGB must be capable of being served in an orderly and economical fashion. Based on information contained in the petitioners' submittal and service provider responses, it appears that the site is capable of being served in an orderly and economical fashion with sewer, water, police, fire protection and rescue, park and open space, electrical and transportation services.

USA cannot definitively state that there is or is not adequate capacity in the existing sanitary and storm sewer systems to serve the subject property because the land is outside the agency's service area. Because, however, any collection system and treatment facility capacity upgrades and public system extensions would be the developer's responsibility, the agency does state (April 12, 1999, letter to Joanne Rice of Washington County) that "there would be no negative economic impact to the Agency and service could be provided to this parcel". The THWD, County sheriff's office, TVFR, THPRD, PGE and the County have indicated that their respective services could be provided to the site in an orderly and economic fashion. There is no statement from the public transit provider. The school district does not indicate whether services could be provided in an orderly and economical fashion, putting this issue off until the comprehensive plan amendment stage.

Based on this information, staff concludes that the site is capable of being served in an orderly and economic fashion.

The second part of Criterion 5 requires that a locational adjustment result in a "net improvement in the efficiency of public facilities and services...in the adjoining areas within the UGB." Staff agrees that the petitioner has demonstrated that the adjustment would result in an improvement for the following services:

- Sanitary sewer -- USA originally stated that without an extraterritorial extension of service, the only way to serve the properties to the east of the site is by pump station, unless the subject site comes into the UGB. The agency further stated that there would be an increase of efficiency of sanitary service to properties currently within the UGB. The addendum Washington County staff report, dated April 27, 1999, contains a summary of a conversation between County staff and USA. Nora Curtis of USA communicated to Joanne Rice of the County that gravity sewer service is available to the Malinowski properties from two different locations within the UGB. These options are the same as Option 2 and Option 3 submitted by the petitioners. Option 2 would connect the Malinowski properties to the future line in the Greenwood Hills subdivision. Option 3 would connect the properties to a future line from Laidlaw Road and NW 137th Avenue.

Having evaluated all the information from the petitioners, USA and the County, Metro staff concludes that Options 2 and 3 do not constitute a net improvement in the efficiency of public sewer service for adjoining UGB land. The petitioners' site would enable use of a gravity sewer system in

a much more efficient and cost-effective manner than the other two options. It is staff opinion that use of a gravity system from the subject site meets the test of net improvement over either use of a pump system or Options 2 and 3. Option 2 requires easements from several property owners for installation and all future maintenance. Option 3 entails a very expensive extension plus easements through private property. Staff finds, therefore, that including the site within the UGB will result in an improvement in the efficiency of sewer service to the Malinowski properties.

- **Water –** TWWD states that approval of the petition would make it more efficient to serve other adjacent areas within the UGB. There is adequate pressure to serve three lots to the east of the site, utility lines are available to create a looped system on the subject site and lines could be stubbed for future development to the east. For these reasons, staff finds there would be an improvement in the efficiency of water service for urban lands to the south and east.
- **Police protection –** According to the Washington County Sheriff's Office, inclusion of the site within the UGB would improve its ability to efficiently serve adjacent lands within the UGB.
- **Parks and Open Space –** THPRD's original statement indicates that inclusion of the property would have no efficiency impact to serve other adjacent urban land. The district's second response strongly advocates avoiding impacts to the natural resource areas on site. The petitioners state that these areas will be established as open space and possibly annexed to the THPRD at a later date. The district's third response states that it would welcome the site into the district and could serve it in an orderly and economic manner resulting in a net improvement of services. For these reasons, staff concludes that there would be a net improvement in the efficiency of this service.
- **Transportation –** The petitioners have secured access to the site through the BOSA No. 4 subdivision to the south. They have a signed agreement with the Shasta Real Estate Company to provide public street access. The petitioners state that two road access points will be used, thus creating a looped system through the site's development. The petitioners will also provide a road stub providing future access to the Malinowski properties.

A traffic impact study was performed by Lancaster Engineering to assess the traffic impact of the development of 80 single-family residential units on the nearby street system and to recommend any required mitigation measures. The study concluded that the development would generate a total of 766 trips per weekday. Neither the total trips nor the peak hour trips would cause the four studied intersections to operate below the acceptable level of service. The trips would also not cause warrants for adding traffic signals at two of the unsignalized intersections. The project-generated traffic would not alter the functional classification of any of the local streets through which it would take access.

Based on the implementation of the planned road system and the analysis of the traffic study by Washington County, staff concludes that the site would be served in an orderly and economical fashion with transportation services and that an improvement in the efficiency of transportation would be realized.

Based on information from Beaverton School District No. 48J, staff concludes that there would be a net decrease in efficiency for the following public facilities and services:

- **Schools** - The school district states that the issue of public facilities will be addressed at the comprehensive plan amendment stage. According to the district demographer and planner, the elementary and high schools that would serve the site's residents already exceed their capacity. The new middle school being built within the BOSA No. 4 subdivision will have a capacity of 930 students with an expected enrollment of 725 students. The proposed development of an 80-unit subdivision on the subject site could result in 24-56 students in the K-12 grade range. Based on the district's response regarding services and the demographer's estimates, it appears there would be insufficient capacity to accommodate the new high school and elementary school students that will result from development of the site. Staff concludes, therefore, that there would likely be a net decrease in efficiency for this public service.

Based on service provider information and the petitioners' submittals, staff concludes that there would be no net change in efficiency for the following public facilities and services:

- **Stormwater** - In its original response, dated February 12, 1998, USA indicated that there are no public facilities outside the UGB to provide service to the property, and that there was not enough information to formulate an opinion on the relative efficiency or economic impact of potential service to the site. In a later letter, dated November 5, 1998, USA indicates that "it is unlikely that there would be a net deficiency in the provision of stormwater services as a result of including the Jenkins/Kim property in the UGB." Based on this information, staff finds that there would be no net change in the efficiency of this service for adjacent urban land if the site is included within the UGB and developed.
- **Fire Protection and Rescue** - TVFR states that there is not enough information to determine whether or not approval of the petition would make it less or more efficient to serve adjacent lands. At the same time, the district indicates that adequate service could be provided to the site if road access and water supply facilities meet the fire code. These facilities have been met. Staff concludes, therefore, that there would be no net change in the efficiency of these services for adjacent urban land if the site is included within the UGB and developed.
- **Transit** - Tri-Met has not commented on this petition. The petitioners present a case that providing a stub road to the east properties would enhance the ability of future residents to reach Bethany Road, where a new bus line has recently begun service. Given the distance of the site from the bus line and the unknown future road alignment(s), design speed(s) and land use pattern of the area north and east of Dogwood Park, staff can not determine whether trips would be faster/more efficient through BOSA No. 4 or the new development. For this reason, staff concludes that there would be no net change in the efficiency of this service for the adjacent urban land.
- **Electrical** - PGE indicates that approval of the petition would have no efficiency impact to serve other adjacent areas within the UGB.

Based on the available information, staff concludes that an improvement would be realized for sewer, water, police protection, parks and open space, and transportation services. There would be no change in efficiency for stormwater, fire protection and rescue and transit services. There would likely be a net decrease in efficiency of school services.

Staff finds that, on balance, the adjustment would result in a net improvement in the efficiency of services to adjoining areas within the UGB. Meeting the 'net improvement' factor in Criterion 5 has historically been interpreted as demonstrating that there is, on balance, an overall improvement of efficiency after considering all the important facilities and services. For example, if two of six services would be improved for adjacent urban land and the remaining four would result in no net change, then the burden of proof is likely met. In this case, there would be an improvement of efficiency for five services, no change in efficiency for four services and a decrease in efficiency only for school services. Further, the school district has not performed an evaluation of school facilities for this proposal.

Based on the above analysis, staff concludes that this criterion is satisfied.

- 6. Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.**
[3.01.035(c)(2)]

The petitioners state that the proposed adjustment, if approved, would provide a public street stub at the eastern end of the site, thereby creating a future urban connection for the Malinowski properties. This action will enable needed development, as defined in Criterion 6, to take place on these properties. The Dogwood Park subdivision to the southeast of the site cannot be used, the petitioners argue, because of the existing lot pattern and Area of Special Concern (ASC), which is a County designation to preserve the existing character. Under this designation, any action to further develop, partition or extend urban services within this area requires mitigation.

In addition to the transportation connection to the Malinowski properties, the petitioners state that development of the site will enable gravity sewer service to be extended to these properties in an efficient and cost-effective manner.

For these reasons, the petitioners state that inclusion of the subject property will facilitate needed development on adjacent existing urban lands.

Staff Response

Staff agrees that development of the subject site would enable the Malinowski properties to be provided with sewer and storm drainage services in an efficient manner. Staff also agrees that vehicular access to the eastern properties could help future circulation within the area. While the petitioners have not demonstrated that inclusion of the site within the UGB is needed in order to serve the eastern properties, this criterion does not require such a burden of proof.

The Malinowski properties could be served with sewer/storm service and roadway access from the south and west of those properties. Based on information provided by the petitioners, USA states that gravity sewer service could be provided to the Malinowski properties. As covered above, however, these options require permission for and acquisition of easements through developed single-family land as well as significantly higher costs.

A road system from the south is possible to serve the Malinowski properties. For this to occur, some of the large lots east of the Dogwood Park subdivision would have to develop and include a roadway from Laidlaw Road of approximately 2200-foot long, or an extension of NW 137th or NW Greenwood Drive within Dogwood Park would need to take place. The former option would require willing

owners/developers in the large lot area and the latter option would require willing owners and overcoming roadway design and policy constraints within the Dogwood Park subdivision.

In addition, a road system from the south would result in a cul-de-sac or limited loop system because of the width of the Malinowski properties. Such a system would limit ingress and egress to one direction, resulting in development on these properties being less efficiently served with police, fire and general vehicular movements as compared to a system that connects directly with development to the south and west.

Based on the foregoing analysis, staff concludes that inclusion of the subject site would facilitate needed development on land to the east. Facilitating sewer/storm services and roadway extension to this vacant land within the existing UGB would be consistent the Washington County Comprehensive Plan and regional goals and objectives of maximizing service efficiencies to urban land. Staff concludes, therefore, that this criterion is satisfied.

7. 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. [3.01.035(c)(3)]

The petitioners performed an analysis for the environmental, energy, economic and social consequences (ESEE) of the proposed adjustment. This analysis is summarized as follows:

- *Environmental – There are no floodplains or drainage hazards on the site. An intermittent stream runs along the southern side of the site, identified in Metro's Functional Plan Title 3 as a primary and secondary protected water feature. A wetland determination and delineation was performed with the results that there are potentially 9.52 acres of jurisdictional wetlands on site.*

Development of the site could impose limitations on agricultural lands and upon the environmental qualities of the wetlands. Some conversion of wetland acreage could occur with development. There might also be impacts from road crossings of the stream. Conversion of wetlands would be governed by local, state and federal regulations, however, which purpose is to ensure no net loss of wetland quality and function. Title 3 would further restrict wetland impacts, including minimum buffers.

Retention of the site for agricultural purposes would allow continued use for low value pasture, seed production or open space. The wetland areas would be subject to soil compaction and loss of habitat cover as a result of horse or cattle grazing. Sedimentation or potential contamination from tilling and application of herbicides or pesticides could also impact the wetlands. In addition, preservation of the class IV soils on the land is a low priority according to the County's classification scheme.

The petitioners state that on balance the benefits and consequences of preserving the low quality agricultural land versus conversion of the land for urban purposes seem to be equally weighted. This is the case because potential impacts could be substantially avoided or mitigated, and preservation of the wetlands would be accomplished by dedication to open space to Tualatin Valley Parks and Recreation District.

- *Energy – Energy consumption resulting from agricultural use is limited to tilling, cultivation and harvesting. Conversion of the site to urban use would result in significantly higher energy use, including development of the site and vehicle trips by future residents. This use can be off-set in several ways, including serving the subject site and adjacent properties*

with electrical power in an orderly and economical manner, and facilitating more efficient development and use of the properties to the east.

The petitioners state that though there would be increased energy consumption if the site is developed, the orderly and economical provision of services to needed development to the east would off-set the increased use.

- *Economic – Currently, the economic use of the site is limited to low value agricultural use and open space. Urbanization of the site will allow for the creation of approximately 80 residential dwellings that will increase land values, property taxes and provide jobs during the development process. It will also allow development on adjacent urban land, consistent with the County comprehensive plan. For these reasons, the petitioners state that the economic benefits of urbanization easily outweigh the economic consequences of leaving the land outside the UGB.*
- *Social – According to the petitioners, the social consequences of preserving low value agricultural lands and wetlands is difficult to measure, evaluate and quantify. Possible benefits include maintaining a strong farm community, maintaining an open space view for the adjacent residents and knowledge that there is nearby wildlife habitat. Urbanization of the site, on the other hand, will include benefits such as expanding the number of housing opportunities in the fast-growing Bethany area, expanding recreation opportunities through dedication of open space to THPRD, greater social interaction through connection of a street system to adjacent eastern properties and enhancing public safety and welfare by providing better police and fire services to eastern properties. For these reasons, the petitioners state that the urbanization of the resource lands outweighs the social benefits and consequences of preserving the resources for non-urban purposes.*

There are no regional transit corridors within one-quarter mile of the site, therefore, there will not be any impact to regional corridor development.

Staff Response

Washington County maps show no flood plains or drainage hazard areas on the site. The wetlands delineated by the petitioners' study would be subject to local, regional, state and federal development restrictions. The intermittent stream that runs along the southern portion of the site is identified in maps for Title 3 of Metro's Functional Plan. It is designated as a primary protected water feature for approximately 220 feet from the western boundary and a secondary protected water feature for another approximately 1220 feet to the east. Development within 50-foot of the primary feature and 15 feet of the secondary feature is subject to Title 3 restrictions in the form of buffers from top of bank. The crossing of wetlands and streams with transportation improvements is also subject to Title 3 restrictions. The developer of the site would need to comply with the restrictions referred to above.

The petitioners' ESEE analysis is sufficient to assess Criterion 7. The potential environmental impacts to the delineated wetland and stream corridor would need to be addressed as part of the development process. Staff agrees that these resources could be substantially avoided or mitigated through site review, including preservation of wetland values through dedication by the owner/developer. Energy, economic and social considerations have been adequately addressed and staff concludes that, on balance, are weighted as neutral regarding conversion of the site to urban use.

The nearest regional transportation corridors, as defined by Metro's 2040 Growth Concept, are Kaiser Road and Springville Road west of Kaiser. The Lancaster Engineering traffic analysis addresses the

potential impact of the site's development to three intersections along Kaiser Road. It concludes that the development would not significantly impact the intersections. The petitioners state that there would be no impact to regional corridor development. Staff concludes that there would be no adverse impact to the two corridors.

Based on the above analysis, staff concludes that this criterion is satisfied.

8. Retention of agricultural land. When a petition includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable. [3.01.035(c)(4)]

The petitioners state that the approximately 95% of the site consists of class IV soils. The County comprehensive plan establishes that the fourth priority for soil preservation shall be all soil associations with 50% or more class IV soils or class III & IV combined. The soils on the site, therefore, are ranked as a fourth priority for soil preservation.

The properties to the east of the site are subject to evaluation under this criterion because they are the only adjacent properties within the UGB that are undeveloped or not approved for development. These properties lack access to gravity sewer, public water and the public transportation network. USA has stated that gravity sewer cannot be provided to the properties unless an extraterritorial extension of sewer service is approved. Otherwise, sewer can only be provided using a pump station. The TVWD states that water service could be provided to the properties in an orderly and economical manner through the subject site. Otherwise, it would need to be pumped to the properties from the east and the district has no plans to install a pump station. The petitioners would provide a street stub on the eastern portion of their site, thus providing an orderly and economic future public street connection to the eastern properties.

Inclusion of the site into the UGB will result in an orderly and economical provision of sewer, water and public street access to the properties to the east. Retention of the petitioners' site as agricultural lands will make the provision of these services to the adjacent properties impracticable.

Staff Response

Criterion 8 sets a strict standard for the conversion of agricultural land to urban land. The factors in this criterion expand upon the Criterion 6 requirement to show facilitation of needed development. Facilitation of needed development can be satisfied by demonstrating that addition of property into the UGB helps development, which is consistent with the adopted comprehensive plan, to occur in an efficient manner. Criterion 8A requires a demonstration that urbanization of adjacent land inside the UGB would be prevented from occurring unless the subject site is added to the boundary. Criterion 8B requires a demonstration that urbanization of adjacent land inside the UGB would be impracticable without inclusion of the subject property. In other words, the adjacent property cannot be provided with urban services through any practicable means except through use of the subject property.

Staff confirms that the subject site is composed of mostly class IV soils. Staff agrees with the petitioners' argument that inclusion of the subject site into the UGB would result in the orderly and economical provision of sewer service, water service and the transportation network; and that inclusion of the site would result in a net improvement of service efficiency for these three services.

In this case, satisfying Criterion 8B depends on whether Option 2 or Option 3 sewer alignments are practicable alternatives for serving the Malinowski properties from within the UGB. As outlined by Washington County staff, Option 2 includes two sub-options. Option 2A is extension of a sewer line from the east end of NW Greenwood Drive within the recently-permitted Greenwood Hill subdivision by acquiring easements through single family developed land. Option 2B is extension of a sewer line along the northern boundary of the Greenwood Hill subdivision. Option 3 is the extension of a sewer line from Laidlaw Road, up along NW 137th Avenue and through single family developed land.

USA updated Metro staff about the status of the Greenwood Hill subdivision proposal regarding sewer service and the agency's sewer extension requirements.¹ Option 2B remains a possibility as far as final approval of sewer service for the subdivision. According to Ms. Curtis of USA, however, there could be an issue with a conflicting goal to preserve the mature tree canopy along the northern boundary of the subdivision as open space. Before the Malinowski properties develop, gravity sewer service must be extended to them. There is a USA requirement that any property within 5000 feet of a public sewer line must extend gravity service and not use a pump station. Whether the Greenwood Hill subdivision is developed or not, a developer of the Malinowski properties would have to consider Options 2 and 3 for gravity service. All three alignments under these options require the use of easements on developed single family property.

Unless and until confirmation is received that affected property owners are willing to grant the necessary easements, Metro staff does not consider Option 2 and Option 3 as feasible alternatives for extending sewer service to the Malinowski properties. Metro staff concludes, therefore, that they are not a practicable means of providing sewer service to an adjacent area within the UGB. These options do not meet the test under Criterion 8B of practicable means for providing sewer service to the Malinowski properties. Option 1, extension of sewer service from the eastern end of the Jenkins/Kim site, is an efficient, cost-effective and practicable means of providing this service to the Malinowski properties. For these reasons, staff finds that retention of the subject site as agricultural land makes the provision of sewer service to adjacent land within the UGB impracticable.

Based on the foregoing analysis, staff concludes that this criterion is satisfied.

9. 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 all factors of this subsection must clearly outweigh the adverse impact of any incompatibility. [3.01.035(c)(5)]

The petitioners state that the subject property abuts UGB exception land to the east, south and west. The land to the north is zoned EFU. Currently a portion of the land to the north, owned by Jenkins, is being used for grass seed and clover production. One parcel to the north has recently been converted

¹ Telephone conversation on May 6, 1999, between Nora Curtis of USA and Ray Valone of Metro.

for water reservoir use. The remaining adjacent EFU land to the north has been carved into rural residential lots too small to be of commercial value.

Grass and seed production is not necessarily incompatible with residential development. Urbanization of the subject site will produce few measurable impacts on the production of the Jenkins' property to the north. Urbanization of the subject site will result in a net efficiency of land use by allowing adjacent urban land to develop, and it will result in a net gain in efficiency of sewer, water, fire and police protection and transportation services. Therefore, inclusion of the site outweighs any adverse impact to the agricultural activity to the north.

Staff Response

Based on air photo information and a site visit, staff confirms that agricultural activities are taking place on the adjacent land to the north, approximately 300 feet from the subject property. This is a primary use under Multnomah County's EFU zoning to the north.

This criterion seeks to assess and evaluate whether an urban use allowed by granting a UGB adjustment would adversely impact and be incompatible with nearby agricultural activities; and whether the urban use would outweigh its impact with justification dependent on Criteria 5 through 9. Staff agrees with the petitioners regarding potential impact to existing agricultural activities. Given the limited nature and type of the activity, distance from site, prevailing wind pattern and existing and future pattern of development on three sides of the subject site, staff believes there would be limited additional impact to the grass and clover production from development of the site. Further, any limited impact to the existing agricultural activity would be outweighed by the benefits to the adjacent urban land, as recognized in criteria 6 and 7 above.

Staff concludes, therefore, that this criterion is satisfied.

SECTION V: SUMMARY AND RECOMMENDATION

This petition seeks to bring 18.85 acres of land into the UGB for the purpose of developing residential dwelling units. The petitioners have provided sufficient evidence to demonstrate that the proposed UGB is superior to the UGB as presently located. The site could be adequately served with sewer, storm, water, police, fire, park and open space and transportation services. Inclusion of the site within the UGB would result in a net improvement in sewer, water, police, parks and open space and transportation services for the adjoining eastern properties. Development of the site would facilitate development of those properties. The petitioners have demonstrated that retention of the subject site as agricultural land would make the provision of services to adjacent urban land impracticable. Any potential impact from development of the site to the agricultural activity taking place on the land to the north would be limited, and it would be outweighed by the beneficial aspects provided to adjacent urban land.

Based on the above analysis, staff recommends that the Hearings Officer forward a recommendation to the Metro Council for approval of this petition.

I:\GM\ComDev\Projects\UGBadmt98\98-7staffrpt



R L I S

REGIONAL LAND INFORMATION SYSTEM

Proposed Adjustment

UGB Case 98-7
Jenkins/Kim

 Urban Growth Boundary

 Subject Property

0 500 1000 1500 Feet

1" = 1000 feet



METRO

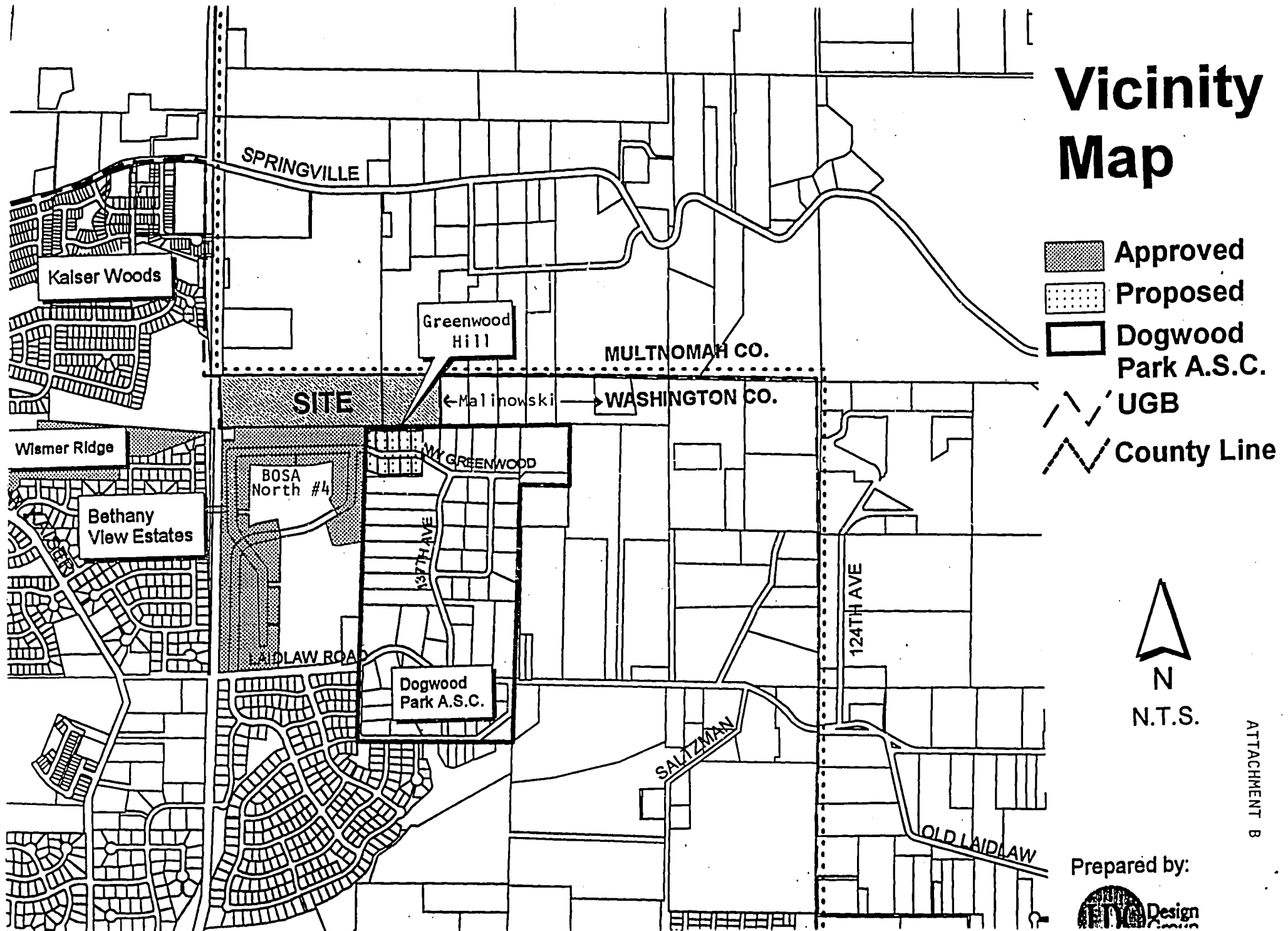
600 NE Grand Ave.
Portland, OR 97232-2736
503 797-1742 FAX 503 797-1909
Email: drc@metro.dst.or.us

Plot date: Apr 29, 1999; c:\projects\jenkins.apr

ATTACHMENT A

65

Vicinity Map

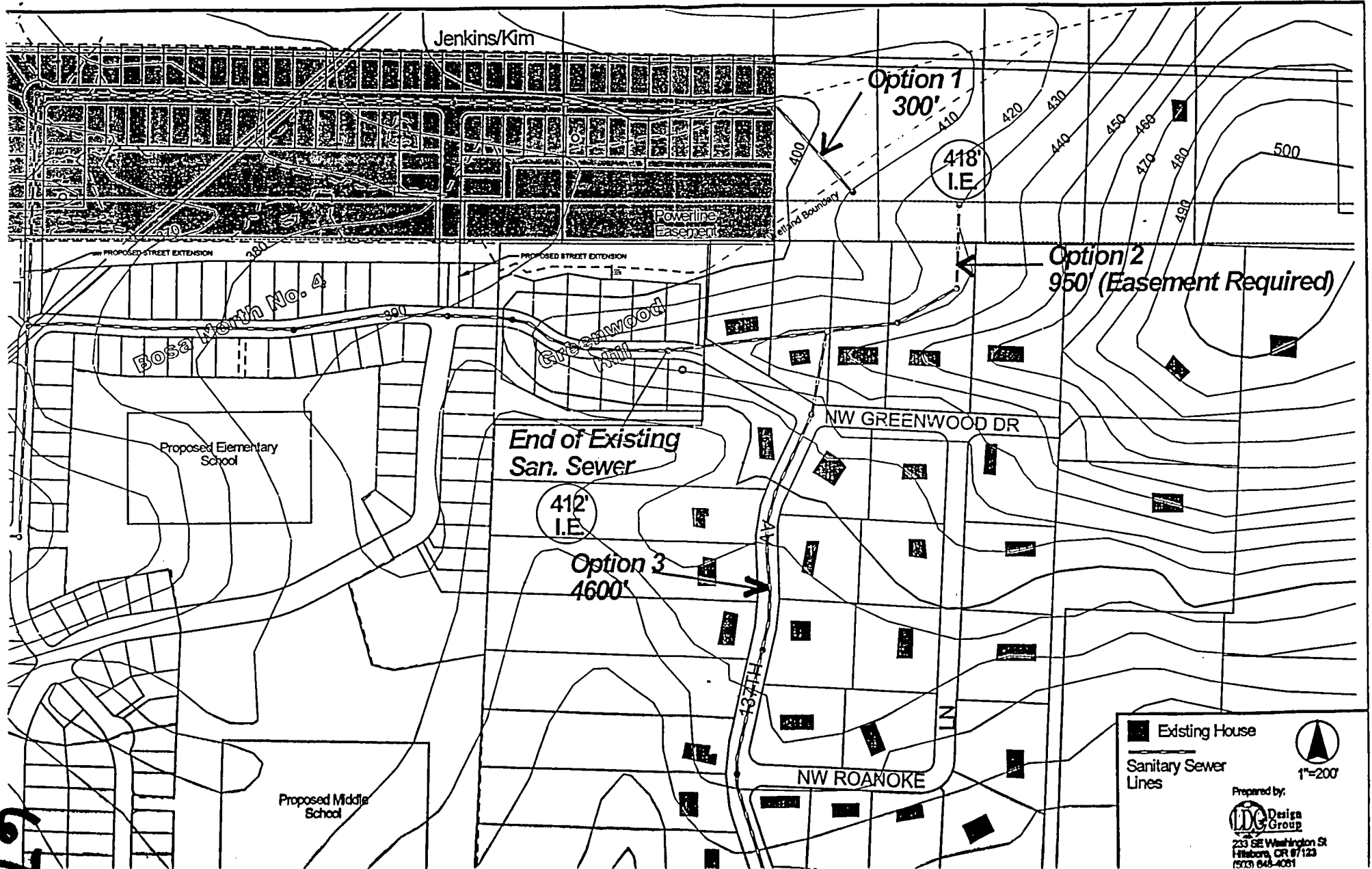


ATTACHMENT B

Prepared by:



66



67

Agenda Item Number 9.1

Ordinance No. 99-812, For the Purpose of Amending the Metro Urban Growth Boundary and the 2040 Growth Concept Map in Ordinance No. 95-625A in Urban Reserve Area 65 in Washington County.

Public Hearing - no final action

**Metro Council Meeting
Thursday, September 9, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO 99-812
METRO URBAN GROWTH BOUNDARY)	
AND THE 2040 GROWTH CONCEPT	)	Introduced by Councilor Monroe
MAP IN ORDINANCE 95-625A)	
IN URBAN RESERVE AREA 65 IN)	
WASHINGTON COUNTY)	

WHEREAS, the Metro Council designated urban reserve areas in Ordinance No. 96-655E, including Urban Reserve Area 65; and

WHEREAS, urban reserve study areas were shown on the 2040 Growth Concept map adopted as part of the Regional Urban Growth Goals and Objectives in Ordinance No. 95-625A and the map was amended by Ordinance No. 96-655E to show urban reserve areas; and

WHEREAS, ORS 197.298(1)(a) requires that land designated as urban reserve land by Metro shall be the first priority land to be included in the Metro Urban Growth Boundary (UGB); and

WHEREAS, the Metro Council initiated a series of legislative amendments to the Urban Growth Boundary in 1998 which included Urban Reserve Area 65 which was the subject of a Metro Council resolution of intent pursuant Metro Code 3.01.015(h)(5) for lands outside the Metro jurisdictional boundary; and

WHEREAS, a series of hearings was held before the Council Growth Management Committee on October 6, 13, 20 and 27, and before the full Metro Council on November 10, 12, 16, 17, 19 and December 3, 1998; and

WHEREAS, notice of Proposed Amendment for Urban Reserve Area 65, consistent with Metro Code and ORS 197.610(1), was received by the Oregon Department of Land Conservation and Development at least 45 days prior to the December 3, 1998 hearing; and

WHEREAS, on December 17, 1998 the Metro Council adopted Resolution No. 98-2726B expressing Council intent to amend the urban growth boundary to add land in Urban Reserve Area 65 to the urban growth boundary within 30 calendar days of receiving notification that the property outside the jurisdictional boundary had been annexed to Metro, provided such notification was received within six (6) months of the date on which the resolution was adopted; and

WHEREAS, on May 13, 1999, in Order 99-82, the Multnomah Board of County Commissioners approved annexation of approximately __ acres in Urban Reserve 65 as shown on the map in Exhibit B to the Metro jurisdictional boundary; and

WHEREAS, the Metro Council received notice of the annexation on June 15, 1999 within six months of adoption of Resolution 98-2726B; and

WHEREAS, after the first reading of this ordinance, the Metro Council scheduled hearings before _____ in July, 1999; and

WHEREAS, notice of hearings was published and mailed in compliance with Metro Code 3.01.050(b), (c) and (d); and

WHEREAS, the staff report for these areas was available at least seven days prior to the final hearing on adoption of Resolution 98-2726B and the Metro Council's final hearing and final adoption of this ordinance on ____, 1999; and

WHEREAS, Metro Code 3.01.012(c)(3) requires designation of regional design types consistent with the 2040 Growth Concept for the land added to the UGB; and

WHEREAS, the Metro Council considered all the evidence in the record, including public testimony in October, November, December, 1998 and July, 1999 to decide proposed amendments to the Urban Growth Boundary; and

WHEREAS, conditions of approval are necessary to assure that the lands in Urban Reserve Area 65 added to the Urban Growth Boundary are used to meet the need for housing consistent with the acknowledged 2040 Growth Concept; now therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. Regional design types consistent with the Metro 2040 Growth Concept for the land added to the Metro Urban Growth Boundary by this ordinance as shown on attached Exhibit A are hereby adopted.
2. The Metro Urban Growth Boundary is hereby amended to include land in Urban Reserve Area 65 as shown on the map in Exhibit B, attached, and incorporated by reference herein.
3. The 2040 Growth Concept map adopted as part of Ordinance No. 95-625A is hereby amended to show the Metro Urban Growth Boundary amendment in Exhibit B as within the UGB, instead of urban reserves.
4. This amendment of the Metro Urban Growth Boundary is based on Findings of Fact and Conclusions in Exhibit C, attached hereto and incorporated by reference herein.
5. In support of Findings and Conclusions adopted in Exhibit C of this Ordinance, the Council hereby designates as the record herein those documents submitted and before the Council for consideration on these lands during the period between the October 6, 1998 Growth Management hearing, the December 3, 1998 Metro Council hearing on Resolution 98-2726B and the ____, 1999 final hearing and final adoption of this ordinance.
7. The following conditions of approval are needed to assure compliance of the developed use with statewide planning goals and Metro's acknowledged regional goals and objectives:

A. The land added to the Urban Growth Boundary by this ordinance shall be planned and zoned for housing uses to the extent and in a manner consistent with the acknowledged 2040 Growth Concept text and the regional design types shown on Exhibit A.

B. Prior to conversion of the new urbanizable land in this ordinance to urban land available for development, an urban reserve plan shall be completed for the lands added to the Urban Growth Boundary by this ordinance consistent with Metro Code 3.01.012, as amended by Ordinance No. 98-772B, including Title 11 of the Urban Growth Management Functional Plan.

C. Urban development consistent with Goal 14, Factor 3 on orderly provision of stormwater urban service is feasible with the condition that the urban reserve plan shall require that a stormwater management plan be adopted for this area to assure that the velocity, temperature, sedimentation and chemical composition of stormwater runoff from the form of approved development meets state and federal water quality standards.

D. Urban development consistent with Title 3 of the Urban Growth Management Functional Plan on Flooding is feasible with the condition that the urban reserve plan and subsequent urban zoning provide for stormwater management to assure that the quantity of stormwater runoff leaving each site after urban development is no greater than before urban development.

E. Urban development consistent with Title 3 on Water Quality is feasible with the condition that Title 3 water quality setbacks and revegetation requirements shall be adopted prior to adoption of urban comprehensive plan and zoning designations for this area.

8. Consistent with ORS 268.390(3) and ORS 195.025(1), Washington County and the City of Beaverton shall include the area added to the Urban Growth Boundary by this

Ordinance as shown on the map in Exhibit B in applicable text and map provisions of their comprehensive plans.

ADOPTED by the Metro Council this _____ day of _____ 1999.

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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(6/25/99)



Exhibit A
Ordinance 998
812

ORDINANCE NO. 99-812 EXHIBIT C

**FINDINGS AND CONCLUSIONS WILL BE AVAILABLE PRIOR TO
THE FINAL DECISION**

Agenda Item Number 10.1

Resolution No. 99-2836, For the Purpose of Approving a Memorandum of Understanding regarding the Expansion of the Oregon Convention Center.

**Metro Council Meeting
Thursday, September 9, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A) RESOLUTION NO. 99-2836
MEMORANDUM OF UNDERSTANDING)
REGARDING EXPANSION OF THE) Introduced by Presiding Officer Rod Monroe
OREGON CONVENTION CENTER) and Executive Officer Mike Burton

WHEREAS, Metro, the City of Portland, and the Multnomah County, through the offices of the Metro Executive Officer, the Metro Presiding Officer, the Mayor of the City of Portland, and the Multnomah County Chair, have conducted extensive discussions among the three governmental entities, as well as with representatives of the Portland Oregon Visitors Association, the Tri-County Lodging Association in Multnomah County, the National Car Rental Companies, the Car and Truck Rental Leasing Association, the Portland Development Commission, and Tri-Met; and

WHEREAS, the purpose of these discussions has been to find common ground on a process by which Multnomah County may increase the rate of tax imposed on the hotel and motel industry and the motor vehicle rental industry and provide the funds raised through these tax increases in order to finance the construction of the improvements to the Oregon Convention Center, the Portland Civic Stadium, and the Portland Center for Performing Arts, as well as to provide additional operating support for the Portland Center for Performing Arts, to provide funds for the expansion of fareless square to the Lloyd Center Transit Station and to provide additional funds to be utilized for attracting visitors to the region; and

WHEREAS, the discussions have resulted in the completion of a Memorandum of Understanding (MOU) attached hereto as Exhibit A and incorporated herein, which outlines the major substantive agreement among the parties to the discussion regarding these matters; and

BE IT RESOLVED:

- ADOPTED by the Metro Council this _____ day of _____ 1999.

APPROVED AS TO FORM:

DBC/sm 8/27/1999
I:\R-O\R 99- OCC.MOU Hotel.Motel Tax.doc

Exhibit A

**PROPOSED
MEMORANDUM OF UNDERSTANDING**

DATED: August 17, 1999

BETWEEN: City of Portland,
A municipal corporation
("the City")

Multnomah County, Oregon
A municipal corporation
("the County")

Metro
A Metropolitan Service District
("Metro")

Tri-County Lodging Association,
An Oregon non-profit corporation

National Rental Car Companies Represented by
Gardner & Gardner,
(Avis, Hertz, Enterprise, Budget and AutoNation)

Car and Truck Rental and Leasing Association,
An Oregon non-profit corporation
("CATRALA")

Portland Oregon Visitors Association,
An Oregon non-profit corporation
("POVA")

Portland Development Commission
("PDC")

Tri-County Metropolitan Transportation District
("Tri-Met")

RECITALS

A. The Oregon Convention Center, since opening in 1990, has proven to be a key public facility serving the region's visitor industry. However, as other areas have expanded their convention and meeting facilities the competitiveness of the Oregon Convention Center has declined. To return to a competitive level and continue to attract national conventions, the Oregon Convention Center needs to be expanded. The increased business will create a stronger local economy, ensuring continued and new employment in supporting visitor-related industries.

B. To improve the competitiveness of the Oregon Convention Center, a proposal to finance construction of a second phase of the facility that would result in its full build-out completion was developed, with funding to be supported largely from proceeds of voter-approved general obligation bonds. The bond measure was not approved by voters at the November 1998 general election.

C. Following the defeat of the bond measure, members of the lodging and visitor industry began work on a funding plan for the project that did not require raising property taxes. The plan looked at a range of options based on taxes and revenues generated largely from the regional visitor industry itself.

D. In early 1999, representatives of the visitor industry met with the City, the County, and Metro to review their plan and to explore ways to move forward with the project. Through this collaborative working relationship it was determined that the combination of industry support for raising taxes on transient lodging and vehicle rental activities within Multnomah County and the City's broad financing authority could not only achieve the goal of

funding the Convention Center Completion Project, but could also provide financial support for a number of other much needed projects that support the region's visitor industry.

E. The City, does not have authority under its Charter to increase its transient lodgings tax or to impose a vehicle rental tax. Multnomah County does have such authority.

F. The City, the County and Metro acknowledge the support of the lodging industry, which has facilitated the proposed tax increases that make possible the various projects named in this MOU.

G. This collaborative effort fulfills the need to modernize and stabilize the operations of public facilities that are critical to serving the region and vital to supporting the region's visitor industry. Included in these efforts are the expansion that nearly doubles the capacity of the Oregon Convention Center, the renovation of Civic Stadium, doubling the size of Fareless Square by extending it to the Lloyd Center Max station, stabilizing the funding and eliminating the capital liabilities of the performing arts center.

H. The City has entered into a Memorandum of Understandings and is currently in negotiations regarding the redevelopment of Civic Stadium with a private sector entity, who was chosen for further negotiations after an open and competitive request for proposals process.

I. The parties have negotiated over issues relating to the expansion of the Oregon Convention Center, improvements to the (PCPA) and the Civic Stadium, as well as other enhancements to the visitor industry in Portland and Multnomah County and have reached certain understandings. The purpose of this non-binding Memorandum of Understanding

("MOU") is to set forth those understandings, which will implemented through further agreements.

NOW, THEREFORE, the understandings of the parties are as follows:

1. DEFINITIONS

A. Bonds means, collectively, the Civic Stadium Bonds, the Convention Center Completion Bonds and the PCPA Bonds.

B. Civic Stadium Bonds means, the bonds issued by the City to fund the Civic Stadium improvements, to be owned by the City. The total amount of the Civic Stadium Bonds shall not exceed \$33,00,000.

C. Civic Stadium Revenues means the City revenues from the operation of Civic Stadium, as provided in section 2.B(4) below.

D. Convention Center Completion Bonds means the bonds issued by the City to fund the Convention Center Completion Project in an amount not to exceed \$100,000,000.

E. Convention Center Completion Project means the expansion of the Convention Center facilities owned by Metro to include approximately 115,000 square feet of exhibit space, a 35,000 square foot ballroom, 40 meeting rooms, 35,000 square feet of lobby space, a 1350 space parking garage and 10 loading docks. The anticipated budget for the expansion is \$106,000,000.

F. Extension of Fareless Square means the extension of free transit from downtown Portland to the Lloyd Center Max station.

G. National Rental Car Companies Represented by Gardner & Gardner means those car rental companies who are currently clients of Gardner & Gardner, Attorneys, P.C., i.e.,

AutoNation, Inc., Avis Rent a Car System, Inc., Budget Rent a Car Corporation, Enterprise Rent a Car and The Hertz Corporation.

H. PCPA Bonds means bonds issued by the City to fund capital improvements to the PCPA. PCPA is owned by the City and operated by Metro. The total amount of the PCPA Bonds shall not exceed \$2,100,000.

I. POVA means the Portland Oregon Visitors Association, or any successor entity with whom the City contracts pursuant to City Charter section 7-113 to expend the 1% of the City's transient lodgings tax dedicated to the promotion, solicitation, procurement and service of convention business and the visitor industry.

J. Project Revenues means the proceeds of the additional 2.5% Multnomah County transient lodging tax and the vehicle rental tax, along with interest earnings on accumulated unspent Project Revenues. Project Revenues shall be deposited in a trust account to be administered by the County.

K. Visitor Development Fund Board means a board established as provided in Section 4 below.

2. THE OBLIGATIONS OF THE PARTIES

A. Multnomah County will take appropriate steps to do the following:

(1) Enact an increase in its transient lodgings tax of 2.5%, including a sunset provision that terminates the increase upon the payoff of the Bonds, and collect and dedicate to Project Revenues the proceeds of the tax increase, less a 5% of proceeds handling charge retained by the operator to offset the cost of collection of the increased tax.

(2) Enact an increase in its vehicle rental tax of 2.5%, including a sunset provision that terminates the increase upon the payoff of the Bonds, and collect and dedicate to Project Revenues the proceeds of the tax increase.

(3) Enter into appropriate intergovernmental agreements to dedicate the proceeds of the tax increases described in 2A(1) and (2) above to Project Revenues and to carry out the understandings of this MOU.

(4) Make any changes in its Code or ordinances necessary to allow those funds to be deposited by Metro as Project Revenues and expended for debt service on the Convention Center Completion Bonds issued by the City as provided in this MOU.

(5) Continue its current support to the Regional Arts and Cultural Council, POVA and Portland Center for the Performing Arts (PCPA) and its dedication of a portion of its transient lodgings tax to the Oregon Convention Center under section 11.40 of the County Code.

(6) Participate by appointing two members and confirming three members to the Visitor Development Fund Board.

(7) Provide a Statement of Current Intent signed by the County Chair, in the form of the attached Exhibit A, incorporated herein by the this reference and made a part hereof.

B. City of Portland will take appropriate steps to do the following:

(1) Issue limited tax revenue bonds, secured by the City's full faith and credit and amortized over a period not to exceed 25 years:

(a) in an amount, not to exceed \$100,000,000 to fund the Convention Center Completion Project, including the costs of issuance (Convention Center Completion Bonds);

(b) in the amount not to exceed \$2.1 million to fund capital improvements to PCPA, including the costs of issuance (PCPA Bonds); and

(c) in an amount not to exceed \$33 million to fund capital improvements to Civic Stadium, including the costs of issuance (Civic Stadium Bonds).

(2) Repay the Convention Center Completion Bonds and PCPA Bonds from Project Revenues.

(3) Repay the Civic Stadium Bonds first from Civic Stadium Revenues and then from Project Revenues, as needed.

(4) So long as Civic Stadium Bonds are outstanding:

(a) Dedicate to Civic Stadium Revenues the amounts actually received as the guaranteed annual payment from the Civic Stadium, in the amount now anticipated to be \$908,000 per year beginning in 2001, increased by 4% per annum, or alternative revenues from Civic Stadium, which in no event shall be less than zero;

(b) If the arrangements for the operation of Civic Stadium do not provide the guaranteed annual payment anticipated in subsection (a) of this subsection, the City will dedicate to Civic Stadium Revenues the revenues it receives from the operation of Civic Stadium, net of reasonable operation, maintenance and reserve costs, up to the amount of that anticipated guaranteed annual payment.

(c) Dedicate any additional net revenues from the Civic Stadium, after payment of reasonable operating costs and establishment of appropriate reserves, to redeem the Civic Stadium Bonds prior to their maturity.

(d) Exercise due diligence to maximize revenues received from Civic Stadium operations.

(e) Use any proceeds from the sale or partial sale of Civic Stadium to repay Civic Stadium Bonds.

(5) Provide to Metro on behalf of the operator of the PCPA \$600,000 per year, adjusted annually based on the rate of inflation in Portland, to be used one half for PCPA operations support and one half for PCPA capital support.

(6) Continue its current dedication of a 1% transient lodgings tax as provided in Section 7-113.2 of the City Charter.

(7) Enter into appropriate intergovernmental agreements to dedicate Civic Stadium Revenues as provided herein and to carry out the understandings of this MOU.

(8) Support the extension of Fareless Square to the Lloyd Center Max station and provide \$300,000 per year, adjusted annually based on the rate of inflation in Portland, to support the cost of the Extension of Fareless Square to the Lloyd Center Max station.

(9) When funds are made available to it by the VDF Board, conduct a study of the feasibility of extending Fareless Square to the central eastside and the Civic Stadium Max station.

(10) Participate by appointing two members and confirming three members to the Visitor Development Fund Board.

(11) Provide a Statement of Current Intent signed by the Mayor in the form of the attached Exhibit A, incorporated herein by the this reference and made a part hereof.

C. Tri-County Lodging Association will take appropriate steps to do the following:

- (1) support the Multnomah County tax increases provided in Section 1 above;
- (2) participate by nominating five members to the Visitor Development Fund

Board; and

(3) Provide a Statement of Current Intent, signed by the President of the Tri-County Lodging Association in the form of the attached Exhibit B, incorporated herein by the this reference and made a part hereof.

D. National Rental Car Companies Represented by Gardner & Gardner and CATRALA will take appropriate steps to do the following acknowledge the contents of this MOU and, presuming its enactment occurs, participate by nominating two members to the Visitor Development Fund Board to ensure that, to the fullest extent possible, rental car users benefit from the expenditures of the VDF.

E. Metro will take the appropriate steps to do the following:

(1) Be responsible for operating the Oregon Convention Center and budgeting and accounting for its activities.

(2) Manage the construction of the capital improvements made to the Oregon Convention Center and the PCPA facilities. Metro will enter into a negotiated guaranteed maximum price contract for the Convention Center Completion Project with a general contractor selected through a competitive process. Metro will not authorize expenditures for the project that exceed the capital budget provided in this MOU. This may mean that Metro will delete items from the project as currently planned.

(3) Develop annual budgets and financial plans showing the anticipated revenues and expenditures for capital improvements and operations of the Oregon Convention Center and PCPA. Revenues for PCPA shall include the support from the current Multnomah County transient lodgings tax (in the amount of approximately \$1,200,000), the City support of \$600,000 and the \$500,000 from Project Revenues.

(4) If Project Revenues are insufficient to pay debt service when due on the Convention Center Completion Bonds, make available funds sufficient to pay any shortfall in that debt service in an amount not to exceed the transient lodgings tax received by Metro from the County for operation of the Convention Center.

(5) Contribute from Convention Center reserves an amount not less than \$5,000,000 to the Convention Center Completion Project.

(6) Allocate the current transient lodgings tax collected by Multnomah County for the Convention Center as follows:

(a) With the intent of continuing a minimum of the current 1% level of support for marketing of the Oregon Convention Center and the Portland and Multnomah County area for the purpose of maximizing hotel occupancy and vehicle rentals;

(b) The remainder, after paying all reasonable operating, capital repair and maintenance costs of the Convention Center, to reserves for future operating and capital needs as provided in Multnomah County Code section 11.400.

(7) Use one half of the annual PCPA support received from the City for operations and one half for capital support.

(8) Enter into appropriate intergovernmental agreements to carry out the understandings of this MOU.

(9) Participate by appointing two members and confirming three members to the Visitor Development Fund Board.

(10) Provide a Statement of Current Intent signed by the Presiding Officer of the Council, in the form of the attached Exhibit A, incorporated herein by the this reference and made a part hereof.

F. POVA, or its successor as defined in section 1.H above, will take the appropriate steps to do the following:

(1) At the direction of the Visitor Development Fund Board, manage the Visitor Development Fund to be funded from Project Revenues; and

(2) Participate by nominating two members to the Visitor Development Board.

G. Tri-Met will take the appropriate steps to do the following:

(1) Allocate the sums provided in subsections (2) and (3) of this section and take the appropriate steps to accomplish the Extension of Fareless Square to the Lloyd Center Max station;

(2) As provided in this MOU, receive \$300,000 per year from Project Revenues and \$300,000 from the City, both amounts increased annually by the rate of inflation in Portland, and apply those annual contributions towards the cost of the Extension of Fareless Square to the Lloyd Center Max station;

(3) Contribute services in the amount of \$300,000 per year, increased by the rate of inflation in Portland, for the cost of the Extension of Fareless Square to the Lloyd Center Max station; and

(4) Enter into appropriate intergovernmental agreements to carry out the understandings of this MOU. It is anticipated that Tri-Met and the City will negotiate terms of an intergovernmental agreement to extend Fareless Square to the Lloyd Center Max station,

including a project schedule, the terms and conditions of the extension and the respective roles and responsibilities of Tri-Met and the City.

H. PDC shall either provide \$5,000,000 in tax increment funds toward the cost of the Convention Center Completion Project, or purchase land or construct other related facilities that will reduce the cost of the Convention Center Completion Project by at least \$5,000,000. The purchase of land or the construction of other related facilities shall be approved by Metro.

3. PROJECT REVENUES

A. Project Revenues shall be deposited in a trust account and administered by the County. The County shall be responsible for distributing and accounting for Project Revenues pursuant to the terms of this MOU as designated in the related intergovernmental agreements and any bond ordinances.

B. The City Auditor, the County Auditor and the Metro Auditor will review the County's annual accounting of Project Revenues and expenditures. The Auditors will report to the City, the County, Metro and the VDF Board regarding that accounting.

C. Project Revenues shall be expended as follows:

- (1) first, to the City the amount required to pay debt service on the Convention Center Bonds;
- (2) second, to the City the amount required to pay debt service on the PCPA Bonds;
- (3) third, to the City the amount required to pay any debt service on the Civic Stadium Bonds remaining after application of the Civic Stadium Revenues to pay debt service on the Civic Stadium Bonds;

(4) fourth, to Metro the amount, if any, required to pay reasonable operating, capital repair and maintenance costs of the Convention Center in excess of the revenues collected from the Oregon Convention Center and the transient lodgings tax received by Metro from the County for operation of the Convention Center. However, during years 1 through 6 of the agreement implementing this MOU the amount to be provided from Project Revenues to Metro under this subsection shall not exceed a total of \$8.84 million;

(5) fifth, to Tri-Met the amount of \$300,000 in the first year in which there are Project Revenues, increased each year by the rate of inflation in Portland, for contribution to the costs associated with the Extension of Fareless Square to the Lloyd Center Max station.

(6) sixth, to the Visitor Development Fund ("VDF"), the amount of \$250,000 in the first year that Project Revenues are available, the amount of \$500,000 in the second year, thereafter increased by the rate of inflation in Portland for each ensuing year;

(7) seventh, to Metro on behalf of the operator of the PCPA, \$500,000 annually, increased by the rate of inflation in Portland, to support the operations of the PCPA; and

(8) eighth, to Metro to fund Convention Center cumulative operating deficits in excess of \$8.84 million incurred during years 1 through 6.

(9) ninth, any Project Revenues remaining after the payments provided in subsections (1) through (8) above shall be the Ending Fund Balance. The Ending Fund Balance shall be retained in the Project Revenues trust account to be expended according to the budget proposed by the VDF Board and approved by the City, the County and Metro, as provided in section 4.G of this MOU.

4. VISITOR DEVELOPMENT FUND BOARD

A. The VDF Board will consist of 5 members who are representatives of the Tri-County Lodging Association from within Multnomah County, 2 members who are representatives of the National Car Rental Companies Represented by Gardner & Gardner or CATRALA from within Multnomah County, 2 members who are elected officials appointed by the City, 2 members who are elected officials appointed by the County, 2 members appointed by Metro, who shall be the Presiding Officer of the Council and the Metro Executive, and 2 members appointed by POVA from within Multnomah County.

B. The private members of the Board shall be nominated and confirmed as follows:

(1) The Tri-County Lodging Association

(a) The Tri-County Lodging Association shall nominate as its representatives its President, Vice-President, Secretary-Treasurer, and two at-large members. If the President, Vice-President or Secretary-Treasurer is not from within Multnomah County, the Tri-County Lodging Association shall nominate alternate members from within the County. One of the at large members shall be from an area of Multnomah County outside of the City of Portland.

(b) The County shall be responsible to confirm the nominations of the President, Vice-President and Secretary-Treasurer or alternate nominees.

(c) The City shall be responsible to confirm the nomination of one of the two at-large members.

(d) Metro shall be responsible to confirm the nomination of one of the two at-large members.

(2) The National Car Rental Companies Represented by Gardner & Gardner and CATRALA

(a) The National Car Rental Companies Represented by Gardner & Gardner and CATRALA shall nominate two members from within Multnomah County.

(b) Metro shall be responsible to confirm the nomination of these members.

(3) POVA

(a) POVA shall nominate as its representatives its President and Board Chair.

(b) The City shall be responsible to confirm the nominations of the POVA members.

(4) The public bodies may reject the nominations of the private members only for just cause, which shall be defined as part of the Board's rules, policies and procedures as provided in section 4.C of this MOU.

(5) The terms of the sitting private members of the VDF Board shall not expire until their replacements have been confirmed by the appropriate public body.

C. The VDF Board and VDF shall be created by an intergovernmental agreement of the City, the County and Metro, through the following process:

(1) The members of the VDF Board shall be appointed as provided in section 4.A by the public bodies and nominated and confirmed provided above initially as members of a temporary organizing committee.

(2) The temporary organizing committee shall propose the terms of an intergovernmental agreement by which the VDF Board will be created and the rules, policies and

procedures for the oversight of the VDF and Ending Fund Balance, according to the terms of this MOU.

(3) The proposed IGA and rules, policies and procedures shall be submitted to the City, the County and Metro for approval.

(4) Approval by the City, the County and Metro shall include the confirmation of the Tri-County Lodging Association, rental car industry and POVA nominations to the VDF Board.

D. The expenditures of the VDF and Ending Fund Balance shall be administered by POVA or its successor, within its available resources, under the direction of the VDF Board and pursuant to the budgets approved as provided in section 4.G below.

E. The VDF will be funded from Project Revenues as provided in Section 3C above.

F. The following shall be the amounts to be paid from Project Revenues into the VDF to the extent funds are available as provided in Section 3C above:

- (1) \$250,000 in the first year;
- (2) \$500,00 in the second year; and
- (3) \$500,000 increased by the rate of inflation in Portland in each subsequent year.

G. Each year the VDF Board shall submit for approval by the County, the City and Metro its proposed budget for the ensuing fiscal year. The proposed budget shall include the VDF and any anticipated Ending Fund Balance, including reserves. The budget shall be consistent with the format of the POVA budget submitted to and approved by the City. Approval of two of the public bodies shall constitute approval of the proposed budget. After the budget is

approved, the VDF Board shall be authorized to make expenditures consistent with the budget and shall not be required to obtain separate approval of each expenditure.

(1) The VDF shall be expended to attract visitors to Portland and Multnomah County that maximize, hotel occupancy, and vehicle rentals.

(2) The first use of Ending Fund Balance funds shall be to accomplish prudent fiscal planning and to establish appropriate reserves for the items to be funded with Project Revenues.

(3) In the first year that sufficient Ending Fund Balance funds are available, the VDF Board shall budget \$100,000 to fund a study of the feasibility of extending Fareless Square to the central eastside and the Civic Stadium Max station to be conducted jointly by the City and Tri-Met. When the \$100,000 is made available by the VDF Board, the City and Tri-Met will mutually agree upon the scope and methodology before undertaking the study. The VDF Board shall consider the recommendations resulting from that study.

H. In conjunction with submitting its proposed budget, the VDF Board shall provide to the County, the City and Metro a report showing the expenditures from the VDF and the Ending Fund Balance for that fiscal year. The City Auditor, the County Auditor and the Metro Auditor shall audit the records of the VDF Board and shall report the results of the audit to the City, the County, Metro and the VDF Board.

5. FURTHER AGREEMENTS

A. The parties recognize that a number of substantive agreements among the parties will be required to accomplish the understandings of this MOU. The parties will cooperate to develop those agreements in a timely manner.

B. The public parties shall establish a dispute resolution process to resolve disputes as to what constitute reasonable Convention Center operating, capital repair and maintenance costs under Section 3.C(4) and other disputes that may arise.

C. Capital improvement projects at the Convention Center, the Civic Stadium and PCPA shall be subject to prevailing wage requirements.

D. The County and the City agree to continue to coordinate their tax policies.

E. The parties acknowledge that this is not a legally binding agreement and that portions of the MOU will be encompassed in legal documents among the parties.

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IN WITNESS WHEREOF, the parties have executed and delivered this MOU to be effective on the date first set forth above.

MULT NOMAH COUNTY, OREGON

By: _____

THE CITY OF PORTLAND

By: _____

TRI-COUNTY LODGING ASSOCIATION

By: _____

NATIONAL RENTAL CAR COMPANIES
REPRESENTED BY GARDNER & GARDNER

By: _____

CAR AND TRUCK RENTAL AND LEASING
ASSOCIATION

By: _____

METRO

By: _____

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT

By: _____

PORTLAND DEVELOPMENT COMMISSION

By: _____

PORTLAND OREGON VISITORS
ASSOCIATION

By: _____

EXHIBIT A
STATEMENT OF CURRENT INTENT

Although government bodies may not contract away their taxing authority, the undersigned, on behalf of their respective government bodies, state that they do not now intend to increase or impose an additional transient lodgings tax or vehicle rental tax.

Vera Katz
Mayor

Beverly Stein
County Chair

Rod Monroe
Metro Presiding Officer

EXHIBIT B

STATEMENT OF CURRENT INTENT

The Tri-County Lodging Association does not now intend to seek or support a legislative requirement that the lodging industry be allowed to retain an administrative fee for collection of transient lodgings taxes in the City of Portland.

President, Tri-County Lodging Association

**STAFF REPORT
ON RESOLUTION NO. 99-2836**

**FOR THE PURPOSE OF APPROVING A MEMORANDUM OF UNDERSTANDING
REGARDING EXPANSION OF THE OREGON CONVENTION CENTER**

September 1, 1999

Prepared by: Jeff Stone

Background

A property tax based initiative failed with the voters to expand the Oregon Convention Center in November 1998. After reviewing the reasons for such a failure, the City of Portland, Metro and representatives from the Hotel/Motel and Car Rental Industries began examining a possibility of expanding the Oregon Convention Center without property taxes.

Over the past several months, representatives from the City of Portland, Multnomah County, Metro, Tri-Met, Portland Oregon Visitors Association (POVA), Portland Development Commission (PDC), Tri-County Lodging Association and the National Car Rental Car Companies negotiated a Memorandum of Understanding (MOU).

The City of Portland and Metro staff briefed the Metro Council and the Executive Officer during this process.

What this MOU does:

First of all, a MOU is a non-binding agreement. Enabling legislation will be forthcoming in the form of an IGA over the next few months.

This MOU affects Metro in the following way;

1. Provides a \$106 Million funding structure to fully build out the Oregon Convention Center.
2. Metro, through MERC, will contribute \$5 Million from Convention Center reserves.
3. Provides a funding structure to rebuild the Convention Center reserve fund.
4. Provides a funding structure to cover operating losses during construction phase of the project not to exceed \$8.84 Million.
5. The flow of funds protects the Oregon Convention Center from competing interests in this MOU.
6. Maintains the possibility to use reserves from current hotel/motel taxes as a pooled capital source for other Metro facilities.
7. Metro will appoint two members to the Visitor's Development Fund.
8. Metro will give up management responsibility to Civic Stadium.
9. PCPA will receive a capital infusion from project revenue to cover deferred maintenance.

Fiscal Impact:

Keep in mind that this MOU is non-binding. However, the document does call out that Metro will commit to:

- \$5 Million from the Oregon Convention Center reserves
- Provides intent to fund POVA at 1% (of the old hotel/motel tax level).

Other Key Components:

- \$2.1 Million would be dedicated to renovation and improvement at the PCPA
- \$33 Million would go toward renovation of Civic Stadium
- The City of Portland would provide \$600,000 subsidy to the PCPA
- Extension of fairless square to the Lloyd Center station through contributions from project revenue, the City of Portland and Tri-Met.
- The creation of a 15-member Visitor's Development Fund Board that will be used to promote tourism.

Agenda Item Number 11.1

Deliberation on Appeal by SSI Compaction System of Executive Officer's Rejection of Appeal of Award
of contract for compaction system.

Contract Review Board - Public Hearing and Council Action

Metro Council Meeting
Thursday, September 9, 1999
Council Chamber

SSI Shredding Systems, Inc.

9760 SW Freeman Drive
Wilsonville, OR 97070-9286 USA
(503) 682-3633 phone
(503) 682-1704 fax
<http://www.ssiworld.com>



August 27, 1999

The Honorable Mike Burton
Executive Officer
Metro
600 NE Grand Avenue
Portland, Oregon 97232

RE: Appeal by SSI Compaction systems of Contract Award
RFB No. 99B-15-REM

Dear Mr. Burton:

Your letter of July 29, 1999 rejecting SSI Compaction Systems' (SSI) appeal of the compaction system contract states that Harris Waste Management Group, Inc. (Harris) is registered with the Oregon Construction Contractors Board, but it failed to recognize that Harris was not a qualified bidder at the time of its bid

RFB No. 99B-15-REM states:

Prior to submitting a Bid, all bidders on public works/construction projects are required to be registered with the State of Oregon Construction Contractors Board, pursuant to ORS 701.035 (sic). (ORS 701.055 appears to be the correct citation.)

The deadline for submitting the bid for RFB No. 99B-15-REM was July 8, 1999 and the conditional award to Harris was July 9, 1999.

The Oregon Construction Contractors Board (OCCB) reports that Harris initially registered with the Board on July 12, 1999. The report from the OCCB is enclosed.

This does not meet the "ELIGIBILITY" requirement of RFB No. 99B-15-REM, which specifically requires being registered "Prior to submitting a Bid...." as required by OAS 137-030-0008:

Eligibility to Bid or Propose on Construction Contracts

An Entity shall not submit an Offer to do Work as a construction contractor as defined in ORS 701.005 (2) unless the Entity is registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board prior to submission of the Offer. The Agency shall deem an Offer received from an Entity that fails to comply with that requirement nonresponsive and shall reject the Offer, unless contrary to federal law.



In light of this additional information, which you did not have when you denied SSI's appeal on July 29, 1999, the award to an unqualified bidder, Harris, is contrary to law and must be rejected because it does not meet the requirements of RFB No. 99-15REM and OAS 137-030-0008.

Because SSI has appealed your decision to the Metro Council, I am also sending a copy of this letter to the Honorable Rod Monroe, Presiding Officer.

Sincerely,

A handwritten signature in dark ink, appearing to read 'T. Garnier', written over a horizontal line.

Thomas J. Garnier
President

Construction Contractors Board

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REGISTRATION NUMBER 0137540

NAME TYPE Corporation MANAGING INDIVIDUAL
NAME HARRIS WASTE MANAGEMENT GROUP INC,
ADDRESS 200 CLOVER RESCH DR
CITY PEACHTREE CITY GA 30289-1857 COUNTY
PREVIOUS REGIS 0000000 0000000 0000000 PHONE 779 831-7290

REG. TYPE Gen Contr/All STATUS Active
EDUCATION REQUIREMENT C MANAGING INDIVIDUAL

SIC CODES 3589 1798 0000 ENTITY Corporation EMPLOYER STATUS NON-EXEMPT

REGIS DATE 07/12/89 EXPIRATION DATE 07/12/01 REGIS PRINT DATE 07/18/89
BOND CANCL DATE

CLOSED CLAIMS (LAST 3 YEARS) 0 OPEN CLAIMS 0
PRINT REGISTRATION N PRINT ADDITIONAL REGISTRATION N

SSI Shredding Systems, Inc.

9760 SW Freeman Drive
Wilsonville, OR 97070-9286 USA
(503) 682-3633 phone
(503) 682-1704 fax
<http://www.ssiworld.com>

August 25, 1999



The Honorable Rod Monroe
Presiding Officer
Metro
600 NE Grand Avenue
Portland, Oregon 97232

Dear Mr. Monroe:

I am enclosing a copy of a letter to Executive Officer Mike Burton regarding the appeal by SSI Compaction Systems of the award of RFB No. 99B-15REM to Harris Waste Management Group, Inc. (Harris).

As you know we appealed to the Metro Council in a letter to you dated August 6, 1999, following Mr. Burton's rejection of the SSI appeal.

The letter to Mr. Burton contains information not available to him when the appeal was rejected on July 29, 1999. In light of this additional information, the award to an unqualified bidder, Harris, is contrary to law and must be rejected.

We submit this additional information to the Presiding Officer as part of our appeal to the Metro Council.

Sincerely,

A handwritten signature in black ink, appearing to read "Garnier", written over the word "Sincerely,".

Thomas Garnier
President

SSI Compaction Systems

A Division of SSI Shredding Systems, Inc.

9760 SW Freeman Drive
Wilsonville, OR 97070-9286 USA
(503) 682-3635 phone
(503) 682-1704 fax
<http://www.ssiworld.com>

METRO
R.E.M. DEPT.

99 AUG 10 AM 10:18

August 09, 1999
By Fax and Mail @ 797-1793



Mr. Rod Monroe
Presiding Officer
METRO Regional Environmental Mgmt
600 N.E. Grand Ave.
Portland, OR 97232-2736

Dear Mr. Monroe:

Our letter of August 6, 1999 stated that our prior letter was enclosed. In fact it was not, but it is already in your file. The letter should have merely stated that it was incorporated by reference. I trust you were not inconvenienced.

We feel very strongly that Metro's specifications were written with the anticipation of receiving the greater capabilities of SSI's product, and that at the very least Metro should rebid this piece of equipment in order to assure itself that it is getting what it needs. If we can provide any additional insight into the comparison of the operating efficiencies of the two pieces of equipment, please feel free to call upon me.

Sincerely,

SSI Shredding Systems, Inc.

A handwritten signature in black ink, appearing to read 'Carl N. Winans', written in a cursive style.

Carl N. Winans
Product Specialist

Enc.

cc: Mr. Marvin Fjordbeck (By fax & mail @ 797-1792)
Mr. Jeffrey Stone, Chief of Staff (By fax & mail @ 797-1792)
Mr. Charles Geyer, Project Manager (By fax & mail @ 797-1795)

SSI Compaction Systems

A Division of SSI Shredding Systems, Inc.

9760 SW Freeman Drive

Wilsonville, OR 97070-9286 USA

503) 682-3633 phone

503) 682-1704 fax

http://www.ssiworld.com

August 6, 1999

By Fax and Mail @ 797-1793



Mr. Rod Monroe
Presiding Officer
Metro
Regional Environmental Management
600 NE Grand Avenue
Portland, OR 97232

We appreciate your letter explaining your decision. This letter incorporates the points raised in our prior letter, a copy of which is included. This letter explains our concerns and objections from a different perspective, and otherwise attempts to convince Metro that its award does not provide it with what it has requested:

1. Metro has emphasized that the resulting bales are to maximize the loads that can be legally hauled. SSI Shredding Systems' equipment produces bales with constant density. You already have two such pieces of equipment in operation and have actual experience.

The equipment Harris manufactures has a three stage telescopic cylinder that cannot provide constant density, based on the simple laws of physics which are not disputable. The three stages of its telescopic cylinder produce 322 tons, 213.5 tons and 101.5 tons of pressure at the maximum operating pressure of 2,500 psi. Such different pressures has to produce nonuniform load densities. A test of the relative density and the impact on hauling costs is strongly urged.

Our estimations suggests that the density difference would cause a loss in hauling efficiency of about 1 ton per load, which amounts to a cost of trucking difference of about \$69,000 per year based on 230 additional loads required at \$300 per load. This loss of efficiency results from unbalanced and therefore lighter loads. An unbalanced load has to be shifted on the bed of the truck to maintain proper load distribution, which reduces the maximum payload of the bale being hauled.

2. The published specifications for the existing Harris equipment do not meet the bid specifications in various respects, which staff is already aware of. For instance, Harris states in its bid documents that with regard to its baling cycle as follows:

A7 BALING CYCLE
[to produce 32 ton bale -- A4]

15 MINUTES (4 CYCLES/HR)

Harris's ability to construct a bale in 15 minutes is conditioned on the following

Mr. Rod Monroe
August 6, 1999

-2-

performance:

Twelve (12) strokes Avg. solid waste loose density is 10 lbs/cu.ft.
Material can vary from 2 lbs. to 30 lbs/cu.ft. Material can vary from
2 lbs. to 30 lbs/cu.ft.

This explanation only provides for 48,600 lbs., or 24.3 tons. (15 cu. yds. material in chamber
x 12 strokes/bale x 270 lbs/cu.yd [10 lbs/cu ft.]

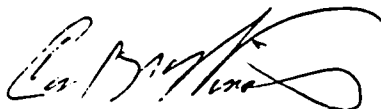
The specifications require a 32 ton bale and an average of 30 ton. Thus, Harris cannot meet
the bale density and the time requirement simultaneously. There are other discrepancies, such as
expressly failing to meet the spill containment specification.

It is submitted that when equipment is proposed to meet bid specifications, and its published
data are inadequate, the bid ought to be rejected on its face in the absence of extraordinary
circumstances that do not exist in this case.

It is contrary to common sense and the bidding process to accept a bid for equipment that has
never been manufactured as proposed and whose published specifications do not meet the bid
criteria. That the manufacturer makes an untested and unsubstantiable claim that its machine will
meet the Metro specification when its published data says to the contrary is not the type of
extraordinary circumstances that would permit the acceptance of a bid that is non-conforming on its
face, especially where the price differential of less than 7% is also less than the annual loss of
efficiency from the less qualified equipment.

We strongly urge you to consider this objection, and to investigate with your staff, based on
its actual experience with SSI's equipment and with Harris's equipment, the validity of the foregoing
comments. We believe that your staff cannot disagree with the engineering concerns expressed in
this letter.

Sincerely,
SSI Compaction Systems
A division of SSI Shredding Systems, Inc.

By 

cc: Mr. Marvin Fjordbeck (By Fax and Mail @ 797-1792)
Mr. Jeffrey Stone, Chief of Staff (By Fax and Mail @ 797-1792)
Mr. Charles Geyer, Project Manager (By Fax and Mail @ 797-1795)



METRO

July 29, 1999

Terri A. Ward
Director, Sales & Marketing
SSI Compaction Systems
9760 SW Freeman Drive
Wilsonville, OR 97070-9286

Re: Appeal by SSI Compaction Systems of Contract Award
RFB No. 99B-15-REM

Dear Ms. Ward:

On July 9, 1999, Metro conditionally awarded its contract for replacement of a compaction system at the Metro Central Transfer Station to Harris Waste Management Group, Inc. ("Harris"). By letter dated July 15, 1999, SSI Shredding Systems, Inc., dba SSI Compaction Systems ("SSI"), filed its appeal of the award of the compaction system contract. I have reviewed the SSI appeal and the information submitted attempting to support it. After review of the appeal and all pertinent related facts, the SSI appeal is rejected.

Metro Code Section 2.04.070(b)(1) states that appeals must be made in writing and "must describe the specific citation of law, rule, regulation or procedure upon which the appeal is based." SSI fails to cite any such specific basis for its appeal. Accordingly, for this reason alone, SSI's appeal could be rejected.

Instead of describing the specific law, rule, regulation or procedure upon which its appeal is based, SSI bases its appeal on two other factors: First, SSI contends that the compaction equipment of Harris, the successful bidder, does not meet the RFB criteria for designation as an "approved equal." Second, SSI claims that Metro did not conduct its equivalency evaluation with due diligence. Because both allegations are meritless and without support, SSI's appeal is rejected.

SSI first argues that the compaction equipment of the successful bidder is not the approved equal of types of machinery and equipment listed in the RFB specifications. In support of this contention SSI makes several technical and engineering arguments. However, none of these

support its contention that the Harris equipment does not meet the criteria contained in the Request for Bid for designation of an item as an "approved equal."

This failure is not surprising, because the RFB provides Metro with wide discretion in making its "approved equal" designation, so long as the procedures set forth in the RFB for making the determination are followed. Those procedures state that if a Bidder proposes to furnish an item, process or material which it claims to be of equal value to the one designated in the bid specifications, it shall submit a written statement in support of its contention. Thereafter, Metro may require additional data of the Bidder before making its determination on whether the proposed item is of equal value. If Metro determines that the item is equivalent, it must inform all potential bidders of the determination at least 72 hours before Bid opening, presumably so that they might adjust their bids if they choose to do so.

Here, it is uncontroverted that the RFB equivalency determination process was followed. Harris submitted its statement, which was timely evaluated. An appropriate Addendum was issued. SSI simply disagrees with Metro's conclusion. Because Metro and the Regional Environmental Management staff appear to have considered the technical and engineering points that SSI raises and have nevertheless determined that the Harris equipment specifications are an "approved equal," SSI's appeal of the "approved equal" designation is rejected.

SSI next contends that Metro performed the evaluation process for the "approved equal" designation without sufficient diligence. In support of this allegation, SSI claims that the extent of Metro's evaluation consisted only of the bidder's proposal for "approved equal" designation, the Addendum No. 1 to the RFB, dated July 2, 1999, and a Metro internal memorandum dated July 7, 1999. SSI further alleges that Metro failed to request additional information and concludes by asserting that a more extensive evaluation should have been conducted.

First, as a factual matter, SSI is mistaken concerning both the extent of the review of Harris' proposal for a designation of equivalency and the acquisition of additional information. Metro's review of the equivalency proposal involved consideration by a team consisting of Metro employees with more than ten years of experience in purchasing and dealing with compactors; a Metro mechanical engineer employed who possessed an intimate familiarity with the SSI design; Metro transfer station operations staff with more than ten years of experience at Metro's transfer stations; and a structural engineer employed by Metro with more than ten years of experience dealing with transfer station compactors. Others involved in determining equivalency included the head of operations and of maintenance for BFI, Metro's transfer station operator.

This equivalency evaluation team reviewed the proposal of Harris in meetings totaling more than six hours. The team requested and received extensive additional information supplied by the successful bidder. Some of the results of the review were memorialized in the staff memorandum dated July 7, to which SSI refers. In short, as a matter of fact, the diligence used in reviewing the equivalency proposal was sufficient.

Terri A. Ward
July 29, 1999
Page 3

Second, as was the case in making its determination of equivalency, Metro had wide discretion under the RFB in the process it employed to reach its conclusion. While no particular diligence process was required, as noted above, extensive review was actually performed. Accordingly, the allegation that the evaluation process for "approved equal" designation was performed with insufficient diligence is unmeritorious, is unsupported by the facts, and is therefore rejected.

Finally, SSI appeals for "further evaluation" of certain additional RFB requirements. As in its previous appeals, SSI cites no specific citation of law, rule, regulation or procedure upon which Metro might perform the requested "further evaluation." For that reason alone, each of the "further evaluation" grounds of appeal is rejected.

Moreover, these "further evaluation" appeals are unsupportable individually. SSI first requests Metro confirm that certain information concerning materials and equipment of Harris be considered. As the staff's July 7 memorandum makes clear, those matters were considered and resolved by additional information supplied by the successful bidder before Metro made its determination of equivalency.

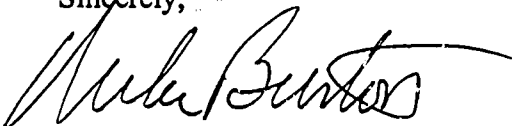
Additionally, SSI seeks further evaluation concerning both its product support and delivery schedule. However, requirements on both of these points were set forth in the Request for Bid and Work Specification. No further evaluation is needed. This ground of appeal is rejected.

SSI next asserts that Harris failed to meet the Request for Bid requirement of registration with the Oregon Construction Contractors' Board. However, the successful bidder is registered with the Oregon Construction Contractors' Board under License No. 137540. This ground of appeal is also rejected.

Finally, SSI implies that it is somehow a more deserving "resident bidder" under the contract than the successful bidder, while at the same time conceding that the successful bidder meets the "resident bidder" provisions. This allegation is meritless, and is rejected.

In summary, because the appeal of SSI is unsupported by law or by fact and is otherwise without merit, it is rejected. If SSI wishes to do so, it may appeal this decision in writing to the Metro Council within five working days from the postmarked date on this Notice of Rejection of Appeal.

Sincerely,



Mike Burton
Executive Officer

MALINOWSKI FARM

13450 NW SPRINGVILLE LN, PORTLAND, OR 97229

September 09, 1999

To the Metro Council on the proposed addition of EFU lands in area 65 to the UGB

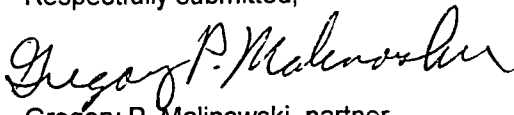
This to confirm that Malinowski Farms is opposed to the addition of the land North of Springville Rd to the Metro Boundary. We have several concerns.

- The entire proposed area is EFU resource lands, why put strictly resource lands into a boundary designed to manage Urban Growth?
- It has not been shown that the entire proposal is needed to provide services to the exception land in the area.
- There is non-resource land available in the area that could be added to Metro instead of the EFU.
- This land has been in the past, part of a Urban Reserve approved by Metro, but that was Appealed, Remanded back to Metro with a host of areas, and Metro has decided not to Appeal this area to another level. So Metro seems to be in agreement with LUBA that this area should not be a urban reserve.
- Metro's recent study has shown that there is no need for additional land in the Urban Growth Boundary. Perhaps this should be deferred until Metro finds a need for additional land in the Urban Growth Boundary.
- The city of Beaverton originally suggested that this land be planned at the 2040 Plan densities of 10 units per net acre to correct an implied jobs/housing imbalance in the area. Mayor Drake is now suggesting that since the area is at the edge of the UGB, perhaps it should be developed with upscale homes at much lower density than 2040 requires. Housing/jobs imbalance no longer seems to be the issue for Mayor Drake or this property.
- There still seems to be a question between Beaverton and Washington County as to who will guarantee and finance street, highway connections, collector and sidewalk improvements and when.
- There is a faultline running along Springville Road, and no one has addressed whether putting 700 new homes is a good idea. (See map included)

We continue to share the concern of the Farm Bureau and others that this is an unnecessary and inappropriate use of resource land striking at the spirit of the rules around UGB expansion. For this reason, we ask Metro Council to deny or defer the inclusion of this land at this time.

Malinowski Farm is a Certified Organic Farm which has been farming at this location for over 50 years. We protect the wetlands, wildlife, and resources, while producing Hay and Beef, and are home to a CSA which provides weekly fresh organic vegetables for 40+ families in the Metropolitan area.

Respectfully submitted,



Gregory P. Malinowski, partner
Malinowski Farm

MALINOWSKI FARM

13450 NW SPRINGVILLE LN, PORTLAND, OREGON, 97229

September 09, 1999

To: Metro Council

An Alternative Strategy for Urban Reserves

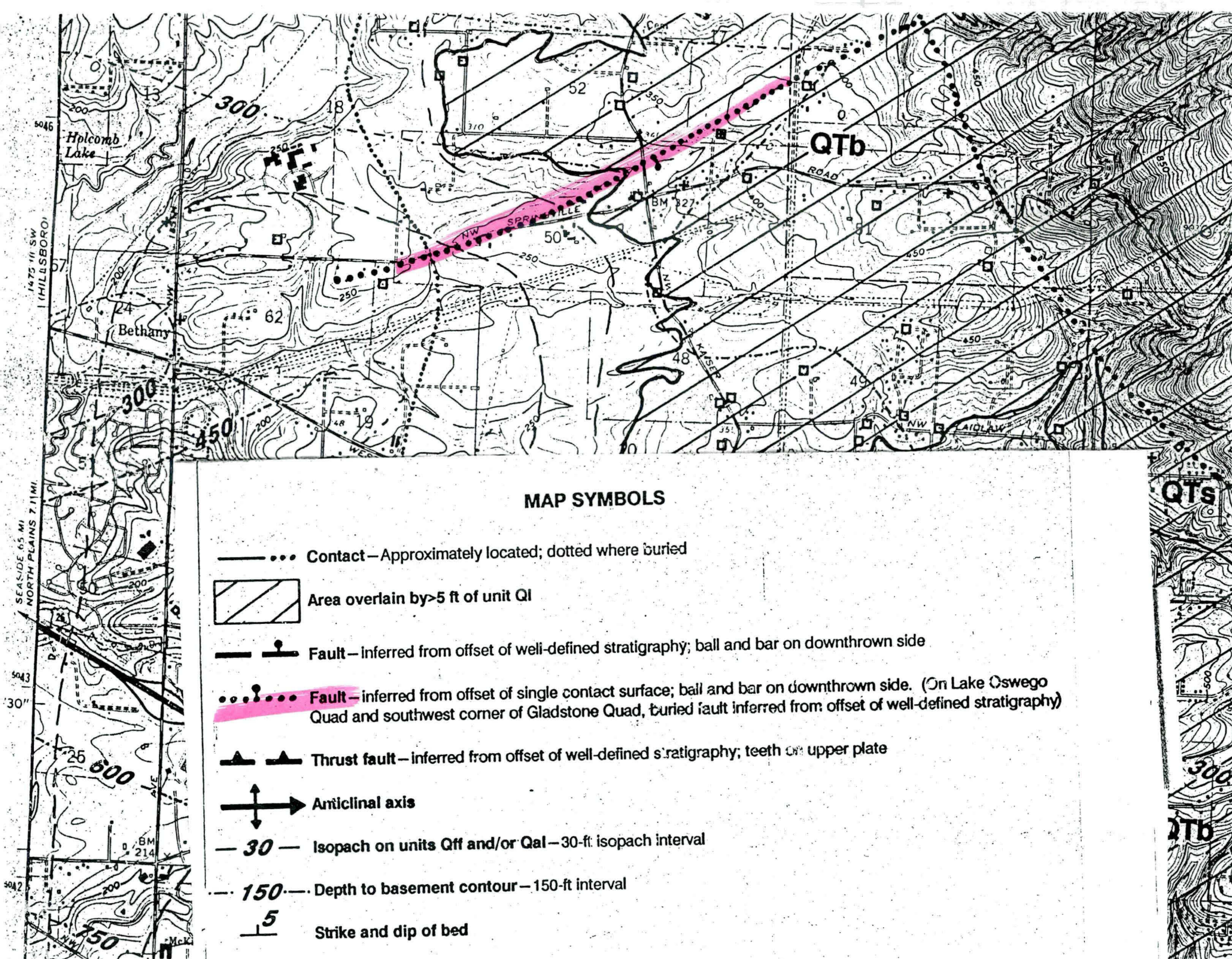
In the last two years, experience has shown the development community prefers the higher profits of developing resource lands in the Urban reserves over exception lands. Note - area 65 proposal contains no exception lands. Perhaps a way out would be to remove all resource lands from the Urban reserves. This would cause the development community to concentrate on urbanizing exception lands as the law intends. Resource lands could still be added as each proposal showed they were needed for logical and efficient provision of services. This would end our appeal of Metro's UGB expansion plans. I can not speak for other plaintiffs but I would guess the Farm Bureau, DLCD, Oregon Department of Agriculture and possibly even 1000 Friends of Oregon might drop their appeals.

It would be easier to justify the loss of a 40 acre farm to provide efficient services to 300 acres of exception land instead of the other way around as the area 65 proposal illustrates.

Thank you for your time.



Gregory P. Malinowski, Partner
Malinowski Farm



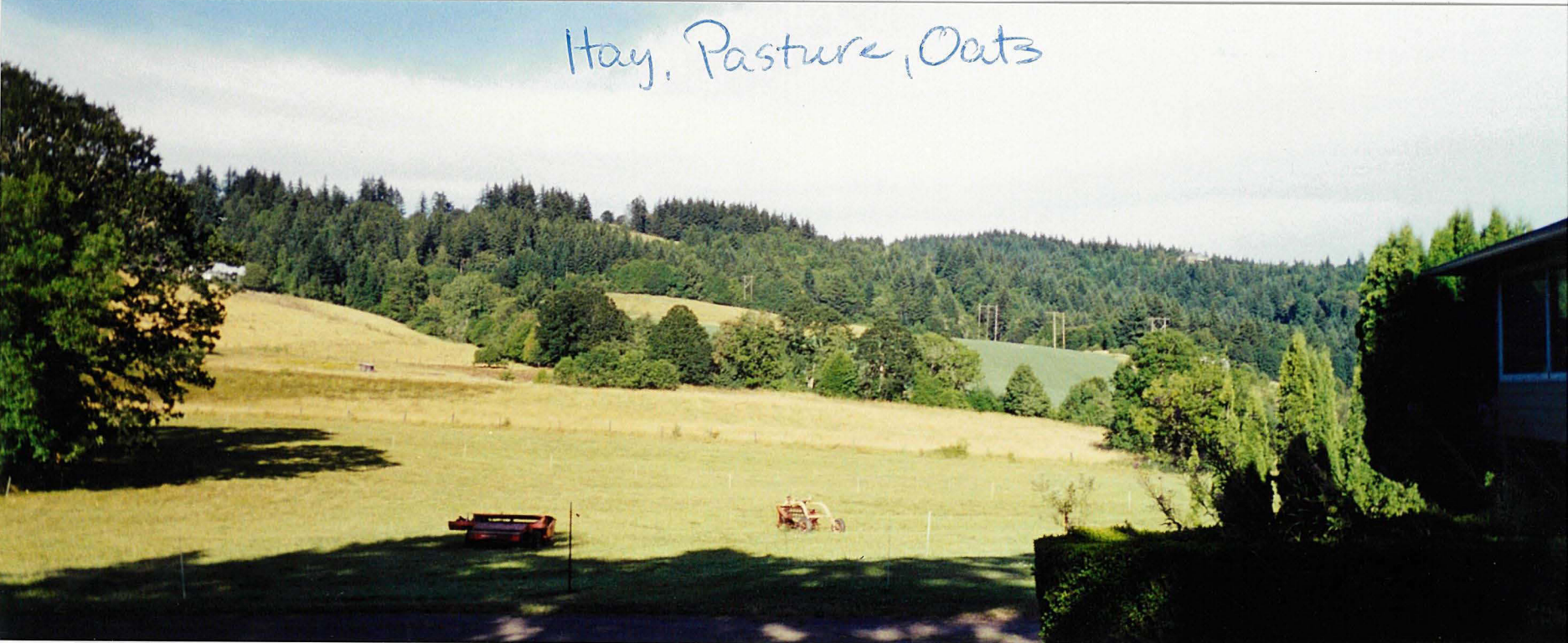
600 NORTHEAST GRAND AVENUE, PORTLAND, OREGON 97232 2736



METRO

F I R S T C L A S S M A I L

Hay, Pasture, Oats



Greg Malinowski 297-9398

Oats, Hay, Pasture



Greg Malinowski 297-9398

Nursery



Gregory P. Malinowski
Jonella K. Malinowski
13450 NW Springville Ln.
Portland, OR 97229

297-9398

Rye Grass Seed



Gregory P. Malinowski
Jonella K. Malinowski
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Portland, OR 97229

297-9398

Apples



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Hay



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Pumpkins



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Nursery Crop + Hay



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Oats



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Clover Seed



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Nursery



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297-9398

Nursery



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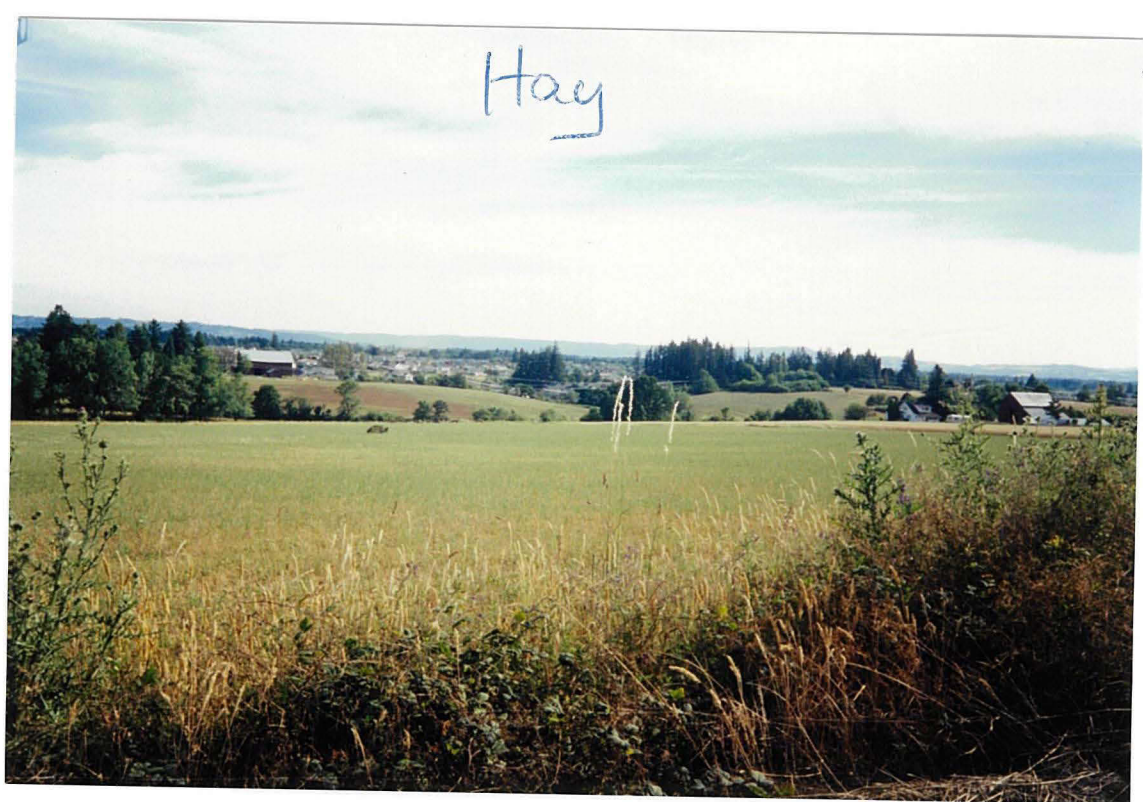
Oats



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Portland, OR 97229

297-9398

Hay



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Portland, OR 97229

297-9398

Crop Land



Gregory P. Malinowski
Jonella K. Malinowski
13450 NW Springville Ln.
Portland, OR 97229

2979398



090999c - CD

September 9, 1999

Metro Council
600 NE Grand Avenue
Portland OR 97232

Re: Proposed Ordinance No. 99-812; Urban Reserve Area 65

Dear Presiding Officer Monroe and Council Members:

Before you today is a proposal to expand the urban growth boundary (UGB) to add 109 acres of land designated as exclusive farm use (EFU). This land comprises only the EFU portion of former urban reserve study area (URSA) 65, located north of the Sunset Highway in the Springville Road area. We oppose bringing this land inside the UGB for the following reasons.

There is no Legal or Actual Need for Additional land in the UGB

Based on Metro's 1999 update of its 1997 Urban Growth Report, there is no need for additional land to be brought inside the UGB, beyond what the Council brought into the UGB by Ordinance last December. The most recent Urban Growth Report data shows a *surplus capacity for housing* of approximately 200 dwelling units.

Therefore, this proposed UGB expansion cannot be justified because it is not needed. The proponents may argue that this land is needed to meet an alleged jobs/housing imbalance in the Beaverton area. However, until Metro has completed its Goal 5/Endangered Species Act work, neither this Council nor the applicant can estimate what contribution the environmentally constrained lands may make to meeting any need for residential lands. Metro needs to complete its work on Goal 5 and the Endangered Species Act before considering any additional UGB expansions. This application is, at best, premature.

The Land is No Longer an Urban Reserve

Metro designated approximately 488 acres, known as URSA 65, as an urban reserve in March 1997. This area consists of both exception lands and land designated EFU. In December 1998, Metro passed a resolution of intent, Resolution No. 98-2726B,

to consider bringing the EFU portion of URSA 65 into the urban growth boundary, if the land is first brought into the Metro jurisdictional boundary. This Resolution was premised on the entire area being designated as an urban reserve.

This underlying premise is no longer valid. That is, as a practical matter, this land is no longer in an urban reserve. Metro's urban reserve decision was appealed to the Land Use Board of Appeals (LUBA) by 1000 Friends and many others. Among other things, we argued that the specific grounds on which Metro justified designating the EFU portion of URSA 65 - i.e., the land at issue in this expansion proposal - were invalid.

The Land Use Board of Appeals agreed with us. See, *D.S. Parklane v. Metro*, LUBA No. 40, slip op. at pp. 92-96, 102-04 (Feb. 29, 1999). Portions of the LUBA decision were appealed to the Court of Appeals, where a decision is now pending. However, *no party appealed LUBA's holding regarding the EFU land in URSA 65*. Although LUBA's opinion is now on appeal to the Court, *regardless* of how the Court decides that appeal, the outcome for this area will not change: when the decision returns to LUBA and ultimately to Metro, this area will not be an urban reserve.

State law, ORS 197.298, requires that when expanding an urban growth boundary, lands designated as urban reserves must be given first priority, and lands designated as resource land must be given last priority. In addition, Metro's Regional Framework Plan, Chapter 1, Policy 1.12, directs that UGB expansions "shall occur in urban reserves." This land is no longer in the urban reserves Metro has designated. Rather, it is in the last priority lands, resource lands.

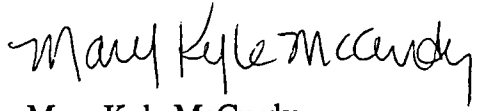
In fact, it is even in the lowest category among resource lands. According to information submitted by the Oregon Department of Agriculture during the urban reserve designation process, the EFU lands in this proposal are "composed predominantly of prime farmland and high-value farmland soil." These are the last category of lands within EFU that should be looked to for UGB expansions. We included in our testimony to the Growth Management Committee a copy of the letter submitted to Metro by the Department of Agriculture and other state agencies during the urban reserve process, describing the soil types in the EFU portion of URSA no. 65.

No justification or legal analysis has been adequately provided as to why this EFU land should be brought into the UGB at this time.

Finally, we believe that bringing in the EFU portion of a larger urban reserve, without the exception areas and without a full concept plan for the entire urban reserve, undermines the integrity of Metro's entire urban reserve process. To do so now, when the EFU portion is not even within an urban reserve, would, we believe, cause the public to question this process.

Thank you for consideration of our comments. We may submit further comments if others put additional information into the record.

Sincerely,

A handwritten signature in black ink that reads "Mary Kyle McCurdy". The signature is written in a cursive, flowing style.

Mary Kyle McCurdy
Staff Attorney
Urban Growth Management Program

DAVID P. MILLER
16415 NW Brugger Road
Portland, OR 97229
(503) 614-8384

September 9, 1999

HAND DELIVERED

Metropolitan Service District Council
600 NE Grand
Portland, OR 97214

Re: Proposed UGB Expansion At Bethany

Ladies and Gentlemen:

This letter summarizes my testimony about the proposed UGB expansion. I am a neighbor living outside the UGB, adjacent to the northerly boundary of the proposed expansion.

Metro will recall that the 117 acres of resource land in question were formerly included in Urban Reserve Study Area #65. When the urban reserve decision was appealed to LUBA, LUBA specifically held that Area 65 was improperly constituted because it included this resource land. Now that LUBA has ruled that these lands were inappropriate to include in an urban reserve, consistency would require that LUBA rule that a direct UGB expansion onto the same lands is also inappropriate. Thus, there is a great amount of wasted effort being expended on this proposal, which seems doomed to failure at the LUBA level, based upon LUBA's own earlier rulings. I do not understand why Metro is even considering this expansion given the earlier LUBA ruling directed at this exact parcel.

To bring this 117-acre parcel into the UGB without having it be part of an URSA is a piecemeal type of expansion which is not the way UGB issues are supposed to be addressed. The urban reserve concept allows for a master planning process of how expansion is to occur within a larger area. None of this has been done here. What we have is a proposed UGB expansion driven solely by a developer's proposal on a specific site, with no master planning of the surrounding area. This is not good planning.

Certain physical aspects of the site in question should be considered by Metro in making its decision. First, the site is regularly used by wildlife. Almost every summer evening I observe deer grazing on the property. The deer come from the woods immediately adjacent to the east of this parcel and graze on the meadow in this property. Elk also visit the

site. Enclosed is a ^{photo}copy of an elk herd on the site taken in March 1999. I continue to see elk tracks on the property in my walks around the neighborhood.

The property contains streams and wetlands. The thread of the stream is defined by the line of trees in the background of the elk photo, and I have enclosed another photo taken from NW Springville Road showing the stream just before it flows into a culvert under Springville Road. The stream is a tributary of Rock Creek which contains anadromous fish, including steelhead trout. I have checked the stream recently and it contains pools of water. The existence of the stream and the generally low and wet nature of the property along the stream would seem to require a review by the Corps of Engineers under Section 404 of the Clean Water Act and by the Oregon Department of Environmental Quality under Section 401 of the Clean Water Act. Additionally, the article in Wednesday's *Oregonian* said that the National Marine Fisheries Service may require 200 foot buffers along both sides of waterways inside the boundary. Four hundred feet of buffering along the stream that flows through the very heart of the 117 acres would dramatically reduce the amount of homes that could be placed upon this property.

In summary, it seems like a very poor decision on Metro's part to add a parcel which has already been the focus of a negative LUBA opinion, which will be added at a time when there is lack of clarity regarding the need for a UGB expansion, and when the physical characteristics of the site are such that much of it cannot be used because of the need to protect wildlife and streams.

Respectfully Submitted,



David P. Miller

DPM:d-p
Enclosures



Attachment to written testimony of David Miller

Sept 9, 1999 Ordinance 99-~~872~~ 812



attachments to written testimony of David
Miller Sept 9, 1999 - Ord 99-46812

QUALITY PARK
11117



090999c-04

From: regnier <regnier@pacifier.com>
To: MetCen.MRC-PO(billingtonc)
Date: Thu, Sep 9, 1999 2:27 PM
Subject: Metro - Urban Reserve Area #65 - Rock Creek

To: Metro Council Growth Management Committee
From: Jan Regnier, 16965 NW Bernietta Ct. Portland OR 97229
Date: September 9, 1999
Re: Urban Reserve Area #65 in Washington County

Before you make a final decision on this area I ask you to consider:

- The true need for more housing in this area * or is it the want of the developer.
- Springville Road is a natural boundary. Look at a large map of the area and see that the land being discussed is a pocket by itself. Also, it's land being farmed!
- Do we really need more high density housing? In a few years will people be tired and angry living so close together?
- What we could use in the area is a community park (there are plenty of powerline open areas and wetlands). It seems as if the developers in the Bethany area are cramming as many houses in as they can without a vision or commitment to quality of life.
- And of course the issue of already over crowded schools - elementary, middle and high school.

I have lived in this area for almost 20 years and seen a lot of changes, some good and some not so good. I understand change is part of life and it is my choice to live in the Rock Creek/Bethany area. "Metro - Creating liveable communities" is a great motto, please keep it in mind. Thank you

090999c-05

STEVEN M. CLAUSSEN*
JOHN DUDREY
BRAD LITTLEFIELD
MICHAEL D. WILLIAMS

WILLIAMS, FREDRICKSON & LITTLEFIELD, P.C.

ATTORNEYS AND COUNSELORS AT LAW
1515 SOUTHWEST FIFTH AVENUE, SUITE 844
PORTLAND, OREGON 97201-5447

TELEPHONE (503) 222-9966

FAX (503) 796-1009

TELEX 4742099

ANS. BACK: MEXPTO

September 9, 1999

FLOYD A. FREDRICKSON
DAVID R. WILLIAMS
RETIRED

*ALSO ADMITTED IN WASHINGTON

Metro Council
600 N.E. Grand Avenue
Portland, OR 97232-2736

Re: Ordinance No. 99-812

Dear Metro Council:

I am writing on behalf of Washington County Farm Bureau regarding the application currently being considered by Metro to bring a portion of Urban Reserve Study Area 65 into the Urban Growth Boundary. This application is particularly disconcerting because it would bring only the farm land portion of Area 65 into the Urban Growth Boundary. If Metro approves the application, it would be inconsistent with Metro's prior representations that it would bring farmland within urban reserve areas into the Urban Growth Boundary only as a last resort.

The Washington County Farm Bureau also objects to bringing this land into the Urban Growth Boundary because it is inconsistent with LUBA's decision regarding Metro's process for designating urban reserves. Metro included the farmland in Area 65 in the urban reserve because, according to Metro's findings, it was necessary to bring urban services across the farmland in order to serve other areas of the URSA. LUBA specifically held that this finding was an insufficient basis for including the entire farmland area in the URSA. To now allow that same farmland to come within the Urban Growth Boundary would be in direct conflict with LUBA's holding.

For the foregoing reasons, the Washington County Farm Bureau strongly urges Metro to deny any application to bring the farmland area within URSA 65 into the Urban Growth Boundary.

Sincerely,



Steven M. Claussen

SMC:ggt

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 99-812 TO AMEND THE URBAN
GROWTH BOUNDARY AND THE 2040 GROWTH CONCEPT MAP IN
ORDINANCE 95-625A URBAN RESERVE AREA 65 IN WASHINGTON
COUNTY

Date: July 20, 1999

Presented by: Lydia Neill

Proposed Action

Ordinance No. 99-812, if adopted by Metro Council would amend the urban growth boundary and approve the urban reserve plan for a portion of urban reserve area 65.

Factual Background and Analysis

On December 17, 1998, the Metro Council adopted Resolution 98-2726B for the purpose of expressing intent to amend the urban growth boundary to include a portion of area 65. The portion of urban reserve 65 represented in this ordinance includes approximately 109 acres of the 488 total acres. The Executive Officer does not recommend inclusion of this area because of the EFU designation.

The Multnomah Board of County Commissioners approved annexation to Metro's jurisdictional boundary on May 13, 1999 by Order No. 99-82 for the expressed purpose of expanding the urban growth boundary. Several changes to the original 116-acre area were a result of right of way adjustments and a request from a property owner to be excluded (Tax Lot 900) leaving an area of 109 acres.

Ryland Homes submitted a preliminary urban reserve plan for approximately 116 acres of urban reserve area 65 in the fall of 1998. The 116-acre reserve plan area is composed of Class 2, 3 and 4 soils. All of the acreage within this reserve area is designated EFU by Washington County. At this time, agriculture is the dominant land use activity in this area. The urban reserve plan included a variety of housing types and densities and a school site. The site is projected to provide 704 dwelling units and 180 jobs. Metro staff reviewed this urban reserve plan and stated in a staff report issued on November 24, 1998 that all urban reserve plan requirements have been met.

The City of Beaverton and Washington County have signed a Memorandum of Understanding (MOU) dated October 28, 1998 to provide governance and planning for urban reserve 65. An Addendum to the MOU signed on November 11, 1998 provided for zoning and the orderly provision of urban services to this reserve area.

An Urban Services Intergovernmental Agreement (IA) signed on February 22, 1999 between the City of Beaverton and Washington County includes the area within urban

reserve 65. The IA formalizes the preliminary understanding outlined in the MOU dated November 11, 1998 and provides greater detail on the roles the city and county will play in planning, implementing the 2040 Growth Concept and provision of urban services to this area.

Budget Analysis

There is no budget impact.

i:gm/long_range_planning/neill/URA's/ staffrep65

JOSEPH O. HUSTAD
ROSE V. HUSTAD

JOSEPH O. HUSTAD, JR.
JOHN A HUSTAD

HUSTAD FUNERAL HOME
7232 North Richmond Avenue
Portland, Oregon 97203
286-9663

November 5, 1999

To: Mike Burton & Metro Council

Dear persons,

As a resident of Bethany Village in NW Portland, this letter draws concern of the possible re-zoning of land directly north of Bethany Village. This land is currently designated an agricultural zone, but developers would like the urban growth boundary extended in this section of land for housing construction. This land I am referring to is bordered by NW Springville Road to the south; NW Germantown Road to the north; NW 185th to the west and NW Kaiser Road to the east. The purpose of my letter is to convince Metro Council that it is important this land remain an agricultural zone for the benefit of wildlife and waterfowl that depend on the ecosystem around Abbey Creek which slowly flows through this section of land.

First, coming out of Forest Park, Abbey Creek flows down just below Germantown Road and then west to drain into Rock Creek which then drains into the Tualatin River. Abbey Creek flows very slowly through a wide gully before entering Rock Creek and every winter and spring Abbey Creek becomes a wetland area or better yet, a shallow swamp where many Canada geese spend the winter. If housing development takes place in this area, a drainage system would be necessary. The waterflow would then have no other place to go but into Rock Creek at a much higher volume and common sense tells me that Rock Creek would flood instead. Families that have owned land around Rock Creek for generations would be the victims of poor land management due to the change in water flow. If this ever becomes a reality, I can foresee many of the people around Rock Creek would be quite angry to say the least.

Second, many deer and waterfowl depend on Abbey Creek for food, water and shelter. There are three distinct deer crossings directly south of Germantown Road along NW Kaiser Road. I have seen deer at all three crossings on numerous occasions and anyone with average eyesight can easily see that these deer crossings are well used by the many hooves which have created these trails. If you would like to see it for