

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1542 | FAX 503 797 1793



METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING - REVISED 9/15/99
DATE: September 16, 1999
DAY: Thursday
TIME: 2:00 PM
PLACE: Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

A. REM RECOGNITION Washington

2. CITIZEN COMMUNICATIONS

A. ECONORTHWEST PRESENTATION ON RESULTS OF ANALYSIS OF UNDERLYING ASSUMPTIONS OF THE 1999 VACANT LAND ESTIMATES. Pozdena

3. EXECUTIVE OFFICER COMMUNICATIONS

4. AUDITOR COMMUNICATIONS

5. MPAC COMMUNICATIONS

6. CONSENT AGENDA

6.1 Consideration of Minutes for the September 9, 1999 Metro Council Regular Meeting.

7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 99-817**, For the Purpose of Amending the Metro Code 2.09.060 and 2.09.100 increasing the Eligibility Requirements and Fees for the Metro Contractor's Business License Program.

8. ORDINANCES - SECOND 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 Hearings Officer's Report and Recommendations*) Epstein/
Valone

9. RESOLUTIONS

- 9.1 Resolution No. 99-2826, For the Purpose of Approving a Change of Composition and Revising the Bylaws for the Metro Policy Advisory Committee. Atherton
- 9.2 Resolution No. 99-2833, For the Purpose of Authorizing the Executive Office to Submit an Application to the State of Oregon Economic Development Department for Low Cost Financing for a Portion of the Reconstruction of Expo Center Hall D. Kvistad
- 9.3 Resolution No. 99-2837, For the Purpose of Adding a Representative of the St. John's Neighborhood Association to the Smith and Bybee Lakes Management Committee. Washington

10. CONTRACT REVIEW BOARD

- 10.1 Resolution No. 99-2832, For the Purpose of Approving a FY 99-00 Residential Waste Reduction Campaign Work Plan, Authorizing Release of a Request for Proposals, and Authorizing the Executive Officer to Enter into a Contract. McLain

- 11. PUBLIC HEARING CONCERNING ALLOCATION OF PROJECTED SAVINGS FROM METRO'S SOLID WASTE DISPOSAL SYSTEM. Washington

12. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for September 16, 1999 Metro Council Meeting

	Sunday (9/19)	Monday (9/20)	Tuesday (9/21)	Wednesday (9/22)	Thursday (9/16)	Friday (9/17)	Saturday (9/18)
CHANNEL 11 (Community Access Network) (most of Portland area)						2:00 P.M. *	
CHANNEL 21 (TVCA) (Washington Co., Lake Oswego, Wilsonville)	7:00 P.M. *	1:00 A.M. *		7:00 P.M. *			
CHANNEL 30 (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)	7:00 P.M. *			7:00 P.M.*			
CHANNEL 30 (CityNet 30) (most of Portland area)		POSSIBLE 2:00 P.M. (previous meeting)					
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	9:00 PM (previous meeting)	12:00 P.M. (previous meeting)		12:00 P.M. (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)

* These meetings may be preceded by a 30-minute public affairs program, *The Regional Report*, produced by Metro.

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).

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Agenda Item Number 6.1

Consideration of the September 9, 1999 Metro Council Meeting minutes.

Metro Council Meeting
Thursday, September 16, 1999
Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

September 9, 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 2:05 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATION

Councilor McLain said there were two major issues covered at the last MPAC meeting. First were the Metro Code changes concerning growth and processing the urban growth boundary amendments. Then there was an update of the 1997 growth report. Issues and items from that dealt with up-zoning and environmentally sensitive lands. She said there had been discussion whether or not MPAC wanted to take a position regarding acceptance of the growth report. That discussion would continue at the next MPAC meeting and at the extra Growth meeting on September 14.

Councilor Bragdon added that there was a good discussion on the industrial lands survey.

Councilor McLain said at least six councilors had been briefed on that report. She pointed out that the industrial land study done by the Port of Portland obtained similar results.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the August 12, 1999 Regular Council Meeting.

Motion: **Councilor McLain** moved to adopt the meeting minutes of August 12, 1999 Regular Council Meeting.

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

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

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.

Presiding Officer Monroe assigned Ordinance No. 99-814 to the Regional Environmental Management Committee.

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.

Presiding Officer Monroe assigned Ordinance No. 99-815 to the Regional Environmental Management Committee.

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.

Presiding Officer Monroe assigned Ordinance No. 99-818 to the Growth Management Committee.

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 Hearings Officer's Report Including Findings and Conclusions.

Dan Cooper, Legal Counsel, indicated that the Hearing's Officer had a conflict and was unable to attend the meeting today. Therefore, Mr. Cooper recommended a delay on this ordinance until Mr. Epstein was available.

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.

Councilor McLain explained that there had been a notice in the newspaper indicating there would be a public hearing on Washington County Urban Reserve Area 65 at this Council

meeting. She said it was not before Council for action today but they wanted to be sure citizens could testify on this matter if they had come to the meeting to do so.

Presiding Officer Monroe opened a public hearing on Ordinance No. 99-812.

David P. Miller, 16415 NW Brugger Rd, Portland, OR 97229 said he was a neighbor of this parcel. He said as a resident of the neighborhood, it did not appear to him there was a housing shortage. He noted that LUBA had ruled this expansion was improperly constituted because it included this parcel which was a large single ownership EFU parcel. He noted that decision was in the Court of Appeals at this time and had not been ruled on. He felt LUBA would rule the same way on a direct expansion onto the same EFU lands that it felt were sufficient to torpedo the Urban Reserve. He read his letter into the record, a copy of which may be found in the permanent record of this meeting. He circulated photographs of an elk herd on his property and concluded that there would be a lot of problems with this property because of the wildlife, watershed issues and general topography of the property.

Mary Kyle McCurdy, 1000 Friends of Oregon, 534 SW 3rd Suite 300, Portland OR 97204, briefly summarized her written testimony (a copy of which may be found in the permanent record of this meeting). Her agency did not believe the parcel was ready for approval at this time for at least two reasons: 1) there was no legal or actual need for the additional land to be brought in at this time, and 2) they did not believe the area could be justified as an urban reserve but only as a traditional urban growth boundary expansion.

Greg Malinowski, 13450 NW Springville Lane, Portland, OR 97229 represented Malinowski Farms. He said he had testified against adding the parcel before and would be brief. He read his testimony into the record, a copy of which may be found in the permanent record of this meeting. He also included maps and pictures of the site for the record.

Councilor Washington asked if the Malinowski Farm produced vegetables.

Mr. Malinowski said it was a subscription farm and 40+ families paid \$500 each to come out once a week for a bag of groceries.

Councilor Atherton asked where Mayor Drake suggested upscale housing and lower densities be located.

Mr. Malinowski said his information came from the Oregonian which quoted him as saying perhaps the property should not have to meet the 2040 plans after all.

Councilor Park said he recalled the conversation and the mayor had said he was also looking at possibilities of up-zoning within the current boundary to keep 2040 alive.

Mr. Malinowski said he was concerned with how the land was used.

Councilor Atherton asked Mr. Miller what was growing on a section in the northern portion of the site, approximately 100 acres.

Mr. Miller said it was predominantly oats.

Councilor Atherton said he asked because he wondered why it had not been included in the urban reserve area.

Mr. Miller's understanding was that there had been too much EFU land in the area so some of the EFU land on the northern edge was removed. That resulted in the "U" shape along the northern edge of the area. He said it had been done before he became involved in the process.

Presiding Officer Monroe closed the public hearing and announced that the record would remain open for this ordinance. He said the next opportunity to be heard on this issue would be September 23, 1999 in Hillsboro at the Council meeting at 5 PM. He noted the final vote was projected for October 7, 1999.

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.

Motion: **Councilor Kvistad** moved to adopt Resolution No. 99-2836.

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

Councilor Washington reviewed Resolution No. 99-2836. He said this was a result of the property tax initiative that failed last year and since then the City of Portland, Tri-Met, and Metro had tried to put together a funding package in Multnomah County to meet the needs of building the convention center. He noted that the MOU was a non-binding agreement and read and explained some of the key components of the MOU package. He asked Mr. Adams and Mr. Rust to comment.

Sam Adams, Chief of Staff, City of Portland, thanked the Council on behalf of the City and remarked it had been a very complex arrangement. He felt the hard work of all the partners was well worth it and would make for significant benefits for all the people of the region.

Ken Rust, Manager, City of Portland Financial Planning Bureau, remarked it was the beginning of an interesting and complicated project with lots of work to be done. He said they looked forward to working with Metro's financial and legal staff as well as staff from other governments involved to put the details together.

Councilor Park thanked the officials for coming before the Council. He noted an editorial he had seen in which Timothy Grewe, Director of the Office of Finance and Administration from the City of Portland, mentioned 25% of the profits from Portland Family Entertainment (PFE) would go to the public. He asked for a definition of "public".

Mr. Adams asked to comment on Councilor Park's comments RE: East County first. He was pleased that the Gresham Area Visitors Association (GAVA) had endorsed the MOU and POVA had pledged to work toward greater cooperation between GAVA and POVA.

Mr. Rust understood some of the confusion with the different sets of numbers. He explained that there were two different projects going on at the same time. One trying to negotiate agreement with a private operator for Civic Stadium and this one. The two came together in the form of the

MOU because the project revenues would be used to help support the Civic Stadium bonds that would be issued. He said a lot of details still needed to be negotiated with PFE. He felt the Grewe editorial was trying to characterize what the public might receive under the best case circumstances. He said the MOU pledged to contribute all of the Civic Stadium revenues earned to payment of debt service on bonds for as long as they remained outstanding. He said the revenues and profits from PFE would be shared over the life of the contract as they were earned.

Councilor Park asked for clarification as to whether any additional funding after the bonds were paid off would be available for the regional facilities for visitor development.

Mr. Rust said when that portion of the debt was paid off, the money stayed with the City. However, in the MOU was an assumption that they would be paying debt service from project revenues as well as about \$37 million from annual payments from the PFE contract. If the debt was paid off early, it would be available for other visitor related facilities and benefits.

Councilor Kvistad expressed his gratitude to Mayor Katz for her leadership on this project as well as Mr. Adams and his staff. He said it would have been very difficult to get through if they had not stepped up to the plate and worked with the Metro Council.

Mr. Adams thanked Councilor Kvistad and said it was a team effort between Metro's staff and the City.

Councilor Washington said this had been a very interesting process and acknowledged the hard work and integrity of the organizations involved, the City of Portland, Multnomah County, Metro, Tri-Met, POVA, the Portland Development Commission, Tri-County Lodging Association, the National Car Rental companies, and, of course, staff from all of these organizations. He said this was a critical first step and urged an aye vote.

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

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.

Marv Fjordbeck, Office of General Counsel, said this matter was a final appeal by SSI Compaction Systems on the award of a contract to Harris Waste Management Group for the provision of a compactor at the Metro Central Transfer Station. He provided a brief background of the matter.

Presiding Officer Monroe called Bob Pfeffer to the testimony table.

Bob Pfeffer, Harris Waste Management Group, 133 Diebert Rd. Longview, WA 98632 said Metro staff had issued a very intense and specific proposal which Harris Waste Management had met or exceeded. He said they had machines performing every day meeting the specified quotas. He said his company did not see the merit of the appeal for not being equal.

Tom Garnier, President of SSI Shredding and Compaction Systems, Wilsonville, OR, thanked the council for the opportunity to make this presentation. He said they had worked with Metro on

developing equipment that met their specifications for the proposed job. He said upon request to the Waste Management Group of how their machine met the specs, they were sent a published brochure with the specifications, but with no explanation. They finally received the explanation the day before the bid was due and they submitted their bid on the basis that every spec had to be met. When they were subsequently given a copy of the bid response, they discovered issues they felt made the bid not equal. He said if they had known beforehand, they would have offered a different machine which would have met the new specs displayed by the intent to award the contract to Harris Waste. He said Harris Waste was not licensed in the state of Oregon at the time of the bid. The RFB clearly stated you had to be, or using, a licensed contractor prior to submitting the bid.

John Verman, attorney representing SSI, added that prior to submitting a bid it was required under the RFB and Oregon Administrative Rules that all bidders already have contractors' license. He submitted a copy of the OAR backing that up. He said they had included a copy of the OAR to the Executive in their July 15, 1999 letter to him.

Presiding Officer Monroe asked Mr. Fjordbeck for a response.

Mr. Fjordbeck said the administrative rules Mr. Verman cited were not applicable to the regional government because they had their own contracting code. With regard to the provisions of eligibility, the language dealt with bidders on public works and construction projects who were required to be registered with the state of Oregon. He said this project was, in fact, neither of those so that language was not applicable to either bidder in this case. He said it turned out on closer review of the eligibility requirements that it was not required of either body.

Councilor Bragdon remarked that from SSI's letter of August 27th, the point may not be the OAR but the RFB issued by Metro which said prior to the bid the bidder would need to be registered.

Mr. Fjordbeck said the full language of the RFB said "prior to submitting a bid, all bidders on public works and construction projects are required to be registered with the State of Oregon." He said that information was explained to the bidders by staff before the bids were submitted.

Councilor Bragdon asked why language would appear requiring something that was not applicable.

Mr. Fjordbeck presumed staff included it because it was included in most RFBs whether or not they are public works contracts.

Councilor Kvistad asked why this was not a public works project. He asked if they were installing the equipment and what would be the line for a "public works project".

Mr. Fjordbeck said it was an equipment procurement.

Councilor Kvistad asked for more information on that point after the testimony was completed.

Mr. Garnier continued that when they reviewed the submittal, they found Harris Waste had taken an exception to the spill prevention and containment feature for both the HYDRAULIC POWER UNIT (HPU) and the compactor. He said this was a direct requirement of the RFB and

SSI took no exception. He said SSI could not understand why that very important environmental issue was not deemed as non-responsive. He added that the features behind the development of the SSI product was not just for today but for the future. He said their new model offered consistent density bales which allowed them to obtain higher weights. The Harris design offered a multi-staged cylinder that allowed various forces throughout the compaction process. He said he brought it up because if SSI was allowed to bid this spec they would have probably quoted a different machine and saved substantially more money.

Mr. Verman said the point that Mr. Garnier was making was that the RFB expressly required the "ability to automate bale building program with consistent density feature". He said that meant constant density and a uniform bale. He said Mr. Garnier was explaining that SSI created a machine with one cylinder to create uniform density with consistent pressure throughout, but Harris had a 3-stage pressure which resulted in non-consistent density and did not meet the specs.

Mr. Garnier acknowledged it was possible that the pressure could be lowered on the first stage of the bale to maintain consistent pressure over the first 2 stages, but that pressure would be below the required 260 tons of force.

Councilor Bragdon asked if SSI equipment was in use by any Metro facilities now. Mr. Garnier answered there was, and in response to a question from the Councilor about that previous RFB, Mr. Garnier deferred to one of SSI's engineers, David Miller.

David Miller responded that they were successful bidder at the Metro South Transfer Station for two compactors which ended up being the one proposed for this contract at Metro Central. The other two were installed about November 1998. In that RFB, they gave Metro an option. They bid the higher density machine as well as a lower density standard machine which is the one Tom mentioned earlier that could actually fulfill the requirements of the 30 ton bales, 4 loads per hour requirement but according to the RFB it specifically called out the tonnage capacity.

Councilor Bragdon repeated that he wanted to know if there was any difference in the RFB itself.

Mr. Miller answered that the RFB was similar to past ones.

Councilor Atherton asked if a contractors license was required to install the machine.

Mr. Fjordbeck was not aware of that requirement.

Councilor Atherton asked Mr. Garnier if it was required. Mr. Garnier responded that it was required of them at Metro South.

Councilor Atherton asked about the oil containment spec. He wanted to know if it was in the RFB.

Mr. Garnier said there was a direct request for spill containment.

Councilor Atherton asked if the Harris design allowed for spill containment.

Mr. Garnier said no, they took a written exception to it.

Councilor Kvistad asked legal counsel if Metro Council had legal obligations regarding this appeal, i.e. considering only certain appeal points, etc.

Mr. Fjordbeck answered that the Council was entitled, under Metro Code, to take into account any matter they deemed relevant.

Councilor Kvistad reiterated that their options were to reject the appeal, at which point the Harris company would move forward as the low bidder, accept the appeal and re-bid it, or other options.

Mr. Fjordbeck said the Council's option today was either to accept or reject the appeal.

Councilor Atherton asked if they had to adopt findings of fact.

Mr. Fjordbeck said that was not required.

Jim Watkins, REM Engineering and Analysis Manager, reported that Metro had been buying compactors from both companies for approximately 10 years. He felt Metro set the standard for the machines as the previous design was used as a reference for the next procurement. He said they had changed from Request for Proposals to Request for Bids because it was a more straightforward process. A team of engineers and operations people reviewed the bids. They had questions and asked Harris for changes, thus they felt they had an approved equal in their opinion.

Councilor Bragdon asked if a vendor should be registered with the State of Oregon Contracting Board.

Mr. Watkins thought whoever installed the compactor had to be registered, but not necessarily the prime contractor.

Councilor Washington said it seemed that the issue was the cost difference.

Mr. Fjordbeck did not think it was the cost difference. He felt the heart of the SSI appeal was the approved equal designation and the provisions contained in the RFB. He said the difficulty was that the owner of the equipment used as the technical benchmark in the RFB did not believe its competitor's equipment was equivalent.

Councilor Washington said this appeared to be a unique situation where Metro had used equipment from both companies with no difficulty. He asked if there had been complaints about either company.

Mr. Watkins answered that neither had performed perfectly and there had been problems, and even failures. He said it had been a learning process for both companies and they continued to improve their models.

Councilor Washington asked if there had been any earth shaking negative or positive experiences with either machine.

Mr. Watkins said the first SSI models were not as high a standard but they had since been repaired and modified.

Councilor Washington asked if that was the criteria for the failure of the bid.

Mr. Watkins said that was not the reason.

Councilor Washington asked if both machines were equal.

Mr. Watkins said yes, they were.

Councilor Washington said it was an issue of cost, as he had previously said. He asked for some clarification.

Mr. Fjordbeck said these items were not inconsistent. Staff was saying the two machines were equivalent. The appellant was saying the two machines were not equivalent. Presuming the staff point of view, it was a matter of cost. The appellant's view that the Harris machine did not reach the specifications in the RFB meant cost was not an issue.

Councilor McLain noted that the RFP process had different responsibilities and opportunities than the RFB process. She asked Mr. Watkins to explain how the 6 hours of team deliberation came to the conclusion of who was awarded the bid. She asked what there was about the chosen machine that fulfilled the bid criteria.

Mr. Watkins responded that staff had laid out the RFP specifications and compared them to the AMFAB compactor. He said when they had questions they contacted Harris, and in some cases asked for changes which Harris agreed to. He noted performance requirements and warranty issues. He said they compared the machines item by item per the specs.

Councilor Park asked about the spillage and oil containment specification that Harris took an exception to. He wondered how that requirement would be met by the Harris equipment.

Mr. Pfeffer said Harris met the provision on the HPU but took exception to the spill containment provision on the compactor body because they believed it was not a good environment to have hoses or electrical wires in a pool of oil. They felt walking in sludge 3-4" deep was a safety issue for the operators.

Councilor Park asked Mr. Watkins if the containment requirement was in the original RFB.

Mr. Watkins thought it was part of the document

Councilor Park asked about the consistency of bale issue that had been brought up previously. He understood the concern for properly loading the trucks and asked if it was a legitimate argument that the Harris machine would consistently and properly distribute the weight to get the maximum load per trip.

Mr. Watkins said the material being compacted was not consistent and it would be up to Harris to prove that.

Councilor Park said it had the same capability as the SSI machine to move up in capacity and was told it did have that potential.

Councilor Atherton asked Mr. Watkins when he reviewed the Harris design and asked for changes, what were the nature of those changes.

Mr. Watkins said they had asked for changes in the chamber construction, the platen adjustability, the platen support bearings and some additional concerns.

Councilor Atherton said but those weren't bid specification issues, the only bid specification issue would have been the containment. The other issues were design issues.

Mr. Watkins said he would considered those specification changes too, for example, increasing the thickness of the steel.

Councilor Atherton asked if it would have been clear in the bid specification that the increase thickness was necessary from the beginning?

Mr. Watkins said you could use different types of steel. They had asked for greater thickness for the Harris design, which was agreed to by Harris.

Councilor Atherton pointed out that the SSI design met that requirement without those kinds of changes.

Mr. Watkins said yes. The team of experts thought that, from a maintenance standpoint, there was a better way to do it and so they made those suggestions to Harris. Harris agreed to make the changes and the team was satisfied with those changes.

Councilor Atherton said that SSI machine also met those requirements without the special changes so the issue at hand was whether the bid required the full containment versus the limited containment that was recommended by Mr. Pfeffer.

Presiding Officer Monroe said this issue struck him as a very important point. He asked Mr. Watkins if, after the selection of Harris, had the team asked Harris to make modifications that would not have been necessary had the team selected SSI.

Mr. Watkins said the suggestions to Harris were made prior to selection of the bid.

Councilor Kvistad said about the process, could the council make an independent motion or did the council have to take action on the motion before the council.

Presiding Officer Monroe asked Mr. Fjordbeck to review the Council's options.

Mr. Fjordbeck said, first where the council was in this process was that they were hearing from staff and legal counsel, additionally from a third interested party representing the Harris Company. If those presentations were at end then the Presiding Officer's process was to allow the appellant the opportunity to sum up before the council began their deliberations. Currently there was no motion before the council. The Council was here to deliberate on the appeal, at that

point either a motion to accept or reject the appeal would be in order. That motion was probably not yet ripe because the staff responses may not yet be completed and the appellant had not yet had a chance to rebut.

Councilor Kvistad said he would like to reserve the right to make a motion.

Presiding Officer Monroe said he would call upon Councilor Kvistad first upon completion of questions from staff and the rebuttal or summation from SSI. Council would then have an opportunity for discussion and a motion.

Councilor Atherton said he wanted to follow up on another line of questioning that Councilor Park had brought forward, the issue of weight balance on the truck. He said the contention was that this weight should be evenly distributed throughout the trailer. He believed, when the question had been asked before, that Mr. Watkins response was that there were differences in garbage and you couldn't depend upon that kind of homogeneity. They were dealing with a shredder that created this homogenous mix of garbage. He asked Mr. Watkins, in his experience, did the bales have the same density throughout the finished product.

Mr. Watkins said it was not a shredder it was a compactor. It did not shred the garbage and blend it together. As the bale was being built, a good cat operator will gage the type of material they were putting in the bale. If it looked as if the bale was getting too heavy they might select some lighter garbage. They could mix it up. If there was light garbage it would be compacted more if you really heavy stuff, you didn't have to compact it as much as you were building the bale. So the compactor operator had to work at a good uniform 32 ton bale.

Councilor Atherton asked if it complicated the operation of the bales if they were uneven bales rather than even sized bales.

Mr. Watkins asked Councilor Atherton for clarification on his question.

Councilor Atherton clarified that if you were having to operate the cat and gage uneven bales, did it complicate the operation to try and spread out the density.

Mr. Watkins said the bale was built longitudinally not vertically.

Councilor Atherton referred to the drawings that SSI had provided showing the uneven bales versus an even bale. The uneven bale drawing depicted the Harris outcome.

Mr. Garnier said no, it was the force that was applied.

Councilor Atherton summarized that the end product was still an even bale.

Councilor Bragdon asked Mr. Watkins about cost. He understood that the appellant was saying that it was cost but it was really not cost because they were talking about like value for like things or unlike things. He thought Mr. Garnier would confirm this assessment. SSI's bid was about \$750,000 and the winning bid was \$720,000 but if the specifications were different SSI's bid might have been less.

Mr. Garnier said that was correct.

Councilor Bragdon asked Mr. Watkins if it was a reasonable magnitude, in his opinion, that the specifications would lead to that big of a difference of like machines.

Mr. Watkins said \$100,000 seemed high but they wanted the super compactor. That was what they believed they got from the Harris group also, not their lesser model.

Councilor Bragdon noted the winning bidder took an exception on the spillage question. It was not clear to him whether there was opportunity for the other vendors to take a similar exception. The winning bidder had taken an exception, he asked about how that exception was granted.

Mr. Watkins said that was correct, the exception was granted. In the team's judgment these compactors were similar and equal compactors even though not every bolt was exactly the same. There were differences in the design. They got the containment that they felt was necessary.

Councilor Bragdon summarized that the bid was award on July 8th and Harris got their CCB license on July 12th. He asked Mr. Pfeffer what prompted him to get the license?

Mr. Pfeffer said, in May when Metro staff sent out the preliminary bid specs for Harris and SSI to review and have comments before the formal bid was issued, SSI was the one that challenged whether or not a contractors license was necessary and staff's response was no it was not necessary. Harris was involved with many other products and they were doing some other potential products in Oregon. They had planned to obtain the license anyway. He was the one who got the contractors license. He had mailed it on July 7th but knew full well that it was not a requirement for the bid opening. He said the date they stamped it in was after the opening but not a requirement for the bid.

Councilor Park asked Mr. Watkins about one of the items that Councilor Bragdon had addressed. He indicated that Mr. Watkins had made requests of the Harris Company to make certain modification on their machine to improve it. Had he made similar requests of SSI in terms of improving it or the ability to increase its efficiency or decreasing the costs? Was there equal opportunity given for adjustments.

Mr. Watkins said not on this because they had just spent a long process on the SSI compactors that they had just purchased for Metro South. They spent extensive time with SSI going over their design, making recommendations, choosing different options. They were pretty well satisfied with the SSI machine at that point. This was a ten year process where they had been going back and forth between the two compactor manufacturers. Each time the REM department set a new standard for these compactors so the department was indicating to Harris that if they wished to be a player they needed to come up to the current standard.

Councilor Park said he was concerned with the fairness of the process. Typically when considering two like machines you didn't work to improve the machine after you accepted the bid.

Mr. Fjordbeck responded to Councilor Park's statement. First of all, he believed the agency had not had a lot of experience with the so called approved equal process. One of the reasons that there was the 72 hour period requirement in the bid was to allow other perspective bidders to go into the approved equal designation and to exam it. The process that occurred was not the staff

calling in Harris and asking them to change their compactor. Harris came forward with a proposal in which it claimed that the compactor was equivalent. At that point the staff sought out information about that proposal and then reached a conclusion on whether it was equivalent or not. That process was not codified anywhere. The staff approached this process by having an expert review. This review was not required. All the contract said was 'make the determination'. Once that determination was made, the other bidders had a copy of that determination and could factor it or not into their bid or seek information from the staff about that determination. This was the process that had been set forth, it was not the staff asking for the bid from Harris but rather the company coming forward, indicated that they thought the equipment was equivalent and staff then seeking additional information or other features to make that equivalent.

Councilor Park said his concern was what he had heard in prior testimony from staff which was that during the review process they requested certain modifications in terms of bearings and platens. The manufacturer agreed to make these modifications. So it was not the manufacturer coming forth with these ideas, it was the other way around.

Mr. Watkins responded that the department brought up concerns to the Harris. Then Harris responded back that they would make the changes in addressing the expert team's concerns.

Mr. Pfeffer said he was the key interface between Harris and the REM team. The Harris transpack (Harris compactor) that Metro currently had was ten years old. Staff and BFI's personnel had a list of questions about specific issues on Harris' current equipment. The Harris Company went through those questions and addressed the changes they had incorporated in their new equipment. They were not doing anything special for the Metro machine, other than the containment. All of the indications of the seal sizes, the bearing surfaces were incorporated in their standard product.

Mr. Watkins said Metro had some concerns with the Harris machine from the previous experience. When they asked Harris Company how those concerns were being addressed, this was how a lot of the changes came about. They had talked to their operations people and asked what was causing problems. The operations people indicated what was causing them problems because the department did not have complete specs from Harris.

Councilor Atherton asked, in the SSI design, would their hoses or any of their operating equipment be subjected to a corrosive environment because of the containment structure that SSI were providing.

Mr. Watkins said it was not an issue.

Mr. Garnier concurred.

Councilor Atherton clarified none of their hoses, any oil containing or transferring equipment would have been in that corrosive environment of spillage.

Mr. Garnier said the machine was installed at an incline and the fluids drain into a sump. There was containment and a sump. It wouldn't be like a swimming pool where it was constantly building up.

Councilor Atherton asked by providing the oil containment feature that in no way would compromise the operation of the equipment.

Mr. Garnier said that was correct.

Presiding Officer Monroe announced that SSI should complete their brief summation at this time and then there would be Council discussion.

Mr. Verman summarized what he had heard to try and synthesize it. Metro had been going through a process of getting ever better compactors. Metro had been working with SSI, a local company. Harris had a local office in Oregon but did not manufacture its equipment in Oregon. As a result Metro had raised the bar. Metro had not bought a Harris piece of equipment in several years. Metro now required that Harris meet this new bar which had been set forth in the specifications. Even though a company was designated as an equal it did not excuse them from the written specs. They must meet the specs and be of a similar quality in other areas to the SSI equipment. The leachate containment requirement involved collecting a leachate at the bottom at an incline and containing it rather than letting it spill on the concrete creating a slippery surface. He had not heard staff say that they had ever granted an exception to the company or that they had agreed with Harris. He heard that Harris had taken an exception, they offered their rationale for why they thought it was a bad idea but he had not heard staff agree or that there had been any change. He understood that the exception was made in the bid, not before the bid and Harris made no attempt to submit any changes with regard to the containment. This was a failure to meet the leachate containment requirement. When Metro developed the specs they thought this was important so why was it all of the sudden overlooked completely. The consistent density issue had to do not with the quality of the garbage but with the pressure of the cylinders. What Mr. Garnier was attempting to show with the diagram was when you were pushing on material to compact it, the force with which you push it determined how compact, dense it will become. One of the reasons that SSI's equipment was more expensive was that it had developed a way of providing consistent pressure with one cylinder which Mr. Garnier had indicated cost them approximately \$40,000 to \$50,000 more to make to create this constant pressure. Harris equipment had three cylinders with three different pressures, with smaller cylinders at the end. Harris information showed that the pressure in the third cylinder was 101 tons, the middle cylinder was 239 tons, and the last stage was 322 tons of pressure. When you have different pressures you would have different compaction. The requirement in the spec was a consistent 250 ton. This was why you had the consistent density requirement. Mr. Garnier had pointed out with regard to the information given to SSI, there was a flaw in the process. Metro determined the Harris compactor was equal but then only provided additional information 24 hours before to SSI.

Mr. Garnier said there was a lot of discussion about a 72 hour advance notice of the approval of the TP Super 500 being an approved equal. SSI asked for clarification on how it was approved equal and received the explanation 24 hour prior to bid opening. SSI did not have 72 hours to act upon it, only 24 hours. It was too close to bid time to have any discussion so they just submitted their bid and took no exceptions as was requested in the RFB. If someone was talking about giving a person opportunity to understand these exceptions, they were not given that opportunity. He had the letter in his hand, it was sent to SSI on July 7th with the points that Mr. Watkins made that Harris was willing to provide. It was SSI's understanding that Metro solicited these changes from Harris. SSI didn't have a problem with that, they simply wanted to know what Metro wanted. In other words, SSI was willing to rebid this process and give Metro what it

wanted but Metro needed to clearly tell SSI what it was they wanted. They thought what Metro wanted was the RFB as it was originally written. SSI didn't think that was what they were asking for by what SSI had received so far. SSI felt that they did not have clarification and they bid what was asked.

Carl Winans, owner of AMFAB Resources, which developed the process of compacting waste. He had the company for ten years then sold it to Harris Waste Management. He was involved in the design of the unit and knew both machines thoroughly. He sold a machine to Metro in 1989 and then subsequently they bought one from SSI in 1991. Both machines were high maintenance items throughout this period. When the time came for the RFP last year for the South Metro station, Harris declined to bid or even work with Metro on this bid. Mr. Winans and SSI worked very closely with Metro to design the unit Metro had at South Metro now. In this RFB Metro used his specs, his drawings and everything that they had developed for those machines. This was what they had put out for bid. Through this process of 'as equal' he believed that by Harris having the specs and all of the information out there in the public that SSI's confidential specifications were somewhat plagiarized. He thought the compactors, even with the changes, were still not equal because he did not believe Harris had actually built a machine with the changes that had been asked for in the bid. Harris built a machine similar to this a couple of years ago for New York. The machine had three catastrophic failures. He wasn't sure if Metro staff had examined this or not. One can't change the law of physics when it comes to telescopic cylinders, each stage had a lower force that it exerted on the bale. When you make an unequal bale, you don't get equal load distribution to the axles. To do this you might have to travel with less weight than what was required for the bid and that would cost Metro money over a period of time.

Presiding Officer Monroe thanked the participants and declared that it was time for Council deliberation.

Councilor Kvistad said having gone through this, there were two or three points that had created a question in his mind. He had concerns about the approved equal status, he was hearing comparable versus equivalent, similar versus equal. He did see where that meshed for him in terms of looking at a piece of equipment that Metro was purchasing. The actual contractor license was also of concern if it was in a different environment. He understood that the Council's options were; reject the appeal at which point Harris received the bid and Metro moved forward, move to accept the appeal at which point either it would be awarded by the Executive Officer or rebid by the Executive Officer, either way it would be returned to the Executive Officer for review.

Motion: **Councilor Kvistad** moved to accept the appeal and return this process to the Executive Officer.

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

Councilor McLain spoke against the motion. She explained that the first step in this appeal process for her was to go back and look at the rules and see if Metro had followed the rules in the Code. There were rules for contracts, bids and proposals. She had looked at the rules and the actual appeal and did not find the appeal to have merit. She found that there was fairness in the process looking at the review of Mr. Burton's letter explaining why he believed the process

should be held as being meritorious and having followed the basic Code. She would be supporting rejection of the appeal.

The second area had to do with changing from a proposal process to a bid process. There were many times when staff may be used to using old rules. There was a difference between a proposal and a bid process. She had looked very carefully at all of the letters, the Executive's responses to make sure that the Executive Officer had answered all of the very specific reasons that it was felt this appeal had merit. She believed that the Executive Officer had demonstrated, where following the bid process, the staff did the right thing and did follow the process that was set in front of the Council for the bid.

She thought the new terminology dealing with the 72 hour advanced notice when accepting an approved equal was a situation where there was probably more gray area in this appeal as well as in the response by the Executive. What was meant by approved equal, it didn't mean that the compactor that was held up as the one Metro had in place was the example, that this meant that they necessarily had an inside track. What the approved equal definition was was that it met the performance standards that we were going to have to use when we bought a piece of equipment. Metro got to choose. It was Metro's manager, Metro's transfer station and Metro's staff that would have to use that equipment, to management that equipment and to help with the maintenance of that equipment. Metro got to decide what that approved equal meant. She added that her husband did bids all of the time. As pointed out by the staff, approved equal didn't mean that the bolts were in the same place, approved equal meant that it was going to do the job that they had set out for the bid in the first place. Metro needed a new compactor.

She also pointed out that looking at the specific issues of rejection as far as the bale density, there were two ways of getting that density to a product of a bale, there was a one cylinder process and one that had a different configuration. It was Metro staff's responsibility to decide which of those cylinders was going to do the best job for the purpose that the compactor was being bought for at the transfer station. She could not find anything in the remarks or the review that demonstrated staff didn't make a good choice. On the issue of the oil containment, there was a response by both staff and the extra party that demonstrated that they choose not to have the same oil containment system that SSI had and gave an explanation of that choice. It was the purchaser's responsibility to decide if that fits the purpose of the machine and would actually take care of the job that the machine had to do. The staff indicated that they believed the exception that they asked for was O.K. because it was going to be able to still do the job and seemed to do the job as well if not better than the SSI system that was proposed. The bid indicated that Metro wanted to see how that system worked but did not indicate that Metro couldn't understand a change of design.

Finally, there was an issue of making sure there was state status for contractor. The legal staff indicated that as long as the subcontractor who would be installing the machine had that status it was legitimate to the Code. Again, there was nothing in this process that made her feel that either of the parties couldn't have gone out and gotten that particular status if they wanted to or that they could have questioned any more or in a different way the reason for the status being required, requested or a nice thing to have. She did not find anything there that would support accepting this appeal.

If Metro was going to be doing their business appropriate, like private business, they probably did not want to be dependent upon one vendor. Many business that she knew had a two vendor

policy. She thought the staff had done an excellent job with this bid process to point out that Metro was always looking for a better compactor, a better maintenance contract and was making sure that each party was out there bidding against each other and trying to be competitive towards each other. She did not expect them to believe that anyone else's design was better than their design. Up to this point she had to depend upon the staff who went through an appropriate fair bid process. Next time, SSI may come up with the appropriate bid. She felt that because of the above mentioned reasons, her belief in competition and a capitalistic system, she thought SSI and Harris was here because they both had a good product. She did not see any reason to reject the process as produced by the staff.

Councilor Park said he felt that the staff was very professional and dedicated to Metro in the job they were trying to do. He had a concern in terms of that same dedication. It may lead to ways that looked like they were good on the surface in order to get to the best product for Metro but may lead them to or others to go further. As Council was looking at these issues, what items did the bidders rely upon. It had been brought up that the language in the request for bid was extraneous to the process, really wasn't necessary, and one really didn't have to abide by it. Then why was it in the original proposal. He said if you were not going to rely upon these items then you didn't put them in the proposal. He noted that Councilor McLain had talked about the bid process and being competitive. He believed in that process but if it had been mentioned in the process that Metro was trying to even things out, SSI wouldn't have wasted their time or would have protested it at the beginning of this process if that was one of Metro's criteria being used. He did not think that was necessarily the criteria that the Council was reviewing. He expressed concern about the team review where additional information was requested of Harris. He wasn't saying this was an incorrect process. His concern, however, was the fairness issue to the competitors in asking for potential changes that would reduce their cost on the containment issue. If there were going to be changes for one bidder, then there should have been opportunity for changes from all bidders. He wasn't sure about the constant density bale issue. He understood the physics involved, that there was a potential for this. The only way to prove this was to go out and run both at the same time with the same type of garbage and see if you get an equal distribution in the load. This was one of those technicalities that was beyond this policy board. He thought that there had been enough question raised that he would be supporting Councilor Kvistad's motion. In terms of the fairness issues, hoping that something would be brought back to Council, that everyone, win or lose, was still happy because they felt it was a fair process.

Councilor Bragdon said in evaluating this appeal he clarified what he was evaluating. He could spend a lot of time and still not be in a position to judge between the two machines. He said the Harris machine, the three cylinder approach, the type of steel and the spillage system may all be superior. He believed that it was his job, when spending \$75,000,000 of the rate payers money and involving intelligent private sector people, that it being conducted fairly and openly and we were getting the best value and giving a fair shot to vendors who had served us well. He had just heard enough questions raised through this inquiry that he had his doubts about this so he would be supporting this appeal with the understanding that the bid may go back out and Harris may still receive the award. His vote today was not any judgment on these two machines, it was more a judgment on the staff work that went into the process. He said what had raised the doubts to cause him to vote the way he would be voting had to do with one, the language on the construction contractor board, but he thought you had to be beyond reproach. If you lay out a system you stick with the system. If it was in a boiler plate RFB and you no longer wanted that requirement, you took it out before it went to bid. As far as he was concerned, if the bid requirements required certain documentation to bid, then they should have that with their bid, not

after the fact. He said it looked like the rule was not followed. He was not disturbed by the technical matters, it was the staff response to those matters that disturbed him and whether there was even-handedness. The spillage was one example where an exception was granted. Again, he was not in a position to judge whether one system was superior to the other but he needed to have the confidence the staff handled that issue fairly between the two bidders and he had doubts about how this process occurred. In conclusion, he would be supporting the appeal.

Councilor McLain said it looked to her that Councilor Kvistad's motion was going to pass. She said there were several issues that were extraordinarily important to get on the record. She did not believe that there was anything in the RFB process or in the Code that indicated that Metro's staff did not go through the appropriate process. She heard two contending competitive bidders tell her their interpretation of what they thought was the bid process. There was nothing compelling in any comments made by anyone other than their own personal analysis of what they thought they heard in front of the Council. She said there was a difference between an RFP process, which the vendors had been used to, and an RFB process which was being utilized this time. The only goodness out of the motion was the fact that everyone was more educated and everyone would be much more careful about reading our Code and the language as we go forward. She did not want this appeal to go down as having everyone on the Council saying that this was not a fair process or that the rules were not followed or that there was an ability for this Council to do better job than a team of experts in a field deciding which one of these machines was a better machine. She thought that Councilor Bragdon made that delineation. He was talking about a process versus the quality of the machine. She did not think there was anything on this record that demonstrated that Metro staff did not do their work appropriately.

Councilor Washington said he could go either way on this issue but he had decided that he was going to support the appeal. It had nothing to do with the staff not doing an appropriate job, he did not believe this was the issue at all. He also thought that this was one of those unusual situations where both of the bidders were very close. To support the appeal did not mean that he would not support the decision of the department when the appeal was returned to Council. He wanted clarity because of the closeness of the nuances. He thought what he had gotten out of this was an education. He would be talking with staff as the REM chair to see what could be done with the closeness of these two bids that they find clarity about the issue. He reiterated that it had nothing to do with what the staff did. On top of that was the low bid process. He would be supporting the appeal but asked that no one read his support of the appeal as an indication that he would change his vote in a future situation. At this point he was unsure who would ultimately get the bid. He was willing to have opportunity for further discussion and further clarity.

Presiding Officer Monroe said that no one could accuse this body of being a rubber stamper to the staff. Sometimes councils and legislative committees had been accused of rubber stamping whatever staff brought to them. He thought it was very clear that this had not happened in this situation. He was very proud of this council because every member of this council took their job very seriously and had tried to do what was right in terms of public policy. Whether or not the council reached the proper conclusion or not, at least everyone had nothing but the very soundest intent in terms of the conclusion that was being reached today. He announced that he would be urging, after the vote, the Executive Officer to resubmit this issue to bid. He thought this was the only appropriate action for him to take after this vote today.

Councilor Kvistad closed by saying that there wasn't much he could add to Councilor Bragdon's comments. This was not a matter of black and white, it was a matter of a shade of

gray, a matter of a policy position. Was there a question of fairness, was there something missed? He said the approved equal was of concern to him as well as some of the other questions raised. He also concur with the Presiding Officer that direction to the Executive Officer would be appropriate. He asked for an aye vote on his motion.

Vote: The vote was 6 aye/ 1 nay/ 0 abstain. The motion passed with Councilor McLain voting no.

Councilor McLain asked to formalize the Presiding Officer's suggestion to the Executive Officer.

Presiding Officer Monroe said the council could if they wished but he would personally be carrying that message to him.

Councilor McLain said she thought it was important that he knew that the rest of this council agreed with the Presiding Officer.

Motion: **Councilor McLain** moved to asked the Executive Officer to send this out to bid again.

Seconded: **Councilor Park** seconded the motion

Councilor Atherton asked if this was legitimate legal procedure. Can the council do this?

Presiding Officer Monroe said that the Council could ask him, could recommend but they could not force him. It was his prerogative to do what he thought was best but the Council could give him their opinion.

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

12. COUNCILOR COMMUNICATION

Presiding Officer Monroe announced that the Council had received the calendar for the next four months, critical time in the history of Metro. He reminded the Council that on September 23rd the Council would be meeting in Hillsboro for the beginning of our public hearing process. It was scheduled for 5:00pm. Other meetings include October 4th in Gresham at 5:00pm, October 7th at Metro at 2:00pm, October 12th in Milwaukie at 5:00pm and October 14th at Metro at 2:00pm.

He said the Council would also be meeting September 30th.

Jeff Stone, Chief of Staff, said tomorrow the council would be receiving a briefing book on the Solid Waste Disposal item.

Councilor Atherton offered a clarification to the viewers about the public hearing schedule. These public hearing would be before the full council on the entire growth issue, there would be an entire list of items related to growth including the forecasts, the Urban Growth Report, Urban Growth Boundary adjustments, and other proposals that the Council would be considering in the

big picture. He said they knew that there were many who were interested in this issue and hoped that they could participate.

Councilor Kvistad asked Mr. Stone about the Executive Officer's proposal for the 60 million dollars. Had the Council received this proposal and how in-depth was it?

Mr. Stone said yes, the Council had received the proposal and it was two pages.

Presiding Officer Monroe indicated that proposal would be part of the briefing book.

Councilor Kvistad asked Mr. Stone about the extensiveness of the briefing book.

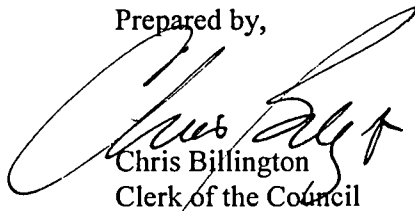
Mr. Stone responded that the book would provide the council with a background of technical material, all correspondences and minutes, media coverage and a list of options that had been created by Council staff.

Councilor McLain reminded the Council about WRPAC on Monday at 1:30pm. This meeting was particularly important because they would be briefed on the Goal 5 work. This Goal 5 work was important to ESA listings in the future but also as they were looking at compliance plans for the Functional Plan. This information would be added to the compliance issues once there was agreement.

13. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting at 4:38 p.m.

Prepared by,



Chris Billington
Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
090999c-01	9/9/99	Proposed Addition of EFU land in area 65 of the UGB - letter & photos	TO: Metro Council FROM: Greg Malinowski, Malinowski Farm 13450 NW Springville Lane Portland OR 97229	Ord No 99-812
090999c-02	9/9/99	Proposed Ordinance No, 99-812 Urban Reserve Area 65	TO: Metro Council FROM: MaryKyle McCurdy, 1000 Friends of Oregon 534 SW	Ord No 99-812

090999c-03	9/9/99	Proposed UGB Expansion in Bethany - letter and photos	Third Suite 300 Portland OR 97204 TO: Metro Council FROM: David Miller 16415 NW Brugger Rd Portland OR 97229	Ord No 99-812
090999c-04	9/9/99	Urban Reserve Area 65 in Washington County email	TO: Metro Council FROM: Jan Regnier, 16965 NW Bernietta Ct Portland OR 97229	Ord No 99-812
090999c-05	9/9/99	Letter concerning Urban Reserve 65	TO: Metro Council FROM: Steven Claussen Williams, Fredrickson, & Littlefield 1515 SW 5th Ave Suite 844 Portland OR 97201	Ord No 99-812
090999-06	7/20/99	Staff report on Ordinance No 99-812	TO: Metro Council FROM: Lydia Neill Growth Management Services Dept.	Ord No 99-812

Agenda Item 7.1

**Ordinance No. 99-817, For the Purpose of Amending the Metro Code 2.09.060 and 2.09.100
Increasing the Eligibility Requirements and Fees for the Metro Contractor's Business License Program.**

First Reading

**Metro Council Meeting
Thursday, September 16, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMMENDING) ORDINANCE NO 99-817
METRO CODE 2.09.060 AND 2.09.100)
INCREASING THE ELIGIBILITY) Introduced by Executive Officer Mike
REQUIREMENTS AND FEES FOR) Burton
THE METRO CONTRACTOR'S
BUSINESS LICENSE PROGRAM

WHEREAS, ORS 701.015 authorized Metro to provide a Contractor's Business License allowing small independent construction and landscape contractors to do business in numerous cities within the Metro Region; and

WHEREAS, the 1999 Oregon Legislature amended ORS 701.015 to increase from \$125,000 to \$250,000 the amount of the gross receipts limitation contained in the statute; and

WHEREAS, in order to reflect this statutory change, it is necessary that the Metro Code be amended; and

WHEREAS, as a result of the passage of the amendments to ORS 701.015, the League of Oregon Cities has requested that Metro increase the fee charged by Metro for the Metro Contractor's Business License; and

WHEREAS, the fee increase requested by the League of Oregon City's constitutes the first increase in the fee charge for the Metro Contractor's Business License since the inception of the business license in 1988;

WHEREAS, a increase for the Metro Contractor's Business License is otherwise appropriate and is in the public interest;

Now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That Metro Code 2.09.060 is amended to read:

"2.09.060 License Applicability

(a) If a contractor or landscape contractor has paid any business license tax imposed by participating jurisdictions in which the contractor or landscape contractor has an office the contractor or landscape contractor may apply for a contractor's business license from the district.

(b) If a contractor or landscape contractor has been issued a contractor's business license by the district, the contractor or landscape contractor may conduct business without any other business license in participating jurisdictions in which the contractor or landscape contractor:

- (1) Has no office;
- (2) Has not derived gross receipts of ~~\$125,000~~ \$250,000 or more from business conducted within the boundary of the participating jurisdiction during the calendar year for which the business license is owed;" and

2. That Metro Code 2.09.100 is amended to read:

"2.09.100 Fee

The fee to be paid by any contractor or landscape contractor for a contractor's business license is ~~\$110~~ \$135 and is non-refundable."

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

jep

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8/18/99

House Bill 2512

Sponsored by Representative HANSEN; Representatives ATKINSON, BOWMAN, DEVLIN, GARDNER, LOKAN, SNODGRASS, STARR, SUNSERI, THOMPSON, WILSON, Senators DUNCAN, LIM, SHANNON, SHIELDS, TROW (at the request of METRO)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Increases threshold amount of gross income receipts required of construction contractor or landscape contractor before contractor becomes subject to business license tax of city located within metropolitan service district.

A BILL FOR AN ACT

1
2 Relating to city business license tax within metropolitan service district; amending ORS 701.015.

3 Be It Enacted by the People of the State of Oregon:

4 **SECTION 1.** ORS 701.015 is amended to read:

5 701.015. (1) A contractor or landscape contractor shall pay directly to any city within the
6 boundaries of a metropolitan service district any business license tax imposed by the city when:

7 (a) The principal place of business of the contractor or the landscape contractor is within the
8 city; or

9 (b) The principal place of business of the contractor or the landscape contractor is not within
10 the city but the contractor or landscape contractor derives gross receipts of [~~\$125,000~~] \$250,000 or
11 more from business conducted within the boundaries of the city during the calendar year for which
12 the business license tax is owed.

13 (2) A contractor or landscape contractor who conducts business during any year in any city
14 within the boundaries of the metropolitan service district other than a city to which the contractor
15 or landscape contractor has paid a business license tax for that year may apply for a business li-
16 cense from the metropolitan service district.

17 (3) When a contractor or landscape contractor obtains a business license from the metropolitan
18 service district under subsection (2) of this section, if a city within the boundaries of the metropol-
19 itan service district other than a city to which the contractor or landscape contractor is required
20 to directly pay a business license tax under subsection (1) of this section demands payment of a
21 business license tax by the contractor or landscape contractor, the city shall waive such payment
22 upon presentation of proof by the contractor or landscape contractor that the contractor or land-
23 scape contractor has a business license issued by the metropolitan service district. Possession by the
24 contractor or landscape contractor of a current business license issued by the metropolitan service
25 district under subsection (2) of this section shall be proof sufficient to obtain the waiver described
26 in this subsection.

27 (4) The metropolitan service district shall issue a business license to a contractor or landscape
28 contractor when:

29 (a) The contractor or landscape contractor presents proof to the district that the contractor or
30 landscape contractor has paid the business license tax imposed by each city within the boundaries

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in boldfaced type.

1 of the district to which the contractor or landscape contractor must directly pay a business license
2 tax under subsection (1) of this section; and

3 (b) The contractor or landscape contractor pays a license fee to the district. The license fee
4 charged under this paragraph shall be twice the average business license tax charged contractors
5 by cities located within the metropolitan service district plus an amount that is sufficient to reim-
6 burse the district for the administrative expenses of the district incurred in carrying out its duties
7 under this section.

8 (5) The metropolitan service district shall distribute the business license fees collected by the
9 district under this section, less administrative expenses, to the cities that are located wholly or
10 partly within the district and that collect a business license tax. In any year, each such city shall
11 receive such share of the license fees as the number of residential building permits that it issued
12 during that year bears to the total number of residential building permits that were issued during
13 that year by all of the cities located wholly or partly within the district. Distribution of moneys
14 under this subsection shall be made at least once in each year. The metropolitan service district
15 shall determine the number of residential building permits issued by cities within the district from
16 statistics and other data published by the State Housing Council.

17 (6) As used in this section:

18 (a) "Business license tax" means any fee paid by a person to a city or county for any form of
19 license that is required by the city or county in order to conduct business in that city or county.
20 The term does not include any franchise fee or privilege tax imposed by a city upon a public utility
21 under ORS 221.420 or 221.450 or any provision of a city charter.

22 (b) "Conducting business" means to engage in any activity in pursuit of gain including activities
23 carried on by a person through officers, agents and employees as well as activities carried on by a
24 person on that person's own behalf.

25 (c) "Landscape contractor" means a person or business who is licensed under ORS 671.510 to
26 671.710 as a landscape contractor.

27 (d) "Principal place of business" means the location in this state of the central administrative
28 office of a person conducting business in this state.

29

STAFF REPORT

RESOLUTION OF ORDINANCE NO. 99-817 FOR THE PURPOSE OF AMENDING METRO CODE 2.09060 AND 2.09100 INCREASING THE ELIGIBILITY REQUIREMENTS AND FEES FOR THE METRO CONTRACTOR'S BUSINESS LICENSE PROGRAM.

Date: August 26, 1999 Presented by: Kerry Gilbreth and Kristine Mijares

Purpose of the Proposed Ordinance

Proposed ordinance 99-817 would amend the Metro Code reflecting changes to Metro's Contractor's Business License (CBL) program. The ordinance would change Metro Code 2.09.060 to indicate a statutory increase to the CBL gross receipts limitation from \$125,000 to \$250,000. Additionally, the ordinance would change Metro Code 2.09.100 to increase the annual nonrefundable CBL fee from \$110 to \$135 as requested by the cities participating in the program. This change will go into affect 90 days after adoption, January 5, 2000.

Background

In 1988, the State enacted ORS 701.015 mandates Metro provide a business license allowing small independent construction and landscape contractors to do business in numerous cities within its boundaries. The intent of the legislation was to relieve some of the bureaucratic and financial hardship of contractors having to be individually licensed within each city they worked. As a means to limit qualification for the Metro CBL to small independent contractors, the State imposed a per city, per year gross receipts limitation of \$125,000. Contractors must obtain individual city licenses in all cities in which they exceed that dollar limit. In the past few years, there has been growing complaint from contractors that the initial \$125,000 limit is too low in the current marketplace and is contrary to the original purpose of Metro CBL.

The 1999 legislature addressed this concern by approving House Bill 2512 (exhibit A), which increases the gross receipts limitation from \$125,000 to \$250,000. The Bill is effective October 23, 1999. In order to reflect this statutory change, it is necessary that Metro Code 2.09.060(b)(2) be amended.

Following approval of HB 2512, the League of Oregon Cities, speaking on behalf of the cities participating in the Metro CBL program, as well as representatives of several individual cities themselves, requested an increase in the fee charged for the Metro CBL under Metro Code section 2.09.100. The league and city representatives expressed a concern that the increased gross receipts limitation resulting from HB 2512 would result in a greater number of contractors being qualified for the Metro CBL, thus reducing the amount of revenue earned by cities via direct city-level business licensing. All fees

collected by Metro through the CBL program, after administrative costs, are distributed among the participating cities as a means to provide a source of revenue in lieu of that which would have been earned by cities by directly issued business licenses. The cities reasoned an increase in the Metro CBL fee would help assure that revenue received by the participating cities would not be significantly reduced. This is the first increase for the Metro CBL non-refundable fee since the program's inception in 1988.

ORS 701.015(4)(b) reads "The license fee under this paragraph shall be twice the average business license tax charged contractors by cities located within the metropolitan service district plus an amount that is sufficient to reimburse the district for the administrative expenses of the district incurred in carrying out its duties under this section."

Metro and the League of Oregon Cities each completed an analysis of city business licensing costs with comparative results. A focus meeting involving Metro, the League of Oregon Cities, and representatives of cities was held to discuss the fee increase issue. With regard to the fee provisions as stated above in ORS 701.015(4)(b), results of the business licensing cost analysis, and consideration of Metro's administrative costs in running the CBL program, a fee increase of \$110 to \$135 was suggested by the League of Oregon Cities. In order to reflect this fee increase, it is necessary that Metro Code 2.09.100 be amended.

Budget Impact

It is anticipated that the increase in fee will result in a projected annualized increase in revenue of \$70,000. Because the ordinance will be effective January 5, the projected increase in revenue for the first year is about half of the annualized amount. Since the distribution to the cities is calculated from revenue that is collected in the prior year a budget amendment is not needed.

Executive Officer's Recommendation

The Executive officer recommends adoption of ordinance 99-817.

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.

Second Reading - Quasi-Judicial Proceedings

Metro Council Meeting
Thursday, September 16, 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

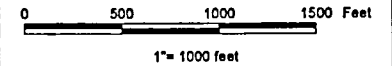
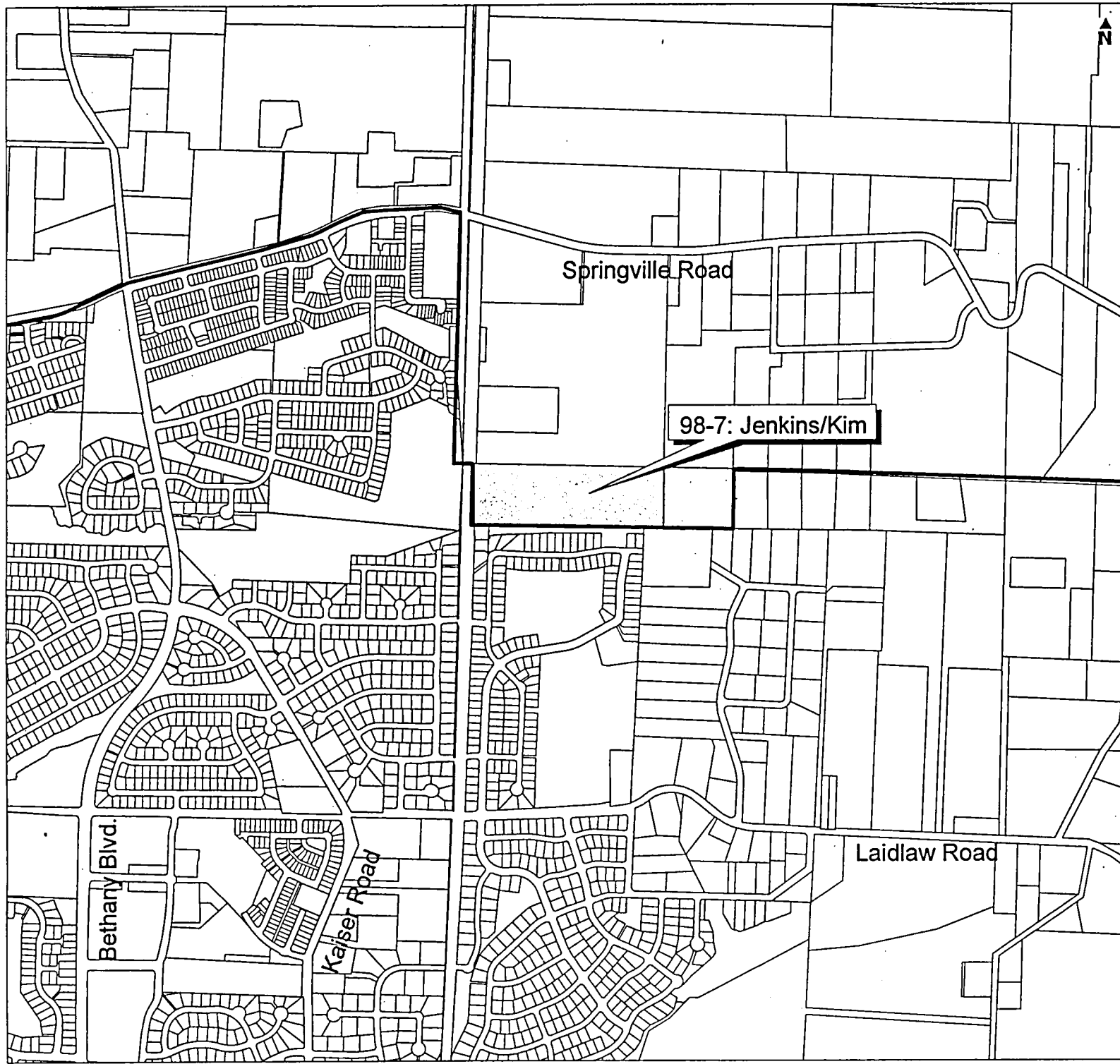
Daniel B. Cooper
General Counsel

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Proposed Adjustment

UGB Case 98-7
Jenkins/Kim

-  Urban Growth Boundary
-  Subject Property



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Portland, OR 97232-2736
503 797-1742 FAX 503 797-1909
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JUL 0 1 1999

BEFORE THE METRO COUNCIL

1
2
3 In the matter of the petition of Michael Jenkins and Sang) HEARINGS OFFICER'S
4 Kim for a Locational Adjustment to the Urban Growth) REPORT AND
5 Boundary between Laidlaw and Springville Roads, east) RECOMMENDATION
6 of Kaiser Road in unincorporated Washington County) Contested Case No. 98-07
7

8 I. INTRODUCTION AND SUMMARY
9

10 This report summarizes the findings the hearings officer recommends to the Metro
11 Council regarding a proposed locational adjustment to the Urban Growth Boundary
12 ("UGB"). After balancing the relevant factors in the approval criteria, the hearings officer
13 to conclude that the petitioners failed to bear the burden of proof that the petition complies
14 with those criteria. A different balance could be struck, but the hearings officer believes the
15 recommendation is consistent with Council action on other petitions for locational
16 adjustments. The petition in this case raises the following major issues:
17

18 1. Whether public services and facilities can be provided to the subject property in
19 an orderly and economical fashion. The hearings officer found the petition failed to show
20 that school services can be provided in an efficient manner.
21

22 2. Whether the petition includes all contiguous similarly situated lands. If as much
23 as 26 feet of the adjoining land is included in the petition, it would exceed the 20 acres
24 maximum permitted for locational adjustments. The hearings officer found that the
25 evidence in the record is insufficient to distinguish the subject property from the adjoining
26 land to the north, and that the subject property is similarly situated with at least the
27 adjoining 26 feet of land to the north.
28

29 3. Whether granting the petition results in a superior UGB and a net improvement
30 in the efficiency of public facilities and services relevant to the adjustment. The hearings
31 officer found that it does not result in sufficient net improvement and that more land is
32 proposed to be included in the UGB than is necessary to provide any service efficiency.
33 Therefore the proposed UGB is not superior to the existing one.
34

35 4. Whether retaining the subject property as agricultural land would preclude
36 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).

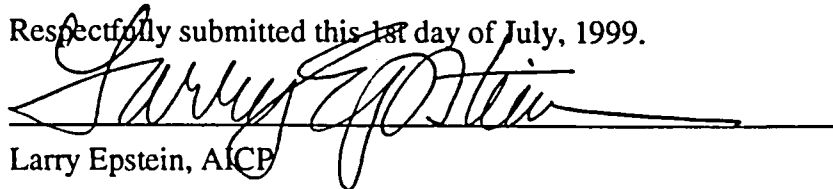
5
6 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
7 UGB. The hearings officer found the proposed UGB is not superior to the extent it does
8 not comply with the other relevant approval criteria cited above.

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

1
2
3 In the matter of the petition of Michael Jenkins and Sang) FINDINGS,
4 Kim for a Locational Adjustment to the Urban Growth) CONCLUSIONS &
5 Boundary between Laidlaw and Springville Roads, east) FINAL ORDER
6 of Kaiser Road in unincorporated Washington County) Contested Case No. 98-07
7

8 I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD
9

10 1. On December 1, 1998, Michael Jenkins and Sang Kim ("petitioners") completed
11 filing a revised petition for a locational adjustment to the Urban Growth Boundary
12 ("UGB"), including exhibits required by Metro rules for locational adjustments. See
13 Exhibit 3 for the original petition for locational adjustment (the "petition"). Basic facts
14 about the petition include the following:
15

16 a. The land to be added to the UGB is described as Tax Lot 1100,
17 Section 21, T1N-R1W and Tax Lot 101, Section 21BA, T1N-R1W, WM, Washington
18 County (the "subject property").¹ It is located roughly 1800 feet south of Springville
19 Road, roughly 2100 feet north of Laidlaw Road and roughly 2200 feet east of Kaiser Road
20 in unincorporated Washington County. The present UGB forms the east, west and south
21 edges of the subject property. The Washington/Multnomah County line forms the north
22 boundary of the site. Land to the east, west and south is inside the UGB and
23 unincorporated Washington County. Land to the north is outside the UGB and in
24 unincorporated Multnomah County. See Exhibits 3, 8 and 17 for maps showing the
25 subject property. Land to the south, east and west is zoned R6 (Residential, 6 units per
26 acre). Land to the southeast is zoned R5 (Residential, 5 units per acre). Land to the
27 northwest is zoned EFU (Exclusive Farm Use, 80 acre minimum lot size). Land to the
28 northeast is zoned MUA-20 (Multiple Use Agriculture, 20 acre minimum lot size). See
29 Exhibit 1E of the petition, Exhibit 3.
30

31 b. The subject property is a rectangularity-shaped parcel 450 feet north-
32 south by about 1900 feet east-west. The site contains 18.85 acres. It is designated and
33 zone EFU (Exclusive Farm Use) on the acknowledged Washington County
34 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.
36

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.

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.

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

IV. DECISION

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

DATED: _____
By Order of the Metro Council
By _____

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

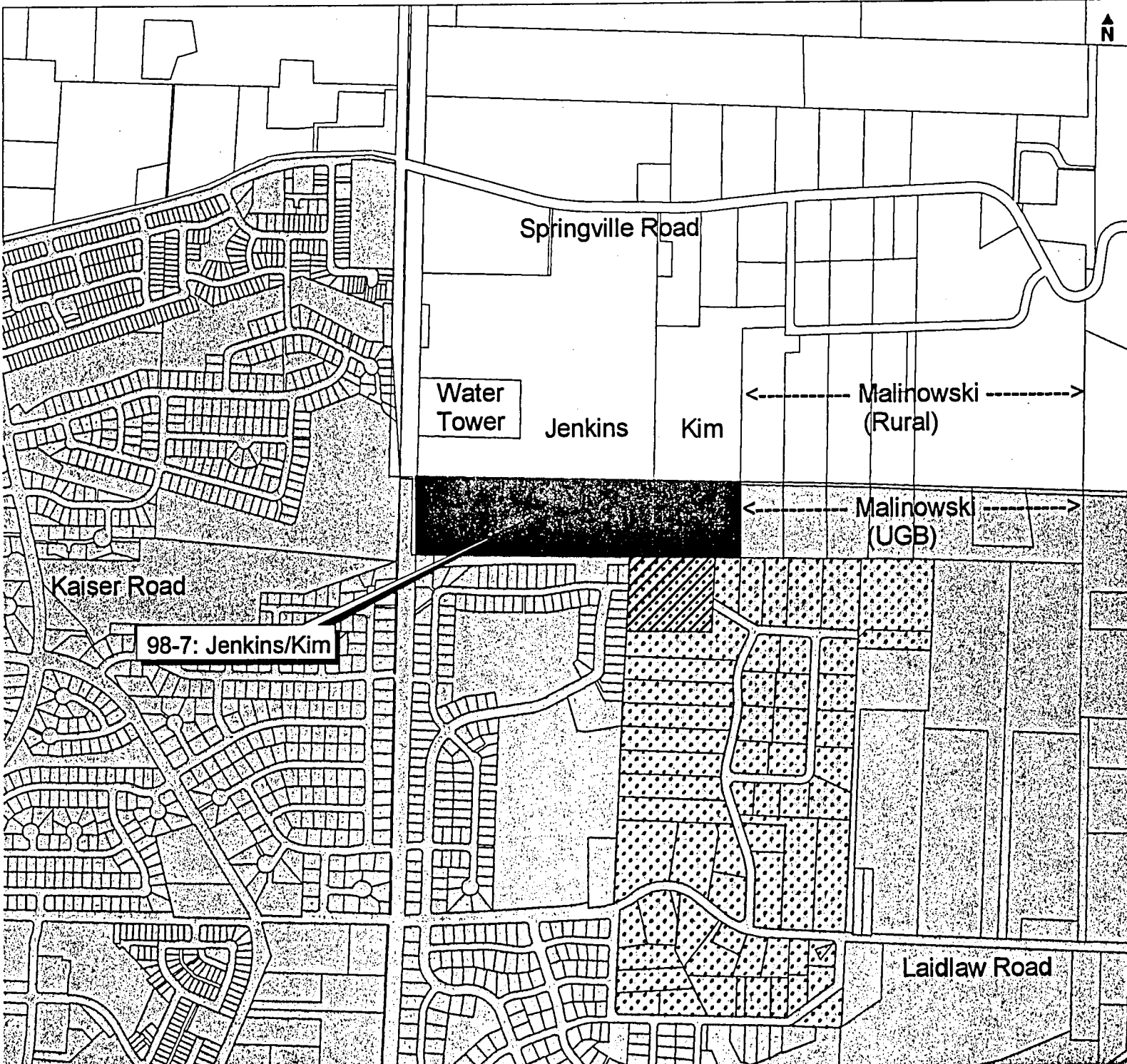
There is no budget impact from adopting this ordinance.

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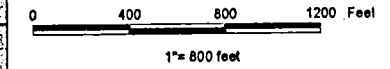
Proposed Adjustment

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 Case 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.



METRO

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503 797-1742 FAX 503 797-1909
Email: drc@metro.dst.or.us

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

JUL 0 1 1999

BEFORE THE METRO COUNCIL

1
2
3 In the matter of the petition of Michael Jenkins and Sang) HEARINGS OFFICER'S
4 Kim for a Locational Adjustment to the Urban Growth) REPORT AND
5 Boundary between Laidlaw and Springville Roads, east) RECOMMENDATION
6 of Kaiser Road in unincorporated Washington County) Contested Case No. 98-07
7

8 I. INTRODUCTION AND SUMMARY
9

10 This report summarizes the findings the hearings officer recommends to the Metro
11 Council regarding a proposed locational adjustment to the Urban Growth Boundary
12 ("UGB"). After balancing the relevant factors in the approval criteria, the hearings officer
13 to conclude that the petitioners failed to bear the burden of proof that the petition complies
14 with those criteria. A different balance could be struck, but the hearings officer believes the
15 recommendation is consistent with Council action on other petitions for locational
16 adjustments. The petition in this case raises the following major issues:
17

18 1. Whether public services and facilities can be provided to the subject property in
19 an orderly and economical fashion. The hearings officer found the petition failed to show
20 that school services can be provided in an efficient manner.
21

22 2. Whether the petition includes all contiguous similarly situated lands. If as much
23 as 26 feet of the adjoining land is included in the petition, it would exceed the 20 acres
24 maximum permitted for locational adjustments. The hearings officer found that the
25 evidence in the record is insufficient to distinguish the subject property from the adjoining
26 land to the north, and that the subject property is similarly situated with at least the
27 adjoining 26 feet of land to the north.
28

29 3. Whether granting the petition results in a superior UGB and a net improvement
30 in the efficiency of public facilities and services relevant to the adjustment. The hearings
31 officer found that it does not result in sufficient net improvement and that more land is
32 proposed to be included in the UGB than is necessary to provide any service efficiency.
33 Therefore the proposed UGB is not superior to the existing one.
34

35 4. Whether retaining the subject property as agricultural land would preclude
36 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).

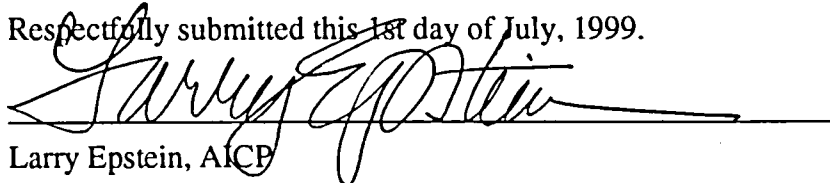
5
6 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
7 UGB. The hearings officer found the proposed UGB is not superior to the extent it does
8 not comply with the other relevant approval criteria cited above.

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) FINDINGS,
Kim for a Locational Adjustment to the Urban Growth) CONCLUSIONS &
Boundary between Laidlaw and Springville Roads, east) FINAL ORDER
of Kaiser Road in unincorporated Washington County) 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.

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

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
2
3 **IV. DECISION**

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

7 DATED: _____

8 By Order of the Metro Council

9 By _____

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**

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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

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35

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.

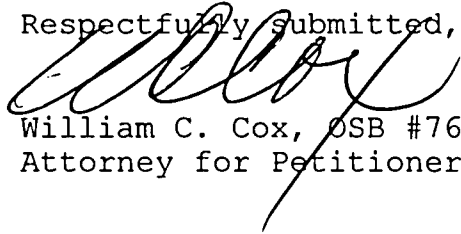
III

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

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

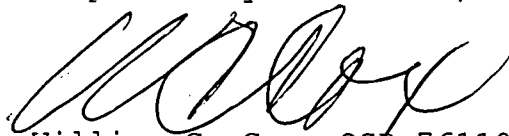
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other types of cultivation." (Attached affidavit of Alan Schaff and Sam Van Dyke -Exhibit B). This goes to the issue of similarly situated lands.

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

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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., 6 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 "SECC OR WE CONDEMN" (1988).

Epangel 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.

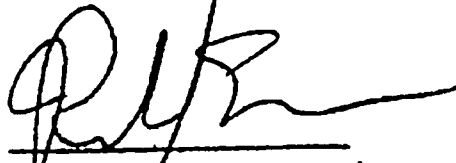
Dated and mailed at Salem, Oregon, this 12th day of October, 1993.

CERTIFIED TO BE A TRUE COPY

Mary DeKabaons

Offices Services Center
DEPARTMENT OF REVENUE

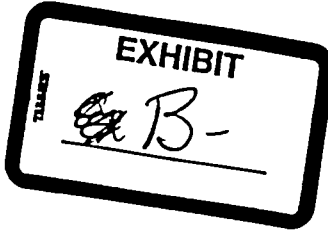
DEPARTMENT OF REVENUE



RICHARD A. GUNN, 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.

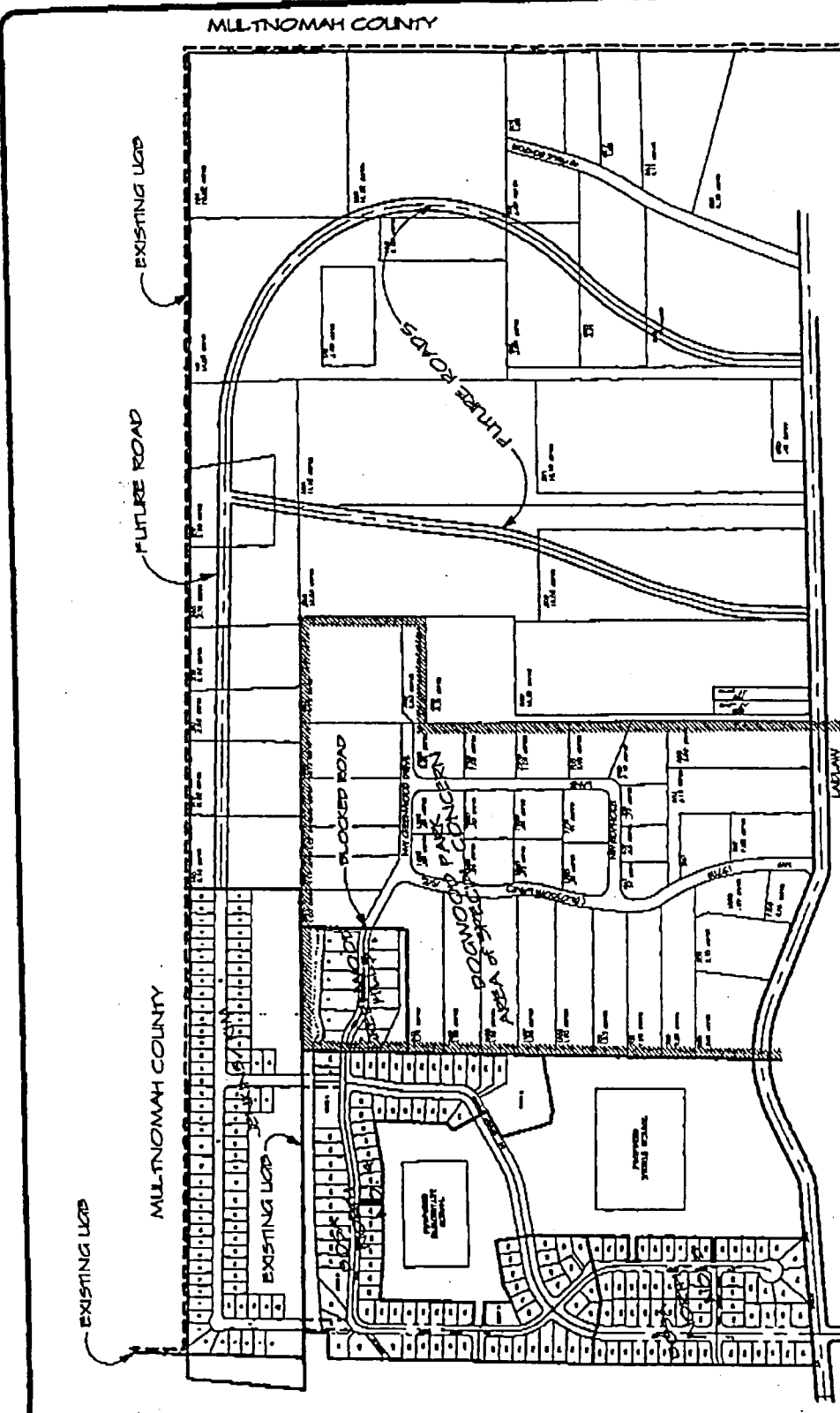
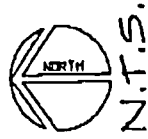
DATED THIS 22 day of July, 1999.

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
C



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

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Planners 233 S.E. WASHINGTON ST.
Engineers HILLSBORO, OREGON 97123
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DRAWING TITLE
JENKINS/KIM OFFER
OF PROOF GRAPHIC #1
CONNECTIVITY

JOB NO.
2350
DRAWING NO.
1

**METRO**

DATE: August 30, 1999

TO: Metro Council
Mike Burton, Executive Officer

FROM: *LS*
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.

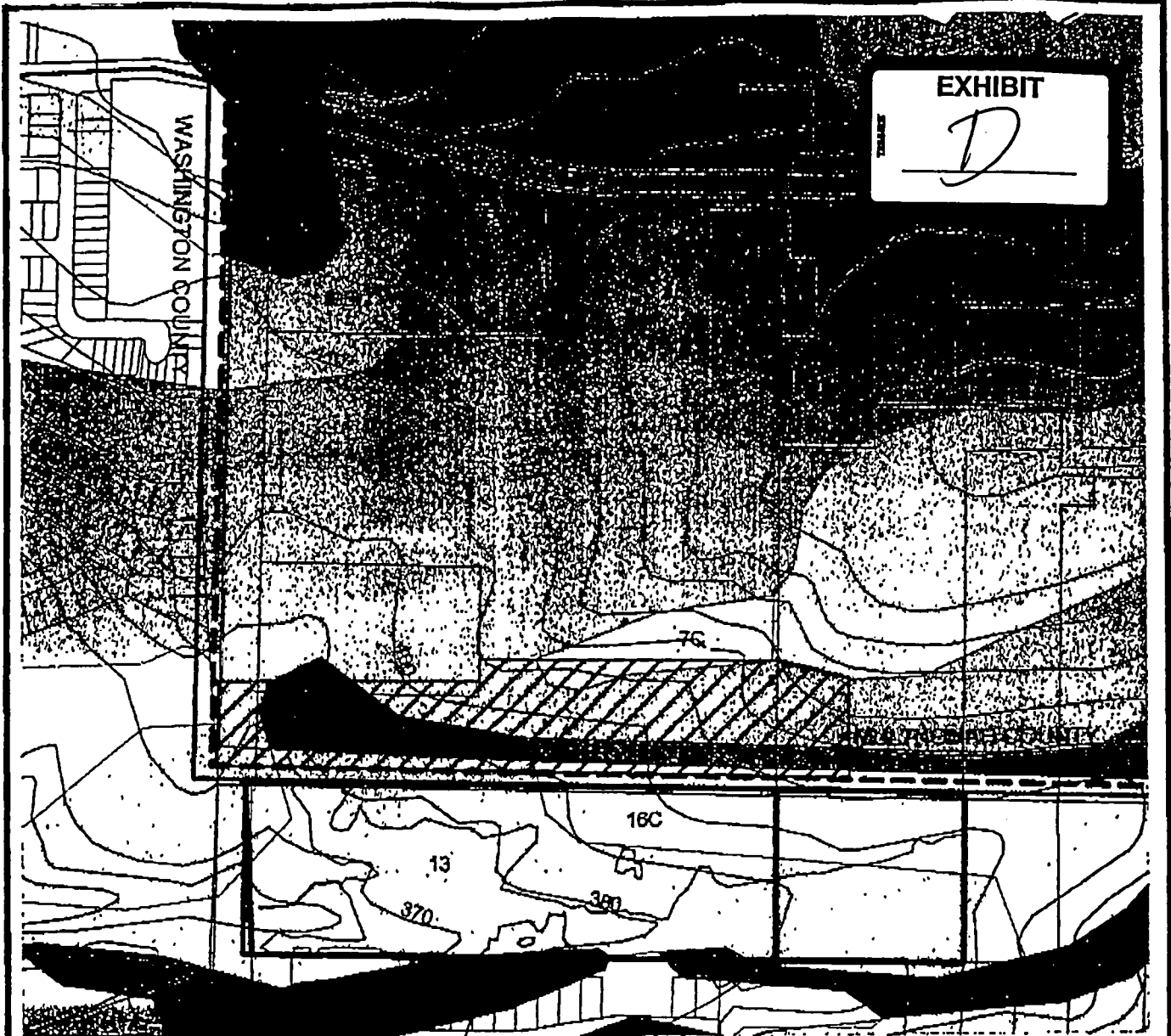


EXHIBIT
D

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

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 on 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
Elaine Wilkerson
Ray Valone

i:\larry\98-07.doc



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 with 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.

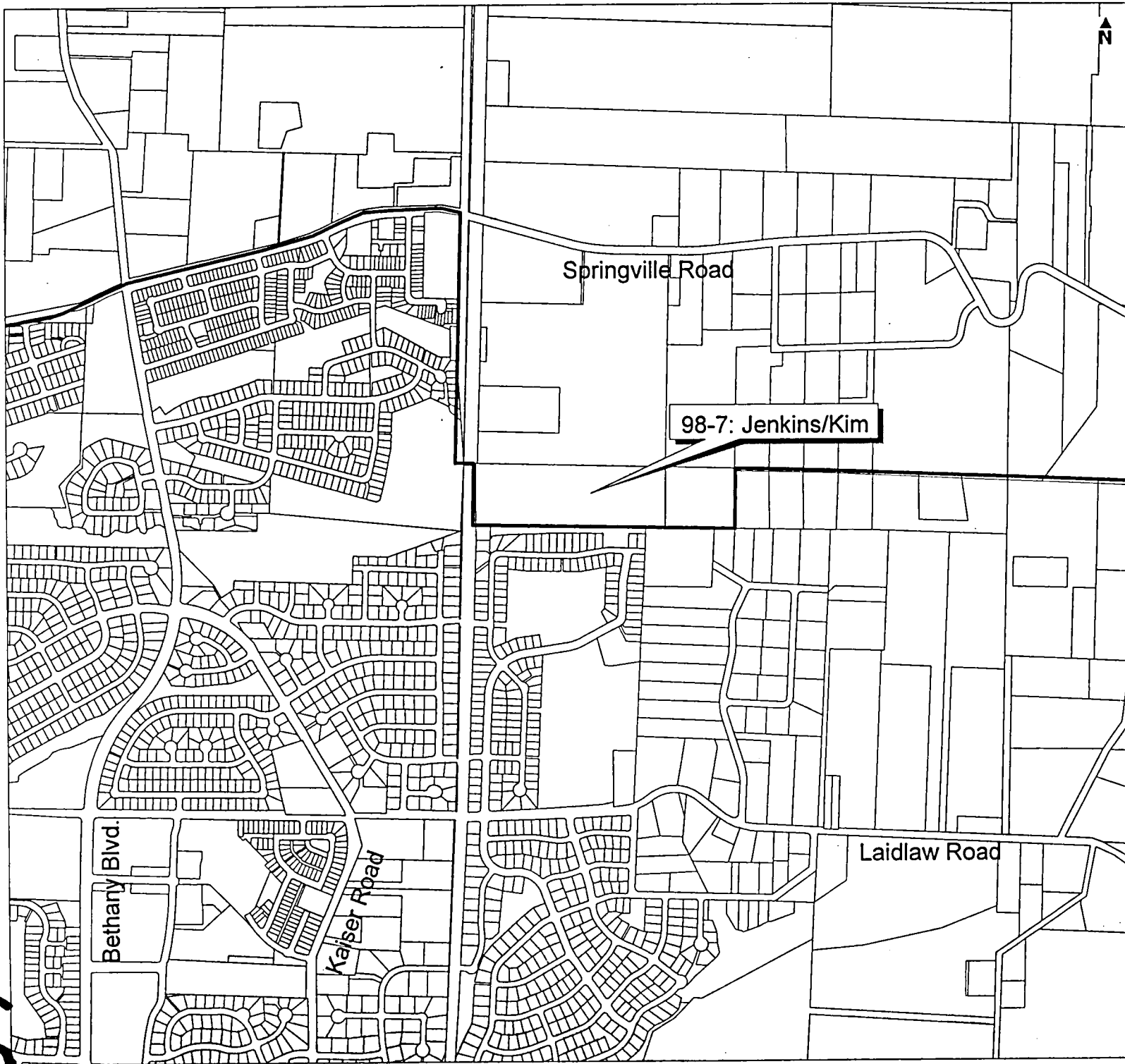
Staff concludes, therefore, that this criterion is satisfied.

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.


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


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

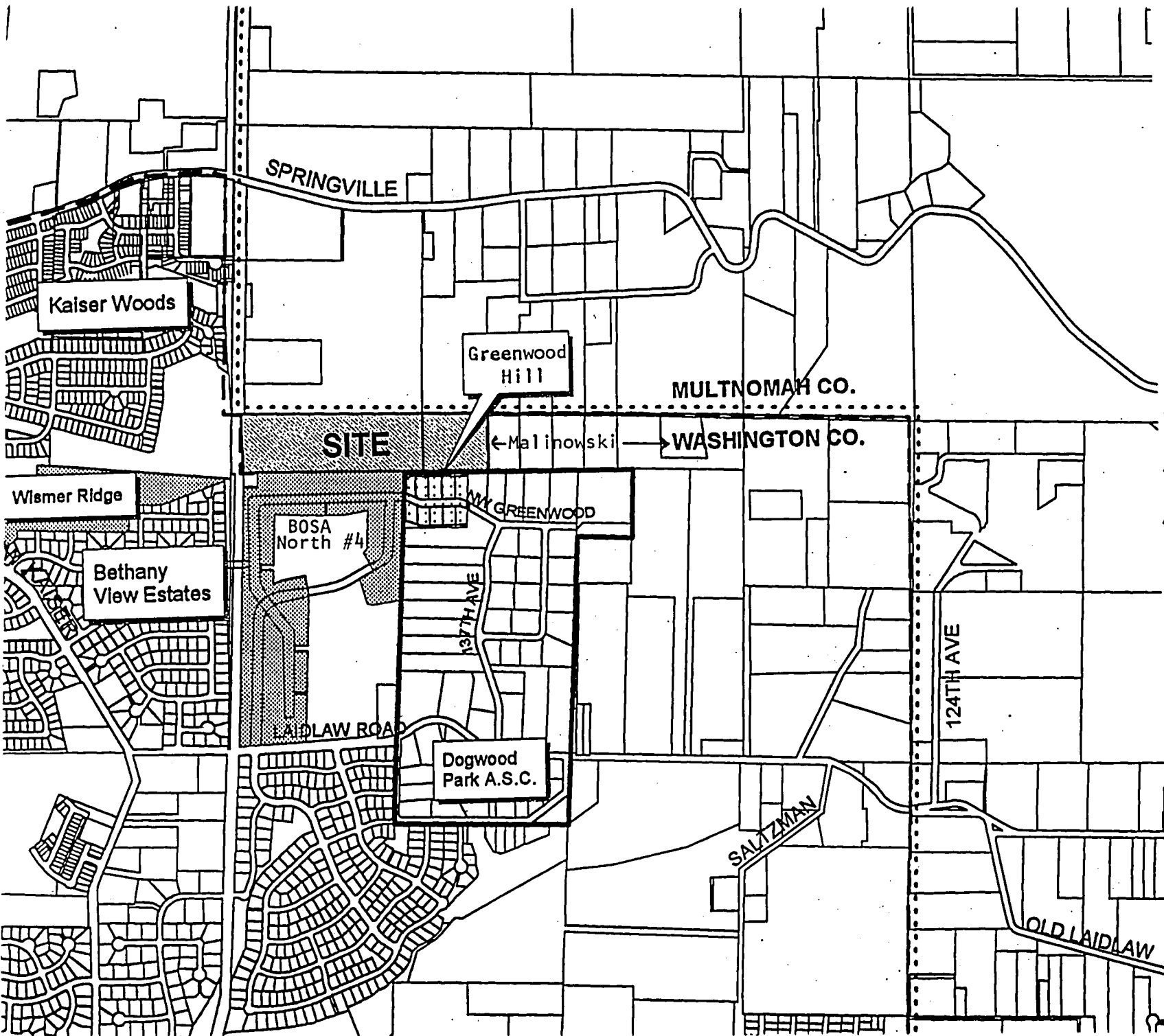

METRO


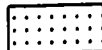



600 NE Grand Ave.
Portland, OR 97232-2736
503 797-1742 FAX 503 797-1909
Email: drc@metro.dst.or.us

ATTACHMENT A

65

Vicinity Map



-  Approved
-  Proposed
-  Dogwood Park A.S.C.
-  UGB
-  County Line

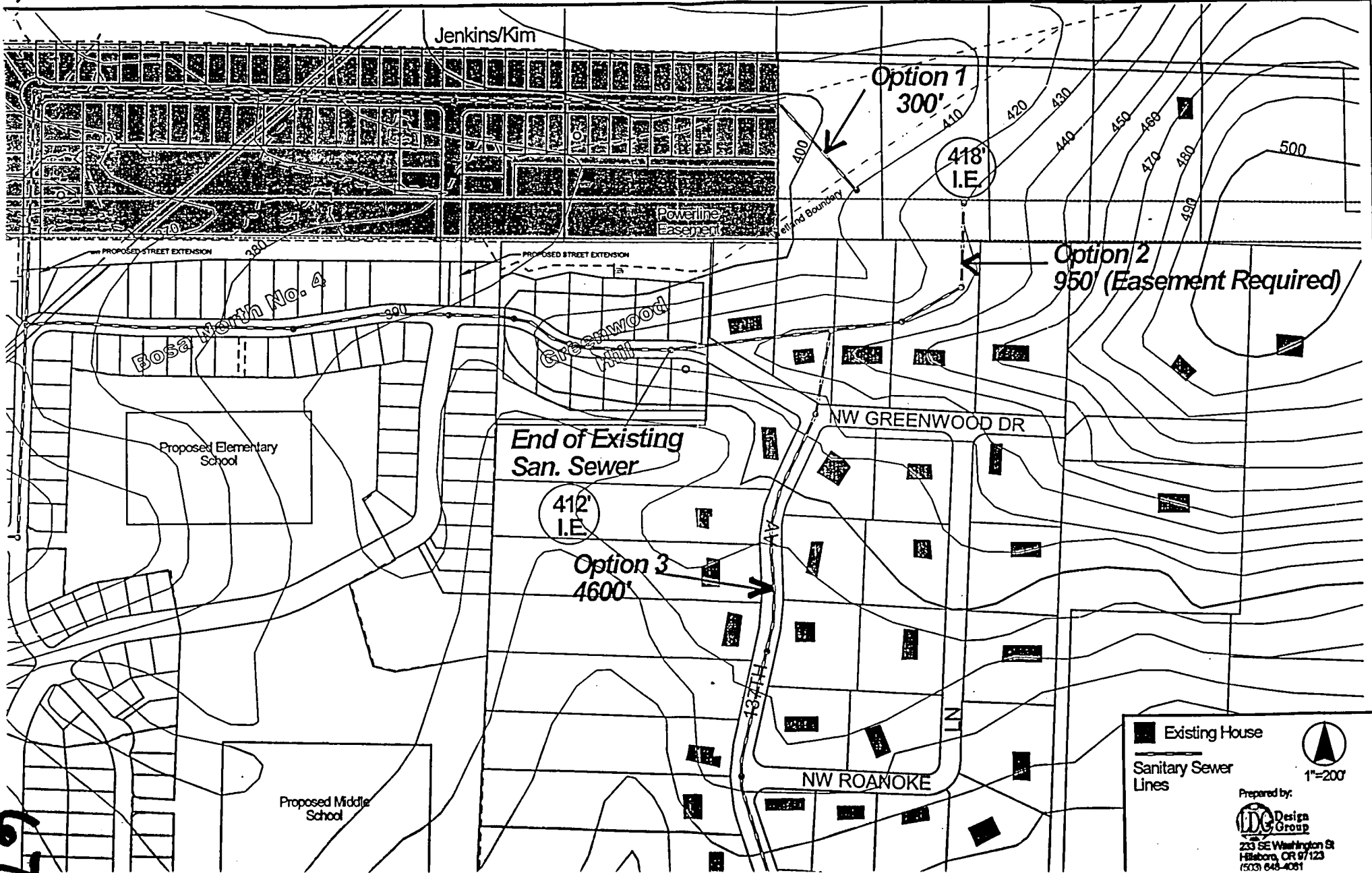


ATTACHMENT B


Prepared by:



66



67

■ Existing House
 Sanitary Sewer Lines
 Prepared by:
 Design Group
 233 SE Washington St
 Hillsboro, OR 97123
 (503) 648-4061

Agenda Item Number 9.1

Resolution No. 99-2826, For the Purpose of Approving a Change of Composition and Revising the Bylaws for the Metro Policy Advisory Committee.

Resolutions

Metro Council Meeting
Thursday, September 16, 1999
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A) RESOLUTION NO. 99-2826
CHANGE OF COMPOSITION AND) Introduced by Mike Burton,
REVISING THE BYLAWS FOR THE) Executive Officer
METRO POLICY ADVISORY COMMITTEE)

WHEREAS, Metro has consistently sought partnership with cities, counties, citizens and other agencies in the region in its regional planning program, and;

WHEREAS, That partnership has been described since September, 1991 in Goal I of Metro's Regional Urban Growth Goals and Objectives which were acknowledged on December 9, 1996, and;

WHEREAS, Implementation of that partnership was intended to occur, in large part, through the creation of an ongoing Metro Policy Advisory Committee (MPAC) required by Section 27 of the Metro Charter to advise and recommend actions to the Metro Council on ways to address areas and activities of metropolitan significance, and;

WHEREAS, A change in the membership composition of MPAC is authorized by Section 27(2) of the 1992 Metro Charter and Article VI(a) of MPAC's bylaws, when approved by a majority of MPAC members and a majority of all Metro Councilors; now, therefore,

BE IT RESOLVED, that the Metro Council hereby concurs with the majority of the members of MPAC that the membership of MPAC shall include the following additional member:

One (1) representative and one (1) alternate of the governing body of the Port of Portland; and

The following change in membership:

Citizen representatives will be selected one from each county within the Metro boundary, rather than from the Metro region at large; and

The MPAC Bylaws will be amended as outlined in Attachment A, to reflect the addition of representation from the Port of Portland and the selection of citizen representatives from each county.

ADOPTED BY THE METRO COUNCIL THIS _____ day of _____, 1999.

Rod Monroe, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT

CONSIDERATION OF RESOLUTION 99-2826 FOR THE PURPOSE OF APPROVING A CHANGE OF COMPOSITION AND REVISING THE BYLAWS FOR THE METRO POLICY ADVISORY COMMITTEE.

July 21, 1999

LISA LISTER (x1940)

PROPOSED ACTION

To adopt a resolution modifying the membership of MPAC to include a representative of the Port of Portland and specifying that citizen representatives will be selected one from each county and to modify the Bylaws to reflect these changes.

BACKGROUND

The Metro Policy Advisory Committee (MPAC) is an advisory committee created by Section 27 of the 1992 Metro Charter. MPAC is comprised primarily of a representative body of the elected officials in the Metro area that advises the Metro Council on regional planning issues and matters deemed of regional concern.

In May, the Executive Officer recommended adding the Port of Portland to MPAC, due to the impact they have on the region in the areas of transportation and land use planning. Port of Portland Commission President Robert Walsh expressed interest in having the Port participate on MPAC. He stated that their involvement makes sense given the key role the Port of Portland plays in the region's and state's transportation system and the influence transportation has on the economic health of and land uses in the region.

The majority vote for approval of the modification for the change to the Bylaws by the MPAC membership took place at their meeting on July 14, 1998 after the required 30-day written notice. They voted 13-6 to recommend to Council to adopt this resolution to modify MPAC's membership and add a member of the Port of Portland's governing body as a voting MPAC member.

ATTACHMENT A

Article III
Committee Membership

Section 1. Membership

a. The Committee will be made up of representatives of the following:

Multnomah County Commission	1
Second Largest City in Multnomah County	1
Other Cities in Multnomah County	1
Special Districts in Multnomah County	1
<u>Citizen of Multnomah County</u>	<u>1</u>
City of Portland	2
Clackamas County Commission	1
Largest City in Clackamas County	1
Second Largest City in Clackamas County	1
Other Cities in Clackamas County	1
Special Districts in Clackamas County	1
<u>Citizen of Clackamas County</u>	<u>1</u>
Washington County Commission	1
Largest City in Washington County	1
Second Largest City in Washington County	1
Other Cities in Washington County	1
Special Districts in Washington County	1
<u>Citizen of Washington County</u>	<u>1</u>
Tri-Met	1
Governing body of a school district	1
Citizens of Metro	3
State Agency Growth Council	1
Clark County	1
City of Vancouver	1
<u>Port of Portland</u>	<u>1</u>
Total	<u>2425</u>

b. Members representing jurisdictions shall be appointed from among members of the governing body. All jurisdictions represented by members, including cities within each county, shall have territory within Metro boundaries.

- c. Alternates qualified to be members shall be appointed to serve in the absence of the regular members.
- d. Metro Councilors will participate with the Committee membership with three non-voting liaison delegates appointed by the Metro Council.
- e. Clark County, Washington, and City of Vancouver, Washington membership includes all duties of MPAC except approving or disapproving authorization for Metro to provide or regulate a local service, as defined in Charter section 7(2), in those cases in which Metro does not seek or secure such approval directly from the voters.
- f. The composition of the MPAC may be changed at any time by a vote of both a majority of the MPAC members and a majority of all Metro Councilors (Section 27 (2)).

Section 2. Appointment of Members and Alternates

- a. Members and alternates will be initially appointed to serve for two years. Members and alternates from the City of Portland, the counties of Multnomah, Clackamas, and Washington, the largest cities of Multnomah, Clackamas, and Washington Counties, excluding Portland, and the second largest cities of Clackamas and Washington counties shall be appointed by the jurisdiction. Members and alternates may be removed by the appointing jurisdiction at any time.
- b. Members and alternates from the cities of Multnomah, Clackamas, and Washington Counties, other than those directly entitled to membership, will be appointed jointly by the governing bodies of those cities represented. The member and alternate will be from different jurisdictions. The member and alternate will be appointed to designated terms of a length to be determined by the appointing authority, but for a period of not less than two years. The member and alternate may be reappointed. Terms of the member and alternate will be staggered to ensure continuity. In the event the member's position is vacated, the alternate will automatically become the member and complete the original term of office.
- c. Members and alternates from the special districts with territory in Multnomah, Clackamas, and Washington Counties will be appointed by special district caucus. The member and alternate will be appointed to designated terms of a length to be determined by the appointing authority, but for a period of not less than two years. The member and alternate may be reappointed. Terms of the member and alternate will be staggered to ensure continuity. In the event the member's position is vacated, the alternate will automatically become the member and complete the original term of office.
- d. Metro Council delegates will be appointed by the Presiding Officer of the Metro Council and will represent each county in the region. The delegates may be removed by the Presiding Officer of the Metro Council at any time.

- e. Members and alternates representing citizens will be appointed by the Metro Executive Officer and confirmed by the Metro Council consistent with Section 27(1)(m) of the 1992 Metro Charter and will represent each county in the region. Members and alternates will be appointed to designated terms of a length to be determined by the appointing authority, but for a period of not less than two years. Members and alternates may be reappointed. Terms of the members and alternates will be staggered to ensure continuity. In the event the member's position is vacated, the alternate will automatically become the member and complete the original term of office.
- f. Members and alternates from the Tri-County Metropolitan Transportation District of Oregon (Tri-Met) will be appointed by the governing body of that District. The member and alternate will serve until removed by the governing body.
- g. Members and alternates from the State Agency Growth Council will be chosen by the Chairperson of that body. The member and alternate may be removed by the Chairperson at any time. The member and alternate will serve as non-voting members.
- h. Members and alternates from the Port of Portland will be appointed by the governing body of that organization. The member and alternate will serve until removed by the governing body.
- hi. The member and alternate from the school boards in the Metro Region will be appointed by a caucus or organization of school boards from districts within the Metro region. If there is no caucus or organization of school boards within the region, the Executive Officer will facilitate the appointment by the school boards. The member and alternate will be appointed to designated terms of a length to be determined by the appointing authority, but for a period of not less than two years. The member and alternate may be reappointed. Terms of the member and alternate will be staggered to ensure continuity. The member and alternate will be from different school districts in the Metro Region. In the event the member's position is vacated, the alternate will automatically become the member and complete the original term of office.
- ij. Appointments of all members and alternates shall become effective upon the appointing authority giving written notice addressed to the Chair of MPAC and filing the notice with the Clerk of the Metro Council. The determination of the relative size of cities shall be based on the official population estimates for Oregon issued by the Center for Population Research and Census, School of Urban and Public Affairs, Portland State University. If the official population estimates result in a change in the relative population of a city entitled to membership, then the term of membership of the affected city or cities shall terminate 90 days after the release of the official estimate and new member(s) shall be appointed as provided by these by-laws.

Agenda Item Number 9.2

Resolution No. 99-2833, For the Purpose of Authorizing the Executive Office to Submit an Application to the State of Oregon Economic Development Department for Low Cost Financing for a Portion of the Reconstruction of Expo Center Hall DC.

Resolutions

Metro Council Meeting
Thursday, September 16, 1999
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)
THE EXECUTIVE OFFICER TO SUBMIT AN)
APPLICATION TO THE STATE OF)
OREGON ECONOMIC DEVELOPMENT)
DEPARTMENT, FOR LOW COST)
FINANCING FOR A PORTION OF THE)
RECONSTRUCTION OF EXPO CENTER)
EXHIBIT HALL D)

RESOLUTION NO. 99-2833

Introduced by Executive Officer
Mike Burton,

WHEREAS, It is prudent to construct a new Hall D at the Portland Metropolitan Exposition Center (Expo) to replace a substandard building, and

WHEREAS, The new building will provide additional needed flat exposition space with climate controls, and

WHEREAS, The new Hall D will be able to accommodate consumer shows currently using the Oregon Convention Center (OCC), thereby freeing space at OCC for more conventions, and

WHEREAS, The new Hall D will aid in the future expansion of the OCC by providing alternative space and additional parking while the OCC is under construction, and

WHEREAS, The new Hall D will provide additional climate-controlled space that allows growth in Expo business, and

WHEREAS, Resolution 98-2734 directed the Executive Officer to prepare a plan to finance the construction of Hall D, and

WHEREAS, the State of Oregon will make low cost financing available to qualifying projects upon application through the State Economic Development Department; and

WHEREAS, the Metro Council wishes to proceed with this financing in a timely and expeditious manner so that construction on the new Hall D can begin as soon as possible.

NOW, THEREFORE, the Metro Council endorses the recommendations of the Executive Officer as presented in Attachment A to this resolution, and authorizes him to proceed with the application process with the Oregon Economic Development Department (OEDD) to finance certain portions of the construction of Exhibit Hall D.

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

Rod Monroe, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT - Exhibit A

CONSIDERATION OF RESOLUTION NO. 99-2833 AUTHORIZING THE EXECUTIVE OFFICER TO SUBMIT AN APPLICATION TO THE STATE OF OREGON ECONOMIC DEVELOPMENT DEPARTMENT FOR LOW COST FINANCING FOR A PORTION OF THE RECONSTRUCTION OF EXPO CENTER EXHIBIT HALL D

Date: August 20, 1999

Presented by: Jennifer Sims, Chief Financial Officer/
Director of Administrative Services

FACTUAL BACKGROUND AND ANALYSIS

Resolution 98-2734 directed the Executive Officer to prepare a plan to finance the reconstruction of Exhibit Hall D at the Expo Center. Since that time, MERC and Metro staff have examined alternative funding mechanisms that could meet the desired time frame to begin construction. The initial plan was to pursue the funding of the infrastructure, which is approximately \$2.2 million, through the Oregon Economic Development Department (OEDD) and the balance of the project budget of \$13.6 million through the issuance of revenue bonds.

When discussions were initiated with OEDD, the department informed us that they have just implemented a new program that provides funding for community facilities. The Expo Center project appears to qualify under the new program with up to \$3.0 million being available for construction. The department recently indicated that their preliminary evaluation of the project is favorable and has officially invited Metro to proceed with the application process. Early estimates indicate that up to \$3.0 million would be available under the new program. In addition, the \$5.2 million through OEDD could be available as early as October 1999.

There are two significant advantages to MERC and Metro proceeding to the application stage of the OEDD loan process. If the loan is approved, savings would result because OEDD would pay for all bond issuance and handling costs through the State of Oregon bonding process. In addition, this would defer financing of the full project until initial budget proposals for Metro's General Fund can be developed for FY 2001. With the OEDD loan, the additional funds for construction would not be needed until July 2000. The current plan would then dictate that Metro would begin the process of issuing revenue bonds for the balance needed for construction in the spring of 2000.

FISCAL IMPACT

This capital improvement project is included in both the adopted Capital Improvement Plan and FY 2000 budget. By pursuing this type of loan, both Metro and MERC can realize substantial project cost savings through reduced loan issuance costs.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 99-2833

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Agenda Item Number 9.3

Resolution No. 99-2837, For the Purpose of Adding a Representative of the St. John's Neighborhood Association to the Smith and Bybee Lakes Management Committee.

Resolutions

**Metro Council Meeting
Thursday, September 16, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADDING A) RESOLUTION NO 99-2837
REPRESENTATIVE FROM THE ST.)
JOHNS NEIGHBORHOOD) Introduced by Councilor Washington
ASSOCIATION TO THE SMITH AND)
BYBEE LAKE STEERING COMMITTEE)

WHEREAS, Smith and Bybee Lakes Wildlife Area is a regionally significant natural area and recreational resource located in the St. Johns area; and

WHEREAS, the Smith and Bybee Lakes Management Committee was established to oversee the implementation of the Natural Resources Management Plan for Smith and Bybee Lakes and provide ongoing policy guidance; and

WHEREAS, The Smith and Bybee Lakes Management Committee is the principal advisory body to Metro as the manager of the Smith and Bybee Lakes Trust Fund; and

WHEREAS, the Smith and Bybee Lakes Management Committee is made up of representatives of public agencies, private landowners, non-profit organizations and neighborhood groups with direct interest in the management of the Smith and Lakes Wildlife Area; and

WHEREAS, the Smith and Bybee Lakes Wildlife Area resides entirely within the St. Johns neighborhood boundaries, and is a major natural feature and therefore of direct interest to the St. Johns Neighborhood Association; and

WHEREAS, it would be appropriate to have representation from the St. Johns area on the Smith and Bybee Lakes Management Committee; now therefore

BE IT RESOLVED,

That the Metro Council adds the Chair of the St. John Neighborhood Association, or their designee, to the Smith and Bybee Lakes Management Committee.

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

Rod Monroe, Presiding Officer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

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STAFF REPORT

CONSIDERATION OF RESOLUTION NO.99-2837, FOR THE PURPOSE OF
ADDING A REPRESENTATIVE OF THE ST. JOHNS NEIGHBORHOOD
ASSOCIATION TO THE SMITH AND BYBEE LAKES MANAGEMENT
COMMITTEE

Date: August 27, 1999

Prepared by: Michael Morrissey

The Smith and Bybee Lakes Wildlife Area is managed by Metro according to the Natural Resources Management Plan for Smith and Bybee Lakes. The city of Portland and Port of Portland are also signatories to the Plan. The lakes are contained entirely within the St. Johns Neighborhood Association boundaries. The Smith and Bybee Lakes Management Committee was created in 1989 to oversee the implementation of the Natural Resources Management Plan for the lakes, and provide ongoing policy guidance.

The Smith and Bybee Lakes Management Committee contains a membership seat for a citizen representative. This seat has been vacant for several years, but recently was filled through a process coordinated by the North Portland Neighborhood Office. The process allowed individuals living in the eight North Portland neighborhoods to apply, and a candidate from the Overlook neighborhood was chosen.

Resolution 99-2837 adds a position to the Committee specifically for a representative from the St. Johns Neighborhood Association. This action is taken in recognition of the geographic and historical relationship between the lakes and the neighborhood, and due to the request of the neighborhood for this type of representation. The position currently designated for a citizen representative will continue to exist.

The Metro Council has the authority to add this position to the Smith and Bybee Lake Management Committee as per the Natural Resources Management Plan for Smith & Bybee Lakes.

Agenda Item Number 10.1

Resolution No. 99-2832, For the Purpose of Approving a FY 99-00 Residential Waste Reduction Campaign Work Plan, Authorizing Release of a Request for Proposals, and Authorizing the Executive Officer to Enter into a Contract.

Contract Review Board

Metro Council Meeting
Thursday, September 16, 1999
Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING)
A FY 99-00 RESIDENTIAL WASTE)
REDUCTION CAMPAIGN WORK PLAN,)
AUTHORIZING RELEASE OF A)
REQUEST FOR PROPOSALS, AND)
AUTHORIZING THE EXECUTIVE)
OFFICER TO ENTER INTO A)
CONTRACT)

RESOLUTION NO. 99-2832

Introduced by Mike Burton,
Executive Officer

WHEREAS, Metro is the regional body responsible for meeting the required regional recovery rate goal of 52 percent by the year 2000 (Regional Solid Waste Management Plan); and

WHEREAS, the regional recovery rate has stalled at 42 percent in recent years, and the Metro region will not achieve its goals without an increased effort; and

WHEREAS, outreach and education continue to be one of the primary mechanisms for Metro to improve recycling and waste reduction efforts throughout the region; and

WHEREAS, local governments are changing their curbside sorting systems to improve collection efficiencies and these changes will be introduced in the fall; and

WHEREAS, an advertising campaign would provide an excellent opportunity to focus residents on ways to increase their recycling and assist local governments with their message to curbside customers; and

WHEREAS, a residential ad campaign is funded in the 1999-2000 Budget and requires Council approval of a work plan and is designated "significant impact" requiring Council action; and

WHEREAS, the resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED,

1. That the Metro Council approves the FY 99-00 Residential Waste Reduction Campaign Work Plan attached hereto as Exhibit 'A.'

2. That the Metro Council authorizes issuance of RFP #99R-30-REM, attached hereto as Exhibit 'B.'

3. That the Metro Council, pursuant to Section 2.04.026(b) of the Metro Code, authorizes the Executive Officer to enter into a contract with the most qualified proposer in accordance with the requirements of the Metro Code.

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

FY 99-00 Residential Waste Reduction Promotion Work Plan

What

- A region-wide campaign to encourage residents of the region to recycle more items and to put out more materials at curbside.
- This campaign will also assist local governments with their educational efforts as they introduce new sorting systems ("commingling") at the curb.

Why

- Metro's regional recovery rate goal is 52% by 2000. However, Metro's current rate has stalled at 42%, and we will not be able to achieve our goals without increased effort.
- This fall, local governments will introduce changes to their sorting systems to improve collection efficiencies. While residents hopefully will view these changes as easier, the changes will modify long-standing sorting instructions and other messages that governments have advertised in the past.
- This ad campaign will assist local governments with getting their message to curbside customers, and also provides an excellent opportunity to focus residents on ways to increase their recycling.

Campaign Objectives

- Build awareness that recycling just got easier, can be improved upon, and that more can be recycled.
- Give residents the basic information that they need in order to be able to increase their recycling, such as how to prepare and sort materials to set out at the curb.
- Thank residents for the good job that they are doing, and remind them recycling is still an important and easy way that they can do something good for the environment.

Campaign Message

- Recent research done for Metro indicates that 54% of residents believe that they are recycling all that they can; however, 44% feel that they could do more, and 2% weren't sure whether they could do more. When those who said that they could do more were asked what would help them to recycle more, much of their comments suggested that they would do more if it were easier, simpler, or more convenient. Results from local government focus groups also support this theme. Since the new curbside sorting instructions will reduce the number of "sorts" from more than a dozen to only 3 or 4, recycling will become easier.

Campaign Methods

- Metro will be hiring an advertising firm to develop an advertising strategy and to recommend the tools and media to best reach our audience. The strategy may include a mix of radio, television, print, and direct-mail. There may also be a public relations element, such as an event or partnership with local sponsors.
- The advertisements, regardless of medium, will list Metro's Recycling Information phone number as the source to call for more information. Callers to the Recycling Information Center will be able to receive a brochure with tips on what can be recycled, how to prepare materials, etc. Callers will also be mailed a brochure explaining sorting requirements specific to their city or county of residence.

Campaign Timeline

- Local governments anticipate that they will introduce their curbside collection changes in October. Metro's campaign will follow this rollout, lengthening the duration of the local jurisdictions' messages. It will help clarify for residents any confusion that the changes might bring, and will reinforce the message that residents can recycle materials more easily.

Campaign Evaluation

- Calls to Metro Recycling Information will be tracked.
- The number of brochures mailed to callers will be tracked.
- The percentage of households reached through various media will be measured.
- A telephone survey following the campaign will help measure campaign effectiveness.
- Local governments will measure increased participation/tonnage.

Campaign Budget and Reach

- Total budget for campaign development and advertising is \$140,000 (within current fiscal year budget appropriation).
- Reach has yet to be determined, depending on the strategy to be developed with advertising firm, but will be region-wide in scope.

Request for Proposals
Advertising Services
Residential Recycling Campaign

I. Introduction

Metro is requesting proposals to develop an advertising campaign to promote curbside recycling to the region's residents. Written proposals must be received in Metro's Regional Environmental Management Department by 3 p.m. September 30, 1999. Address all responses to Vicki Kolberg, Metro REM, 600 NE Grand Ave., Portland, OR 97232.

Details concerning the project and proposal are contained in this document.

II. Background

As the regional government responsible for coordinating recycling in the urban areas of Clackamas, Multnomah, and Washington Counties, Metro works with local governments to promote recycling. Curbside recycling has become an institution in the region, receiving strong support and participation by the residents of the region. More than 80% of single-family residences participate in recycling and 42% of the region's waste is recycled, one of the highest rates in the nation.

Although we have made great progress, Metro's goal is 52% recovery by the year 2000. Over the last few years, the recycling rate has stalled, and it is unlikely that we will achieve our goals without increased efforts in the commercial and residential sectors. This RFP addresses the residential sector only.

Metro has been planning an advertising campaign to increase residential recycling for the fall or winter of Fiscal Year 99-00. Simultaneously, local governments have been planning a significant change in the way that residential recyclables are collected at the curb. When it was learned that the timing of their change was close to our campaign schedule, we realized that it was an opportunity to achieve two goals at once and to reinforce one another's messages. Therefore, the goals of this campaign are to encourage people to recycle more and to help local governments provide their residents with the specifics of how to do it.

In a recent survey and in focus groups conducted for Metro by Moore Information, 54% of residents said that they were recycling all that they could, with 44 % saying that they could do more and 2% not sure whether they could do more. When those who said that they could do more were asked what would help them to do more recycling, the leading responses included providing a more convenient way of separating items, simplify the process, make it more convenient and easy. Additional Metro and local government surveys and calls from the public to Metro's Recycling Information Center have shown that while residents have a clear understanding of some of the materials they can recycle at the curb, they do not know all of the materials they can recycle, or are unsure about some items, such as scrap paper, magazines, motor oil, and plastic bottles not generated in the kitchen. Focus group work has also shown that people recycle the items that they perceive as being easy to recycle, such as newspaper, and they

do not recycle things that they perceive to be difficult to recycle, such as steel cans, because the ends must be cut out and the paper labels removed.

The change in the way that curbside material will be collected beginning this fall has to do with the way that people sort the recyclable items that they leave in their bins. The program has been re-designed to improve efficiencies for both residents and collectors of recyclables, thereby saving costs and hopefully, increasing participation. Governments have taken particular care to design the new sorts in a manner that does not affect the recyclability of the materials.

In the new collection system, residents will be asked to sort recyclables into three to four clusters of materials (all plastic bottles and steel cans together, all paper products together, all glass containers together, etc.), rather than keeping each recyclable material separate in paper bags and placing the bags in their set-out bin as they currently do. The sorts will be similar throughout the region, but there will be some variation from city to city. Therefore, the message needs to be broad enough to allow for these differences. While residents will hopefully view the change to this new "commingled" system as easier, it also will be a change in long-standing sorting instructions and other messages that governments have advertised in the past.

III. Project description

Metro is seeking an advertising firm to develop and implement a region-wide advertising campaign to promote recycling. A public relations component may be included. The campaign objectives are as follows:

Primary

- Build awareness that recycling is easy, can be improved upon, and that more can be recycled.

Secondary

- Give residents the basic information that they need in order to be able to increase their recycling, such as what is recyclable at curbside, and how to prepare and sort materials to set out at the curb. Residents also need to be informed that it is still important to clean and properly prepare recyclables.

Other objectives

- Thank residents for the good job that they are doing.
- Provide some level of assurance to citizens that their materials are still going to be recycled.
- Local government commingling programs will have been in place for three months when this campaign is launched. Metro would like this campaign to be able to respond to any problems that have been identified over the course of this three-month period (i.e., too much contaminated material, incorrect sorting taking place, etc.).

The campaign, which will be introduced in January 2000, should span at least three weeks, and may use a broad range of media appropriate for the messages and the budget.

Services required include creative development, final production of all campaign materials, media planning and purchase and public relations assistance.

Metro intends to conduct a telephone survey following the campaign to evaluate the effectiveness of the campaign. This survey is not part of the services requested in this RFP, but is for proposers' information.

IV. Scope of work

The agency selected will provide the following services according to the approximate schedule outlined below:

1. Meet with campaign team of representatives from Metro and local governments to discuss campaign objectives, background information/research, timelines, budget and other start-up issues (mid-October).
2. Review existing educational materials on curbside recycling, surveys (early/mid-October).
3. Develop a creative and media proposal and present it to the campaign team for comment and approval, along with overall budget estimates (early November).
4. Develop copy and produce campaign materials for team approval, along with finalized budget (November).
5. Negotiate media-buy, pursue media sponsorships and public service and value-added opportunities whenever possible (November/December).
6. Work with Metro/local government public relations team to develop and implement a complementary public and media relations plan (November).
7. Distribute all materials to media outlets and confirm completed media schedule (December).
8. Wrap up meeting, if needed.

V. Budget

The budget to complete this project will be \$140,000. All campaign expenses, including campaign development, ad production, media planning and purchase will be covered by this budget.

VI. Proposal contents

The proposal should fully describe the ability of the proposer to perform the scope of work and should be in the following format:

Cover Letter

Provide a brief introduction of your qualifications to perform the tasks outlined. Include a statement that the proposal is valid for 90 days, and include the name, title, address, and telephone number of the individual authorized to execute a contract with Metro.

Approach

Based on the contents of the RFP, briefly discuss how you might approach this campaign, including the general creative direction, media strategy, and public relations elements that you might recommend, given the objectives and budget. What makes your approach unique and effective?

Agency Team

Identify the team that would work on this campaign, including account executive, creative director, art director, copywriter, media buyer, and production manager. Briefly describe their experience, and why they would be an asset to this project.

Past Work

Describe two or three recent public service campaigns completed by the creative team proposed for this project. How are these past projects relevant to the recycling campaign? What made them effective, and how did you extend the budget? Please describe the results achieved and include samples, a contact name, and a telephone number for each project.

Budget

Provide an approximate breakdown of how you would allocate the budget based on the information available in the RFP. Include your realistic estimates for the value of media sponsorships and any in-kind goods, services, or time.

Exceptions and Comments

To facilitate evaluations of proposals, all proposers must follow the format outline above. However, if you wish to take exception to, or comment on, any aspect of this RFP, please do so in this section of your proposal.

VII. Schedule

The following is an approximate contract award and completion schedule.

- Proposals due September 30, 1999.
- Proposal review and finalist selection (early October).
- Finalist interviews, if needed (early October).
- Start-up meeting with agency (mid-October).
- Campaign development (mid-October through December).
- Campaign implementation (early January).

VIII. Proposal Instructions

The proposal should be submitted on recyclable, double-sided recycled-content paper (at least 30% post-consumer content). No waxed, plastic, or non-recyclable page dividers or other materials should be included in the proposal.

Proposal Submission

Seven copies of the proposal should be furnished to Metro, addressed to:

Vicki Kolberg
Metro REM
600 NE Grand Ave.
Portland, OR 97232-2736

Deadline

Proposals will not be considered if received after 3 p.m., September 30, 1999.

RFP as Basis for Proposals

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which proposals are to be based. Any verbal information not addressed in this RFP will not be considered in evaluating proposals. All questions relating to this RFP should be addressed to Vicki Kolberg at 797-1514. Any questions, which, in the opinion of Metro, warrant a written reply or RFP amendments, will be furnished to all parties receiving this RFP.

Information Release

All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal, all proposers agree to such activity and release Metro from all claims arising from such activity.

IX. Proposal Evaluation

Proposals that are responsive to this Request for Proposals will be evaluated according to the following criteria:

Approach	25%
Past Work	20%
Agency Team	20%
Budget	15%
Balance of development cost to media purchase	20%

If required, finalist interviews will be scheduled. Proposers will be notified of results by October 13, 1999. Proposers not selected will be notified by mail. Samples will be returned, if requested.

X. General Proposal/Contract Conditions

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Billing Procedures: Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.

- C. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.
- D. Conflict of Interest: A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf, without connection with, or obligation to, any undisclosed person or firm.

XI. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached Personal Services Agreement is a standard agreement approved for use by the Metro Office of General Counsel. This is the contract the successful proposer will enter into with Metro; it is included for your review prior to submitting a proposal.

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and _____, referred to herein as "Contractor," located at _____, _____, OR.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective _____, 1998, and shall remain in effect until and including _____, 1999, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A — Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed _____ AND ___/100THS DOLLARS (\$_____.00).
4. Insurance.
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. 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.
 - c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that 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. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

f. Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work.

Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

By _____
Title _____
Date _____

METRO
By _____
Title _____
Date _____

Exhibit A

Scope of Work

1. Statement of Work.
2. Exceptions to boilerplate contract (if any)
3. Payment, Billing and Term.

Contractor shall provide the above services for a maximum price not to exceed _____ AND NO/100 DOLLARS (\$_____.00), based upon Contractor's quotation dated _____ (see attached).

The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing statement will include an itemized statement of unit prices for labor, materials and equipment, will include an itemized statement of work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro, Attention Regional Environmental Management Department. Metro will pay Contractor within 30 days of receipt of an approved statement.

In the event Metro wishes for Contractor to provide services or materials after the maximum contract price has been reached, Contractor shall provide such services or materials pursuant to amendment at the same unit prices that Contractor utilized as of the date of this Agreement, and which Contractor utilized to submit requests for payment pursuant to this Scope of Work. Metro may, in its sole discretion and upon written notice to Contractor, extend the term of this contract for a period not to exceed 12 months. During such extended term all terms and conditions of this contract shall continue in full force and effect.

NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached Personal Services Agreement is a standard agreement approved for use by the Metro Office of General Counsel. This is the contract the successful proposer will enter into with Metro; it is included for your review prior to submitting a proposal.

STAFF REPORT

CONSIDERATION OF RESOLUTION No. 99-2832, FOR THE PURPOSE OF APPROVING A FY 99-00 RESIDENTIAL WASTE REDUCTION CAMPAIGN WORK PLAN, AUTHORIZING RELEASE OF A REQUEST FOR PROPOSALS, AND AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO A CONTRACT.

Date: August 18, 1999

Presented by: Doug Anderson,
Vicki Kolberg

PROPOSED ACTION

Approval of Resolution No. 99-2382 would approve a work plan for a FY 99-00 Residential Waste Reduction Outreach Campaign. It would also authorize the following:

- Release of an RFP to ad agencies.
- Release of promotion and public relations funds to hire an advertising firm to develop and implement a residential promotional campaign.
- The Executive Officer to enter into a contract with the selected firm.

BACKGROUND

The adopted Metro FY 1999-2000 Budget includes a "budget note" that requires Council review and approval of a work plan prior to expenditures on a residential waste reduction outreach campaign. Council designated the contract for this campaign as "significant impact." The purpose of this staff report is to explain the goals, objectives, and timelines of the work plan, pursuant to the budget note requirement. The work plan is attached to the resolution as Exhibit 'A.' A copy of the Request for Proposals is attached to the resolution as Exhibit 'B.'

The residential waste reduction outreach campaign is a critical part of Regional Environmental Management's efforts to partner with local governments in order to achieve the region's waste recovery goals. Although the Metro region has achieved a recovery rate of 42%, progress has stalled in recent years. Reaching the regional recovery rate goal of 52% by 2000 looks unlikely without increased efforts. Metro-area households strongly support residential curbside recycling with over 80% of households participating. Our surveys show that citizens want to increase the amount of materials they recycle. The proposed campaign will assist them in doing so.

Last fall, staff determined that a significant residential outreach campaign would be an effective method of improving participation and recycling rates. The campaign was included in the Budget, with the exact message and outreach methods to be determined later. The general message was to be a practical "news you can use" approach that would help residents to increase their recycling by describing what can be recycled and how to prepare materials. At the time that the Budget was being developed, staff was aware that local governments were improving their residential recycling programs—including adopting commingling technologies. Now that local governments have converged on a

standard for residential curbside sorting and collection, the task of developing an effective regional campaign has been made much easier.

SUMMARY OF THE WORK PLAN

The attached work plan describes the objectives, message, methods and timeline to be employed in the residential outreach campaign. These specific campaign objectives follow from the general "practical advice" approach envisioned at the conception of the campaign. Residents would be provided with information they need to prepare and sort materials consistent with the new simpler and convenient requirements of local collection programs. The message would promote how the new sorting method can increase recycling levels by making preparation and sorting easier.

The contract will be a critical component of the work plan. It will procure the necessary creative services to develop an advertising strategy and appropriate mix of media methods (radio, television, print etc.) to best accomplish the campaign objectives. This campaign would begin in January, following the rollout of the local government programs this fall, thereby lengthening and deepening the impact of their communication with their residents. Several evaluation components are included in the work plan to measure the impact and effectiveness of the campaign.

BUDGET IMPACT

The Adopted FY 1999-2000 Regional Environmental Management Budget includes \$140,000 in funds needed for the campaign.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution 99-2832, approving the work plan for the FY 99-00 residential waste reduction outreach campaign, authorizing release of RFP #99-R-30-REM, and authorizing the Executive Officer to enter into a contract with the selected firm.

**EXECUTIVE SUMMARY
RESOLUTION 99-2832
1999 RESIDENTIAL RECYCLING CAMPAIGN**

PROPOSED ACTION

- The adopted Metro FY 1999-2000 Budget includes a "budget note" that requires Council review and approval of a work plan prior to expenditures on a residential waste reduction outreach campaign.
- Council also designated the contract for this campaign as "significant impact."
- Approval of Resolution No. 99-2832 would authorize the release of promotion and public relations funds to hire an advertising firm to develop and implement a residential promotional campaign.
- The resolution would also authorize the release of an RFP to ad agencies and would authorize the Executive Officer to enter into a contract with the selected firm.

WHY NECESSARY

- The residential recycling outreach campaign is a critical part of Regional Environmental Management's efforts to partner with local governments in order to achieve regional recycling goals.
- Staff determined that a significant residential outreach campaign would be an effective method of improving both participation and recovery rates in the region.
- The campaign would also assist local governments with educating residents about changes in the way that recyclable materials are sorted for curbside collection in the region.

ISSUES/CONCERNS

- The recycling level in the region has stalled at 42%, and Metro and local governments will not be able to reach Metro's recovery goal without increased effort to boost recovery.
- Local governments are changing their sorting systems to improve collection efficiencies. While this will hopefully be viewed as easier by residents, it may initially be confusing, and will require additional education.
- Recent surveys indicate strong public support for recycling, but also indicate that 44% of surveyed residents feel that they could be recycling more.

BUDGET/FINANCIAL IMPACTS

- The adopted FY 1999-2000 Regional Environmental Management Budget includes \$140,000 needed for the campaign.

FY 99-00 Residential Waste Reduction Promotion Work Plan

What

- A region-wide campaign to encourage residents of the region to recycle more items and to put out more materials at curbside.
- This campaign will also assist local governments with their educational efforts as they introduce new sorting systems ("commingling") at the curb.

Why

- Metro's regional recovery rate goal is 52% by 2000. However, Metro's current rate has stalled at 42%, and we will not be able to achieve our goals without increased effort.
- This fall, local governments will introduce changes to their sorting systems to improve collection efficiencies. While residents hopefully will view these changes as easier, the changes will modify long-standing sorting instructions and other messages that governments have advertised in the past.
- This ad campaign will assist local governments with getting their message to curbside customers, and also provides an excellent opportunity to focus residents on ways to increase their recycling.

Campaign Objectives

- Build awareness that recycling just got easier, can be improved upon, and that more can be recycled.
- Give residents the basic information that they need in order to be able to increase their recycling, such as how to prepare and sort materials to set out at the curb.
- Thank residents for the good job that they are doing, and remind them recycling is still an important and easy way that they can do something good for the environment.

Campaign Message

- Recent research done for Metro indicates that 54% of residents believe that they are recycling all that they can; however, 44% feel that they could do more, and 2% weren't sure whether they could do more. When those who said that they could do more were asked what would help them to recycle more, much of their comments suggested that they would do more if it were easier, simpler, or more convenient. Results from local government focus groups also support this theme. Since the new curbside sorting instructions will reduce the number of "sorts" from more than a dozen to only 3 or 4, recycling will become easier.

Campaign Methods

- Metro will be hiring an advertising firm to develop an advertising strategy and to recommend the tools and media to best reach our audience. The strategy may include a mix of radio, television, print, and direct-mail. There may also be a public relations element, such as an event or partnership with local sponsors.
- The advertisements, regardless of medium, will list Metro's Recycling Information phone number as the source to call for more information. Callers to the Recycling Information Center will be able to receive a brochure with tips on what can be recycled, how to prepare materials, etc. Callers will also be mailed a brochure explaining sorting requirements specific to their city or county of residence.
- This campaign will also be coordinated with the Agency's overall theme of creating livable communities and protecting the nature of the region.

Campaign Timeline

- Local governments anticipate that they will introduce their curbside collection changes in October. Metro's campaign will follow this rollout, lengthening the duration of the local jurisdictions' messages. It will help clarify for residents any confusion that the changes might bring, and will reinforce the message that residents can recycle materials more easily.

Campaign Evaluation

- Calls to Metro Recycling Information will be tracked.
- The number of brochures mailed to callers will be tracked.
- The percentage of households reached through various media will be measured.
- A telephone survey following the campaign will help measure campaign effectiveness.
- Local governments will measure increased participation/tonnage.

Campaign Budget and Reach

- Total budget for campaign development and advertising is \$140,000 (within current fiscal year budget appropriation).
- Reach has yet to be determined, depending on the strategy to be developed with advertising firm, but will be region-wide in scope.

091699c-01

Observations on Metro's Urban Growth Report

September 1999 Update

Randall J. Pozdena, PhD

ECONorthwest

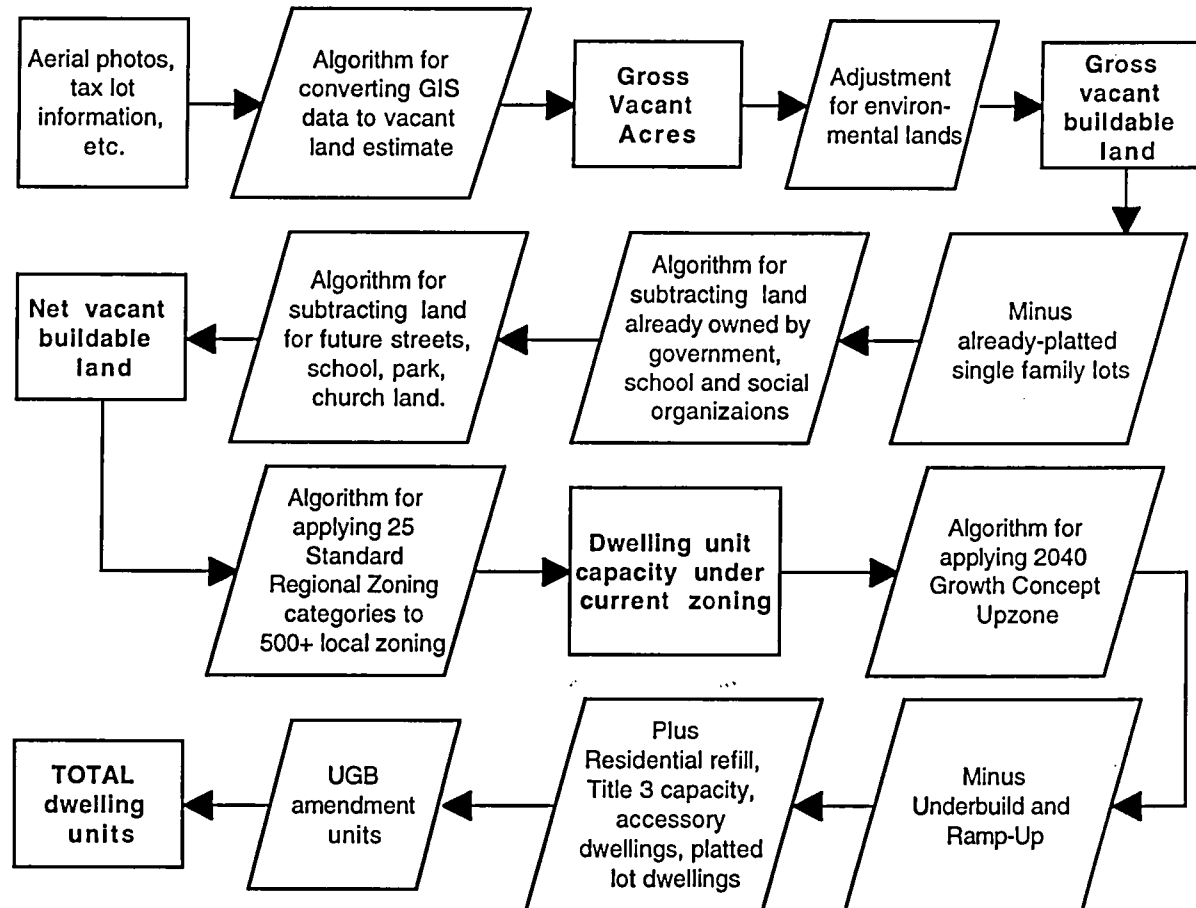
Introduction

- The Westside Economic Alliance hired ECONorthwest to review the UGR findings
- We were asked to review:
 - The key analytic assumptions used in the UGR
 - The consistency of the calculations
- We are presenting today:
 - Preliminary findings
 - Questions and issues

Synopsis of Findings

- The UGR calculations are difficult to audit
 - Not fully documented in the Report, in background papers, or readily-available databases
- No “cross-check” with market conditions
 - HB-2709 speaks primarily to a land-accounting approach
 - But actual market conditions can provide a useful crosscheck
- Methodology not always consistent with 2040 precepts
 - It seems that analysis is not certain that UGB will provide the intended benefits of higher quality of life
- Issues with specific assumptions

UGR process is complex, difficult to audit



Conversion of local zoning to Standard Regional Zoning types

- Conversion process applies 'average' development density assumptions
- Necessarily yields an inexact estimate of dwelling unit capacity under current zoning
- Washington County e.g.: →

Standard Regional Zone			MFR1	MFR2	MFR3	SFR2	SFR3
UGR Assumed Units/Acre			20	40	75	3	4.5
Local Zoning	Min	Max	Total Regional Acres				
R15	12	15	1,630	-	-	-	-
R24	19	24	662	-	-	-	-
R25+	20	100	-	258	-	-	-
R5	1	5	-	-	-	12,556	-
R6	1	6	-	-	-	4,978	-
R9	7	9	-	-	-	-	2,981
RR5	0.2	0.2	-	-	-	1,123	-
TO:R12-18	12	18	36	-	-	-	-
TO:R18-24	18	24	69	-	-	-	-
TO:R24-40	24	40	-	145	-	-	-
TO:R40-80	40	80	-	-	48	-	-
TO:R80-120	80	120	-	-	16	-	-
TO:R9-12	9	12	49	-	-	-	-
			Gross Vacant Acres				
Total			544	194	42	2,560	800

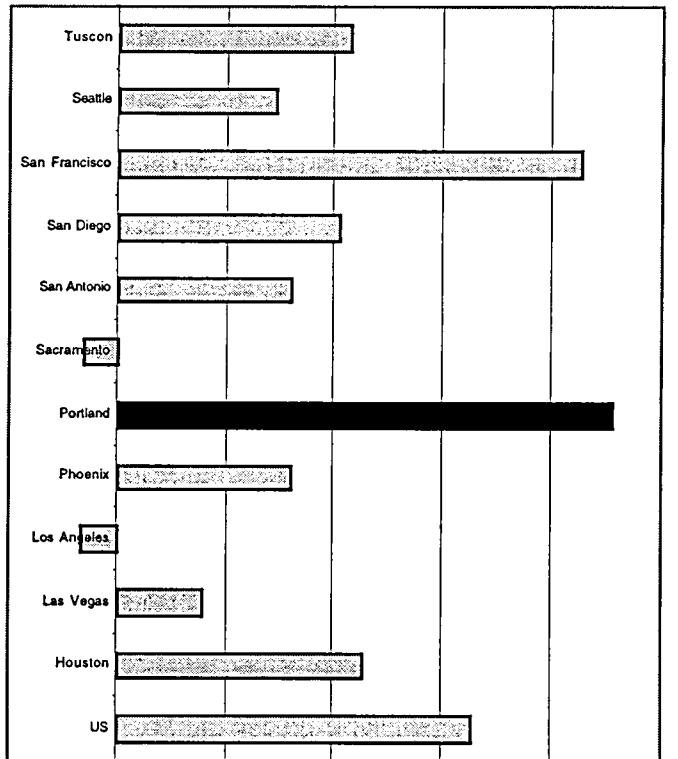
Further complicating matters... '2040 concept upzoning' and 'refill'

- 2040 upzoning: 40% increase over current zoning
 - If localities achieved 2040 compliance by upzoning outside of Metro Design Type areas, is not additional upzoning outside current policy?
- Refill: *redevelopment* and *infill*
 - *Infill* potential exists on lots “3 to 10 times larger than zoning”
 - Adds 48,200 units to UGB capacity with assumed refill rate
 - Aren't *infill* and *buildout* of 'partially vacant' lands to current zoning overlapping concepts? Refill rate is estimated from data on *all buildout* of partially vacant lots, so most infill is already accounted for by vacant land buildout.
 - *Redevelopment* potential exists “on 8,810 acres”
 - Adds 10,300 units to UGB capacity with assumed redevelopment rate
 - Where is the *loss* of housing or other capacity associated with redevelopment accounted for?

Further complicating matters... 'accessory dwelling units'

- Accessory dwelling units
 - 7,500 added to 20-year capacity
- Assumes “1.8% of *existing* and future dwelling units *will have* accessory unit” (emphasis added)
 - But aren't the *existing* accessory units sampled in the AHS already occupied?
 - Under the denser, future development, what land will these units occupy? Don't they compete for refill and other buildout capacity?
 - These units may not be functionally equivalent to regular units.

Market cross-check: Asset markets are forward-looking, too



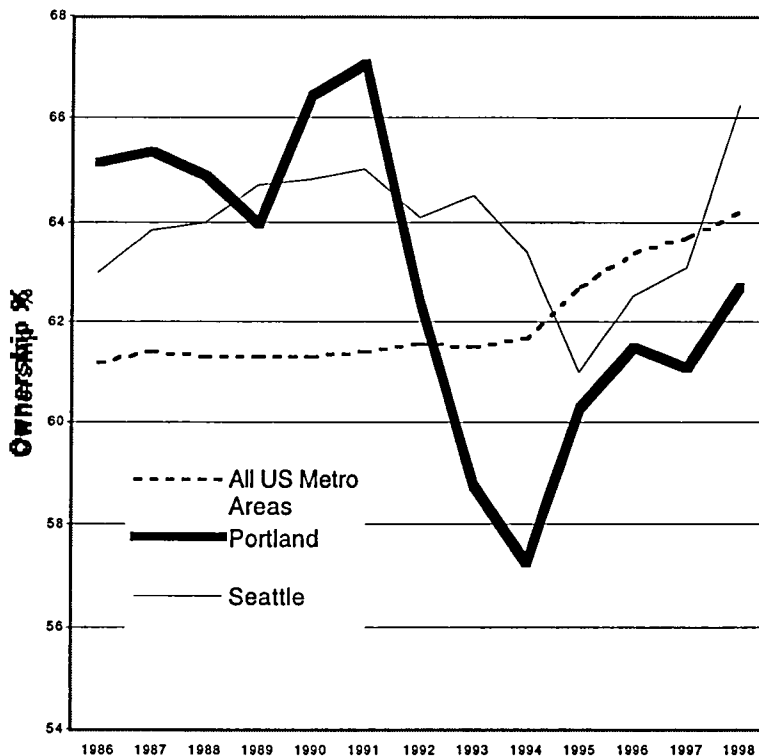
Ratio of Price Growth to Employment Growth, 93-98

25 Least Affordable Areas 99Q1	National Rank
SAN FRANCISCO, CA PMSA	181
Santa Cruz-Watsonville, CA PMSA*	180
Eugene-Springfield, OR MSA+	179
Santa Rosa, CA PMSA+	178
Laredo, TX MSA*	177
SAN JOSE, CA PMSA	176
Salinas, CA MSA+	175
PORTLAND-VANCOUVER, OR-WA PMSA	174
San Luis Obispo-Atascadero-Paso Robles, CA MSA*	173
SAN DIEGO, CA MSA	172
Portsmouth-Rochester, NH-ME PMSA*	171
OAKLAND, CA PMSA	170
Provo-Orem, UT MSA+	169
Lowell, MA-NH PMSA+	168
Santa Barbara-Santa Maria-Lompoc, CA MSA+	167
LOS ANGELES-LONG BEACH, CA PMSA	166
Salem, OR PMSA+	165
ORANGE COUNTY, CA PMSA	164
Ventura, CA PMSA+	163
Greeley, CO PMSA*	162
New Bedford, MA PMSA*	161
Stockton-Lodi, CA MSA+	160
Jersey City, NJ PMSA+	159
NEW YORK, NY PMSA	158
Honolulu, HI MSA+	157

ECONorthwest

8/30/99

Homeownership and suburbanization trends suggest “price flight”

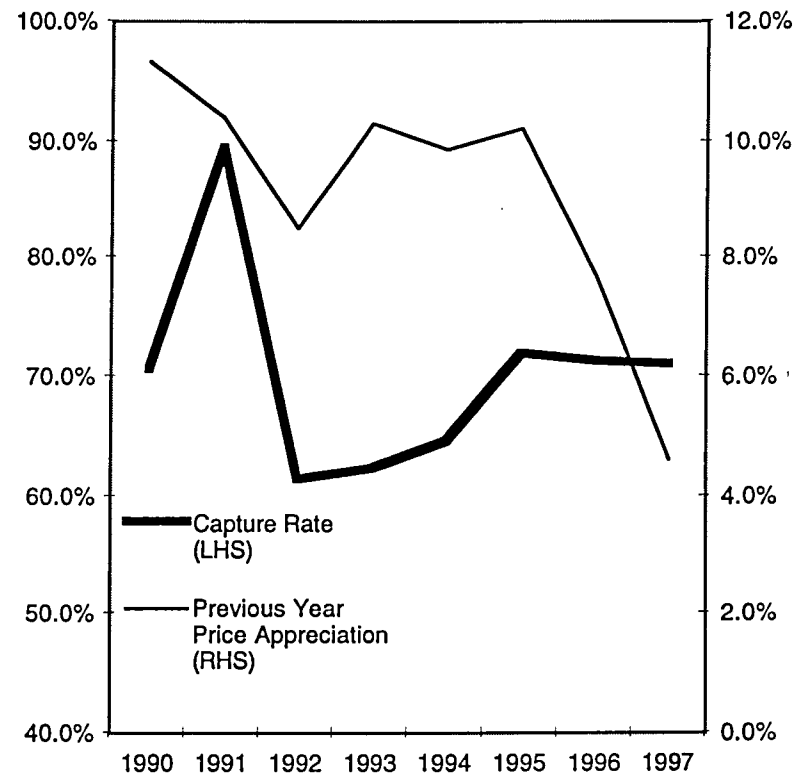


City	Suburbanization Indicator	Rank
St. Louis	>10	1
Washington	>10	2
Baltimore	>10	3
Philadelphia	8.9	4
Milwaukee	7.1	5
Pittsburgh	3.8	6
Indianapolis	3.0	7
New Orleans	3.0	8
Virginia Beach	2.3	9
Portland	2.0	10
Chicago	1.8	11

Suburbanization indicator is the ratio of suburban growth to urban growth, using employment by residence (6/93-6/99). If >10, indicates negative urban growth.

Methodology not always consistent with 2040 precepts

- Capture rate used is recent historical average.
- But, if 2040 concept will, in fact, ultimately improve the region's attractiveness and cost-effectiveness, shouldn't the assumed capture rate in the UGR be higher?



Specific methodological concerns

- Counting parks outside the UGB against need
 - Has the effect of increasing UGB capacity by 4,920 acres
 - Inconsistent w. studies that suggest that parks must be *nearby* to add value to property
 - Parks *demand* is at the historical rate, but demand would *rise* with higher density and smaller personal outdoor spaces
- Report is silent on market acceptance of assumptions
 - What is the *price- and quality-adjusted* quantity of dwellings supplied?
 - New home lot size in US has only declined 10% in 20 years
 - Demand for both lot size and interior space increase as income increases
 - Will buildout occur regardless of current value of improvements on specific vacant-buildable parcels? (URA analysis adjusted for this.)

Other concerns we are still evaluating

- Assumption about <18.5% of land going to streets and dismissal of additional need for land for regional roads
- Impact on land requirements for mandated on-site *surface water management* facilities
- Impact of suburbanization on commercial FARs
- Schools and places-of-worship land

PRESENTATION
METRO
SEPTEMBER 16, 1999

GOOD AFTERNOON

MY NAME IS LEN EDWARDS AND I AM A MEMBER OF THE FAIRVIEW CITY COUNCIL. I AM HERE THIS AFTERNOON TO ASSIST YOU IN MAKING A DECISION REGARDING THE DISTRIBUTION OF A LARGE AMOUNT OF MONEY. I HAVE TO TELL YOU THAT I USUALLY AM ASKED TO TALK BEFORE GROUPS REGARDING SOMETHING THAT WE ARE UPSET ABOUT. IT IS AN EXTREME PLEASURE TO COME BEFORE YOU AND GIVE YOU OUR IDEAS ON HOW TO SPEND MONEY!!!

AS I'M SURE THAT YOU ARE AWARE, THE CITY OF FAIRVIEW IS LOCATED IN MULTNOMAH COUNTY AND BOTH BLUE LAKE PARK AND CHINOOK LANDING ARE WITHIN OUR CITY LIMITS. WE HAVE COMMUNICATED WITH YOU IN THE PAST REGARDING THE BURDEN IMPOSED ON THE CITY OF FAIRVIEW FROM POLICE RESPONSE TO BOTH OF THESE PARKS. THIS SUBJECT, IN FACT, IS STILL UNDER DISCUSSION AND THE ISSUE CONTINUES TO REMAIN CRITICAL FOR OUR CITY.

AS A BRIEF REMINDER OF THE ISSUE, THE CITY OF FAIRVIEW HAS A POPULATION OF APPROXIMATELY 6000. THE ADOPTION OF MEASURE 50 SEVERAL YEARS AGO RESULTED IN THE LOSS OF A POLICE TAX BASE INCREASE THAT WAS PASSED BY OUR VOTERS AS WELL AS A BUDGET CUT OF OVER 20%. AS A RESULT OF THESE LOSSES WE ARE SCRAMBLING TO PROVIDE PUBLIC SAFETY SERVICES TO OUR CITIZENS. WHEN WE ADD THE SERVICES NEEDED BY CITIZENS VISITING BLUE LAKE PARK AND CHINOOK LANDING, THE BURDEN BECOMES OVERWHELMING.

I WOULD LIKE TO SHARE AN EXAMPLE WITH YOU REGARDING WHAT HAPPENS IN FAIRVIEW ON A BEAUTIFUL SUNNY SUMMER WEEKEND. THE CITY OF FAIRVIEW EMPLOYS A POLICE FORCE TO PROVIDE SERVICE TO A CITY OF 6000 PEOPLE. BLUE LAKE PARK, AS A REGIONAL PARK, ATTRACTS APPROXIMATELY 5000 TO 6000 VISITORS ON SUCH A WEEKEND AND CHINOOK LANDING DOUBLES THAT COUNT. THE RESULT IS THAT OUR POLICE DEPARTMENT IS RESPONSIBLE FOR 15,000 TO 18,000 PEOPLE.

THE CITY OF FAIRVIEW'S REQUEST TO YOU WAS TO ADD A \$.50 SURCHARGE ON ENTRANCE FEES TO BOTH PARKS. THE RESPONSES WERE MIXED BUT BASICALLY INDICATED THAT THE FEES TO THE PARKS COULD NOT BE INCREASED BECAUSE: 1) IT WOULD CAUSE A DROP IN USAGE, 2) THERE WOULD BE OBJECTION FROM THE GENERAL PUBLIC, AND 3) YOU WOULD LOSE A SUBSIDY NOW RECEIVED FROM THE STATE MARINE BOARD.

PRESENTATION
METRO
PAGE 2

THE CITY OF FAIRVIEW FEELS STRONGLY THAT COSTS OF SERVICE SHOULD BE BORNE BY THE USERS OF THE SERVICE. SINCE A REQUEST FOR A SURCHARGE HAS BEEN REJECTED, THE CITY OF FAIRVIEW REQUESTS THAT THE METRO COUNCIL CONSIDER AN ANNUAL AGREEMENT WITH THE CITY TO ASSIST WITH THE COSTS OF PUBLIC SAFETY, WHICH INCLUDE POLICE, FIRE AND EMERGENCY RESPONSE, IN THE AMOUNT OF \$75,000.

I THANK YOU FOR THE TIME THIS AFTERNOON AND I LOOK FORWARD TO AN EQUITABLE DISTRIBUTION OF THE DOLLARS IN QUESTION.

Metro Facts



METRO
Regional Services
Creating livable communities

600 NE Grand Ave.
Portland, OR
97232-2736

Tel (503) 797-1942
Fax (503) 797-1793

Web site:
www.metro-region.org

Recycled paper

The urban growth boundary and Metro's role

History and background

Requirements for urban growth boundaries were created in the early 1970s as part of Oregon's land-use planning program. Every urban area in the state must have a UGB to mark the separation between rural and urban land. By providing land for urban uses within the boundary, farm and forest lands can be protected from urban sprawl. The boundaries allow cities and counties to provide public facilities (such as police and fire stations and roads) and urban services (such as sewers and piped water) more cost-effectively.

Metro has managed the regional urban growth boundary for the Portland metropolitan area since its adoption in 1979. Our UGB is a 365-square-mile area (about 236,000 acres) that includes 24 cities and the urban portions of Multnomah, Washington and Clackamas counties. When major changes in the UGB are proposed, representatives from cities, counties and special districts from all over the region review the choices and make recommendations to the Metro Council before it makes a final decision.

How state law affects Metro's decisions

Metro has the authority to add land to the boundary if needed. In 1995, the Oregon Legislature passed a law that every UGB must include enough land to house all of the people expected to live within it in the next 20 years.

State law also allows Metro to approve expansions to the UGB if a need in a "subregional" area is demonstrated. For instance, one community may have too many jobs and not enough housing, creating a burden on the transportation system.

Metro also is required to set aside land outside the current UGB that could be brought in within the next 50 years. In 1997, the Metro Council, in consultation with elected leaders from the cities and counties, designated about 18,600 acres – called **urban reserves** – for this purpose. That Council decision is still in the appeal process.

Moving the UGB

During the last two decades, Metro has moved the boundary about 35 times; moves were very small, 20 acres or less. In 1997 and 1998, Metro worked to

make sure it was in compliance with the state's 20-year land supply law. Metro planners estimate that between now and 2017, the region will grow by about 400,000 people, a third of those our own children and grandchildren. Metro found that most of those people could fit into the current boundary if land and buildings are used more efficiently.

However, in a 1997 "need" report Metro planners estimated that the region would still need land for about 32,000 housing units. Planners must take into account the amount of land needed for homes as well as for greenspaces, schools, churches and public facilities.

This is a two-year process

State law gave Metro two years (1998-1999) to expand the urban growth boundary to bring in enough land to accommodate an estimated 32,000 housing units. Last year, the Metro Council started a lengthy process that included citizen input and technical analysis of each UGB amendment.

In 1998, the Council chose to bring about 3,500 acres of urban reserves into the UGB immediately, and it expressed intent to bring another 1,800 acres in this year if that land were annexed into the Metro jurisdictional boundary and there was still a demonstrable need.

Metro staff has spent much of 1999 working on an update of the report that details how much land this region will need for housing and jobs during the 20-year period. That draft report shows that, right now, there is no need for a general UGB expansion. However, that report does not yet take into account any new federal regulations that would require local governments to set aside land for salmon and steelhead restoration efforts. This land would not be able to be built upon, therefore the federal regulations will affect how much the UGB needs to expand.

Right now, the Metro Council is facing several possible choices:

- Go ahead with the second half of the expansion planned last year based on the original "need" report. The Council

continues

would need to re-vote on the 1,800 acres that it said it intended to bring into the boundary last year before those lands could officially come in.

- Put any general expansion on hold, pending the completion of the updated "need" report. This would require waiting for the federal government to announce what kind of regulations it will impose. It would also require asking the state of Oregon for an extension so that the work Metro is supposed to finish by the end of 1999 could continue in 2000.
- Approve some small expansions based on "subregional" need. The Metro Council can consider bringing in some urban reserves before staff completes the updated "need" report if it can show there is a special need (such as jobs/housing balance) in a specific area.

Legal issues

In February 1999, the Oregon Land Use Board of Appeals indicated that it had questions about how Metro chose to designate urban reserves. Metro has appealed the LUBA decision. This legal issue is indirectly related to the on-going UGB amendment decisions, but it is not believed the appeal will affect work the Metro Council is doing this year.

Fall 1999 public hearings

5 p.m. Thursday, Sept. 23
Washington County Public Services Building
155 N. First Ave., Hillsboro

5 p.m. Monday, Oct. 4
Gresham City Hall
1333 NW Eastman Parkway
Gresham

2 p.m. Thursday, Oct. 7
Metro Regional Center
600 NE Grand Ave.
Portland

5 p.m. Tuesday, Oct. 12
Milwaukie City Hall
10722 SE Main St.
Milwaukie

2 p.m. Thursday, Oct. 14
Metro Regional Center
600 NE Grand Ave.
Portland

Getting involved

For information on the public hearings or on how to submit testimony, call the Metro Council Public Outreach Office at 797-1942 or check out Metro's web page (www.metro-region.org/glance/council/issues).

091699c-02

UGB 98-07 (Jenkins/Kim)**Organization**

23-page "Findings, Conclusions and Final Order"
5-page "Hearings Officer's Report & Recommendation"

Basic facts

AREA: 18.85 acres; rectangle 450 feet north-south and 1900 feet east-west.

LOCATION: 1800 feet south of Springville Road; 2100 feet north of Laidlaw Road; 2200 feet east of Kaiser Road in unincorp'd Wash. Co.; north of and adjoining Bosa North and Greenwood Hill subdivisions; access from two potential stub roads in Bosa North. Abuts Multnomah/Washington County line. UGB abuts the west, south and east edges of site. Was removed from UGB in 1982 in trade for other property in Tualatin.

PLAN/ZONE: Designated and zoned EFU (Wash. Co.)
West, south and east: zoned R5 or R6 (5 to 6 du/ac)
North: MUA-20 and EFU (Mult Co.)

PHYSICAL CONDITIONS: Slopes from high of 410 feet at northeast corner to low of 360 feet at southwest corner. Average slope is less than 5%. There are 9 1/2 acres of wetlands on the site (i.e., more than 1/2 the site is wetlands). Stream crosses site; identified in Metro Functional Plan as a primary and secondary protected water feature.

EXISTING LAND USE: Vacant, no urb services, historical use for pasture

SURROUNDING LAND USE: West/south: urb subdiv, water tank (NW)
East and north: farm use (pasture & hay)

COMMENTS:

Wash Co: no recommendation

TVWD: can serve; would improve water service delivery in UGB

Beav. Schools: neutral; no statement on service capacity

USA: would improve sewer service to land in UGB (Malinowski); no impact on storm drainage services

TVFR: can serve; no recommendation

Wash Co sheriff: could serve, would improve efficiency

THPRD: can serve; no comment on efficiency or support

Tri Met: no comment

HEARING: Hearing held may 24, 1999. 13 witnesses offered oral and/or written testimony: 1 Metro staff and 3 witnesses supported petition. 9 witnesses against. Record held open 1 week after the hearing to allow applicant to introduce a final argument. Report, recommendation and findings filed with Metro on July 1. Exceptions were filed with Metro by petitioner on July 22.

Applicable approval standards and responsive findings

1. Locational adjustment to add land to UGB must comply with MC 3.01.035(b), (c), (f).
2. Not more than 100 acres of land added to UGB in any calendar year; none in 1999--- COMPLIES (MC 3.01.035(b)).
3. Not more than 20 acres of land added to UGB in any one petition; pivotal issue in this case. Staff/petitioner argued land to north is not similarly situated; HO found that at least 26 feet of land to north is similarly situated ---- DOES NOT COMPLY w/ MC 3.01.035(b) when at least 26 feet of similarly situated land to the north is included as required by MC 3.01.035(f)(3).
4. Must be capable of being served in an orderly and economic manner. (MC 3.01.035(c)(1)). Based on statements from service providers, site can be served by water, sanitary sewer, road, drainage, transit & emergency services.

Schools are not listed as one of the services that must be provided in an orderly and economic manner, but the list is not exclusive, and schools are a public service like other services listed. Concluded that it is relevant. Evidence in record is that elementary and high schools are now over capacity and nearby new middle school will reach capacity in two years without adjustment. Given capacity problems and lack of substantive response from school district, there is insufficient evidence in the record that school services can be provided in an orderly & economic manner.

As an aside, the school district's decision not to respond in UGB context significantly prejudices petitioner. Council should prevail on school district to participate as other service providers do. There are a small handful of locational adjustment cases annually; it would not take a whole lot for the district to respond.

Other urban services can be provided to the Property based on statements by service providers.

5. Must result in net improvement in efficiency of public facilities and services to land already in UGB. (MC 3.01.035(c)(1)).

Metro rules do not define how to calculate net efficiency of urban services. Must construe meaning of terms in practice. Endeavored to do so based on Council actions in past cases and *Parklane v. Metro* decision.

No net improvement in park and open space services and facilities. Would increase amount of land in TVPRD if wetlands on site are dedicated to district. But, under existing zoning, site will remain largely open space, so locational adjustment would not increase open space area. Moreover would lead to development of 7 acres, reducing open space. Conclude NO NET EFFECT on open space and parks.

No net improvement in transportation services/emergency service access depending on timing of development of adjoining urban land. If Greenwood Drive opened to through traffic first, no need for access through site --- no net efficiency. If Greenwood Drive is not opened to through traffic, street through site is needed to provide access to Malinowski property. Concluded that applicant failed to bear burden of proof that locational adjustment would result in net improvement in efficiency. *Could* does not equal *will*.

No net efficiency in water service, because loop through site could be created within land already in UGB.

No apparent enhancement in EFFICIENCY for drainage services, natural gas, electric and fire protection for land already in UGB. Failed to bear burden of proof.

Re: sewer service --- *Parklane* decision holds Metro cannot include more land in UGB than needed to serve purpose for UGB. As it relates to this case, including east half of site in UGB would enable sewer line to be extended east to serve Malinowski property; whole site is not needed to achieve this efficiency. Including western portion of site in UGB does not enhance efficiency of sewer service; merely confirms economic benefit on petitioner; convenient device.

6. Must facilitate permitted development of adjacent land already in UGB. (MC 3.01.035(c)(2)).

Including subject site in UGB facilitates needed development on adjacent land already in UGB because it makes it possible to serve Malinowski property with gravity flow sewer. However it does not facilitate development of any other land in existing UGB except with regard to potential timing impact.

7. Must have positive impact on regional transit corridor and must address any hazards or natural resources on site. (MC 3.01.035(c)(3)).

In this case, no impact on regional transit corridor. Wetlands can be addressed through local development regulations and ODSL/COE permitting requirements.

8. Must retain farmland unless it would preclude or make impracticable urbanization of land in UGB. (MC 3.01.035(c)(4)).

Site constitutes agricultural lands, because CLASS III & IV SOILS. Retaining it as farm land does not preclude urbanization of adjacent land in UGB. Malinowski land can be served by sewer without including site in UGB, albeit less efficiently. But efficiency not relevant to this criterion.

9. Must be compatible with existing agricultural activities. (MC 3.01.035(c)(5)).

Malinowskis use adjoining land for hay production and cattle pasture. Dr. Jenkins and Malinowskis testified about conflict between such uses and urban residential development -- fences cut allowing cattle to escape; complaints of noise and dust; vandalism. Urban development of site will bring such conflicts closer to Malinowski farm activities.

10. Proposed UGB must be superior. (MC 3.01.035(f)(2)).

In this case, proposed UGB is not superior, because:

a. No evidence that public services (schools) can be provided to the subject property in an orderly and economic fashion;

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

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

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

e. It does not include all similarly situated land.

11. Must include all similarly situated contiguous land which could be appropriately included within UGB as an addition based on the factors above without violating 20 acre limit. (MC 3.01.035(f)(3)).

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

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

c. Jurisdictional boundaries are not relevant. Not an obstacle to development between the subject site and abutting properties. No physical barrier between the subject property and the adjoining 26 feet to the north, such as a highway, street or railroad track, that distinguishes the subject property from adjoining land.

d. Failed to show that the soil conditions on this site and the adjoining land to the north are different. On the contrary the petitioner testified that such lands have been farmed or grazed in the past together with the subject site. Aerial photographs in the record show the northern portion of the abutting property is cultivated while the southern portion is undisturbed.

e. The Council finds the evidence in this case can be distinguished from the evidence in prior cases regarding the "similarly situated" criterion. Many of the properties proposed for addition in prior cases had some natural or man-made physical feature that separated the subject property from adjoining non-urban land. See, e.g., UGB Case 94-

01 (Starr/Richards) (I-5 freeway), UGB Case 95-01 (Harvey) (railroad tracks) and UGB Case 87-4 (Brennt) (steep slopes). In this case, the subject property is not physically distinguishable from adjoining non-urban land, similar to the situation in UGB Case 95-02 (Knox Ridge).

g. If petition includes all similarly situated lands, it would exceed 20 acres. Would include at least 1.15 acres of the land north. If as little as 26 feet of the land adjoining the north edge of the subject property is included in the UGB, the petition would include more than 20 acres. The evidence is insufficient to show the adjoining 26 feet of land is not similarly situated to the subject site based on the relevant criteria.

RESPONSE TO THE EXCEPTIONS

1. Request for remand --- no response

2. Whether agricultural activities on land inside UGB is relevant to MC 3.01.035(c)(5). Petitioners argues zoning precludes agricultural use of adjoining land. Incorrect as a matter of law. Farming of adjoining land is permitted. To ignore existing agricultural use is contrary to plain meaning of words in code.

3. HO assumed facts not in record? Not really what is alleged as basis for exception. It is more accurately characterized as a difference of opinion about whether it is practicable to provide urban services to land already in UGB without including site in UGB.

e.g., re connectivity: HO gave more significance to fact that through access could be provided in future. Petitioner gave more significance to fact that through access is not immediately available and is restricted for the indefinite future.

e.g., re sewers: mixes different approval criteria. HO concluded it is practicable to provide sewer service with pump station. Petitioner disagreed, because USA discourages use of pump stations. **ERROR:** USA does not allow pump station when sewer is within 5000 feet.

e.g., re water loop: HO concluded not all of subject site needed to provide looped water system. Petitioner says that it is not practicable to do so, but no evidence to that effect. Nothing precludes including only a portion of the subject site in the UGB to achieve water loop.

4. Improperly equates open space with undeveloped land. Difference of opinion about meaning of term open space. Although defined differently in other contexts, there is nothing in MC 3.01 to suggest open space has any particular meaning or requires Goal 5 analysis to be done. HO concluded it means undeveloped land. That is consistent with context of words. MC 3.01.035(c)(1) says locational adjustment shall result in net improvement in the efficiency of ... parks and open space. So open space must mean something other than parks. It could be construed more narrowly than HO did.

5. Improper to consider schools. Disagree. MC 3.01.035(1)(c) is not an exclusive list and it says so.

6. Improper to rely on failure of school district response to find that services are not available given proximity of two schools. Reflects difference of opinion rather than matter of law. There is evidence that the existing schools are at or will exceed capacity soon. Discounts significance of proximity of schools to site.

TO JUSTIFY A DECISION APPROVING THE PETITION:

1. Find that school services are not relevant OR that proximity of schools to site is sufficient evidence that school services will be available.
2. Find that including site in UGB will increase efficiency with which urb. services are provided to land already in UGB, and that it does not matter that all of land need not be included in UGB to achieve these efficiencies.
3. Find that including the site in UGB facilitates development of land already in UGB.
4. Find that site is not agricultural OR that retaining this land in agricultural use would preclude or render impracticable urban development of land already in UGB.
5. Find that urban development of site would be compatible with existing agricultural uses (e.g., that existing agricultural uses on land in UGB are not relevant).
6. Find that IGB would be superior.
7. Find that site includes all similarly situated lands.



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DISTRICT ADMINISTRATION OFFICE

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April 21, 1999

Ms. Joanne Rice
Washington Co. Dept. of Land Use & Transportation
Land Development Services
155 North 1st Avenue - Suite 350-13
Hillsboro, OR 97123

Re: Jenkins/Kim Locational Adjustment (1N1 21BA - Tax Lot 101 and 1N1 21 - Tax Lot 1000)

Dear Ms. Rice:

I would like to follow-up on the letter that I faxed to you earlier this morning regarding the referenced development and boundary adjustment.

When this area is annexed into the Park District there will be an orderly and economic provision of park and recreation services which will result in a net improvement and efficiency of services. Furthermore, annexation would provide for adequate, planned capacity for providing these services, as anticipated for projected growth areas in our *20-Year Comprehensive Parks & Recreation Master Plan*.

Please accept this letter and forward it to the Planning Commission for today's Hearing, and call me if you have any questions.

Thank you.

Sincerely,

Stephen A. Bosak, CLP
Superintendent of Planning & Development

cc: Mr. Eric Eisemann/WPS

Transmitted by fax to 693-4412 and mailed on April 21, 1999 (1 page).

ITEM 8.1

Quasi-Judicial Proceeding on Ordinance No. 99-816

1. READ THE ORDINANCE BY TITLE ONLY
2. CALL ON DAN COOPER TO EXPLAIN PROCEDURES

THE PROCEDURE IS:

3. VALONE WILL GIVE A SHORT SUMMARY AND INTRODUCE EPSTEIN
4. HEARINGS OFFICER EPSTEIN WILL GIVE REPORT
5. APPLICANT WILL SPEAK THROUGH BILL COX (EXPLAIN OBJECTION TO REPORT AND REQUEST TO SEND IT BACK TO THE HEARINGS OFFICER)
6. ANY OTHER PUBLIC TESTIMONY
7. COUNCILOR DISCUSSION
8. OUTCOMES:
 - ✓ 1. MOTION TO APPROVE ORDINANCE AND ADOPT HEARINGS OFFICER'S REPORT
 2. MOTION TO SEND THE MATTER BACK TO THE HEARINGS OFFICER FOR NEW EVIDENCE
 3. DIRECT OFFICE OF GENERAL COUNSEL TO CREATE FINDINGS SUPPORTING APPROVAL
 4. DISCONTINUE THE ITEM FOR FURTHER ACTION LATER.
9. VOTE

**METRO**

DATE: August 30, 1999

TO: Metro Council
Mike Burton, Executive Officer

FROM: *LS*
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
Elaine Wilkerson
Ray Valone

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