

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 10/25/99**
DATE: October 28, 1999
DAY: Thursday
TIME: 2:00 PM
PLACE: Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

A. OPEN SPACES ACQUISITION ACKNOWLEDGEMENT

3. EXECUTIVE OFFICER COMMUNICATIONS

4. AUDITOR COMMUNICATIONS

5. MPAC COMMUNICATIONS

6. CONSENT AGENDA

- 6.1 Consideration of Minutes for the October 14, 1999 and the October 21, 1999 Metro Council Regular Meetings.

7. PUBLIC HEARING ON I-MAX LAND USE FINAL ORDER (2:30 P.M.)

- 7.1 **Resolution No. 99-2853A**, For the purpose of Adopting a Land Use Final Order Amending the Light Rail Route, Light Rail Stations and Park-and-Ride Lots, Including Their Locations, for the Portion of the South/North Light Rail Project Extending from the Steel Bridge to the Exposition Center. Kvistad

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. Epstein/Valone

9. ORDINANCES - SECOND READING

- 9.1 **Ordinance No. 99-825A**, For the Purpose of Amending Metro Code Section 5.02.025 to Modify the Disposal Charge at the Metro South and Metro Central Transfer Stations. Bragdon
- 9.2 **Ordinance No. 99-824A**, For the Purpose of Amending Metro Code Chapter 7.01 to Modify and Adjust Excise Taxes and making other Related Amendments. Washington
- 9.3 **Ordinance No. 99-823A**, For the Purpose of Amending Metro Code Chapter 5.02 to Modify Charges for Direct Haul Disposal, to Modify Metro System Fees, to Create Additional Regional System Fee Credits, and Making Other Related Amendments. Washington

10. RESOLUTIONS

- 10.1 **Resolution No. 99-2843**, For the Purpose of Adopting the Portland Area Air Quality Conformity Determination for the FY 2000 Metropolitan Transportation Improvement Program. Bragdon
- 10.2 **Resolution No. 99-2857**, For the Purpose of Granting a Time Extension for Compliance with Titles 1, 2, 4, and 6 of the Urban Growth Management Functional Plan for the City of Sherwood and Requiring Actions to Assure Coordination among the Comprehensive Plans of the Cities of Sherwood, Tualatin, Tigard, Beaverton and Washington County Concerning Title 4 of The Functional Plan. McLain

11. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for October 28, 1999 Metro Council Meeting

	Sunday (10/31)	Monday (11/1)	Tuesday (11/2)	Wednesday (11/3)	Thursday (10/28)	Friday (10/29)	Saturday (10/30)
CHANNEL 11 (Community Access Network) (most of Portland area)		4:00 P.M.					
CHANNEL 21 (TVCA) (Washington Co., Lake Oswego, Wilsonville)							
CHANNEL 30 (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)							
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 P.M.						
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)		12:00 P.M. (previous meeting)	7:00 P.M. (previous meeting)	12:00 P.M. (current or previous meeting)	6:00 P.M. (previous meeting)	7:00 P.M. (previous meeting)	7:00 A.M. (previous meeting)
CHANNEL 19 or CHANNEL 33 (ATT Consumer Svcs.) (Milwaukie)	4:00 P.M. (previous meeting)					10:00 P.M. (previous meeting)	9:00 A.M. (previous meeting)

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

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

Agenda Item Number 6.1

Consideration of the October 14, 1999 and the October 21, 1999 Regular Metro Council Meeting minutes.

**Metro Council Meeting
Thursday, October 28, 1999
Council Chamber**

Agenda Item Number 7.1

Resolution No. 99-2953A, For the Purpose of Adopting a Land Use Final Order Amending the Light Rail Route, Light Rail Stations and Park-and-Ride Lots, Including Their Locations, for the Portion of the South/North Light Rail Project Extending from the Steel Bridge to the Exposition Center.

Public Hearing

**Metro Council Meeting
Thursday, October 28, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING A LAND)	
USE FINAL ORDER AMENDING THE LIGHT)	RESOLUTION NO. 99-2853A
RAIL ROUTE, LIGHT RAIL STATIONS AND)	
PARK-AND-RIDE LOTS, INCLUDING THEIR)	Introduced by:
LOCATIONS, FOR THAT PORTION OF THE)	
SOUTH/NORTH LIGHT RAIL PROJECT)	Ed Washington, LUFO Steering
EXTENDING FROM THE STEEL BRIDGE TO)	Committee Chair
THE EXPOSITION CENTER	

WHEREAS, The Oregon Legislature enacted Oregon Laws 1996, Chapter 12 (the Act) establishing procedures for siting the South/North Light Rail Project through adoption by the Metro Council of a Land Use Final Order (LUFO) following application by Tri-Met; and

WHEREAS, In accordance with Section 4 of the Act, the Oregon Land Conservation and Development Commission adopted the South/North Light Rail Project land use final order criteria on May 30, 1996 following a public hearing; and

WHEREAS, The Act requires that Tri-Met apply to the Metro Council for a LUFO or a LUFO amendment for the South/North Light Rail Project following its receipt of recommendations from the LUFO Steering Committee and the Oregon Department of Transportation (ODOT); and

WHEREAS, On July 23, 1998, following public notice and hearing and in accordance with all applicable procedures set out in the Act, the Metro Council adopted Resolution No. 98-2673 adopting a Land Use Final Order establishing the light rail route, stations, lots and maintenance facilities and the highway improvements for the South/North Light Rail Project, including their locations (the original LUFO); and

WHEREAS, On July 23, 1998, the Metro Council adopted Resolution No. 98-2674 that approved the South/North Locally Preferred Strategy (LPS) which is consistent with the original LUFO; and

WHEREAS, As of April, 1999, Metro staff had completed a Supplemental Draft Environmental Impact Statement identifying a new alternative for the South/North Light Rail Project for that portion of the Project located between approximately the Steel Bridge and the Exposition Center, including an Interstate Avenue alternative; and

WHEREAS, The Metro Council adopted Resolution No. 99-2806A that modified the Locally Preferred Strategy in June of 1999 to include the Full-Interstate Alignment Alternative following submittal of recommendations by Tri-Met staff and the City of Portland that the region select the Full-Interstate Alignment Alternative as the amended LPS, and defining the North Corridor as the first construction segment; and

WHEREAS, On September 13, 1999, the LUFO Steering Committee recommended to Tri-Met a LUFO amendment, amending the original LUFO, that establishes a light rail route, stations and park-and-ride lots along the Full-Interstate Alignment Alternative for that portion of the Project located between the Steel Bridge and the Exposition Center; and

WHEREAS, On September 13, 1999, in a letter to the Tri-Met Board from Kay Van Sickel, Oregon Department of Transportation (ODOT) Region 1 Manager, ODOT recommended to Tri-Met the same LUFO amendment as was recommended by the LUFO Steering Committee; and

WHEREAS, On September 24, 1999, following consideration of the recommendations from the LUFO Steering Committee and ODOT, and authorization by the Tri-Met Board, Tri-Met submitted to Metro its application for a LUFO amendment, amending the light rail route, stations and lots maintenance facility, including their locations, for that portion of the South/North Light Rail Project extending from the Steel Bridge to the Exposition Center; and

WHEREAS, The light rail route, stations and lots locations in Tri-Met's application are in the form of boundaries within which the light rail route, stations and lots shall be located, as provided for in Section 6(1)(a) of the Act; and

WHEREAS, Following receipt of Tri-Met's application, public notice of an October 28, 1999 public hearing to consider Tri-Met's application was published on October 8, 1999, in *The Oregonian*, which the Council finds to be a newspaper of general circulation within Metro's jurisdictional area, with the notice being published more than 14 days prior to the October 28, 1999 public hearing; and

WHEREAS, The above-identified notice contains all of the information required by Section 7(1)(b) of the Act to be included in the Council's published notice of this LUFO amendment proceeding; and

WHEREAS, The Council provided additional public notice of the October 28, 1999, public hearing by mailing a flyer to all properties within 100 feet of the proposed light rail alignment, providing notice on the project telephone "hot line", and provided notice and information on both Tri-Met and Metro's Web Sites; and

WHEREAS, Additional public notice of the October 28, 1999 hearing was mailed to Clackamas and Multnomah Counties; the Cities of Portland, Milwaukie, Gladstone and Oregon City; and the Oregon Department of Transportation; and

WHEREAS, The Metro Council finds and determines that the above-described published notice required by the Act, together with the mailed notice to persons who own property in close proximity to the proposed project improvements are, in its judgment, reasonably calculated to give notice to persons who may be substantially affected by its decision on Tri-Met's application; and

WHEREAS, On October 21, 1999, a copy of the staff report, identifying and addressing compliance with the applicable South/North land use criteria and also including a description of the proposed boundaries within which the light rail route, stations and lots are proposed to be located, was made available for public inspection; and

WHEREAS, On October 28, 1999, the Metro Council held a public hearing at which it accepted oral and written public testimony on Tri-Met's application for a LUFO amendment as described in these recitals; and

WHEREAS, At the October 28, 1999 hearing, the Council commenced the hearing by making a statement containing the information identified in Section 7(3) of the Act; and

WHEREAS, The Council has considered Tri-Met's application, the recommendations of the LUFO Steering Committee and ODOT, the staff report, and the testimony provided in support or in opposition to Tri-Met's application; and

WHEREAS, A variety of Metro policy documents include reference to the South/North Project such as the *Regional Transportation Plan* (RTP) and the *Regional Urban Growth Goals and Objectives* (RUGGOs), that will need to be amended to be consistent with the Land Use Final Order amendment;

WHEREAS, the Metro Council has an interest in improving the linkage between the Expo Center and the regional light rail system, now, therefore,

BE IT RESOLVED:

1. That the Metro Council hereby adopts the Land Use Final Order amendment for the South/North Light Rail Project, attached hereto as Exhibit A and incorporated herein by this reference, amending the light rail route, stations and lots, including their locations, for that portion of the South/North Light Rail Project extending from the east end of the Steel Bridge northward to the Exposition Center. As indicated in Exhibit B, attached hereto and incorporated

herein by this reference, the South/North LUFO amendment hereby adopted by the Metro Council is identical to the LUFO amendment application submitted by Tri-Met.

2. That the Metro Council hereby adopts the Findings of Fact and Conclusions of Law in Support of the Land Use Final Order Amendment, attached hereto as Exhibit C and incorporated herein by this reference, as its written findings of fact demonstrating how the Metro Council's decisions in its adopted Land Use Final Order amendment comply with the applicable review criteria.

3. That the Metro Council hereby states its intent to prepare amendments to Metro's *Regional Transportation Plan* and the *Regional Urban Growth Goals and Objectives* and related documents to make such plans consistent with the LUFO amendment adopted by this Resolution.

4. That the Metro Council acknowledges Tri-Met has agreed to complete final design for an alternate station location at the Expo Center north entrance near Marine Drive.

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

Rod Monroe, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

Attachments:

- Exhibit A – South/North Land Use Final Order Amendment**
- Exhibit B – Tri-Met Application for South/North Land Use Final Order Amendment**
- Exhibit C – Findings of Fact and Conclusions of Law in Support of the South/North Land Use Final Order Amendment**

Exhibit A to Resolution No. 99-2853
South/North Land Use Final Order Amendment

**South/North
Land Use Final Order Amendment**

October 21, 1999

Land Use Final Order Amendment for the South/North Light Rail Project

1. Introduction

This document constitutes a Land Use Final Order (LUFO) for the South/North Light Rail Project (the Project) in accordance with Oregon Laws 1996, Chapter 12 (House Bill 3478). This LUFO amends the original LUFO for the Project adopted by the Metro Council on July 23, 1998 through the Council's adoption of Resolution No. 98-2673.

2. Requirements of House Bill 3478

Pursuant to House Bill 3478, upon application by Tri-Met and following a public hearing held on October 28, 1999, the Metro Council hereby adopts this LUFO amendment for the Project. This LUFO amendment amends the light rail route and the light rail stations and park-and-ride lots, including their locations, for that portion of the Project extending from the Steel Bridge to the Exposition Center (Expo Center).

3. Establishment of Light Rail Route, Stations and Park-and-Ride Lots, Including their Locations.

The Council adopts the light rail route, station and lot amendments identified below. These light rail facilities and improvements are identical to those for which Tri-Met requested Council approval. Additionally, the Council adopts the location boundaries for these light rail facilities and improvements as illustrated in the attached maps, which are the same as the boundary maps attached to Tri-Met's application.

The attached maps are printed from a common Geographic Information System data base. The maps illustrate the adopted boundaries at the one inch equals 400 foot scale continuously along the light rail alignment from south to north within the affected area. The boundaries shown on these maps represent the areas within which the light rail facilities may be located. The maps generally show the existing property lines and major buildings to provide orientation and clarity with respect to the project facility locations. The FEIS light rail route and station platform locations depicted on those maps are provided solely for visual reference purposes. The exact location of the light rail tracks and station platforms may fall anywhere within the light rail route and light rail station boundaries shown on the maps.

The approved amendments occur entirely within that portion of the Project between the Steel Bridge and the Expo Center in the City of Portland. In the original LUFO adopted for the Project, that portion of the Project was included within an area identified as the Eliot and North Portland segments of the Project. With the changes approved in this LUFO, the Council now deems it more appropriate to divide the affected area into three segments, identified as the Albina, Upper Interstate, and Expo Center segments.

3.1 Albina Segment

The Albina Segment extends along N Interstate Avenue from the east end of the Steel Bridge to the Kaiser Interstate Medical Office Center north of N Fremont Street.

The light rail alignment splits from the existing east-west alignment on the east side of the Steel Bridge in the vicinity of the Rose Quarter, where the alignment turns north into the center of N Interstate Avenue. A station is located in the median of N Interstate Avenue in the vicinity of the intersection of N Multnomah Street and N Interstate Avenue adjacent to the Rose Garden, approximately 200 yards west of the existing Rose Quarter Transit Center. North from the Rose Quarter, the tracks are aligned in the middle of N Interstate Avenue and pass underneath the Broadway Bridge. A center platform station is located in the vicinity of N Russell and N Knott Streets on N Interstate Avenue. From the intersection of N Greeley Avenue, the alignment proceeds north within the N Interstate Avenue right-of-way up to Overlook Park and the Edgar Kaiser Medical Center.

There are no maintenance facilities or highway improvements in this segment.

The boundaries within which the above-described light rail improvements may be located are as illustrated in Figures 1.1, 1.2 and 1.3 attached hereto.

3.2 Upper Interstate Segment

The Upper Interstate Segment extends from the Kaiser Interstate Medical Office Center north of N Fremont Street to N Denver Avenue in the vicinity of N Columbia Boulevard.

From the Overlook Station located in the vicinity of N Overlook Boulevard at the Edgar Kaiser Medical Facility, the light rail alignment extends northward to Kenton within the center of the existing 100-foot N Interstate Avenue right-of-way. Split-platform stations are located in the vicinity of the following major east/west streets: N Overlook Boulevard, N Going Street, N Killingsworth Street, N Portland Boulevard and N Lombard Street. The alignment continues towards Kenton Station in the vicinity of N Fenwick Avenue, N Denver Avenue, N McClellan Street and N Argyle Street. From Kenton Station, the light rail alignment continues northward on a reconstructed Denver Avenue viaduct over N Columbia Boulevard to the start of the Expo Center Segment.

There are no maintenance facilities or highway improvements in this segment.

The boundaries within which the above-described light rail improvements may be located are as illustrated in Figures 1.3, 1.4, 1.5 and 1.6 attached hereto.

3.3 Expo Center Segment

The Expo Center Segment extends from N Denver Avenue a short distance north of N Columbia Boulevard to the Expo Center.

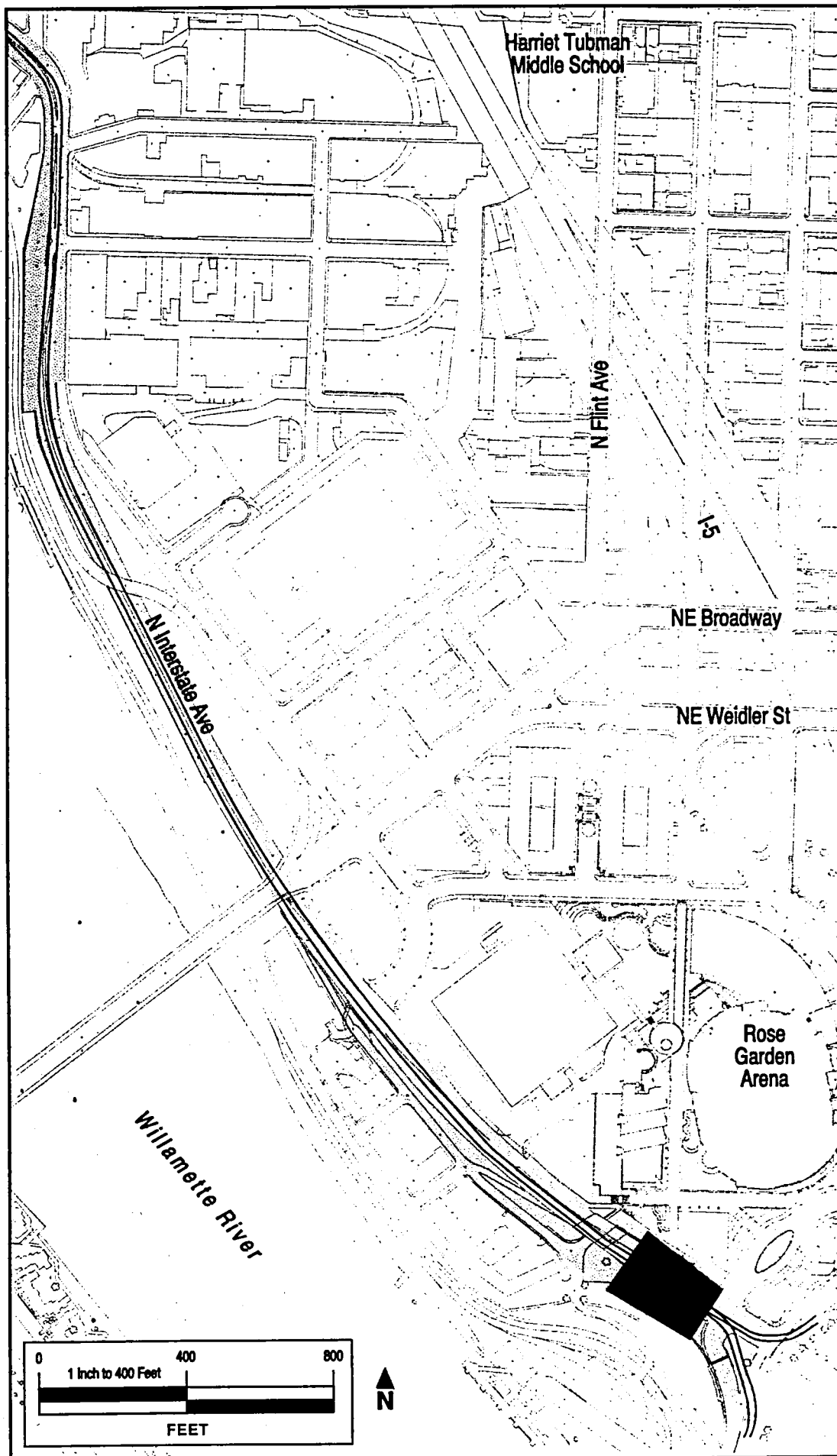
From N Denver Avenue north of N Columbia Boulevard, the alignment continues northward, east of N Denver Avenue (Highway 99W), crossing over the Columbia Slough on a new bridge. The alignment crosses under Highway 99W through a tunnel to a station and park-and-ride lot in the vicinity of Portland International Raceway near N Victory Boulevard. From here the track continues near N Expo Road to a terminus station and park-and-ride lot at the Expo Center.

There are no maintenance facilities or highway improvements in this segment.

The boundaries within which the above-described light rail improvements may be located are as illustrated in Figures 1.7 and 1.8 attached hereto.



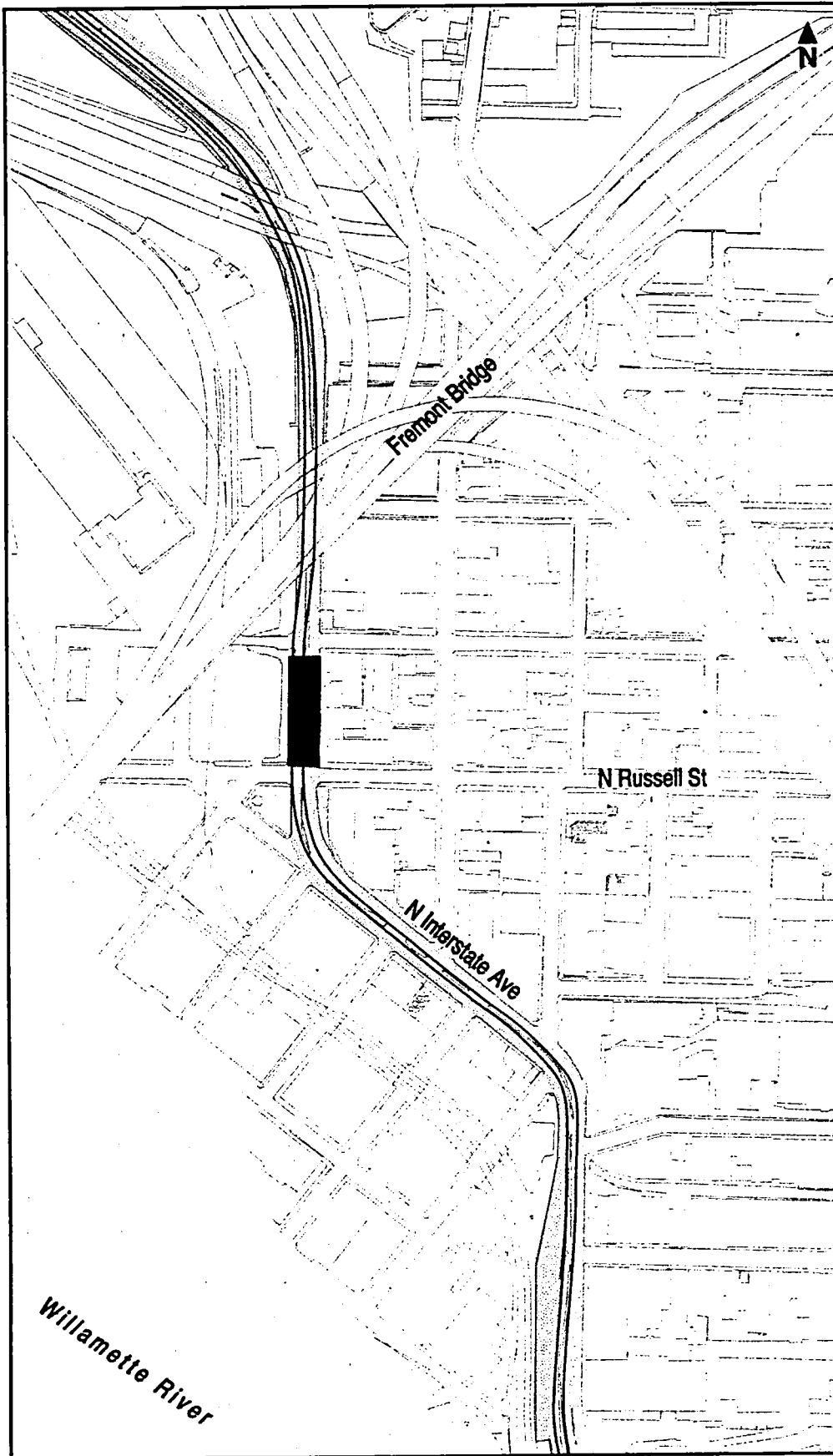
Figure 1.1
**Land Use
Final Order
Amendment
Boundary Maps**

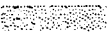


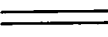



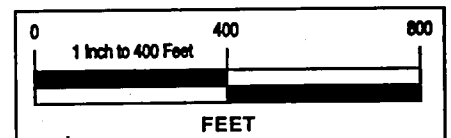
August 1999



Figure 1.2
**Land Use Final Order
Amendment
Boundary Maps**



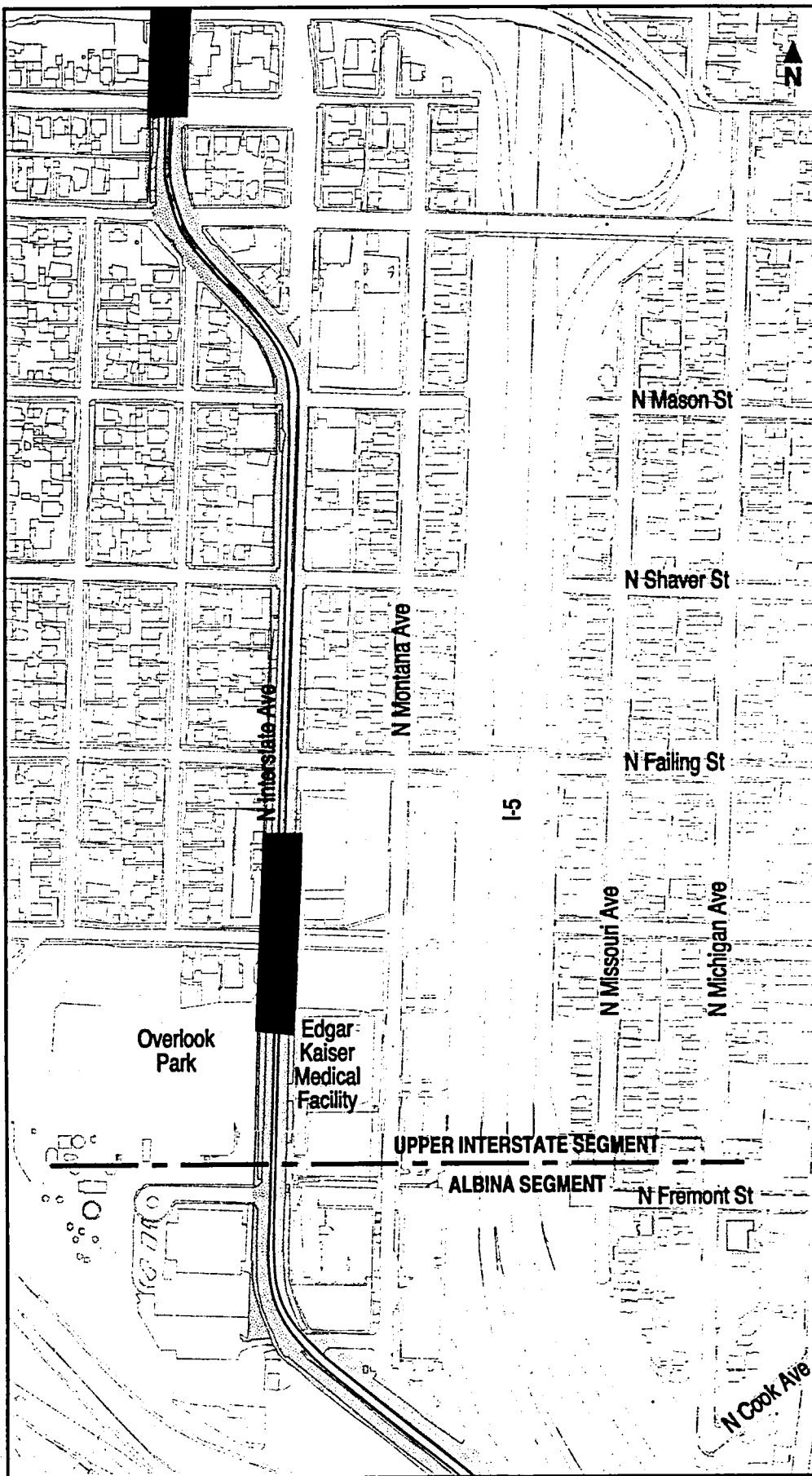
-  Light Rail Route
-  Light Rail Station
-  FEIS Station Platform
-  FEIS Light Rail Route/Options
-  Segment Break








August 1999



Figure 1.3
**Land Use Final Order
Amendment
Boundary Maps**



-  Light Rail Route
-  Light Rail Station
-  FEIS Station Platform
-  FEIS Light Rail Route/Options
-  Segment Break

August 1999

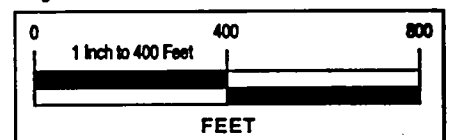
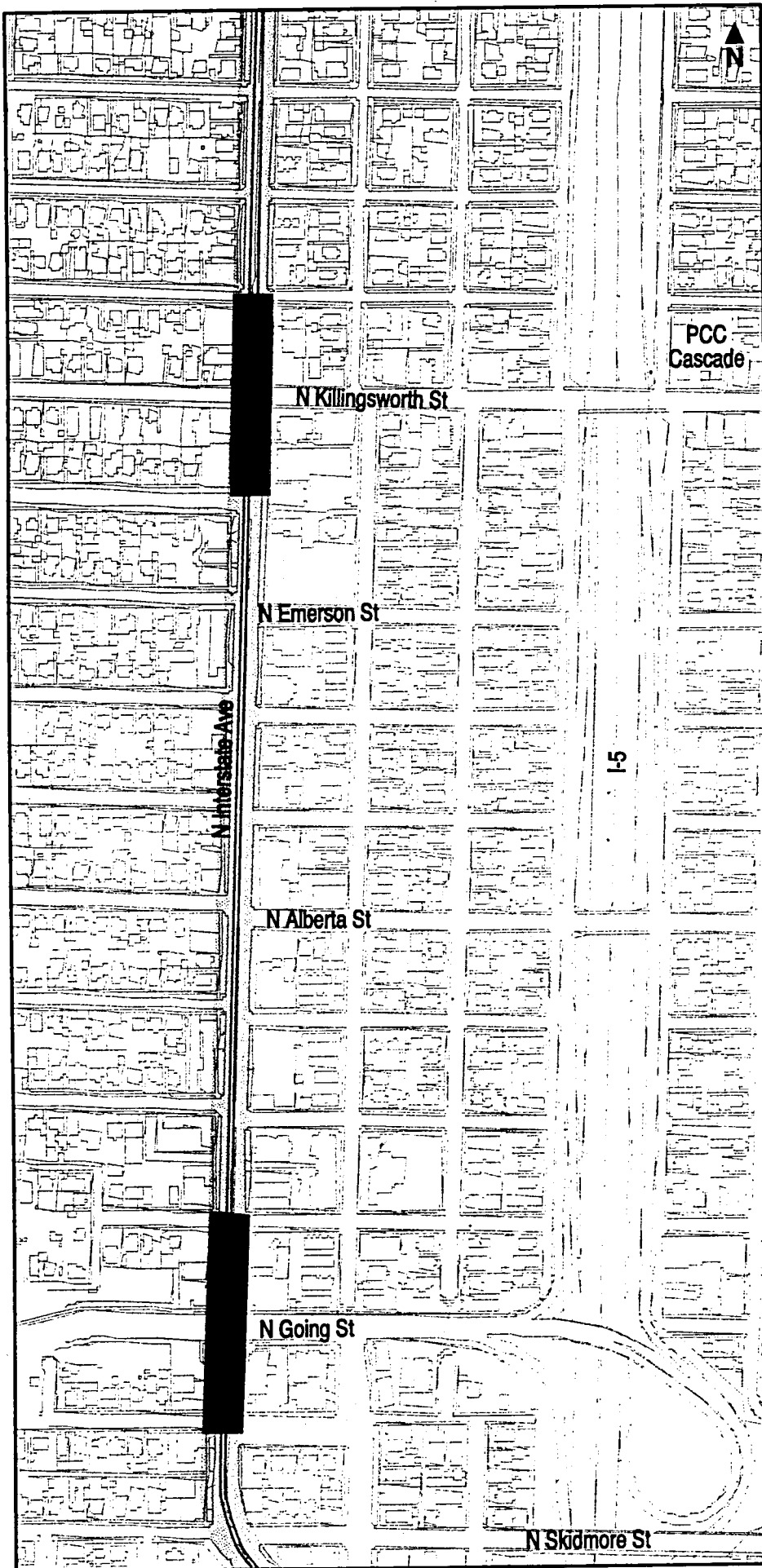



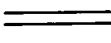
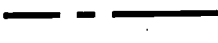
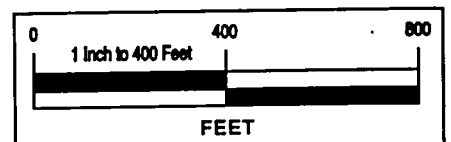




Figure 1.4
**Land Use Final Order
Amendment
Boundary Maps**



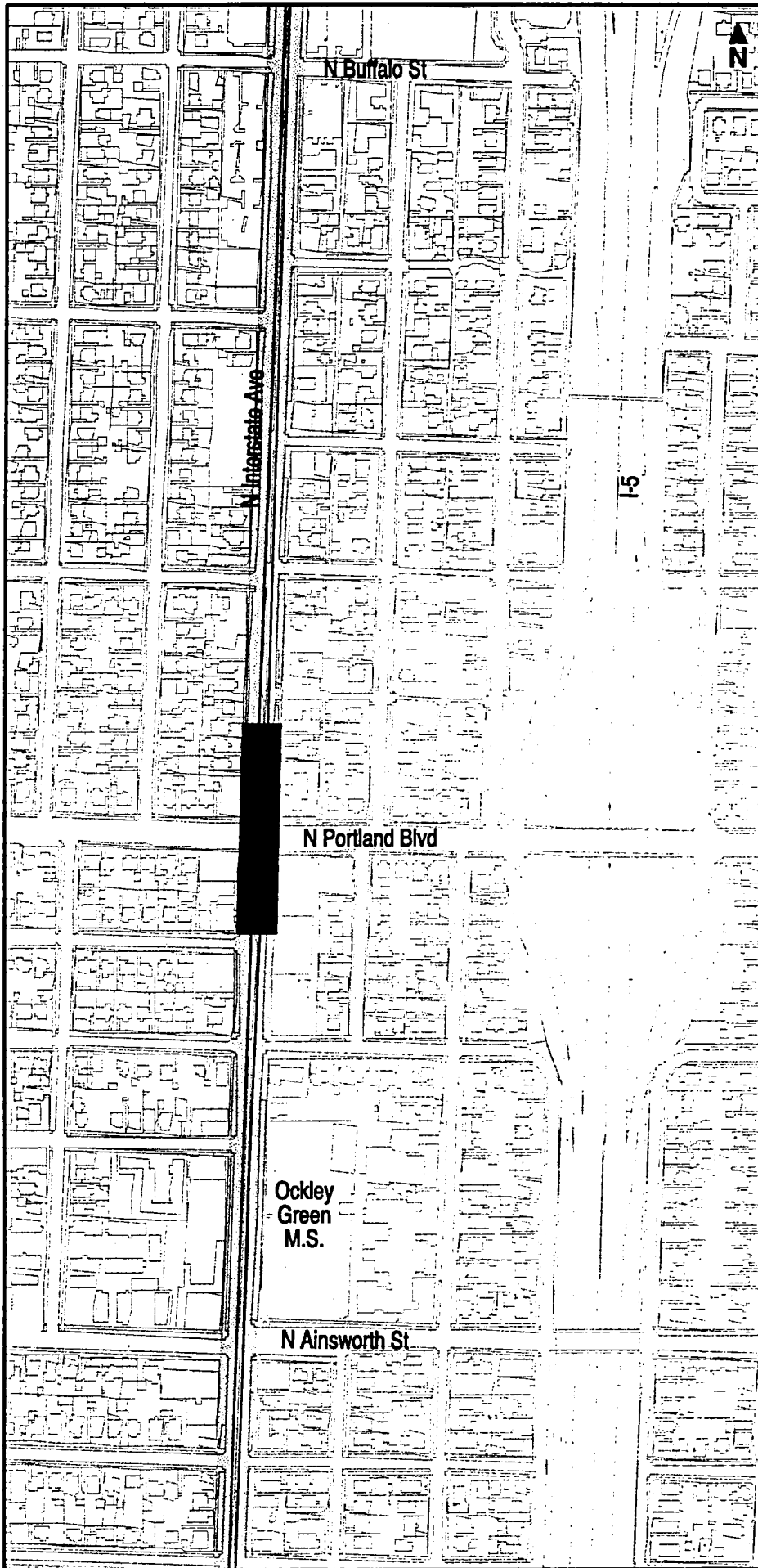
-  Light Rail Route
-  Light Rail Station
-  FEIS Station Platform
-  FEIS Light Rail Route/Options
-  Segment Break




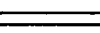



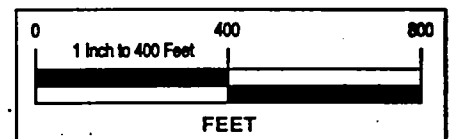
August 1999



Figure 1.5
**Land Use Final Order
Amendment
Boundary Maps**



-  Light Rail Route
-  Light Rail Station
-  FEIS Station Platform
-  FEIS Light Rail Route/Options
-  Segment Break



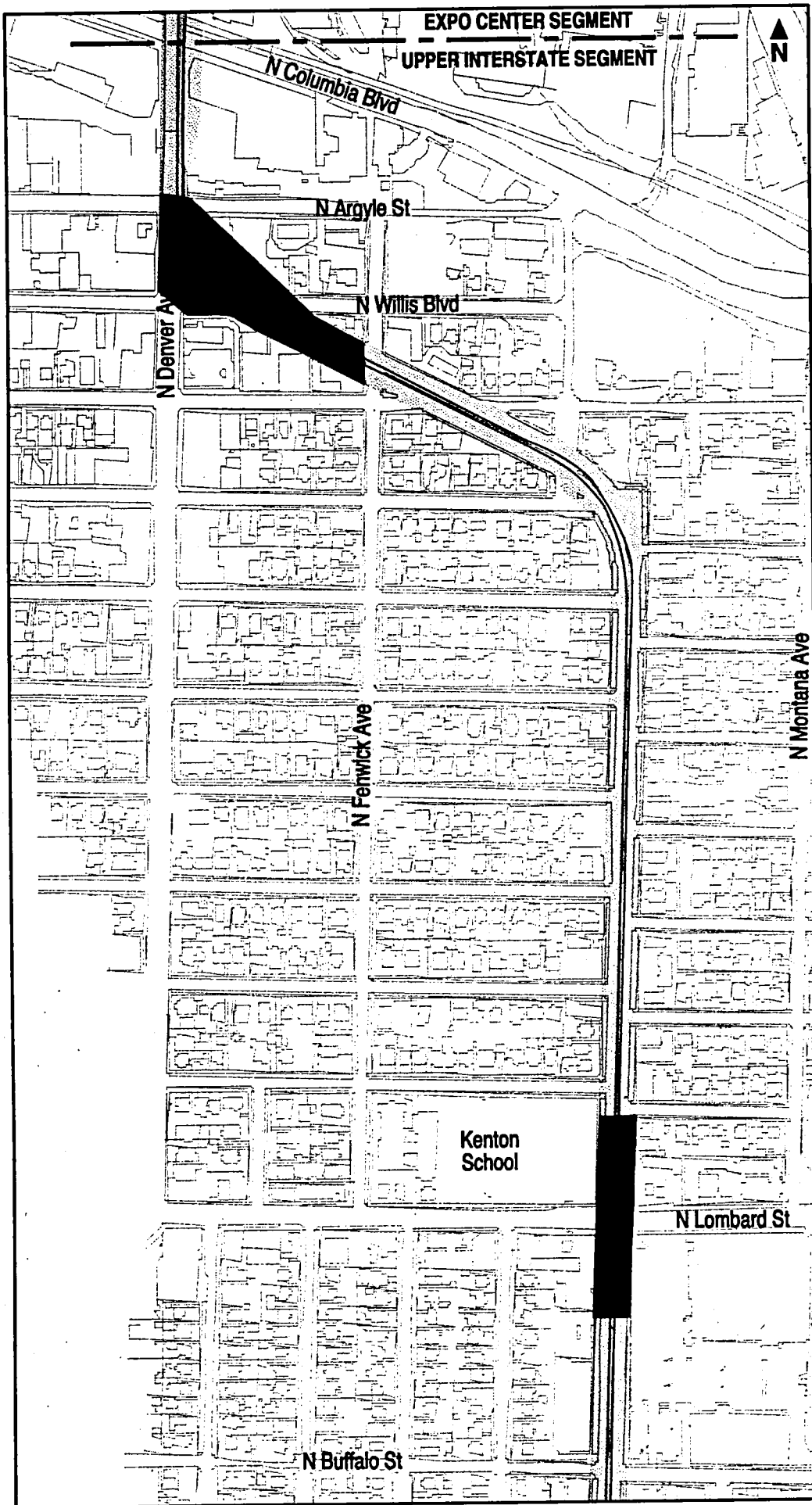
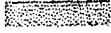


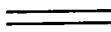
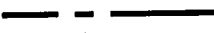


Figure 1.6
Land Use Final Order
Amendment
Boundary Maps

-  Light Rail Route
-  Light Rail Station
-  FEIS Station Platform
-  FEIS Light Rail Route/Options
-  Segment Break

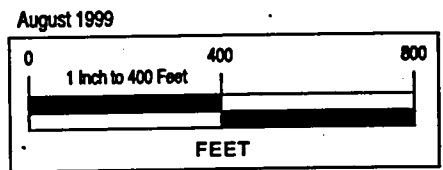
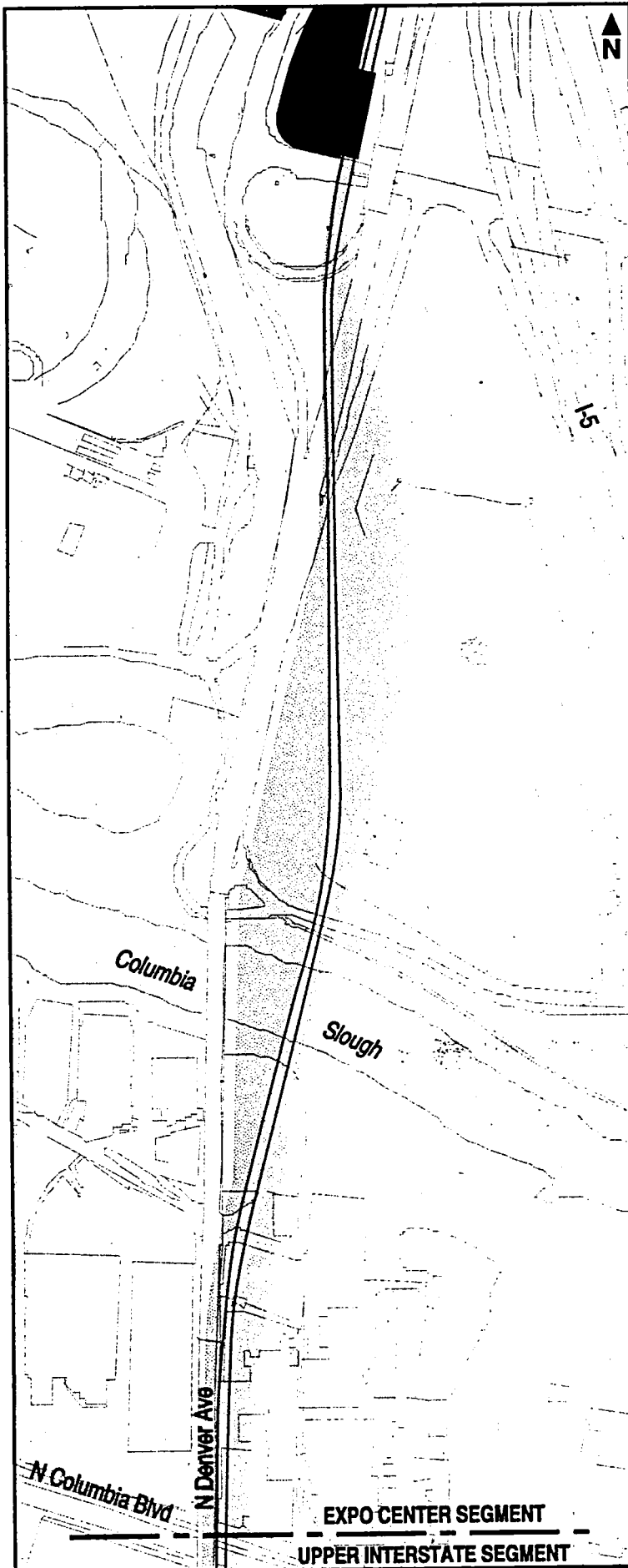
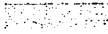



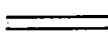





Figure 1.7
**Land Use Final Order
Amendment
Boundary Maps:
Steering Committee
Recommendation**



September 1999

-  Light Rail Route
-  Light Rail Station
-  Park-and-Ride Lot
-  FEIS Station Platform
-  FEIS Light Rail Route/Options
-  Segment Break

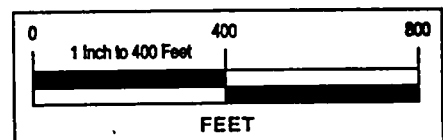
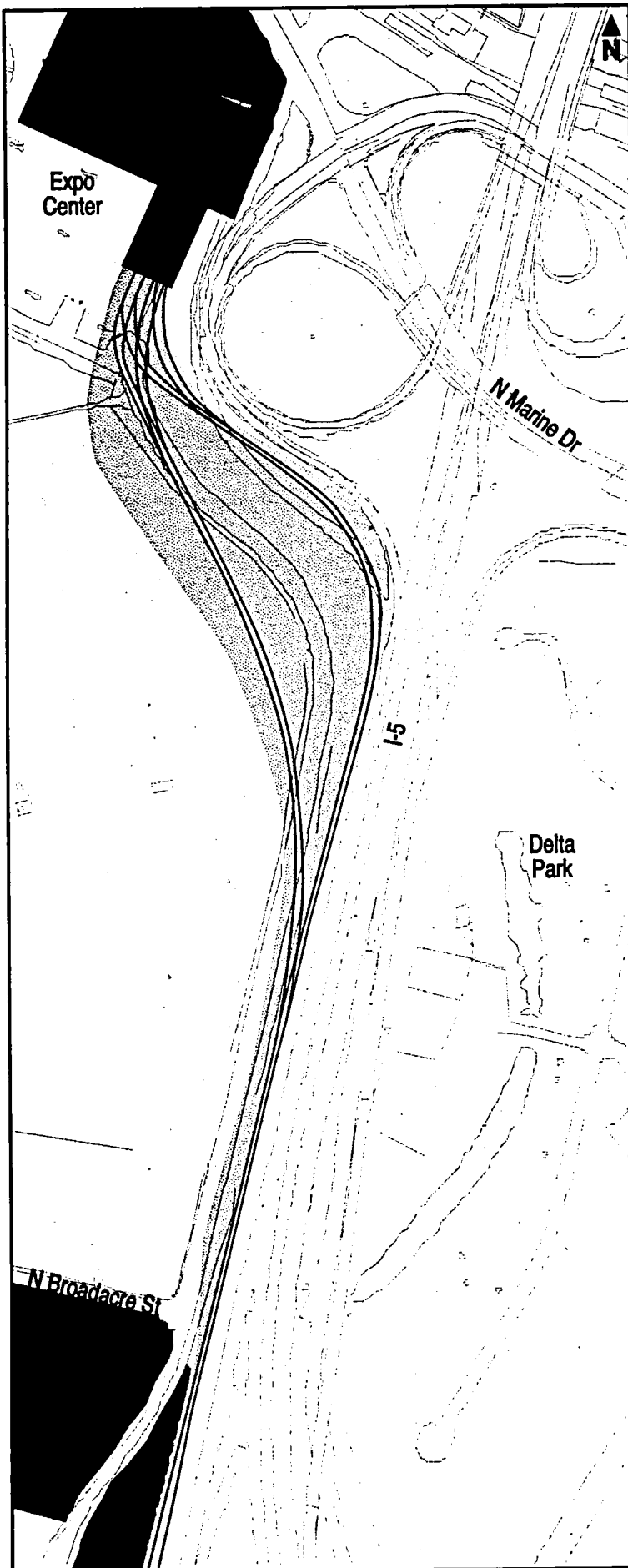
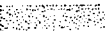



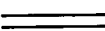





Figure 1.8
**Land Use Final Order
Amendment
Boundary Maps**



August 1999

-  Light Rail Route
-  Light Rail Station
-  Park-and-Ride Lot
-  FEIS Station Platform
-  FEIS Light Rail Route/Options
-  Segment Break

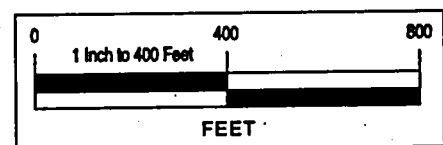


Exhibit B to Resolution No. 99-2853
South/North Land Use Final Order Amendment

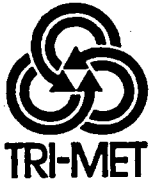
**Tri-Met Application for South/North
Land Use Final Order Amendment**

September 24, 1999

Please note that copies of this document are available from the
Metro Transportation Department. To obtain a copy contact:

Jan Faraca
Metro Transportation Department
600 NE Grand Avenue
Portland, Oregon 97232

Telephone (503) 797-1756
Fax (503) 797-1929



TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON

CAPITAL PROJECTS & FACILITIES DIVISION
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

RECEIVED

EXHIBIT B

LS0552

SEP 24 1999

TIME: 9:19am Hand delivered
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

VIA PERSONAL DELIVERY

September 23, 1999

Mr. Rod Monroe
Presiding Officer
Metro Regional Center
600 NE Grand Avenue
Portland, OR 97232-2736

RE: LUFO South/North Application and Amendment

Dear Mr. Monroe:

Please find enclosed, Tri-Met's Application for an Amendment to the Land Use Final Order (LUFO) relating to the South/North Light Rail Project adopted by Metro in June of 1998.

This LUFO application is being submitted to Metro pursuant to the provisions of 1996 Oregon Laws, Chapter 12 (House Bill 3478), which directs Tri-Met to submit such an application to the Metro Council after Tri-Met has received recommendations from the LUFO Steering Committee and the Oregon Department of Transportation. I am pleased to report that Tri-Met has now received and considered both of those recommendations as is noted in the Application and its attachments.

It should be noted that this LUFO Application is consistent with the recommendations from the Steering Committee and ODOT, in both the facilities and improvements it proposes.

The enclosed LUFO Application will provide the basis for the findings to be made as part of Metro's

Mr. Rod Monroe
Metro Regional Center
September 23, 1999
Page 2

adoption of the subject Amendment to the Land Use Final Order. I am requesting that Metro schedule a public hearing and Council action on this application by the end of October, 1999.

Thank you for your cooperation and assistance on this very important component of our planned regional transportation system.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil McFarlane". The signature is fluid and cursive, with the first name "Neil" and last name "McFarlane" clearly distinguishable.

Neil McFarlane
Executive Director, Capital Projects and Facilities

/llc
enclosure

cc: Fred Hansen, Bob Stacey, Ron Higbee, Brian Playfair, Dean Phillips, Larry Shaw

Application for South/North Land Use Final Order Amendment

South/North Light Rail Project

September 23, 1999

A. Introduction.

This document constitutes Tri-Met's application to the Metro Council for approval of a Land Use Final Order (LUFO) amending the original South/North Light Rail Project LUFO that the Metro Council adopted on July 23, 1998. A LUFO is a written order or orders of the Metro Council deciding the light rail route, the light rail stations, park-and-ride lots and maintenance facilities, and the highway improvements for the South/North Project, including their locations.

On July 23, 1998, the Metro Council adopted Resolution No. 98-2673, adopting the original LUFO for the South/North Project. The original LUFO established the light rail route, stations, lots and maintenance facilities and the highway improvements, including their locations, for that portion of the South/North Project extending from Clackamas Town Center to the Columbia River.

This application seeks to amend the original LUFO with respect to that portion of the Project extending from the east end of the Steel Bridge northward to the Exposition Center ("Expo Center"), all within the jurisdictional boundaries of the City of Portland. This application would modify the light rail alignment; establish, relocate or expand light rail station boundaries along that alignment; and authorize park-and-ride lots near Portland International Raceway and the Expo Center along the light rail route.

B. Requirements of House Bill 3478.

Section 6(1) of House Bill 3478 authorizes the Metro Council, upon application by Tri-Met, to adopt land use final orders for the South North Project. The LUFO identifies the light rail route, stations, lots and maintenance facilities, and the highway improvements that comprise the South/North Project, and it further specifies the locations within which these facilities and improvements may be located. As explained in Section 6(1)(a) of the Act:

"The applied-for locations shall be in the form of boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located. These boundaries shall be sufficient to accommodate adjustments to the specific placements of the light rail route, stations, lots and maintenance facilities, and the highway improvements for which need commonly arises upon the development of more detailed environmental or engineering data following approval of a Full Funding Grant Agreement."

Section 6(2) of the Act addresses amendments to the original LUFO. As relevant to this proceeding, it provides that any siting of the light rail route or a station, lot or maintenance facility outside the boundaries previously established in a LUFO, or any new station, lot or maintenance facility, "shall require a land use final order amendment or a new land use final

order which shall be adopted in accordance with the process provided for in subsection (1) of this section."

Section 6(1) of House Bill 3478 directs Tri-Met to file its application with the Council following its receipt of recommendations from the Department of Transportation and the South/North LUFO Steering Committee established pursuant to Section 1(21) of the Act. On September 13, 1999, the South/North LUFO Steering Committee adopted its recommendations to Tri-Met on the light rail route, stations and park-and-ride lots for that portion of the South/North Project subject to this LUFO amendment application. Also on September 13, 1999, the Oregon Department of Transportation provided recommendations in the form of a letter to the Tri-Met Board of Directors from Kay Van Sickel, Region 1 Manager, endorsing the LUFO amendments recommended by the LUFO Steering Committee. Tri-Met has received and considered these recommendations from the South/North LUFO Steering Committee and ODOT, copies of which are attached to this application. Tri-Met's application is consistent with those recommendations.

House Bill 3478 further requires the Metro Council to demonstrate that its decisions comply with approval criteria established by the Land Conservation and Development Commission under Section 4 of the Act. These criteria are identified later in this application.

C. Requested Light Rail Improvements.

Tri-Met requests Metro Council adoption of a LUFO amending the July 23, 1998 LUFO to approve the light rail route and the stations and park-and-ride lots identified textually below and in the maps (Figures 1.1 through 1.8) attached to the Steering Committee recommendation, which illustrate the location "boundaries" as required by Section 6(1)(a) of HB 3478. Those maps are incorporated herein and made a part of this application.

All of the maps are printed from a common Geographic Information System data base. The maps illustrate the recommended boundaries at the one inch equals 400 foot scale continuously along the LRT alignment from south to north within the affected area.

The boundaries shown on these maps represent the areas within which the light rail facilities may be located. The maps generally show the existing property lines and major buildings to provide orientation and clarity with respect to the proposed project facility locations. The FEIS light rail route and station platform locations depicted on those maps are provided solely for visual reference purposes. The exact location of the light rail tracks and station platforms may fall anywhere within the light rail route and light rail station boundaries shown on the maps.

The applied-for amendments occur entirely within that portion of the South/North Project between the Steel Bridge and the Expo Center in the City of Portland. In the original LUFO, that portion was included within an area identified as the Eliot and North Portland segments of the Project. Based on the nature of the proposed amendments to the Project, and to better facilitate discussion of adverse impacts, Tri-Met, in coordination with Metro staff, deems it more appropriate now to divide this affected area into three segments: Albina, Upper Interstate, and Expo Center. The LUFO Steering Committee recommendation accepts, incorporates and recommends this new delineation of segments. For each of these segments, this application begins with a brief summary of the segment,

followed by identification of the applied-for light rail route, stations and park-and-ride lots. No maintenance facilities or highway improvements are requested in these segments.

The light rail route, and the light rail stations and park-and-ride lots for which Tri-Met seeks approval are as follows:

Albina Segment

The Albina Segment extends along N Interstate Avenue from the east end of the Steel Bridge to the Kaiser Interstate Medical Office Center north of N Fremont Street.

The LRT alignment splits from the existing east-west alignment on the east side of the Steel Bridge in the vicinity of the Rose Quarter, where the alignment turns north into the center of N Interstate Avenue. A station is located in the median of N Interstate Avenue in the vicinity of the intersection of N Multnomah Street and N Interstate Avenue adjacent to the Rose Garden, approximately 200 yards west of the existing Rose Quarter Transit Center. North from the Rose Quarter, the tracks are aligned in the middle of N Interstate Avenue and pass underneath the Broadway Bridge. A center platform station is located in the vicinity of N Russell and N Knott Streets on N Interstate Avenue. From the intersection of N Greeley Avenue, the alignment proceeds north within the N Interstate Avenue right-of-way up to Overlook Park and the Edgar Kaiser Medical Center.

There are no maintenance facilities or highway improvements proposed for this segment.

The proposed boundaries within which the above-described light rail improvements would be located are as illustrated in Figures 1.1, 1.2 and 1.3 attached to the LUFO Steering Committee recommendation.

Upper Interstate Segment

The Upper Interstate Segment extends from the Kaiser Interstate Medical Office Center north of N Fremont Street to N Denver Avenue in the vicinity of N Columbia Boulevard.

From the Overlook Station located in the vicinity of N Overlook Boulevard at the Edgar Kaiser Medical Facility, the LRT alignment extends northward to Kenton within the center of the existing 100-foot N Interstate Avenue right-of-way. Split-platform stations are located in the vicinity of the following major east/west streets: N Overlook Boulevard, N Going Street, N Killingsworth Street, N Portland Boulevard and N Lombard Street. The alignment continues towards Kenton Station in the vicinity of N Fenwick Avenue, N Denver Avenue, N McClellan Street and N Argyle Street. From Kenton Station, the LRT alignment continues northward on a reconstructed Denver Avenue viaduct over N Columbia Boulevard to the start of the Expo Center Segment.

There are no maintenance facilities or highway improvements proposed for this segment.

The proposed boundaries within which the above-described light rail improvements would be located are as illustrated in Figures 1.3, 1.4, 1.5 and 1.6 attached to the LUFO Steering Committee recommendation.

Expo Center Segment

The Expo Center Segment extends from N Denver Avenue a short distance north of N Columbia Boulevard to the Expo Center.

From N Denver Avenue north of N Columbia Boulevard, the alignment continues northward, east of N Denver Avenue (Highway 99W), crossing over the Columbia Slough on a new bridge. The alignment crosses under Highway 99W through a tunnel to a station and park-and-ride lot in the vicinity of Portland International Raceway near N Victory Boulevard. From here the track continues near N Expo Road to a terminus station and park-and-ride lot at the Expo Center.

There are no maintenance facilities or highway improvements proposed for this segment.

The proposed boundaries within which the above-described light rail improvements would be located are as illustrated in Figures 1.7 and 1.8 attached to the LUFO Steering Committee recommendation.

D. Applicable Land Use Criteria.

On May 30, 1996, pursuant to Section 4 of HB 3478, LCDC established the criteria to be used by the Council in making land use decisions establishing or amending the light rail route, stations, lots and maintenance facilities, and the highway improvements for the South/North Project, including their locations. The approved criteria include two procedural, six substantive, and two alignment-specific standards, set out below. In its LUFO, the Council must demonstrate compliance with these criteria.

Procedural Criteria

1. Coordinate with and provide an opportunity for Clackamas and Multnomah Counties, the cities of Gladstone, Milwaukie, Oregon City and Portland, the Tri-County Metropolitan Transportation District of Oregon and the Oregon Department of Transportation to submit testimony on the light rail route, light rail stations, park-and-ride lots and vehicle maintenance facilities, and the highway improvements, including their locations.
2. Hold a public hearing to provide an opportunity for the public to submit testimony on the light rail route, light rail stations, park-and-ride lots and vehicle maintenance facilities, and the highway improvements, including their locations.

Substantive Criteria

3. Identify adverse economic, social and traffic impacts on affected residential, commercial and industrial neighborhoods and mixed use centers. Identify measures to reduce those

impacts which could be imposed as conditions of approval during the National Environmental Policy Act (NEPA) process or, if reasonable and necessary, by affected local governments during the local permitting process.

- A. Provide for a light rail route and light rail stations, park-and-ride lots and vehicle maintenance facilities, including their locations, balancing (1) the need for light rail proximity and service to present or planned residential, employment and recreational areas that are capable of enhancing transit ridership; (2) the likely contribution of light rail proximity and service to the development of an efficient and compact urban form; and (3) the need to protect affected neighborhoods from the identified adverse impacts.
 - B. Provide for associated highway improvements, including their locations, balancing (1) the need to improve the highway system with (2) the need to protect affected neighborhoods from the identified adverse impacts.
- 4. Identify adverse noise impacts and identify measures to reduce noise impacts which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by affected local governments during the permitting process.
 - 5. Identify affected landslide areas, areas of severe erosion potential, areas subject to earthquake damage and lands within the 100-year floodplain. Demonstrate that adverse impacts to persons or property can be reduced or mitigated through design or construction techniques which could be imposed during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.
 - 6. Identify adverse impacts on significant fish and wildlife, scenic and open space, riparian, wetland and park and recreational areas, including the Willamette River Greenway, that are protected in acknowledged local comprehensive plans. Where adverse impacts cannot practicably be avoided, encourage the conservation of natural resources by demonstrating that there are measures to reduce or mitigate impacts which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.
 - 7. Identify adverse impacts associated with stormwater runoff. Demonstrate that there are measures to provide adequate stormwater drainage retention or removal and protect water quality which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.
 - 8. Identify adverse impacts on significant historic and cultural resources protected in acknowledged comprehensive plans. Where adverse impacts cannot practicably be avoided, identify local, state or federal review processes that are available to address and to reduce adverse impacts to the affected resources.

Alignment-Specific Criteria

9. Consider a light rail route connecting the Clackamas Town Center area with the City of Milwaukie's Downtown. Consider an extension of the light rail route connecting the City of Oregon City and the City of Gladstone with the City of Milwaukie via the Interstate 205 corridor and/or the McLoughlin Boulevard corridor.
10. Consider a light rail route connecting Portland's Central City with the City of Milwaukie's Downtown via inner southeast Portland neighborhoods and, in the City of Milwaukie, the McLoughlin Boulevard corridor, and further connecting the Central City with north and inner northeast Portland neighborhoods via the Interstate 5/Interstate Avenue corridor.

Attachment A

South/North Land Use Final Order Amendment LUFO Steering Committee Recommendation

September 13, 1999

South/North Land Use Final Order

LUFO Steering Committee Recommendation

I Introduction

This document constitutes the South/North Land Use Final Order (LUFO) Steering Committee's recommendation to Tri-Met regarding Tri-Met's application to the Metro Council for approval of an amendment to the original South/North Light Rail Project LUFO, which the Metro Council adopted on July 23, 1998. This recommendation is provided pursuant to Section 6(1) of House Bill 3478, which directs Tri-Met to apply to the Metro Council for a Land Use Final Order approving the light rail route, stations, lots and maintenance facilities, and the highway improvements for the Project, including their locations, "following receipt of recommendations from the Department of Transportation and the Steering Committee", and Section 6(2), which provides that amendments to the LUFO be adopted following the same process used to adopt the original LUFO.

In May, 1998, in accordance with Section 1(21) of Oregon House Bill 3478, the South/North Steering Committee was established through intergovernmental agreement between Metro, Tri-Met, ODOT, Clackamas County, Multnomah County, the City of Portland, and the City of Milwaukie. The City of Oregon City is an ex officio member of the Committee.

This recommendation from the LUFO Steering Committee addresses light rail route, station and park-and-ride lot amendments within only that portion of the South/North Project extending from the east end of the Steel Bridge northward to the Exposition Center (Expo Center), all within the jurisdictional boundaries of the City of Portland.

2. Requirements of House Bill 3478.

House Bill 3478 authorizes the Metro Council, upon application by Tri-Met and following recommendations from the Steering Committee and Department of Transportation, to adopt a Land Use Final Order for the South/North Project. A LUFO is a written order or orders of the Metro Council deciding the light rail route, the stations, lots and maintenance facilities, and the highway improvements for the South/North Project, including their locations. The LUFO identifies the light rail route, stations, lots, maintenance facilities and highway improvements that comprise the South/North project, and it further specifies the locations within which these facilities and improvements may be located. As explained in Section 6(1)(a) of House Bill 3478,

"The applied for locations shall be in the form of boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located. These boundaries shall be sufficient to accommodate adjustments to the specific placements of the light rail route, stations, lots and maintenance facilities, and the highway improvements for which need commonly arises upon the development of more detailed environmental or engineering data following approval of a Full Funding Grant Agreement."

3. Recommended Light Rail Improvements

The Steering Committee recommends that Tri-Met request and that the Metro Council adopt a LUFO amending the July 23, 1998 LUFO to approve the light rail route and the stations and park-and-ride lots identified textually below and in the attached maps, which illustrate the location "boundaries" as required by Section 6(1)(a) of HB 3478.

The recommended amendments occur entirely within that portion of the South/North Project between the Steel Bridge and the Expo Center in the City of Portland. In the original LUFO, that portion was included within what the Metro Council identified as the Eliot and North Portland segments of the Project. Based on the nature of the proposed amendments to the Project, and to facilitate discussion of impacts, the LUFO Steering Committee recommends that this affected area now be divided into three segments: Albina, Upper Interstate, and Expo Center. For each of these segments, the description of recommended amendments begins with a brief summary of the segment, followed by identification of the recommended light rail route, station and park-and-ride lot modifications. There are no recommendations for maintenance facilities or highway improvements in these segments.

3.1 Albina Segment

The Albina Segment extends along N Interstate Avenue from the east end of the Steel Bridge to the Kaiser Interstate Medical Office Center north of N Fremont Street.

The LRT alignment splits from the existing east-west alignment on the eastside of the Steel Bridge in the vicinity of the Rose Quarter, where the alignment turns north into the center of N Interstate Avenue. A station is located in the median of N Interstate Avenue in the vicinity of the intersection of N Multnomah Street and N Interstate Avenue adjacent to the Rose Garden, approximately 200 yards west of the existing Rose Quarter Transit Center. North from the Rose Quarter, the tracks are aligned in the middle of N Interstate Avenue and pass underneath the Broadway Bridge. A center platform station is located in the vicinity of N Russell and N Knott Streets on N Interstate Avenue. From the intersection of N Greeley Avenue, the alignment proceeds north within the N Interstate Avenue right-of-way up to Overlook Park and the Edgar Kaiser Medical Center.

There are no highway improvements proposed for this segment.

The proposed boundaries within which the above-described light rail improvements would be located are as illustrated in Figures 1.1, 1.2 and 1.3 attached to this recommendation.

3.2 Upper Interstate Segment

The Upper Interstate Segment extends from the Kaiser Interstate Medical Office Center north of N Fremont Street to N Denver Avenue a short distance north of N Columbia Boulevard.

From the Overlook Station located in the vicinity of N Overlook Boulevard north of the Edgar Kaiser Medical Facility, the LRT alignment extends northward to Kenton within the center of the

existing 100-foot N Interstate Avenue right-of-way. Split-platform stations are located in the vicinity of the following major east/west streets: N Going Street, N Killingsworth Street, N Portland Boulevard and N Lombard Street. The alignment continues towards N Denver Avenue with Kenton Station in the vicinity of N Fenwick Avenue, N Denver Avenue, N McClellan Street and N Argyle Street. From Kenton Station, the LRT alignment continues northward on a reconstructed Denver Avenue viaduct over N Columbia Boulevard to the start of the Expo Center Segment.

There are no highway improvements proposed for this segment.

The proposed boundaries within which the above-described light rail improvements would be located are as illustrated in Figures 1.3, 1.4, 1.5 and 1.6 attached to this recommendation.

3.3 Expo Center Segment

The Expo Center Segment extends from N Denver Avenue a short distance north of N Columbia Boulevard to the Expo Center.

From N Denver Avenue north of N Columbia Boulevard, the alignment continues northward, east of N Denver Avenue (Highway 99W), crossing over the Columbia Slough on a new bridge. The alignment crosses under Highway 99W through a tunnel to a station and potential park-and-ride lot in the vicinity of Portland International Raceway near N Victory Boulevard. From here the track continues near N Expo Road to a terminus station and potential park-and-ride lot at the Expo Center.

There are no highway improvements proposed for this segment.

The proposed boundaries within which the above-described light rail improvements would be located are as illustrated in Figures 1.7 and 1.8 attached to this recommendation.

Attachment A: Land Use Final Order Boundary Maps

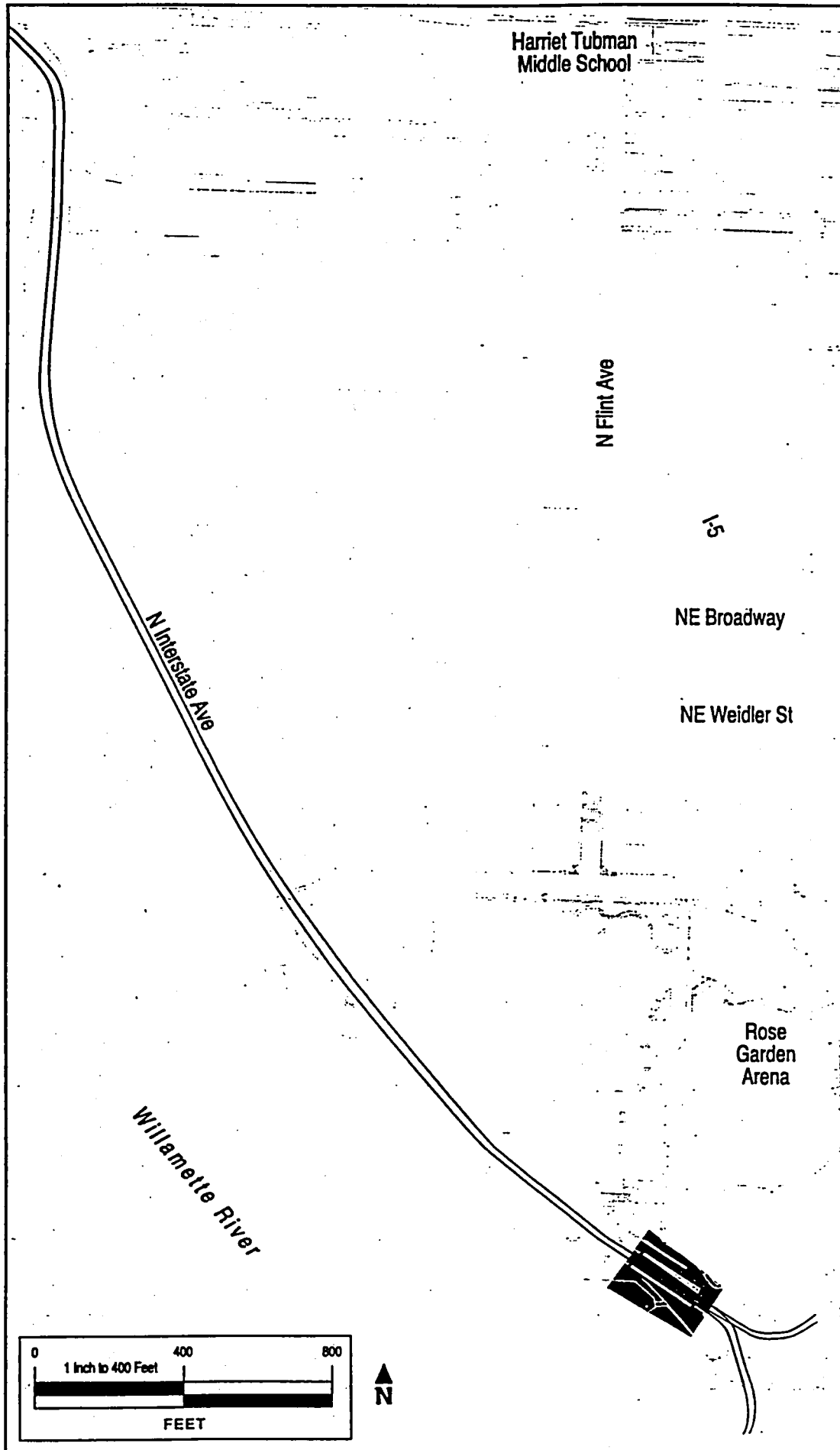
The attached maps were prepared to delineate the LUFO Steering Committee's recommended boundaries within which the light rail route, stations, and park-and-ride lots for the Albina, Upper Interstate and Expo Center Segments shall be located in accordance with provisions of HB 3478.

All of the maps (Figures 1.1 to 1.8) are printed from a common Geographic Information System data base. The maps illustrate the recommended boundaries and show the segment limits at a scale of one inch equals 400 feet continuously along the LRT Alignment from south to north.

The boundaries shown on these maps represent the areas where specific light rail facilities will be located. The maps generally show the existing property lines and major buildings to provide orientation and clarity with respect to the proposed project facility locations.



Figure 1.1
**Land Use
Final Order
Amendment
Boundary Maps:**
Steering Committee
Recommendation

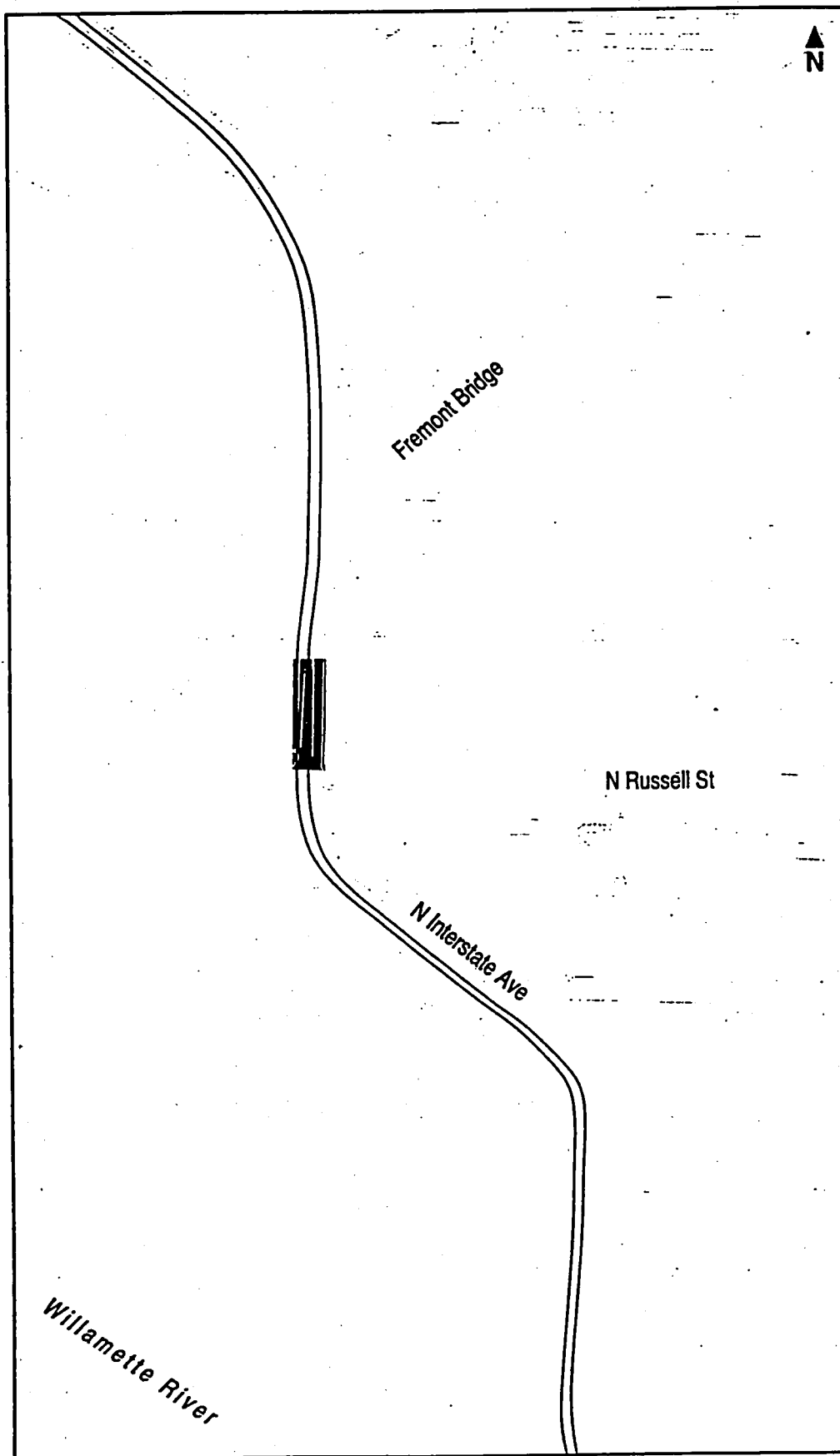


September 1999

- Light Rail Route
- Light Rail Station
- FEIS Station Platform
- FEIS Light Rail Route/Options
- Segment Break

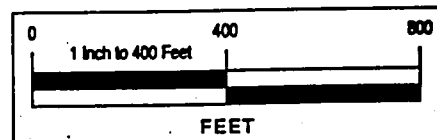


Figure 1.2
**Land Use Final Order
Amendment
Boundary Maps:
Steering Committee
Recommendation**



- Light Rail Route
- Light Rail Station
- FEIS Station Platform
- FEIS Light Rail Route/Options
- Segment Break

September 1999



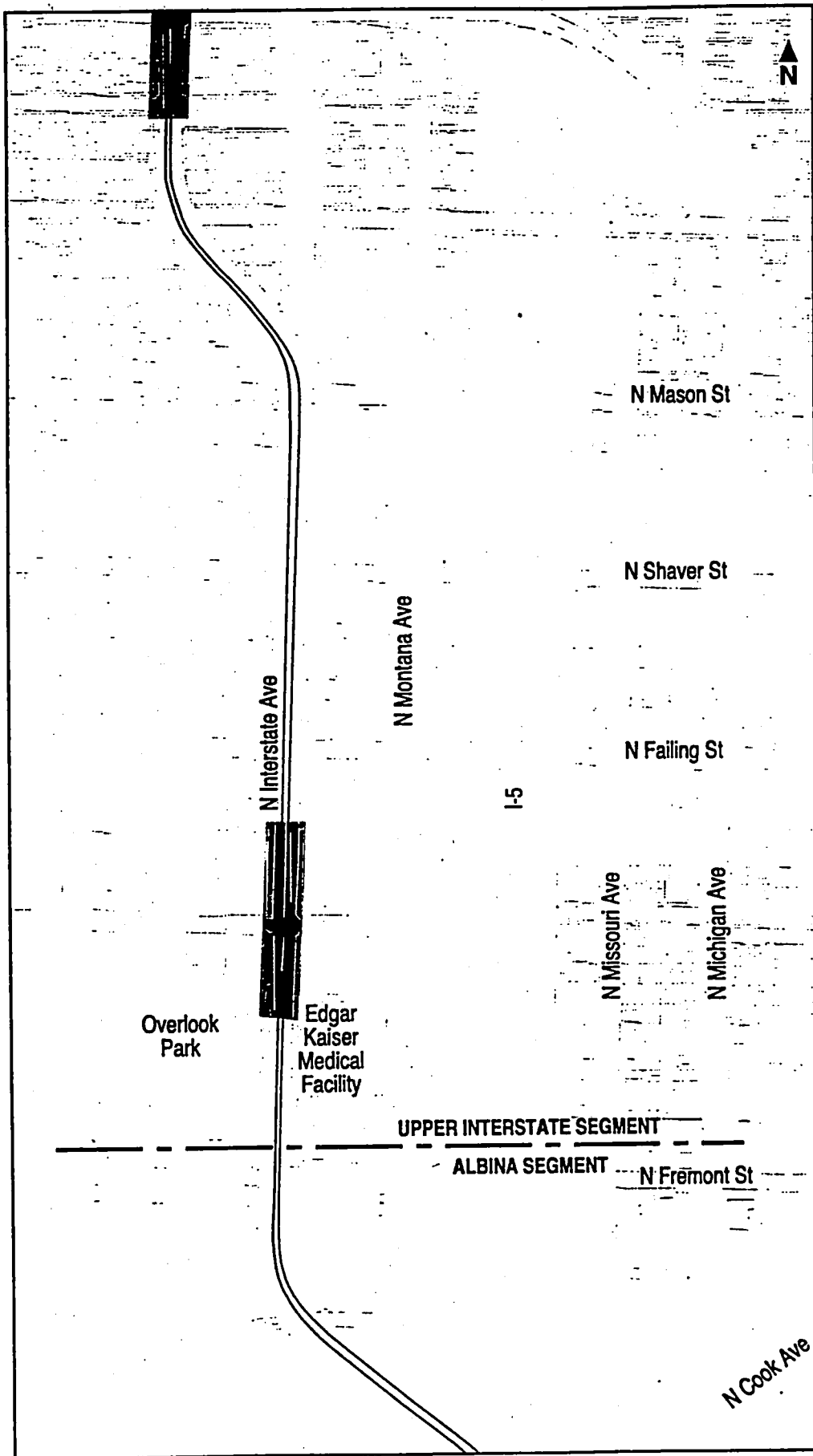
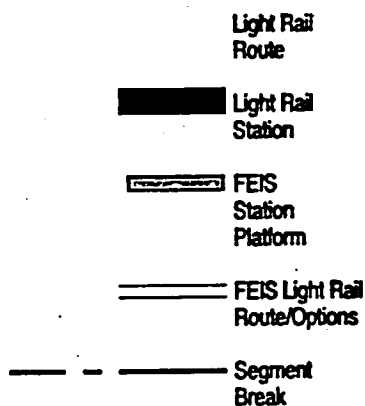


Figure 1.3
**Land Use Final Order
Amendment
Boundary Maps:
Steering Committee
Recommendation**



September 1999

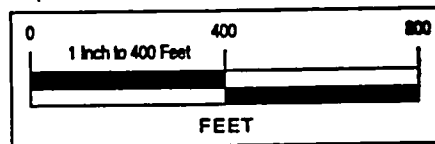
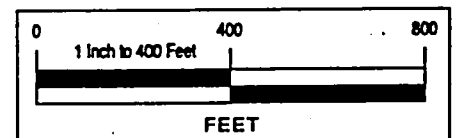
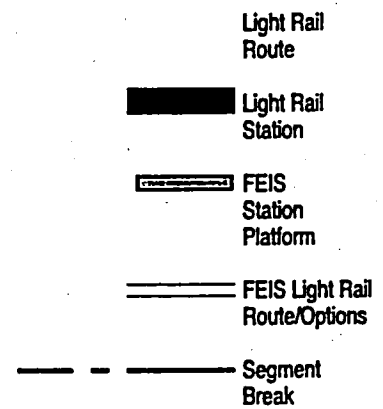
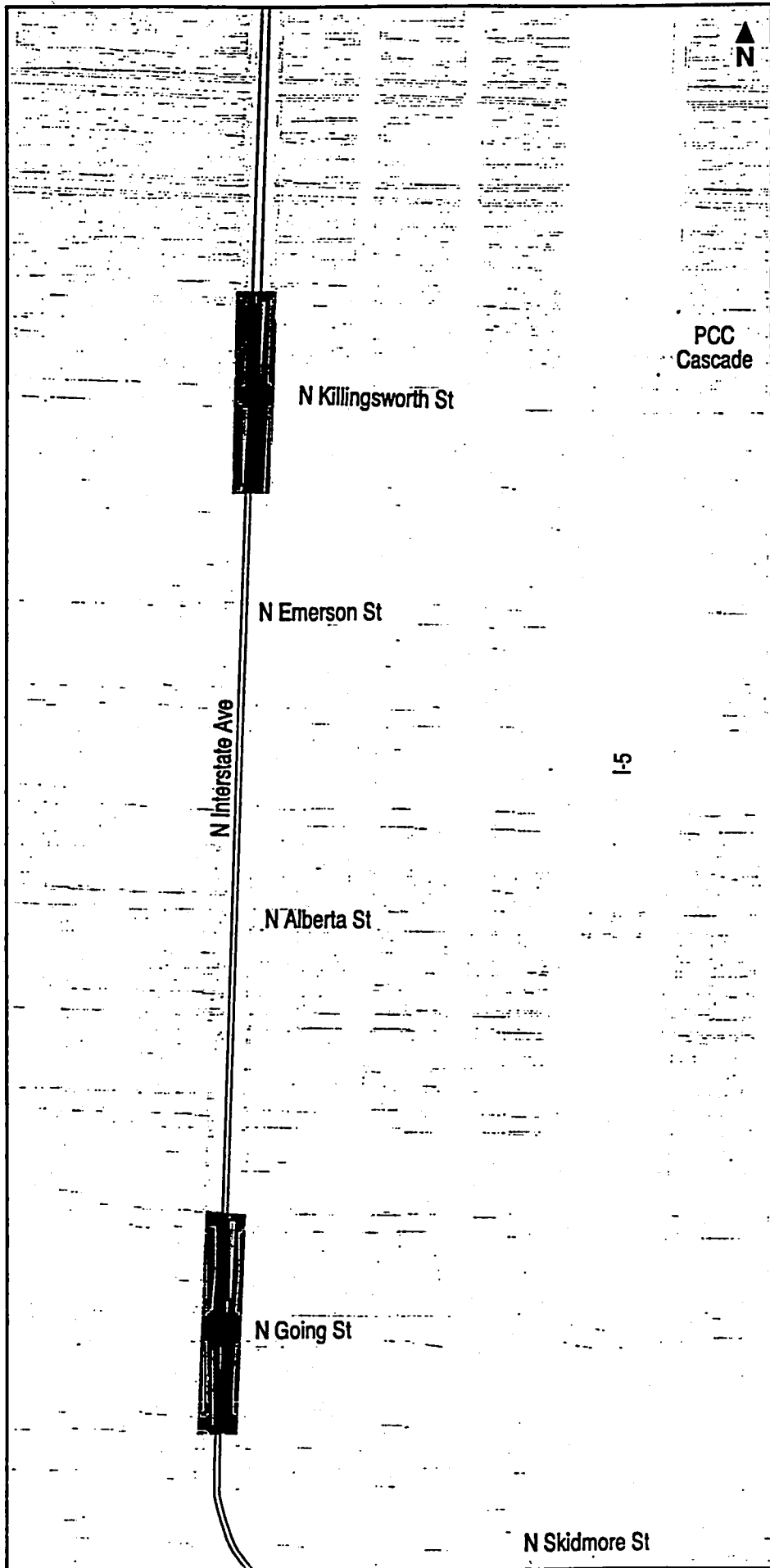




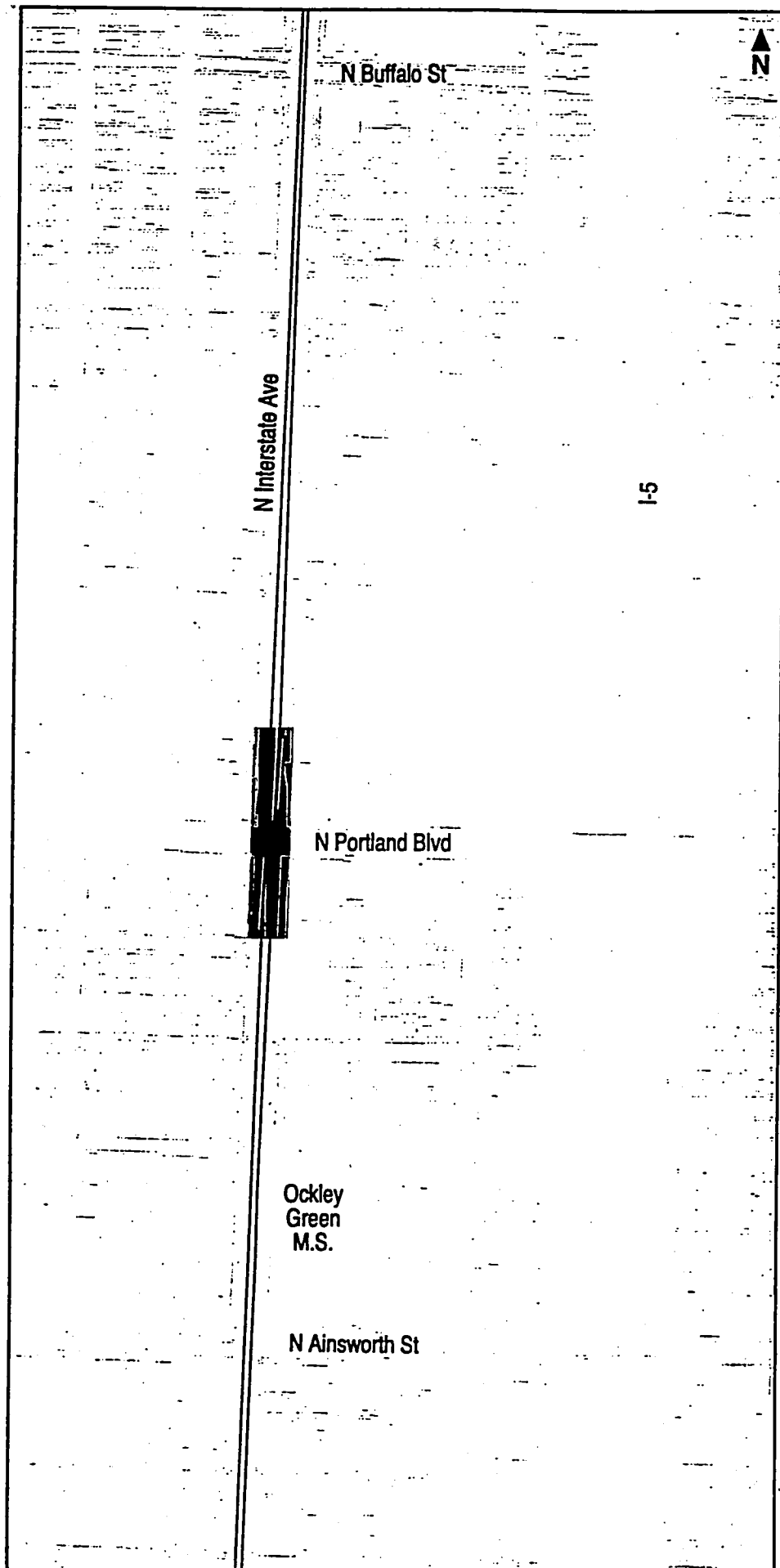
Figure 1.4
**Land Use Final Order
Amendment
Boundary Maps:
Steering Committee
Recommendation**



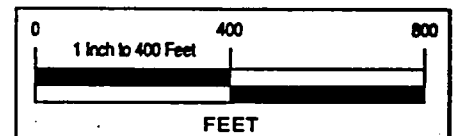
September 1999



Figure 1.5
**Land Use Final Order
Amendment
Boundary Maps:**
Steering Committee
Recommendation



- Light Rail Route
- Light Rail Station
- FEIS Station Platform
- FEIS Light Rail Route/Options
- Segment Break



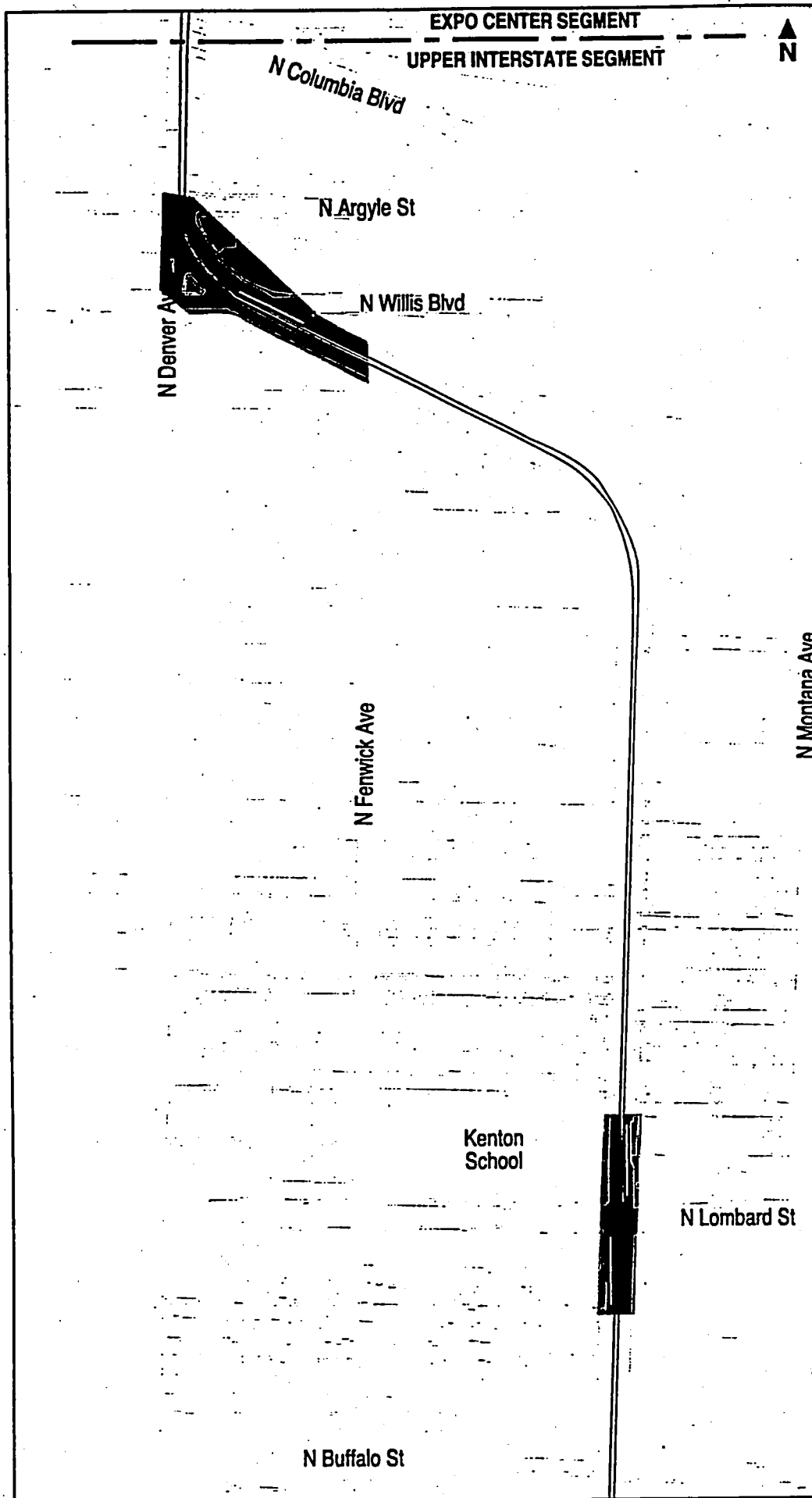
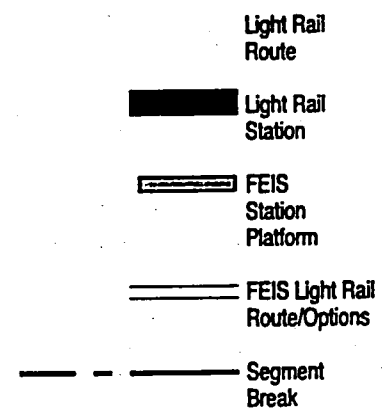


Figure 1.6
**Land Use Final Order
Amendment
Boundary Maps:**
Steering Committee
Recommendation



September 1999

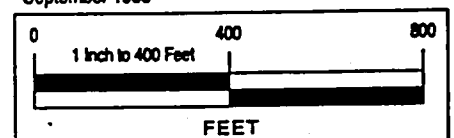
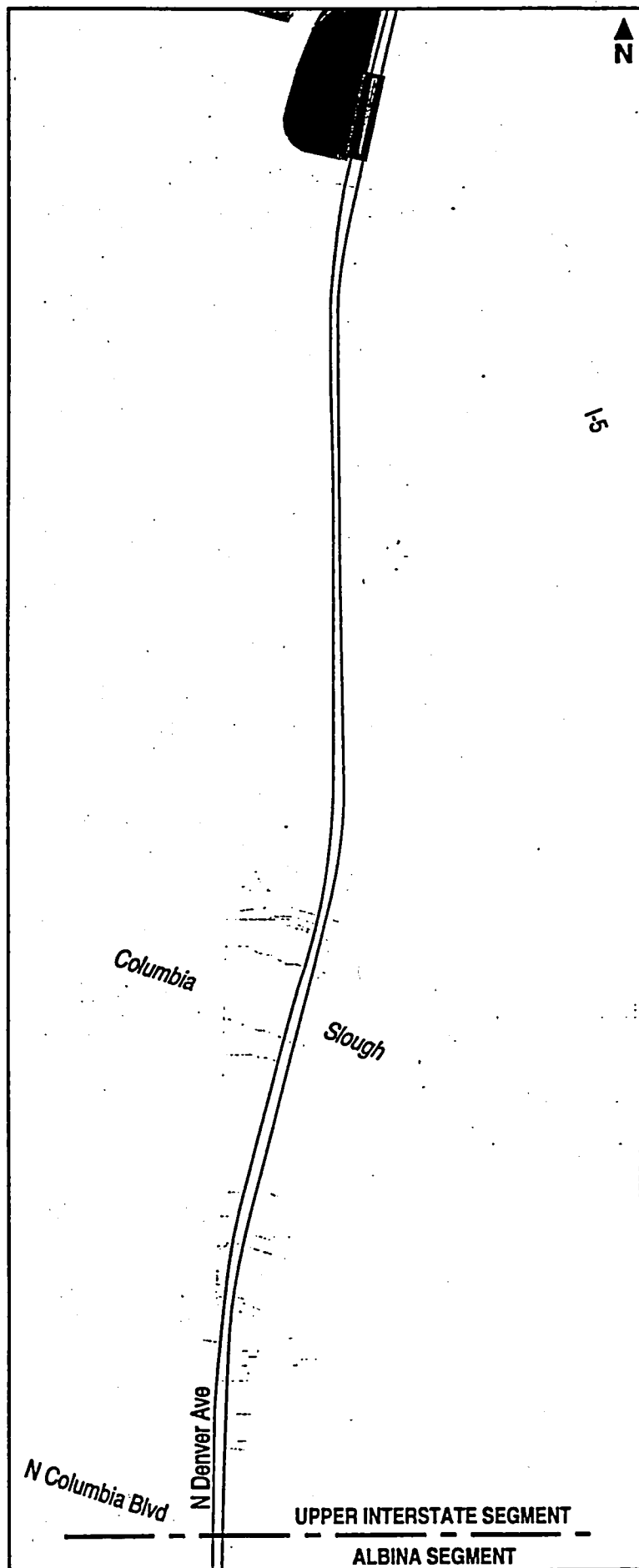




Figure 1.7
**Land Use Final Order
Amendment
Boundary Maps:
Steering Committee
Recommendation**



15

Light Rail
Route

Light Rail
Station

Park-and-Ride
Lot

FEIS
Station
Platform

FEIS Light Rail
Route/Options

Segment
Break

Columbia

Slough

N Denver Ave

N Columbia Blvd

UPPER INTERSTATE SEGMENT

ALBINA SEGMENT

September 1999

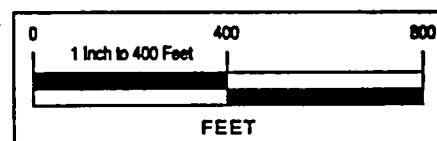
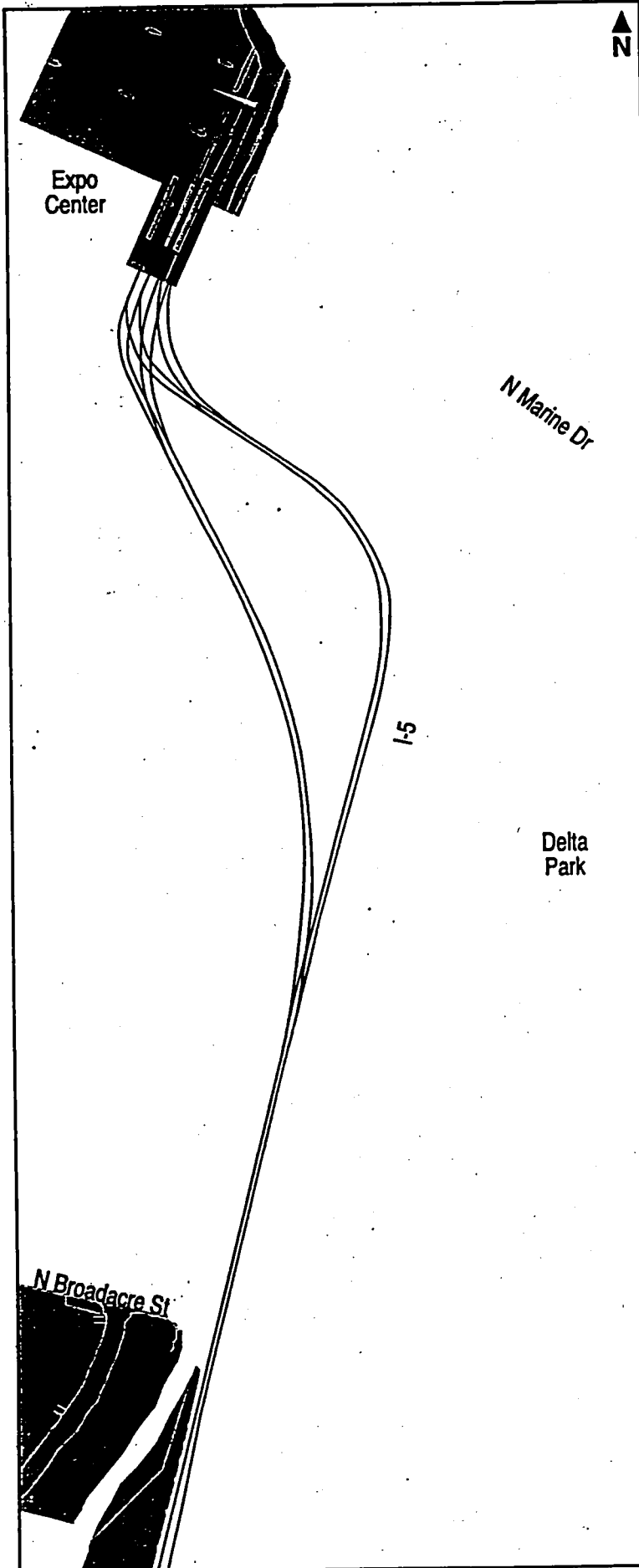


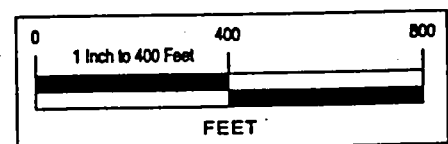


Figure 1.8
**Land Use Final Order
Amendment
Boundary Maps:
Steering Committee
Recommendation**



September 1999

- Light Rail Route
- Light Rail Station
- Park-and-Ride Lot
- FEIS Station Platform
- FEIS Light Rail Route/Options
- Segment Break



Attachment B

South/North Land Use Final Order Amendment Oregon Department of Transportation Recommendation

September 13, 1999



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Region 1

123 NW Flanders

Portland, OR 97209-4037

(503) 731-8200

FAX (503) 731-8259

September 13, 1999

FILE CODE:

Board of Directors
Tri-Met
4012 SE 17th Avenue
Portland, OR 97202

Subject: South/North Light Rail Land Use Final Order Amendment

Dear Board of Directors:

The Oregon Department of Transportation (ODOT) has been charged by the Oregon Legislative Assembly with preparing a recommendation on the Land Use Final Order (LUFO) for the South/North Light Rail Transit Project and any of its segments. Metro and Tri-Met have identified the North Interstate Alignment as the next possible segment. ODOT has participated from the outset with Tri-Met, Metro, and the local jurisdictions, in the planning and development of this project.

We believe the project team has done a commendable job in meeting both the intent and the specific requirements established by the Oregon Legislature concerning the conduct of this project. The proposed Land Use Final Order Amendment includes no improvements to state highways.

Therefore, on behalf of the Oregon Department of Transportation, I am recommending approval of the Locally Preferred Strategy and the Land Use Final Order application, as adopted by the Steering Committee. We at ODOT look forward to continuing our partnership with you in pursuing this project to its successful conclusion.

Sincerely,

Kay Van Sickel
Region 1 Manager

KVS:rd

Exhibit C to Resolution No. 99-2853
South/North Land Use Final Order Amendment

**Findings of Fact and Conclusions of Law
in Support of the South/North
Land Use Final Order Amendment**

October 21, 1999

Please note that copies of this document (approximately 100 pages)
are available from the Metro Transportation Department.
To obtain a copy contact:

Jan Faraca
Metro Transportation Department
600 NE Grand Avenue
Portland, Oregon 97232

Telephone (503) 797-1756
Fax (503) 797-1929

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 99-2853 FOR THE PURPOSE OF ADOPTING A LAND USE FINAL ORDER AMENDING THE LIGHT RAIL ROUTE, LIGHT RAIL STATIONS AND PARK-AND-RIDE LOTS, INCLUDING THEIR LOCATIONS, FOR THAT PORTION OF THE SOUTH/NORTH LIGHT RAIL PROJECT EXTENDING FROM THE STEEL BRIDGE TO THE EXPOSITION CENTER

Date: October 7, 1999

Presented by: Richard Brandman

NATURE OF PROPOSED ACTION

This resolution would: 1) adopt a Land Use Final Order (LUFO) amendment for the South/North Light Rail Project (Exhibit A) identical to the LUFO amendment application submitted by Tri-Met (Exhibit B); 2) adopt the findings of fact and conclusions of law in support of the LUFO (Exhibit C); demonstrating how the Metro Council's decisions in its adopted LUFO amendment comply with applicable review criteria; and 3) express the Metro Council's intent to amend the *Regional Transportation Plan* (RTP) and *Regional Urban Growth Goals and Objectives* (RUGGOs) and related documents to make the regional plans consistent with the LUFO amendment.

Tri-Met's application seeks to amend the light rail route and the light rail stations and park-and-ride lots for that portion of the South/North Light Rail Project extending from the Steel Bridge to the Exposition Center (Expo Center), all within the jurisdictional boundaries of the City of Portland. The requested LUFO would be an amendment to the original LUFO adopted by the Metro Council on July 23, 1998 through the Council's adoption of Resolution No. 98-2673. This amendment would make the LUFO consistent with the amended Locally Preferred Strategy (LPS) as adopted by the Metro Council in June 1999.

FACTUAL BACKGROUND

A. RELATIONSHIP OF ACTION TO NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Adoption of amendments to the South/North LUFO is a land use proceeding that is governed only by the standards and requirements in House Bill 3478 (Or Laws 1996, Chapter 12). The pertinent requirements of the Act are described below. LUFO adoption differs from selection of a Locally Preferred Strategy (LPS) pursuant to the requirements of the National Environmental Policy Act of 1969. Federal regulations govern the decision on the LPS, while adoption of a LUFO amendment is controlled by state law.

B. REQUIREMENTS OF HOUSE BILL 3478

Section 6(1) of House Bill 3478 authorizes the Metro Council, upon application by Tri-Met, to adopt land use final orders for the South North Project. The Act further requires the Council to

adopt written findings demonstrating how its decisions comply with approval criteria established by the Land Conservation and Development Commission (LCDC) under Section 4 of the Act.

A LUFO is a written order or orders of the Metro Council establishing the light rail route, stations, lots and maintenance facilities, and the highway improvements that comprise the South/North Project, and it further specifies the locations within which these facilities and improvements may be located. As explained in Section 6(1)(a) of the Act:

"Prior to publication of the public hearing notice described in Section 7(1) of this Act, and following receipt of recommendations from the Department of Transportation and the Steering Committee, Tri-Met shall apply to the council for a land use final order approving the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations. The applied-for locations shall be in the form of boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located. These boundaries shall be sufficient to accommodate adjustments to the specific placements of the light rail route, stations, lots and maintenance facilities, and the highway improvements for which need commonly arises upon the development of more detailed environmental or engineering data following approval of a Full Funding Grant Agreement."

Section 7(7) of House Bill 3478 requires the Metro Council to demonstrate with written findings how its LUFO complies with the approval criteria established by LCDC. These criteria are the legal standards against which the Council must measure its decisions. Draft findings of fact demonstrating compliance with those criteria are attached to this staff report and incorporated herein by this reference. Should the Council choose to approve Tri-Met's application, those findings may require revision or supplementing prior to adoption to respond to public testimony.

Section 6(2) of the Act addresses amendments to the original LUFO. As relevant to this proceeding, it provides that any siting of the light rail route or a station, lot or maintenance facility outside the boundaries previously established in a LUFO, or any new station, lot or maintenance facility, "shall require a land use final order amendment or a new land use final order which shall be adopted in accordance with the process provided for in subsection (1) of this section."

Section 6(1)(b) of House Bill 3478 provides for the Council, following public hearing, either to 1) adopt a LUFO establishing the facilities and locations applied for by Tri-Met; or 2) continue the public hearing and refer the proposed facilities and locations back to Tri-Met for further review. Should the Council adopt a LUFO, it must provide notice of its decision as soon as reasonably possible following adoption. Should it refer the matter back to Tri-Met, then Tri-Met must consider amendments to its proposed project and forward a further application to the Council for hearing and adoption. At that time, the Council will retain the same decision options it had at the first hearing.

Section 3(1) of the Act provides that the procedures and requirements set out in House Bill 3478 are the only land use procedures and requirements to which the Council's decisions on the light rail

route, stations, lots and maintenance facilities, and the highway improvements for the Project, including their locations, are subject.

C. LUFO RECOMMENDATION AND TRI-MET APPLICATION

As noted, Section 6(1) of House Bill 3478 directs Tri-Met to file its application with the Council following its receipt of recommendations from the Department of Transportation and the South/North LUFO Steering Committee established pursuant to Section 1(21) of the Act. On September 13, 1999, the South/North LUFO Steering Committee adopted its recommendations to Tri-Met on the light rail route, stations and park-and-ride lots for that portion of the South/North Project subject to this LUFO amendment application (Attachment A of Exhibit B). Also on September 13, 1999, the Oregon Department of Transportation provided recommendations in the form of a letter to the Tri-Met Board of Directors from Kay Van Sickel, Region 1 Manager, endorsing the LUFO amendments recommended by the LUFO Steering Committee (Attachment B of Exhibit B). The light rail route, stations and lots contained in Tri-Met's application, including their locations, are the same as those recommended by the LUFO Steering Committee and ODOT. No maintenance facilities or highway improvements are proposed as part of Tri-Met's LUFO amendment application.

On September 22, 1999, the Tri-Met Board of Directors unanimously approved its LUFO amendment application to the Metro Council for the South/North Light Rail Project. Tri-Met submitted its application to Metro on September 24, 1999.

D. PROPOSED SOUTH/NORTH LAND USE FINAL ORDER AMENDMENT

The attached Land Use Final Order (Exhibit A) contains a segment-by-segment textual description of the amended portion of the South/North Project's light rail improvements. The LUFO also includes maps illustrating the boundaries within which the light rail route, stations and lots may go without need for an additional LUFO amendment. These maps are the same as those included in Tri-Met's application and recommended by the LUFO Steering Committee and ODOT.

All of the maps are printed from a common Geographic Information System data base. The maps illustrate the recommended boundaries at the one inch equals 400 foot scale continuously along the LRT alignment from south to north within the affected area.

The boundaries shown on these maps represent the areas within which the light rail facilities may be located. The maps generally show the existing property lines and major buildings to provide orientation and clarity with respect to the project facility locations. The FEIS light rail route and station platform locations depicted on those maps are provided solely for visual reference purposes. The exact location of the light rail tracks and station platforms may fall anywhere within the light rail route and light rail station boundaries shown on the maps.

E. APPLICABLE LAND USE CRITERIA AND FINDINGS

On May 30, 1996, in accordance with Section 4 of HB 3478, LCDC established the criteria to be used by the Council in making land use decisions establishing the light rail route, stations, lots and

maintenance facilities, and the highway improvements for the Project, including their locations. The approved criteria include two procedural, six substantive and two alignment-specific standards. In its LUFO findings, the Council must demonstrate compliance with these criteria.

Draft findings addressing the LCDC criteria are attached to the Metro Council resolution as Exhibit C.

F. NOTIFICATION OF PUBLIC HEARING

Notification of the LUFO Public Hearing was provided to the public through a variety of mechanisms as follows:

- Legal notice was published in *The Oregonian* on October 8, 1999;
- A postcard was mailed to all owners of property located within approximately 100 feet of the proposed project improvements; and
- Information was posted on both the Metro and Tri-Met Web Pages providing information about the proposed amendments to the LUFO and information was made available to the public on the project telephone "hot line."

STAFF RECOMMENDATION

Staff recommends approval of Resolution No. 99-2853, adopting a Land Use Final Order amendment for the South/North Project modifying the light rail route, stations and lots, including their locations, for that portion of the South/North Light Rail Project extended from the east end of the Steel Bridge northward to the Exposition Center as provided in Tri-Met's application.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 99-2853.

Agenda Item Number 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.

Second Reading – Quasi-Judicial Proceeding

**Metro Council Meeting
Thursday, October 28, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

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

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

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

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

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

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

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

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

Jenkins/Kim

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

Rod Monroe
Presiding Officer

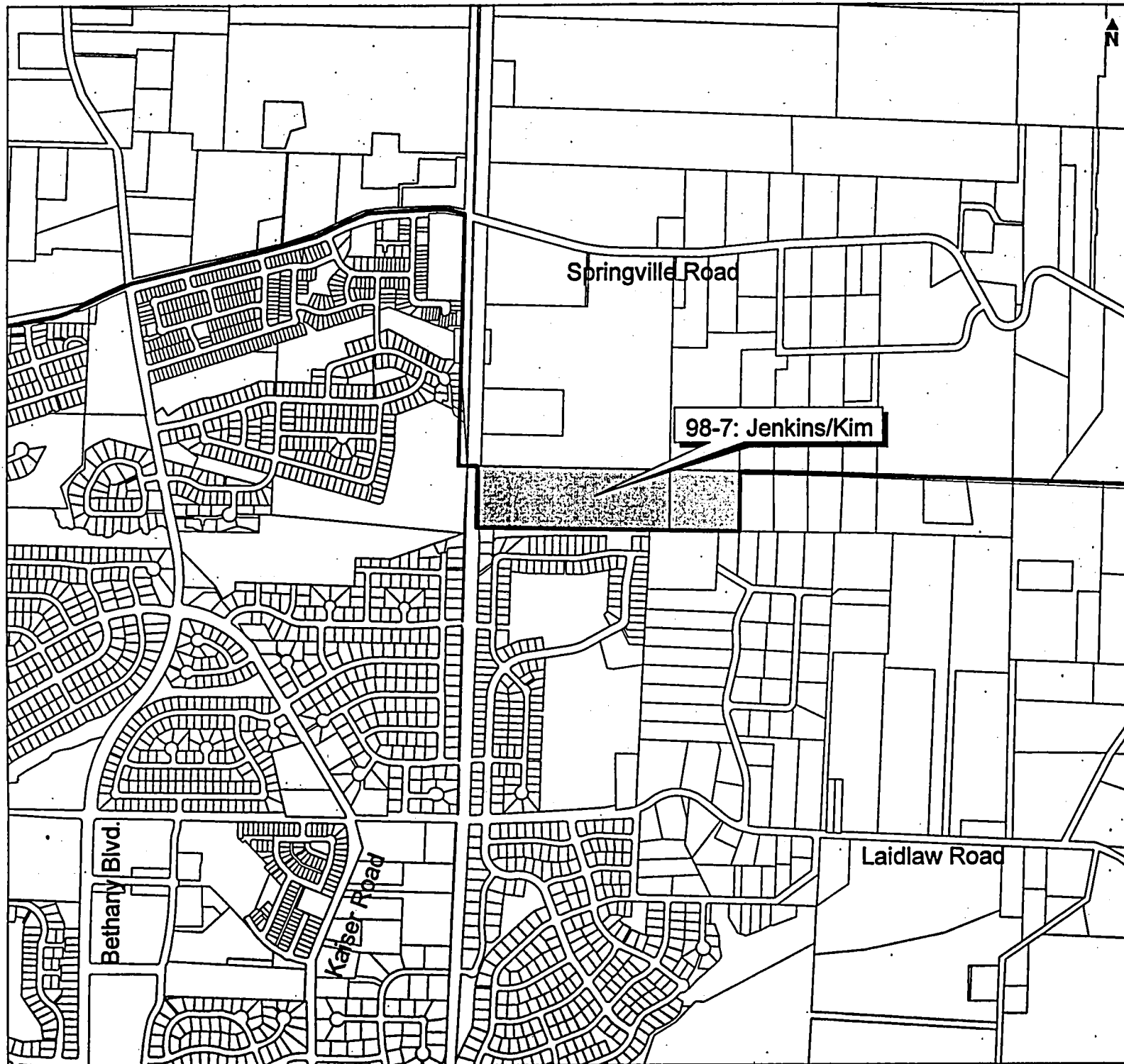
ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper
General Counsel

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



R L I S

REGIONAL LAND INFORMATION SYSTEM

Proposed Adjustment

UGB Case 98-7
Jenkins/Kim

 Urban Growth Boundary

 Subject Property

0 500 1000 1500 Feet

1" = 1000 feet



METRO

800 NE Grand Ave.
Portland, OR 97232-2736
803 787-1742 FAX 803 787-1909
Email: drc@metro.del.or.us

Plot date: Apr 29, 1998; c:\projects\jenkins.apr

BEFORE THE METRO COUNCIL

DRAFT

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

On September 16, 1999, the Metro Council voted to adopt Ordinance 99-816, denying a proposed locational adjustment to the Urban Growth Boundary ("UGB") in the matter of Contested Case 98-07 (Jenkins/Kim). In a subsequent action later that day, the Council voted to reconsider this ordinance. This memorandum is offered to facilitate discussion by the Council when it reconsiders the ordinance.

Whatever decision the Council makes, it must be supported by findings addressing the approval criteria for a locational adjustment. Adoption of Ordinance 199-816 is supported by findings in the draft order the hearings officer filed with the Council on July 1, 1999 (the "Draft Order"). The findings explain the legal reasoning for Council's decision. Council action on reconsideration could result in at least 3 outcomes:

- Adoption of Ordinance 99-816 as is (i.e., without changes to the Draft Order);
- Adoption of Ordinance 99-816 with selected changes to the Draft Order;
- Adoption of a different ordinance approving the locational adjustment with substantial changes to the Draft Order.

This memo could help Council members reconsider the case. It provides a structured format for review of the issues raised by Council members at the September 16 hearing in light of the goal of having findings to support whatever decision Council ultimately makes.

This memorandum is organized in terms of the relevant approval criteria for a locational adjustment. After each criterion is quoted in italic typeface, the memorandum summarizes:

- The original finding(s) in the Draft Order related to a disputed issue;
- The nature of the dispute raised by the original finding(s);
- Arguments on each side and Council discussion of the issue; and
- Recommended amendments to the original finding(s) depending on how Council resolves each disputed issue listed herein.

The matter on reconsideration continues to be constrained and guided by Metro Code ("MC") sections 3.01.035(b), (c) and (f), with which a locational adjustment must comply.

1. MC section 3.01.035(b) provides:

Area of locational adjustments. All locational adjustment additions ... for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres...

a. In the draft order, the hearings officer found that locational adjustments have not added more than 100 acres to the UGB in 1999. But the hearings officer found that the locational adjustment in this case would include more than 20 acres if it included all similarly situated lands, as required by MC 3.01.035(f)(2).

b. There was a dispute about whether adjoining land to the north was similarly situated. The hearings officer found that adjoining land to the north is similarly situated, largely because it is similar physically. The petitioner disagreed. Council members appeared divided on the issue, with the majority appearing to find that the land north of the site is similarly situated. However other Council members found land to the north is not similarly situated, largely because it is in a different county. *The issue of whether abutting lands are similarly situated is addressed more in response to MC 3.01.035(f)(2) below.*

c. If Council decides land to the north is similarly situated, no changes need to be made to the Draft Order. This would indicate that, under the circumstances of this case (e.g., where the land is physically similar, some urban services cross the county line and the site approaches 20 acres), the petitioner failed to show the county boundary and other facts sufficiently distinguish the site from the adjoining land to the north.

d. If Council decides land to the north is not similarly situated, (e.g., because the county boundary and the fill north of the site sufficiently distinguish the site from land to the north), then finding II.2 on p. 10 of the Draft Order should be amended as illustrated by the strike throughs and underlines below to read as follows:

2. No locational adjustments or administrative adjustments have been approved in 1999. Therefore not more than 100 acres has been added to the UGB this year. The petition in this case proposes to add 18.85 acres to the UGB, which is less than 20 acres, and adjoining lands outside the Urban Growth Boundary are not similarly situated. Therefore, as proposed, the petition complies with Metro Code section 3.01.035(b). ~~However, if all similarly situated land is included in the adjustment, the area of the adjustment would exceed 20 acres. See the findings regarding Metro Section 3.01.035(f)(3) for more discussion of the "similarly situated" criterion.~~

Findings regarding MC 3.01.035(f)(2) should be amended to be consistent with any changes made to findings for MC 3.01.035(b). They are addressed more below.

2. Metro Code section 3.01.035(c)(1) provides:

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; and any area to be added must be capable of being served in an orderly and economical fashion.

a. School services

i. In the original Draft Order, the hearings officer found that the subject property can be served in an orderly and economic manner by most public facilities and services, based on service provider comments. However the hearings officer concluded that the petitioner failed to show that school services can be provided to the subject property in an orderly and economical manner, largely because there was unrebutted evidence in the record that the elementary and high school that would serve the site are now over capacity, and the middle school would be at capacity within two years. For the same reasons, the hearings officer found the locational adjustment would not result in a net improvement in the efficiency with which school services would be provided to land already in the UGB. The school district declined to provide a written statement addressing these issues, preferring to undertake such an analysis as part of the review of a future comprehensive plan map amendment (i.e., after the locational adjustment is approved).

ii. Counsel for the petitioner disagreed with the findings in the Draft Order. He argued that schools are not a relevant consideration under MC 3.01.035(c)(1), because "schools" is not expressly on the list of relevant services under that section. Assuming schools are relevant under MC 3.01.035(c)(1), he argued elementary and middle schools are close to the site, and that is sufficient to show that school services can be provided, notwithstanding the school capacity evidence in the record. Counsel for petitioner did not address the related issue of whether including the site in the UGB would improve the efficiency with which school services can be provided to land already in the UGB.

iii. Some members of Council appeared to agree with petitioner that the proximity of the schools to the site was sufficient to meet the petitioner's burden of proof that school services can be provided. Council members did not discuss the efficiency with which school services could be provided. It appeared from its deliberations that Council members believe school services are a relevant consideration under MC 3.01.035(c)(1).

iv. If Council finds that school services are a relevant consideration, and that there is not sufficient evidence in the record to show school services can be provided in an orderly and economical manner and to show that including the site in the UGB would increase the efficiency with which school services can be provided, no changes need to be made to Ordinance 99-816 or to findings addressing MC 3.01.035(b)(1) in the Draft Order.

v. If Council finds that schools are not a relevant urban service under MC 3.01.035(b)(1), then finding II.3.b.i on p. 12 of the Draft Order should be amended as illustrated by strike throughs and underlines to read as follows:

~~ib. Schools are not expressly included in the list of services in this criteria, and Council finds they are not a relevant urban service for locational adjustments. However the list is expressly non-exclusive. Therefore the Council finds that school capacity is a relevant service and this criteria is not met.~~

If this is Council's choice, it would render the discussion of school services moot and irrelevant. Therefore the remainder of finding II.3.b and footnote 2 on page 11 of the Draft Order would be deleted in conjunction with this change, and the remaining finding would be renumbered. Also finding II.4.a on p. 12 of the Draft Order would be deleted, and remaining findings would be renumbered accordingly.

vi. If Council decides that school services are a relevant consideration, but that the record is sufficient to show school services can be provided to the site in an orderly and economical manner, then finding II.3.b on p. 11 of the Draft Order should be amended as illustrated by the strike throughs and underlines below to read as follows:

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

b. ~~There is no substantial evidence that school services can be provided to the subject property in an orderly and economical fashion. The applicant testified (page 18 of the petition, Exhibit 3) that the elementary school and high school which would serve this site are both currently over capacity. The middle school which is currently under construction south of the site is projected to reach capacity within two years after completion.² Development on the subject property is projected to generate 59 students (33 elementary, 14 middle and 12 high school), Exhibit 4. The Beaverton School District testified that it would address school capacity issues through~~

~~the Comprehensive Plan Amendment process. Exhibit 3H of the Petition, Exhibit 3. Therefore Council finds that there is no substantial evidence that school services can be provided to the subject property in an orderly and economical fashion, because there are schools in close proximity to the site.~~

vii. If Council decides that the record is sufficient to show that including the subject site in the UGB would increase the efficiency with which school services can be provided to land already in the UGB, then finding II.4.a on p. 12 of the Draft Order should be amended as illustrated by the strike throughs and underlines below to read as follows:

- a. Including the subject property in the UGB will ~~reduce~~ increase the net efficiency of school services, because ~~there is insufficient capacity to accommodate students, and residential development on this site will increase the burden on the School District~~ it increases the school age population within walking distance of schools in the area, thereby reducing the cost to transport students to school.

b. **Sanitary sewer services**

i. In the original Draft Order, the hearings officer found that the subject property can be served with sanitary sewer services in an orderly and economic manner. See finding II.3.a on p. 11 of the Draft Order. That finding is not disputed.

ii. The hearings officer also found that including the east part of the subject site in the UGB would increase the efficiency with which sanitary sewer services can be provided to land already in the UGB, because gravity flow sewer service can be provided to the Malinowski property east of the site only across the subject site. The hearings officer erroneously stated that the Malinowski property could be served by a pump station. Unified Sewerage Agency ("USA") rules prohibit use of a pump station to serve land in the UGB if the sewer is within 5000 feet. which it is in this case. To correct this error, the hearings officer recommends the Council amend finding II.4.b to read as follows:

- b. Including the subject property in the UGB increases the net efficiency of sewer service, because it enables the petitioners to serve properties east of the subject property (the Malinowski properties) with a gravity flow sewer line. Based on the testimony of Nora Curtis with USA, the Malinowski property cannot be served by a pumped station, because sewers are situated within 5000 feet of that property, if the subject property is not included in the UGB, then the Malinowski properties would have to be served with a pump station. Exhibit 1. That is inherently less efficient than a gravity flow line, because a pump station contains mechanical and hydraulic parts that require maintenance and repair and relies on electricity to operate instead of gravity. This finding is consistent with the Council action in UGB Case 8-04 (Bean) and UGB Case 94-01 (Starr/Richards) where locational adjustments allowed gravity flow systems instead of pump stations.

iii. At the September 16, 1999 hearing, Mr. O'Brien and the Malinowskis testified that the sewer in Greenwood Drive has been placed at sufficient depth to allow gravity flow sewer service to the western portion of the Malinowski properties. The owner of one of the intervening properties is willing to grant an easement allowing extension of sanitary sewer across his property toward the Malinowski properties. See Exhibit 21. Owners of two other properties would have to agree to allow the sewer to cross their property to reach the Malinowski property by a practicable route. To reflect this testimony, the hearings officer recommends the Council amend finding II.4.b.i to read as follows:

- i. ~~There is no substantial evidence that a~~ Alternative routes for gravity flow sewer service can be provided to the Malinowski property inside the UGB from the stub are not practicable or available. It was alleged that sewers could be extended to the Malinowski properties through the powerline right of way south of the subject property within the existing UGB. However sewer lines do not extend to the powerline right of way now. Sewer lines serving the Greenwood Hill subdivision were stubbed in NW Greenwood Drive south of the site. Gravity sewers could be extended to the Malinowski properties from this stub ("Option 2" identified by the applicant in Attachment C of the Staff Report, Exhibit 18). However ~~there is no substantial evidence that this sewer extension could serve the western portion of the Malinowski properties, which are a lower elevation, with gravity flow sewers~~ there is no legal right for a sewer to cross all intervening properties at this time, and topography between Greenwood Drive and the western portion of the Malinowski property may impede gravity flow service to that area even if a line is extended from Greenwood Drive. Therefore the gravity flow line from Greenwood Drive, while possible, is not sufficiently timely or certain to be practicable and available.

iv. Finding II.4.b.ii on p. 13 of the Draft Order addresses the fact that only the eastern portion of the subject site needs to be included in the UGB to provide sewer efficiencies to land already in the UGB. Based on the *Parklane* decision, this factor is relevant to whether the petition demonstrates --- on balance --- a sufficient improvement in the efficiency with which public services can be provided to land already in the UGB. If Council disagrees, finding II.4.b.ii should be deleted.

c. Park and open space services

i. In the original Draft Order, the hearings officer found that including the subject property in the UGB has no effect on the net efficiency of park and open space services and facilities. The hearings officer failed to acknowledge the written statement by the Tualatin Hills Park and Recreation District ("THPRD") that including the subject site in the UGB would result in increased efficiency. The hearings officer treated the site as "open space" for purposes of MC 3.01.035(c)(1), because it is not developed with urban improvements, uses or structures.

ii. Counsel for the petitioner pointed out the omission of the hearings officer with regard to the THPRD statement, and he disputed the interpretation made by the hearings officer that any undeveloped land is "open space" for purposes of MC 3.01.035(c)(1). Councilor Bragdon and others pointed out the use of the term "public" before the list of public services that includes "park and open space" services in MC 3.01.035(c)(1). There appeared to be majority support on the Council for changing the Draft Order to reflect the THPRD statement and to construe the term "park and open space" to mean land used or owned by the public for park or open space purposes, rather than to mean all undeveloped land. Accordingly the hearings officer recommends the Council amend finding II.4.c to read as follows:

- c. The Council finds that including the subject property in the UGB ~~has no effect on~~ increases the net efficiency of park and open space services and facilities. The April 12, 1999 letter from the THPRD states that the Park District "welcomes the proposed development area into the District..." It ~~does not state that~~ approval of this petition results in increased efficiency of park and open space services.
- i. Approval of the petition could increase the amount of open space within the Park District because the wetland areas of the subject property could be dedicated to the THPRD when the subject property is developed. The area proposed to be dedicated is adjacent to the existing open space within the Kaiser Woods subdivision to the west.¹ Therefore approval of this petition will expand the amount of contiguous open space area in the Park District. Increasing the area of open space increases the efficiency of open space services for purposes of this section.
- ii. ~~However the Council also recognizes that, under e~~Existing zoning, use of the subject property is so constrained that it is reasonably likely to remain undeveloped and substantially in an open space even if it is not included in the UGB. If the petition is approved, roughly one third of the subject property, about 7.33 acres, will be cleared and developed for urban uses, substantially reducing the amount of actual open space in the area. Therefore, including the subject property in the UGB actually may is likely to reduce the undeveloped area of the site open space in fact if not in designation. Given these facts, the Council concludes that, on balance, including the subject property has no net effect on open space efficiency. This is consistent with prior Council decisions. See UGB Case 95-02 (Knox Ridge). But, under MC 3.01.035(c)(1), the only parks and open spaces that are relevant are "public" parks and open spaces, i.e., land owned or used by the public for park or open space purposes. Therefore the loss of undeveloped land as a result of the locational adjustment petition is not relevant.

¹ 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.

d. Transportation services

i. In the original Draft Order, the hearings officer found that the petitioner failed to bear the burden of proof that including the site in the UGB would increase the efficiency with which transportation services would be provided to land already in the UGB. Although including the subject site in the UGB could result in access that cannot be provided otherwise, there is no certainty such a result will occur. It depends on the timing of development of large undeveloped tracts east of the Dogwood Park neighborhood and on the redevelopment of that neighborhood. On balance, the hearings officer found no net improvement in transportation efficiency. See finding II.4.d on p. 14 of the Draft Order.

ii. Counsel for the petitioner disputed the findings in the Draft Order regarding transportation efficiencies. But the hearings officer did not observe any movement on the Council toward the petitioner's position.

iii. If Council finds that petitioner failed to sustain the burden of proof regarding transportation service efficiencies to land already in the UGB, no changes need to be made to the Draft Order.

iv. If Council finds that petitioner sustained the burden of proof regarding transportation service efficiencies to land already in the UGB, findings II.4.d.iii and II.4.e should be amended to read as follows:

iii. Whether including the subject property in the UGB results in increased transportation efficiency depends on whether the Malinowski property is developed before the barriers are removed and Greenwood Drive is extended to the east. There is no certainty when the adjoining land in the UGB will develop or when the barriers in Greenwood Drive will be removed. Including the property in the UGB may or may not increase transportation efficiency. There is no substantial evidence that including the subject property will necessarily enhance transportation efficiency. But, on balance, Council finds that creating a potential second means of providing access and cross-circulation in the area is sufficient to show that including the subject site in the UGB results in a net improvement in transportation services to land already in the UGB.

e. The Council concludes that the petitioner ~~failed to bear~~ sustained the burden of proof that approval of this petition will increase efficiency of emergency services. As discussed above, approval of this petition may enhance east-west circulation in the area. ~~However this petition will result in a substantial efficiency only if the Malinowski properties redevelop and extend streets to the east before the barriers are removed and Greenwood Drive is extended to the east. Such enhancement would benefit emergency service access to land already in the UGB.~~

e. Water services

i. In the original Draft Order, the hearings officer found that the petitioner failed to bear the burden of proof that including the site in the UGB would increase the efficiency with which water services would be provided to land already in the UGB. Although including the subject site in the UGB could result in a looped water system, the petitioner failed to show that such looping could not be achieved without the locational adjustment (i.e., within the existing UGB). On balance, the hearings officer found no net improvement in water system efficiency. See finding II.4.g on p. 15 of the Draft Order.

ii. Counsel for the petitioner disputed the finding regarding water system efficiency in the Draft Order. But the hearings officer did not observe any movement on the Council toward the petitioner's position.

iii. If Council finds that petitioner failed to sustain the burden of proof that including the site in the UGB would increase the efficiency with which water services can be provided to land already in the UGB, no changes need to be made to the Draft Order.

iv. If Council finds that petitioner sustained the burden of proof regarding water service efficiencies to land already in the UGB, finding II.4.g should be amended to read as follows:

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

f. Other services

i. In the original Draft Order, the hearings officer found that the petitioner failed to bear the burden of proof that including the site in the UGB would increase the efficiency with which surface water management/storm drainage, natural gas, electricity or fire protection services would be delivered to land already in the UGB. On balance, the hearings officer found no net improvement in efficiencies for these services. See finding II.4.h on p. 15 of the Draft Order.

ii. Counsel for the petitioner disputed the findings regarding the foregoing services, arguing the locational adjustment will increase efficiencies by increasing the population in the area. But the hearings officer did not observe any movement on the Council toward the petitioner's position, and petitioner's position on this issue is substantially at odds with Council action in past cases. That is, Council has consistently held that it is not an increase in efficiency simply to have more people served resulting in a marginally lower per person cost.

iii. If Council finds that petitioner failed to sustain the burden of proof that including the site in the UGB would increase the efficiency with which those services can be provided to land already in the UGB, no changes need to be made to the Draft Order.

iv. If Council finds that petitioner sustained the burden of proof that including the site in the UGB would increase the efficiency with which surface water management/storm drainage, natural gas, electricity or fire protection services can be provided to land already in the UGB, finding II.4.h should be amended to read as follows:

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

g. Wrap-up finding for MC 3.01.035(c)(1)

Finding 4.i at page 15 of the Draft Order is a summary of the preceding findings regarding compliance with MC 3.01.035(c)(1). To the extent the Council modifies the findings regarding compliance with MC 3.01.035(c)(1), finding 4.i should be modified to be consistent.

3. MC 3.01.035(c)(2) provides:

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.

a. In the Draft Order, the hearings officer found that including the subject property in the UGB facilitates needed development on adjacent existing urban land, (i.e., the Malinowski property), because it makes it possible to serve that land with a gravity flow sewer. However, as noted above, the petitioner testified that USA required the sewer stub on Greenwood Drive to be low enough to provide gravity flow sewer service to the Malinowski property across properties already in the UGB. The hearings officer recommends Council amend finding II.5.b to read as follows so that it is consistent with amended finding II.4.b.i:

b. The Council acknowledges that it is not necessary to include the subject property in the UGB to provide any form of sewer service to the Malinowski properties. The Malinowski properties could be served by extending a sewer line from the southwest, from the existing stub in Greenwood Drive or from the south up 137th Avenue. ~~However, based on the topography in the area and the statement from USA, alternative routes for sewer lines would require pumping of sewage from portions of the Malinowski properties~~ there is no legal right for a sewer to cross all intervening properties at this time, and topography between Greenwood Drive and the western portion of the Malinowski property may impede gravity flow service to that area even if a line is extended from Greenwood Drive. Therefore the gravity flow line from Greenwood Drive, while possible, is not certain.

b. Counsel for the petitioner argued that approval of this petition facilitates needed development on adjacent existing urban land, because service from the Greenwood Drive stub is uncertain, it must cross intervening properties, and it may be constrained by topography to serve the west end of the Malinowski property.

c. Although there was discussion of this issue by Council, the hearings officer did not perceive a desire on the part of the majority of the Council to change the findings in the Draft Order regarding this issue.

d. Council could find that the locational adjustment does not facilitate needed development, because the Malinowskis have no desire to redevelop there property. If so, it is irrelevant that including the subject site in the UGB would make more timely and certain extension of sewers to the Malinowski property. However the Council historically has not considered it relevant whether owners of land inside the UGB want to develop their land. Council consistently has assumed in past locational adjustment cases that it is inevitable that land inside the UGB will development.

e. Council could find that gravity flow sewer can be provided to the Malinowski property now, based on Mr. Lindell's willingness to grant an easement for a sanitary sewer across his land from the Greenwood Drive stub to the Malinowski property; therefore the addition of the subject site to the UGB is not needed to facilitate development in the existing UGB. If Council so finds, it should amend finding II.5.c to read as follows:

- c. ~~Given the importance of the efficiency of service delivery in section 3.01.035(e)(1), the Council finds that the availability of a less efficient means of sewer service can be provided to the Malinowski property from the Greenwood Drive stub, (i.e., a system that relies on a pump station), does not preclude and is not inconsistent with a finding that the locational adjustment in this case facilitates development on the Malinowski properties by enabling it to be served with a more efficient sewer system. This is consistent with and similar to the Council's action in the matter of UGB Case 88-04 (Bean) and UGB Case 94-01 (Starr/Richards). Therefore inclusion of the subject site is not necessary to provide sewer service to land already in the UGB and thereby facilitate its needed development.~~

f. On the other hand, Council could find that including the subject property in the UGB facilitates urban development of the Malinowski property, because it removes the uncertainties of intervening owners and topographic constraints regarding sewer service. This was the hearings officer finding, based on the record before September 16.

g. If the Council finds that including the subject property in the UGB facilitates development of the Malinowski property, by providing greater certainty that sewer can serve that property, Council should amend finding II.5.c to read as follows:

- c. ~~Given the importance of the efficiency of service delivery in section 3.01.035(e)(1), the Council finds that the availability of a less efficient possibility of another means of sewer service, (i.e., a system that relies on a pump station extends from the Greenwood Drive stub), does not preclude and is not inconsistent with a finding that the locational adjustment in this case facilitates development on the Malinowski properties by enabling it to be served with a more efficient sewer system in a more certain and timely manner. This is consistent with and similar to the Council's action in the matter of UGB Case 88-04 (Bean) and UGB Case 94-01 (Starr/Richards).~~

h. In the Draft Order, the hearings officer found that including the subject property in the UGB does not otherwise facilitate needed development on adjacent existing urban land (i.e., other than providing for sewer service to the Malinowski property). See finding II.6 on pp. 16-17 of the Draft Order. The petitioner did not specifically argue the issue, and Council did not discuss it at the September 16 hearing. Therefore changes to this finding do not appear warranted and are not provided.

Finding II.6 does not support approval. It supports denial. It does not dictate denial if including the site in the UGB assures necessary sewer service will be provided, facilitating urban development of land already in the UGB.

4. MC 3.01.035(c)(3) provides:

Environmental, energy, social & economic 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.

In the Draft Order, the hearings officer finds the petitioner sustained the burden of proof regarding this criterion. The petitioner did not challenge that finding, and Council did not address this issue in its deliberations. Therefore changes to this finding do not appear warranted and are not provided. This finding supports approval.

5. MC 3.01.035(c)(4) provides:

Retention of agricultural land. When a petitioners 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.

a. In the Draft Order, the hearings officer found that retaining the subject site as agricultural land will not preclude urbanization of adjacent lands and will not render provision of urban services to land inside the UGB impracticable. See findings II.8.a and b on pp. 17-18 of the Draft Order. The hearings officer found that public services and facilities can be provided to the Malinowski properties through lands within the existing UGB. The hearings officer relied on provision of sewer service to the Malinowski property by means of a pump station to conclude that sewer services could be provided to that property, albeit less efficiently than gravity flow sewers. It is a factual error that a pump station can be used; this should be corrected. Based on the testimony at the September 16 hearing, gravity flow sewer can be provided from the Greenwood Drive stub, although it would be harder than from the petitioner's site. Based on corrected information, the analysis in the Draft Order needs to be amended a little, but the ultimate conclusion of law could be the same.

b. Petitioner argued that including the subject site in the UGB is the only certain, timely way to provide sewer service to the Malinowski property. Therefore retaining the site as farm land would preclude urbanization of the Malinowski property. Because of the difficulties associated with providing gravity flow service from the Greenwood Drive stub (i.e., acquiring easements and overcoming topography), petitioner argued extending sewer service to the Malinowski property from the subject site is more practicable.

c. The Council did not consider finding II.8 specifically, but it is related logically to findings regarding compliance with MC 3.01.035(C)(1) and (2). Therefore the hearings officer provides alternative findings for consideration by the Council.

i. If Council finds that sewer service to the Malinowski property can be provided practicably through land already in the UGB, then it should amend finding II.8.b to read as follows:

b. The Council further finds that retaining the subject property as agricultural land will not make the provision of urban services to adjacent properties inside the UGB impracticable. Sewer service can be provided to the Malinowski properties by means of a pump station gravity flow sewers extended from the Greenwood Drive stub. The Council finds that, although pumping sewage is less efficient than a gravity flow sewers, it extending across the Lindell property (and others as necessary) is a practicable alternative. All other urban services will be provided to abutting properties within the UGB as properties to the south and east are redeveloped in the future.

ii. If Council finds that the only practicable way to provide sewer service to the Malinowski property is by including the subject site in the UGB, then it should amend findings II.8.a and b to read as follows:

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

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

6. MC 3.01.035(c)(5) provides:

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

a. In the Draft Order, the hearings officer found that the petitioner failed to bear the burden of proving that adverse impacts of urban use of the subject site would be outweighed by other merits of the petition. In fact the hearings officer found that urban use of the subject site would have significant adverse impacts to agricultural activities on land inside and outside the UGB, and including the subject site in the UGB has few growth management benefits. See finding II.9 at pp. 18-19 of the Draft Order.

b. The hearings officer understands from Council discussion that there are two issues raised by this section: (1) whether adverse impacts on agricultural activities inside the UGB are relevant and (2) whether, in this case, the merits of the locational adjustment clearly outweigh its adverse impacts on relevant agricultural activities.

c. With regard to the first issue, the hearings officer concluded that MC 3.01.035(c)(5) applies to all agricultural activities regardless of location. This section refers to "existing agricultural activities". It makes no distinction based on the location of those activities. The hearings officer believes the Council cannot construe the words used in MC 3.01.035(c)(5) to apply only to land outside the UGB, because it would be inconsistent with the unambiguous meaning of the words. Agricultural use of the portion of the Malinowski property within the UGB is an outright permitted use by existing zoning. It is not a non-conforming use. The hearings officer recommends the Council rely on that fact and the unambiguous meaning of the words in the section to find that agricultural activities on land inside the UGB is relevant to MC 3.01.035(c)(5) under the facts here.

d. If the Council finds that the applicability of MC 3.01.035(c)(5) is ambiguous, and it construes that section to apply only to lands outside the UGB, then Council should amend finding II.9.a and b to refer to the agricultural activities by the Malinowskis northeast of the site (see more below) and should amend finding II.9.c to read as follows:

- c. Agricultural activities on The fact that the Malinowski properties are located within the UGB is are irrelevant to this criterion, because the locational adjustment rules assume urban development of all land within the UGB, and agricultural use of land in the UGB should not be protected against impacts of urban development. The Code does not distinguish between existing agricultural uses based on their location within or outside the UGB.

e. With regard to the second issue, the hearings officer concluded that urban development of the subject site would have adverse impacts on nearby agricultural activities, based on the testimony and personal experiences of the Malinowskis and one of the petitioners. The petitioner failed to show those impacts will not occur or are outweighed by positive results of the locational adjustment. Even if the agricultural activities in question are limited to those outside the UGB, the hearings officer continues to recommend that Council find the merits of the locational adjustment do not outweigh its adverse impacts on agricultural activities, because its merits to the public are so slim and its impacts on agricultural activities, even at a distance, are significant and unmitigated.

f. If Council finds that the merits of the locational adjustment do not clearly outweigh its adverse impacts on relevant agricultural activities in the vicinity, it should amend finding II.9 as warranted to be consistent with its finding regarding applicability to lands inside the UGB.

i. If Council finds MC 3.01.035(c)(5) applies to agricultural activities on lands inside the UGB, then no changes need to be made to finding II.9.

ii. If Council finds MC 3.01.035(c)(5) applies to agricultural activities only on lands outside the UGB, then it should amend findings II.9, a and b to read as follows:

9. The Council finds, based largely on the testimony of the Malinowskis and Dr. Jenkins at the hearing, that the proposed adjustment will be incompatible with ongoing agricultural activities on the Malinowski properties outside the UGB. The minimal service efficiencies achieved by including subject property in the UGB do not "clearly outweigh" the adverse impacts of its urban development on existing agricultural activities outside the UGB.
- a. The Malinowskis testified that their property abutting north of the east boundary of the subject property is in active agricultural use. They harvest hay and graze cattle on this portion of their property. The petitioner, Dr. Jenkins, testified based on his own experience that these activities are incompatible with urban development on abutting properties. Both Dr. Jenkins and the Malinowskis testified that their fences have been cut, allowing their livestock to escape. The Malinowskis testified that they receive complaints about noise and dust from their harvesting activities under existing conditions.
- b. The Council finds that urban development on this site will increase the potential for such conflicts by allowing urban residential development abutting the southwest boundary of the Malinowski property outside the UGB. The Malinowski property is largely buffered from urban development under existing conditions. The powerline right of way along the south boundary of their property provides a buffer between their

property and abutting urban lands. Properties to the north are outside the UGB and designated for rural development in the Multnomah County Comprehensive Plan. Properties to the east are within the UGB, but they are not currently developed with urban uses. The subject property, ~~abutting the west boundary of the Malinowski property~~, is designated exclusive farm use by the Washington County Comprehensive plan. Approval of this petition would bring urban development closer to agricultural activities on the Malinowski property outside the UGB, thereby increasing the likelihood of conflicts between urban and farm uses.

f. If Council finds that the merits of the locational adjustment clearly outweigh its adverse impacts on relevant agricultural activities in the vicinity, it should amend finding II.9 to read as follows:

9. The Council finds, ~~based largely on the testimony of the Malinowskis and Mr. Jenkins at the hearing~~, that the proposed adjustment will not be incompatible with ongoing agricultural activities on the Malinowski properties [outside the UGB]. ~~The minimal (i.e., service efficiencies such as water looping and sanitary sewer extension achieved by including subject property in the UGB), do not~~ Such efficiencies "clearly outweigh" the adverse impacts of its urban development on existing agricultural activities.

a. The Malinowskis' agricultural activities are separated from the subject site by a sufficient distance that potential adverse impacts of urban development on the subject site will dissipate to insignificant levels before reaching the agricultural activities and vice versa. ~~testified that their property abutting the east boundary of the subject property is in active agricultural use. They harvest hay and graze cattle on this portion of their property. The petitioner, Dr. Jenkins, testified based on his own experience that these activities are incompatible with urban development on abutting properties. Both Dr. Jenkins and the Malinowskis testified that their fences have been cut, allowing their livestock to escape. The Malinowskis testified that they receive complaints about noise and dust from their harvesting activities under existing conditions.~~

b. ~~The Council finds that urban development on this site will increase the potential for such conflicts by allowing urban residential development abutting the west boundary of the Malinowski property. The Malinowski property [outside the UGB] is largely buffered from urban development under existing conditions. The powerline right of way along the south boundary of their property provides a buffer between their property and abutting urban lands. Properties to the north are outside the UGB and designated for rural development in the Multnomah County Comprehensive Plan. Properties to the east are within the UGB, but they are not currently developed with urban uses. The subject property, abutting the west boundary of the Malinowski property, is designated exclusive farm use by the Washington County Comprehensive plan. Approval of this petition would bring urban development closer to the Malinowski property, thereby increasing the likelihood of conflicts between urban and farm uses.~~

7. MC 3.01.035(f)(2) provides:

Superiority. [T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section.

a. In the Draft Order, the hearings officer finds the proposed UGB is not superior for five reasons. The petitioner failed to bear the burden of proof that: (1) schools can be provided to the site in an orderly and economic manner; (2) the size of the adjustment was commensurate with the increase in land use efficiencies in which it results; (3) retention of the site in agricultural use would preclude or render impracticable urban use of land already in the UGB; (4) the merits of the adjustment clearly outweigh its adverse impacts on agricultural activities in the vicinity; and (5) the site includes all similarly situated land. See finding II.10 on pp. 19-20 of the Draft Order. This is a summary finding. It should be amended to be consistent with Council's action on the other relevant standards.

b. The petitioner argued a straight UGB boundary is inherently superior to a crooked boundary. Some members of Council appeared to favor that argument. The hearings officer believes there is nothing inherently superior about a straight UGB line. The UGB commonly is not a straight line. The factors in MC 3.01.035(c) suggest that service delivery boundaries, natural feature boundaries and significant man-made features could be a superior UGB. In this case the county line is not a boundary for all services; USA provides sanitary and storm drainage services on both sides of the line. It does not correspond to any natural resource boundary or to significant man-made features. Under these facts, a straight UGB line farther north is not superior to the existing line.

8. MC 3.01.035(f)(3) provides:

Similarly situated land. The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above.

a. In the Draft Order, the hearings officer finds the petition does not include all similarly situated property, and, that if it did, the locational adjustment would exceed 20 acres, contrary to MC 3.01.035(b). If as little as 26 feet of the land north of the subject site is similarly situated and therefore included in the petition, the petition would include more than 20 acres. See finding II.11 on pp. 20-21 of the Draft Order.

i. The site and adjoining 26 feet to the north are similar in terms of zoning, elevation, slope and soils based on SCS classifications.

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b. The petitioner argued a straight UGB boundary is inherently superior to a crooked boundary. Some members of Council appeared to favor that argument. The hearings officer believes there is nothing inherently superior about a straight UGB line. The UGB commonly is not a straight line. The factors in MC 3.01.035(c) suggest that service delivery boundaries, natural feature boundaries and significant man-made features could be a superior UGB. In this case the county line is not a boundary for all services; USA provides sanitary and storm drainage services on both sides of the line. It does not correspond to any natural resource boundary or to significant man-made features. Under these facts, a straight UGB line farther north is not superior to the existing line.

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i. The site and adjoining 26 feet to the north are similar in terms of zoning, elevation, slope and soils based on SCS classifications.

ii. Services could be extended 26 feet north easily to serve the off-site land if it was converted to urban use.

iii. To an extent, the land to the north is more suited for urban use than the subject site, because it adjoins a water reservoir and other urban development, rather than land used for farming.

iv. The petitioner argued the abutting land has "better quality agricultural soils." Petition at page 30. But there is no substantial evidence in the record to support this statement or to show that the change in soil types coincides with the property line. And it is inconsistent with the petitioner's testimony that the subject site and land to the north have been farmed or grazed together in the past.

v. The petitioner argued that the land to the north is not similar, because land to the north is not necessary to extend urban services to the adjoining land already in the UGB (i.e., the Malinowski property). But neither is inclusion of most of the subject property necessary to provide that service, so that does not sustain a distinction.

c. There is a dispute about whether the county line is relevant to the similarly situated determination. As noted above the hearings officer concluded that the county line is not relevant to the criteria regarding similarly situated lands. The petitioner argued it is relevant (if not determinative). Members of Council discussed the issue. The majority appeared to find that, however relevant the line might be in general, it is not determinative under the facts of this case, and it does preclude a finding that lands on both sides of the line are similarly situated, much the same as Council has found in past locational adjustment cases that land in different ownership can be similarly situated. See UGB Case 95-02 (Knox Ridge) and UGB Case 98-10 (JJ Development).

d. If Council finds that the county line is relevant but not determinative, and that the petitioner failed to show that at least 26 feet of the land north of the site is not similarly situated, Council does not need to make any changes to the Draft Order.

e. If Council finds that the petitioner has sustained the burden of proof that land north of the site is not similarly situated, then it should amend finding II.11 to read as follows:

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

- a. ~~Based on the aerial photographs in the record, the southern portion of the~~ The soils on the abutting property are not similar, because their surface is fill from the area excavated for the TVWD reservoir to the north. 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 is not similar, because 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. ~~Although the adjoining land to the north is not similar, because it is not necessary to extend urban services to the adjoining land already in the UGB (i.e., the Malinowski property), neither is inclusion of most of the subject property necessary to provide that service.~~
- d. ~~The petitioner distinguishes the adjoining land to the north is not similar largely because it is in a different county; but such jurisdictional boundaries are not relevant to the criteria regarding similarly situated lands. That boundary does not create an obstacle to development between the subject site and abutting properties. There is 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.~~
- e. ~~The petitioner did not demonstrate 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. The petitioner argued that the abutting property contains "better quality agricultural soils." Petition at page 30. However there is no substantial evidence in the record to support this statement. The petition does not include a soils map or similar evidence of the soils on this and the abutting properties. In addition, this statement conflicts with petitioners' statement that "[s]eed production is limited on the Class IV soils immediately adjacent to the Jenkins/Kim site because of poor drainage." Petition at page 27. This statement is consistent with the aerial photographs in the record which show the northern portion of the abutting property is cultivated while the southern portion is undisturbed.~~
- f. ~~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. ~~Therefore the Council concludes the petition does not include all similarly situated properties. If it did include all such lands, it would exceed 20~~

acres. It is not evident to Council how far north similarly situated lands go, but they include at least 1.15 acres of the land north of the subject site. 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.

9. Conclusions

The conclusions at pp. 21-22 of the Draft Order should be amended to be consistent with the findings ultimately adopted by the Council.

Respectfully submitted,
LARRY EPSTEIN, PC

Larry Epstein, AICP
Metro Hearings Officer

JUL 01 1999

BEFORE THE METRO COUNCIL

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

I. INTRODUCTION AND SUMMARY

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

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

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

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

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

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

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

10 11 II. SUMMARY OF BASIC FACTS AND PROCEDURE

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

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

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

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

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

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

14
15 2. MC § 3.01.035(c)(1) requires a petitioner to show (1) that granting the petition
16 would result "in a net improvement in the efficiency of public facilities and services" and
17 (2) that the area to be added can be served "in an orderly and economic fashion."

18
19 a. There was a dispute about whether school services can be provided to
20 the subject site in an orderly and economic fashion. The hearings officer concluded that
21 there is insufficient evidence that school services can be provided, because the enrollment at
22 elementary and high schools serving the subject property currently exceeds capacity. The
23 school district declined to certify that it could provide services in an orderly and economic
24 fashion, prejudicing the case for the petition.

25
26 b. There is a dispute whether granting the petition results in a net
27 improvement in efficiency of transportation, sanitary sewer, open space and police and fire
28 services. The hearings officer found including the subject property in the UGB would
29 have a positive effect on the efficiency with which sewer service could be provided to land
30 already in the UGB, would have no net effect on the efficiency of transportation services,
31 open space or emergency services, and would have a negative effect on efficiency of school
32 services. On balance, the hearings officer found that the increased efficiency of providing
33 gravity flow sewer service to abutting properties is outweighed by the reduced efficiency in
34 providing school services, particularly because including only a small portion of the subject
35 property would achieve the positive sewer efficiency. It is not necessary to include most of
36 the subject property to achieve a net increase in efficiency of urban services.

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

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

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

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

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

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

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

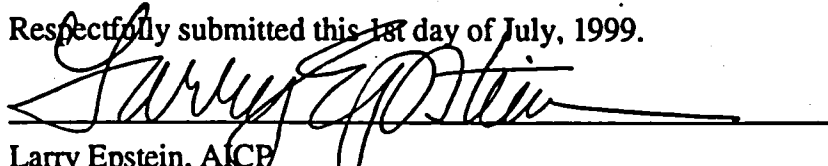
5
6 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
7 UGB. The hearings officer found the proposed UGB is not superior to the extent it does
8 not comply with the other relevant approval criteria cited above.

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

22 23 IV. ULTIMATE CONCLUSION AND RECOMMENDATION

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

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

32 
33
34 Larry Epstein, AICP
35 Metro Hearings Officer

BEFORE THE METRO COUNCIL

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

I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

12

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

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

22 *Area of locational adjustments. All locational adjustment additions*
23 *and administrative adjustments for any one year shall not exceed 100 net*
24 *acres and no individual locational adjustment shall exceed 20 net acres...*
25

26 Metro Code section 3.01.035(b)
27

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

32 Metro Code section 3.03.035(c)(4)
33

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 f. The Council finds the evidence in this case can be distinguished from the
10 evidence in prior cases regarding the "similarly situated" criterion. Many of the properties
11 proposed for addition in prior cases had some natural or man-made physical feature that
12 separated the subject property from adjoining non-urban land. See, e.g., UGB Case 94-01
13 (Starr/Richards) (I-5 freeway), UGB Case 95-01 (Harvey) (railroad tracks) and UGB Case
14 87-4 (Brennt) (steep slopes). In this case, the subject property is not physically
15 distinguishable from adjoining non-urban land, similar to the situation in UGB Case 95-02
16 (Knox Ridge).

17
18 g. Therefore the Council concludes the petition does not include all
19 similarly situated properties. If it did include all such lands, it would exceed 20 acres. It is
20 not evident to Council how far north similarly situated lands go, but they include at least
21 1.15 acres of the land north of the subject site. If as little as 26 feet of the land adjoining
22 the north edge of the subject property is included in the UGB, the petition would include
23 more than 20 acres. The evidence is insufficient to show the adjoining 26 feet of land is
24 not similarly situated to the subject site based on the relevant criteria.

25 26 III. CONCLUSIONS

27
28 Based on the foregoing findings, the Council adopts the following conclusions.

29
30 1. Public services and facilities, including water, sanitary sewer, storm drainage,
31 transportation, and police and fire protection, can be provided to the subject property in an
32 orderly and economical fashion.

33
34 2. School services cannot be provided to the subject property in an orderly and
35 economical fashion.
36

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

6
7 4. The petitioners showed that the proposed addition will facilitate needed
8 development on adjacent existing urban land. Therefore Council concludes the petition
9 does comply with MC section 3.01.035(c)(2).

10
11 5. The petitioners showed that including the subject property in the UGB will not
12 affect regional transit corridor development and that limitations imposed by the presence of
13 wetlands and a natural gas transmission pipeline can be addressed. Therefore Council
14 concludes the petition does comply with MC section 3.01.035(c)(3).

15
16 6. The petitioners failed to carry the burden of proof that retention of the subject
17 property as agricultural land would preclude urbanization of an adjacent area already inside
18 the UGB, or make the provision of urban services to an adjacent area inside the UGB
19 impracticable. Thus the petition does not comply with MC section 3.03.035(c)(4).

20
21 7. The petitioners failed to carry the burden of proof that efficiencies created by
22 including the subject property in the UGB clearly outweigh the adverse impact of any
23 incompatibility with existing agricultural activities. Thus the petition does not comply with
24 MC section 3.01.035(c)(5).

25
26 8. The petitioners failed to show that the proposed addition will result in a superior
27 UGB. Thus the petition does not comply with MC section 3.01.035(f)(2)

28
29 9. The petition does not include all similarly situated contiguous land outside the
30 UGB. If it did include all such lands, the area in question would exceed 20 acres, which is
31 the maximum area permitted as a locational adjustment.

1 IV. DECISION

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

6 DATED: _____

7 By Order of the Metro Council

8 By
9 _____

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

Exhibit No. Subject matter

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

STAFF REPORT

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

Date: September 9, 1999

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

PROPOSED ACTION

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

SUMMARY OF PROCESS

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

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

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

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

BACKGROUND AND ANALYSIS

Proposal Description:

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

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

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

Hearings Officer Recommendation and Proposed Findings

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

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

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

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

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

Comparison of Staff Report and Hearings Officer's Recommendation

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

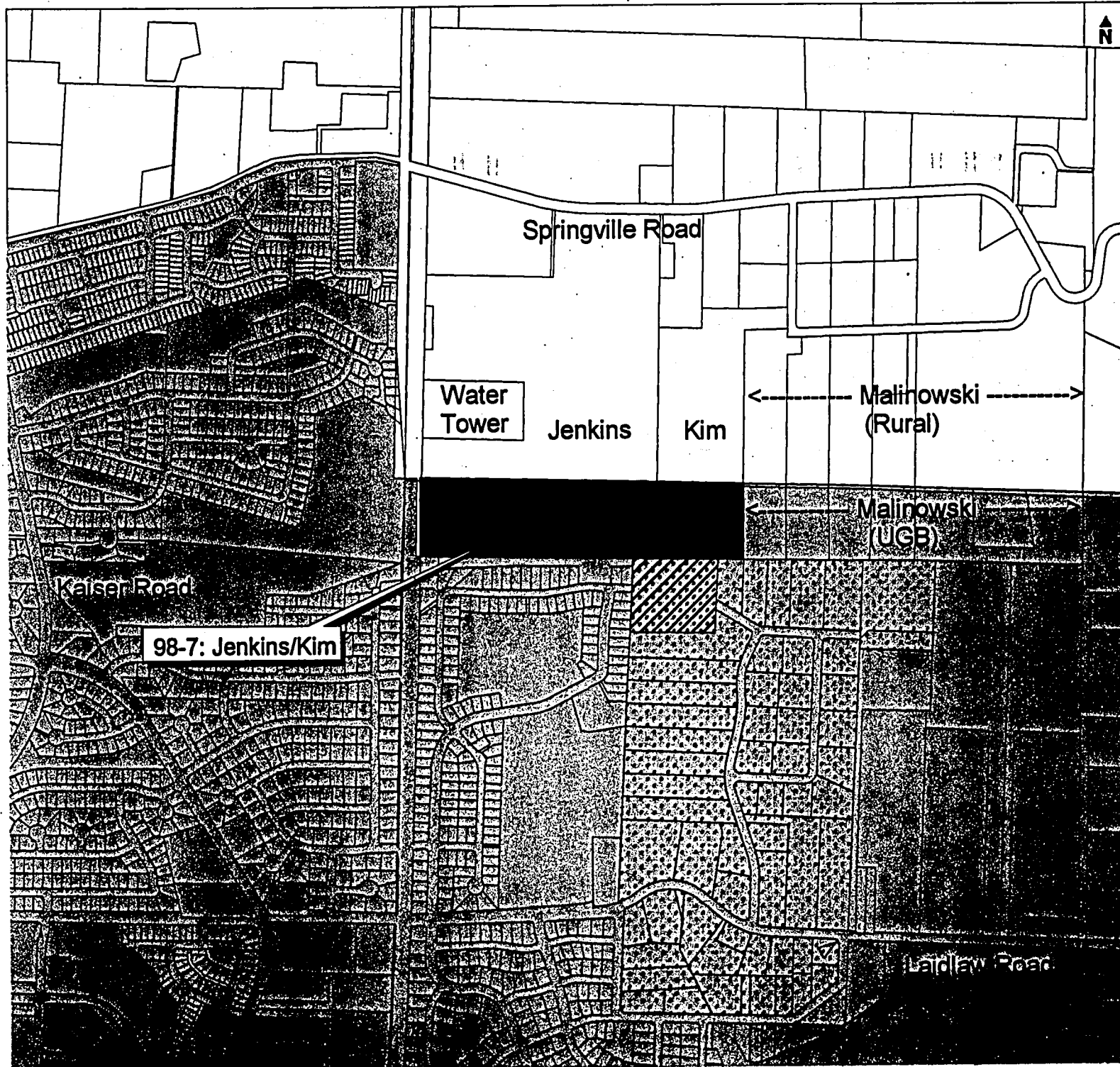
Staff conclusions differ from the Hearings Officer's recommendation in the following ways:

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

BUDGET IMPACT





There is no budget impact from adopting this ordinance.

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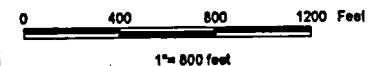


Proposed Adjustment

UGB Case 98-7:
Jenkins/Kim

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

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

JUL 01 1999

BEFORE THE METRO COUNCIL

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

I. INTRODUCTION AND SUMMARY

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

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

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

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

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

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

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

10 11 II. SUMMARY OF BASIC FACTS AND PROCEDURE

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

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

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

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

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

10
11 1. A locational adjustment to add land to the UGB must comply with the relevant
12 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). The following findings
13 highlight the principal policy issues disputed in the case.

14
15 2. MC § 3.01.035(c)(1) requires a petitioner to show (1) that granting the petition
16 would result "in a net improvement in the efficiency of public facilities and services" and
17 (2) that the area to be added can be served "in an orderly and economic fashion."

18
19 a. There was a dispute about whether school services can be provided to
20 the subject site in an orderly and economic fashion. The hearings officer concluded that
21 there is insufficient evidence that school services can be provided, because the enrollment at
22 elementary and high schools serving the subject property currently exceeds capacity. The
23 school district declined to certify that it could provide services in an orderly and economic
24 fashion, prejudicing the case for the petition.

25
26 b. There is a dispute whether granting the petition results in a net
27 improvement in efficiency of transportation, sanitary sewer, open space and police and fire
28 services. The hearings officer found including the subject property in the UGB would
29 have a positive effect on the efficiency with which sewer service could be provided to land
30 already in the UGB, would have no net effect on the efficiency of transportation services,
31 open space or emergency services, and would have a negative effect on efficiency of school
32 services. On balance, the hearings officer found that the increased efficiency of providing
33 gravity flow sewer service to abutting properties is outweighed by the reduced efficiency in
34 providing school services, particularly because including only a small portion of the subject
35 property would achieve the positive sewer efficiency. It is not necessary to include most of
36 the subject property to achieve a net increase in efficiency of urban services.

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

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

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

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

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

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

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


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

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

22
23 **IV. ULTIMATE CONCLUSION AND RECOMMENDATION**

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

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

32 
33 _____
34 Larry Epstein, AICP
35 Metro Hearings Officer

BEFORE THE METRO COUNCIL

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

I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

12

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

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

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

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

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

7 Metro Code section 3.01.035(c)(1)

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

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

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

33

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Metro Code section 3.01.035(c)(2)

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

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

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

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

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

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

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

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

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

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

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

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

31 Metro Code section 3.03.035(c)(4)

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

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

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

14
15 *Compatibility of proposed urban uses with nearby agricultural*
16 *activities. When a proposed adjustment would allow an urban use in*
17 *proximity to existing agricultural activities, the justification in terms of this*
18 *subsection must clearly outweigh the adverse impact of any incompatibility.*
19 Metro Code section 3.01.035(c)(5)
20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 f. The Council finds the evidence in this case can be distinguished from the
10 evidence in prior cases regarding the "similarly situated" criterion. Many of the properties
11 proposed for addition in prior cases had some natural or man-made physical feature that
12 separated the subject property from adjoining non-urban land. See, e.g., UGB Case 94-01
13 (Starr/Richards) (I-5 freeway), UGB Case 95-01 (Harvey) (railroad tracks) and UGB Case
14 87-4 (Brennt) (steep slopes). In this case, the subject property is not physically
15 distinguishable from adjoining non-urban land, similar to the situation in UGB Case 95-02
16 (Knox Ridge).

17
18 g. Therefore the Council concludes the petition does not include all
19 similarly situated properties. If it did include all such lands, it would exceed 20 acres. It is
20 not evident to Council how far north similarly situated lands go, but they include at least
21 1.15 acres of the land north of the subject site. If as little as 26 feet of the land adjoining
22 the north edge of the subject property is included in the UGB, the petition would include
23 more than 20 acres. The evidence is insufficient to show the adjoining 26 feet of land is
24 not similarly situated to the subject site based on the relevant criteria.

25 26 III. CONCLUSIONS

27
28 Based on the foregoing findings, the Council adopts the following conclusions.

29
30 1. Public services and facilities, including water, sanitary sewer, storm drainage,
31 transportation, and police and fire protection, can be provided to the subject property in an
32 orderly and economical fashion.

33
34 2. School services cannot be provided to the subject property in an orderly and
35 economical fashion.
36

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

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

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

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

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

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

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

1 IV. DECISION

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

6 DATED: _____

7 By Order of the Metro Council

8 By _____
9

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

Exhibit No. Subject matter

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

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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before the governing authority that school capacity is relevant as attested by the School District.

5. The hearings officer interpretation of the **Similarly Situated Land** provision, decision page 20, fails to recognize evidence in the record. The Hearings Officer found on page 21, lines 2 through 4 that no soils maps or similar evidence of the soils on this and abutting properties was in the record. That is simply not true. Soils maps and supporting testimony are in the record and apparently the Hearings Officer missed them. In addition, the conclusion there is no physical barrier that distinguishes the subject property from the adjacent 26 feet is based upon reasoning which was not announced as a pre requisite to the approval being sought. If the matter is remanded that issue can be properly addressed with evidence from the people presently and previously farming the property (see offer of proof). Much of the existing UGB is differentiated from EFU land by lot lines and jurisdictional boundaries. The subject property was once within the UGB with the line establishing the boundary being the Multnomah County line. The Hearings Officer disregard for that reality is inconsistent with prior Metro action.

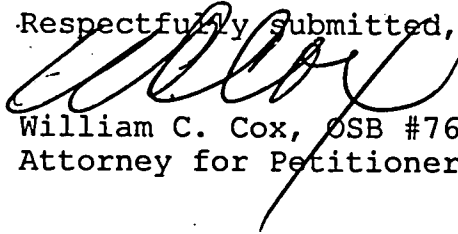
III

In summary, Petitioners request that Metro accept the above as a statement of exception. In addition, Petitioners'

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request that the matter be remanded to the Hearings Officer for additional hearings which should substantially reduce the number of issues which will need review by the Metro Council if not eliminate them altogether.

Respectfully submitted,



William C. Cox, OSB #76110
Attorney for Petitioners

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Metro Growth Management

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

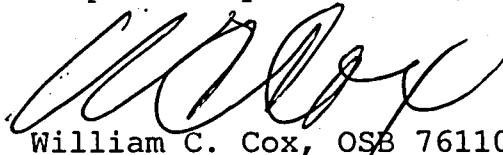
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other types of cultivation." (Attached affidavit of Alan Schaff and Sam Van Dyke -Exhibit B). This goes to the issue of similarly situated lands.

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.

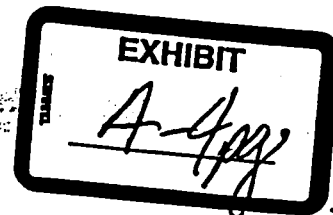
4. The Council is requested to accept additional evidence in the form of documents regarding the issue similarly situated lands and soils classifications (Attached as Exhibit D)

Respectfully submitted,



William C. Cox, OSB 76110
Attorney for Petitioners

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(503) 246-5499



STATE OF OREGON

DEPARTMENT OF REVENUE

In the Matter of the Appeal)

of)

OPINION AND ORDER

Michael H. and Joann S. Jenkins Con-)
cerning Certain Multnomah County Real)
Property Tax Assessments for the)
1991-92 Tax Year.)

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. Kellens 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 "SELL OR WE CONDEMN" (1988).

Emmanuel Lutheran Charity Board v. Dept. of Rev., 263 Or 287, 502 P2d 251 (1972). Since farm-use special assessments are in the nature of a partial exemption from taxation it is absolutely essential that the application falls squarely within the terms of the qualifications in the statute. Masters v. Dept. of Rev., 5 OTR 134 (1972).

In this case, the county took steps to disqualify the subject property from farm-use special assessment pursuant to ORS 308.397(1) which provides for the removal of the special assessment when the assessor discovers that the property is no longer being used as farmland. While the disqualification under this procedure will require the assessment of the property at its real market value, additional penalties for back taxes will not be assessed so long as the land is not converted to a use which is inconsistent with its return to use as farmland. ORS 308.382(1).

The definition of farmland and farm uses are set out in Chapter 215 of the Oregon statutes. ORS 215.203(2)(b)(B) provides that land lying fallow for one year as a normal and regular requirement of good agricultural husbandry can be considered the current employment of land for farm use. While certain cases have allowed a somewhat longer period of time for land to lay fallow when required by reasons of good agricultural husbandry, that is not the situation in this case. The record establishes that recontouring land with subsoil is not a good agricultural husbandry practice and therefore an extended fallow period does not fall squarely within the definitions of farm use as set forth in the statute. Moreover, while it is clear that the petitioner has suffered several set backs which have hindered the use of this property over the past few years, there is no provision in the statute for combining reasons for disuse. Disuse periods cannot be added together to justify a three-year period during which the property was not farmed.

In a property tax appeal the burden of proof is on the party seeking affirmative relief. This means that the petitioner must show that the assessor's actions were incorrect and that the requested action is correct. A preponderance of the evidence is required to meet the burden of proof. OAR 150-305.115-(B)(9). In this case, the county appears to have acted properly, according to statute, in taking the action to disqualify the subject property because of its lack of a qualifying farm use. In order to meet the burden of proof, the petitioner must clearly show that the extended period of disuse is allowed by the statutes. This has not been done. The department can find no authority which would allow it reinstate the farm-use special assessment for the subject property for the years at issue which is within the confines of the statutory scheme set forth by the legislature.

NOW, THEREFORE, IT IS ORDERED that the appeal is denied. The assessor's action of disqualification is sustained. The real property shall remain taxable at real market value for the 1991-92 tax year.

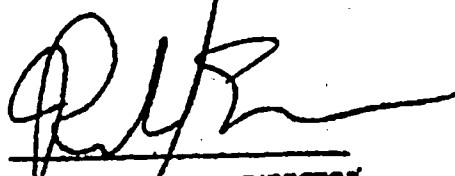
Dated and mailed at Salem, Oregon, this 12th day of October, 1993.

CERTIFIED TO BE A TRUE COPY

Mary Gekabsons

Offices Services Center
DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE



RICHARD A. MUNN, DIRECTOR

Notice:

If you want to appeal this decision, file a complaint in the Oregon Tax Court, 520 Justice Building, Salem, Oregon 97310. **YOUR COMPLAINT MUST BE FILED WITHIN 60 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.**



AFFIDAVIT OF ALAN SCHAFF

STATE OF OREGON)
County of Washington) ss.

I, Alan Schaff, being first duly sworn say:

1. I am a commercial farmer and have been a farmer for many years.
2. I leased Tax Lot 7 in Multnomah County located directly north and adjacent to Tax Lot 1100 Section 21 T1N R1W W.M. in Washington County, from Dr. Jenkins from the fall of 1998 to the present. I am currently farming the property.
3. Initially, I cultivated the entire property for grass seed.
4. I abandoned farming the lower portion of Tax Lot 7 described as the area south and east of the reservoir to the southern property line due to its extremely poor production of cover crops and its inability to support any other types of cultivation.
5. I tilled the entire property in the fall of 1998 and found that there was no valuable top soil on the backside of the hill that faces southeast towards the Washington County line.
6. Additionally, it appears as if fill may have been deposited there. Underneath the fill (made up of mostly clay soils), soils containing large amounts of rocky shale were found rendering this portion of the farm very unproductive. It currently is covered in wild /native grasses. Therefore, this area, south and east of the reservoir to the southern property line, is too wet and soils are too poor to farm productively.

DATED THIS 22 day of July, 1999.

Alan Schaff
Alan Schaff

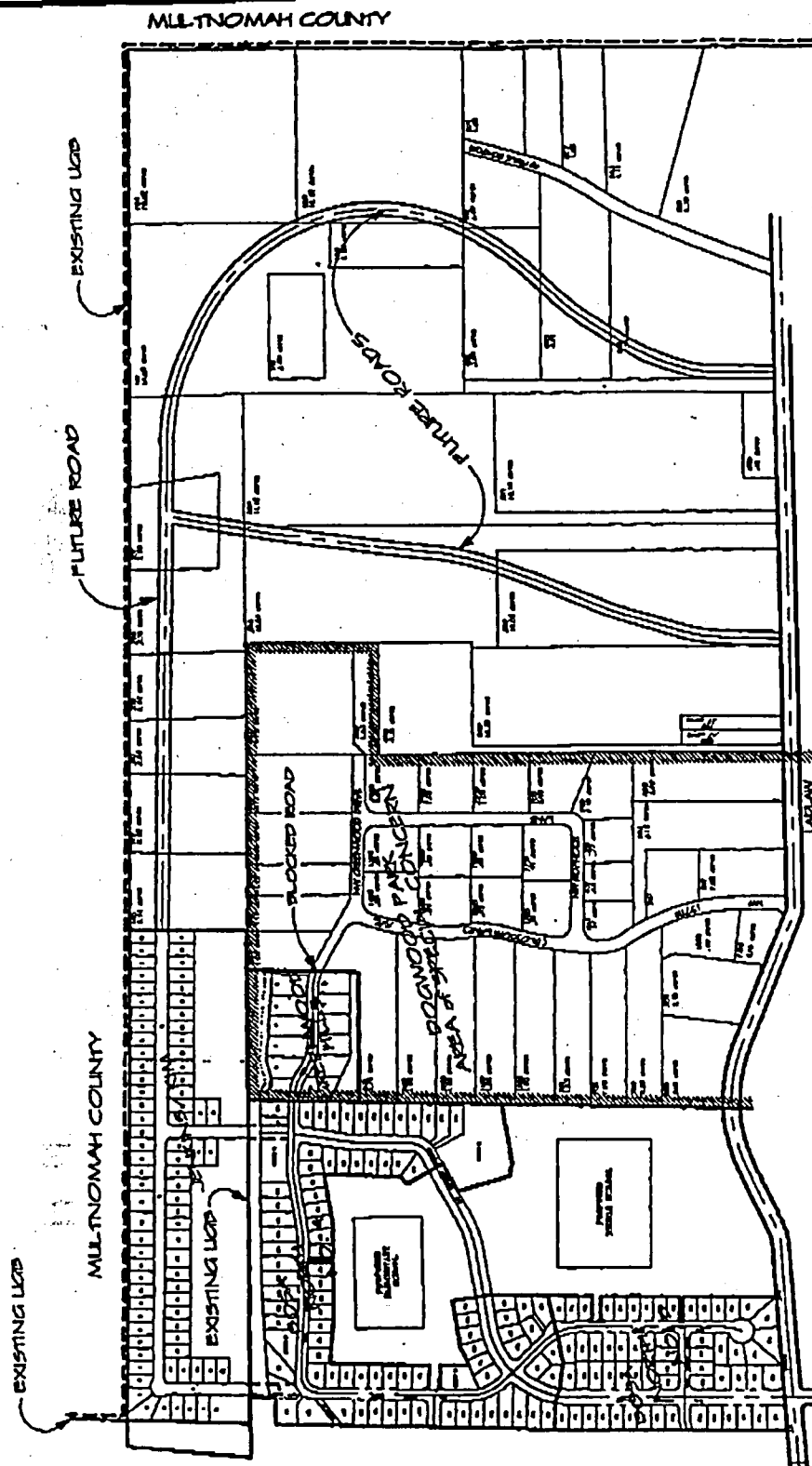
Subscribed and sworn to before me this ___ day of July, 1999.

Notary Public for the State of Oregon
My Commission Expires: _____

c



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ALL STREETS SHOWN ABOVE ARE LOCAL EXCEPT LAIDLAW
LAIDLAW IS DESIGNATED AS A MAJOR COLLECTOR

Street Volume Limits

Local Street 1,500 vpd

Major Collector 1,500 - 3,000 vpd



**Planners
Engineers
Surveyors** 233 E. WASHINGTON ST.
MILLSBORO, OREGON 97123
PHONE (503) 846-4801
FAX (503) 881-7846

MAKING TILES

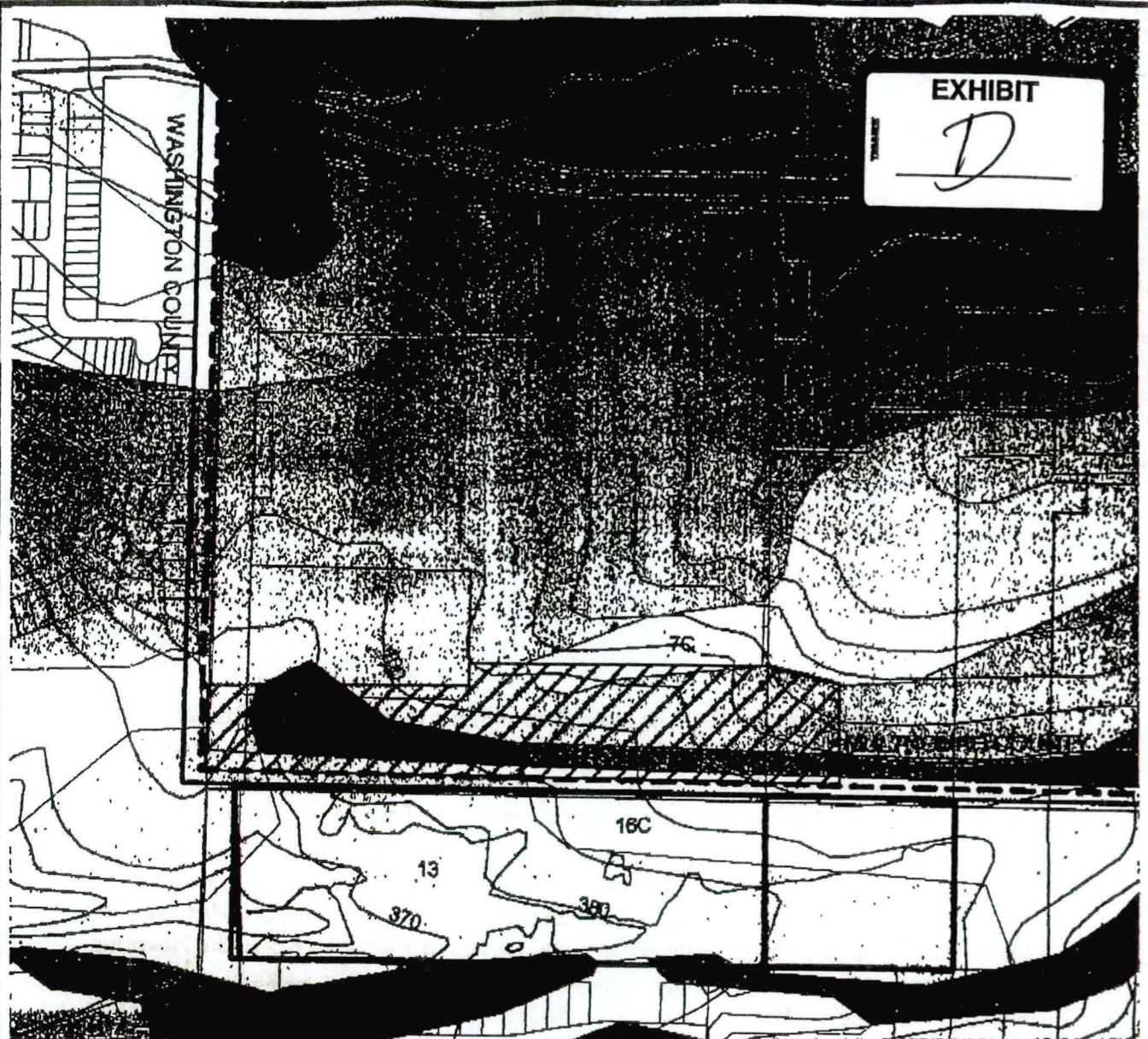
JENKINS/KIM OFFER
OF PROOF GRAPHIC #1
CONNECTIVITY

1992

2350

PLATE 10






1.



Jenkins/Kim Offer of Proof Graphic 2 Similarly Situated Lands



Legend


-  UGB
-  Site
-  Wetland
-  County line
-  Overburden soil

Type	Name	Capability Unit	Fertility
7B	Cascade silt loam, 3-7% slopes	IIIw-1	Moderate
7C	Cascade silt loam, 7-12% slopes	IIIe-4	Moderate
10B	Chehalis silt loam	Iiw-3	High
13	Cove silty clay loam	IVw-1	Low
14C	Clove clay	IVw-1	Low
16C	Delena silt loam, 3-12% slopes	IVw-3	Moderate
55	Wapato silt loam	IIIw	Moderate

**METRO**

DATE: August 30, 1999

TO: Metro Council
Mike Burton, Executive Officer

FROM: 
Larry Shaw
Office of General Counsel

RE: Process For "Offer of Proof"

Introduction

Petitioners in Contested Case 98-07 have filed exceptions to the Hearings Officer Recommendation that include an "offer of proof" to support their request for a remand to the Hearings Officer. This 18.85-acre locational adjustment south of Springville Road is an unusual case. The Hearings Officer differs from the staff report on how to balance several serviceability issues. A criterion issue not raised by staff became the Hearings Officer conclusion that some adjacent land is "similarly situated," making applicant's 18.85 acres, plus the adjacent land, greater than the 20-acre maximum size. Based on this and how the Hearings Officer balanced approval factors in the Metro Code, the Hearings Officer recommends denial of the application. Applicant, basically, seeks to reopen the record to (1) include evidence to respond to the "similarly situated" criterion, and (2) have the Hearings Officer rebalance the Code factors using requested Metro Council interpretations of the Code factors.

Metro Code 2.05 Hearing Process

As indicated in the staff report, the Metro Council may approve, deny or send the application back to the Hearings Officer, with or without specific instructions. The only Metro Code procedures for hearings before the Metro Council are dated ones which apply to all "contested case" administrative hearings on any subject. At Metro Code 2.05.025(i) is the usual process for a limited Motion to "reopen the hearing" (record) "for receipt of new evidence which could not have been introduced earlier and is otherwise admissible" I believe that applicant's position is that the evidence in their "offer of proof" would have been available for the hearing if it had known of the "similarly situated" issue.

Offer of Proof - Metro Code 2.05.050 Reconsideration, Rehearing

The Metro Council does not have to limit itself to this hearing process rule on adding new evidence in deciding whether to send an application back to the Hearings Officer. The Council has the inherent authority to do so, with or without ruling 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 not 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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**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** – TVWD 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.

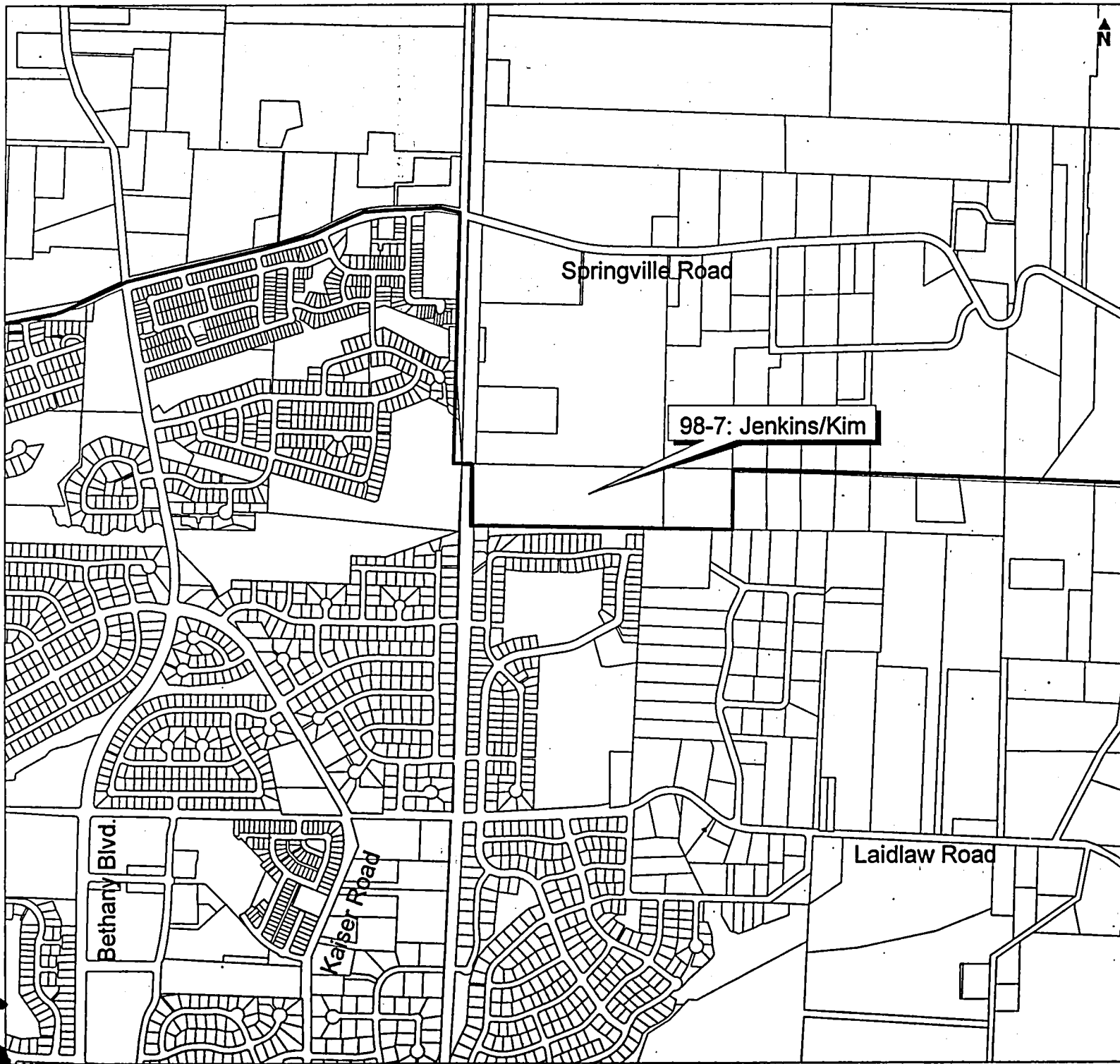
Staff concludes, therefore, that this criterion is satisfied.

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.

I:\GM\ComDev\Projects\UGBadmt98\98-7staffrpt



R L I S

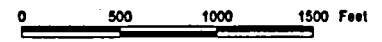
REGIONAL LAND INFORMATION SYSTEM

Proposed Adjustment

UGB Case 98-7
Jenkins/Kim

 Urban Growth Boundary

 Subject Property



1" = 1000 feet



METRO


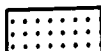



800 NE Grand Ave.
Portland, OR 97232-2738
503 797-1742 FAX 503 797-1909
Email: drc@metro.de.or.us

Plot date: Apr 28, 1999; c:\projects\jenkins.spr

ATTACHMENT A

1-5

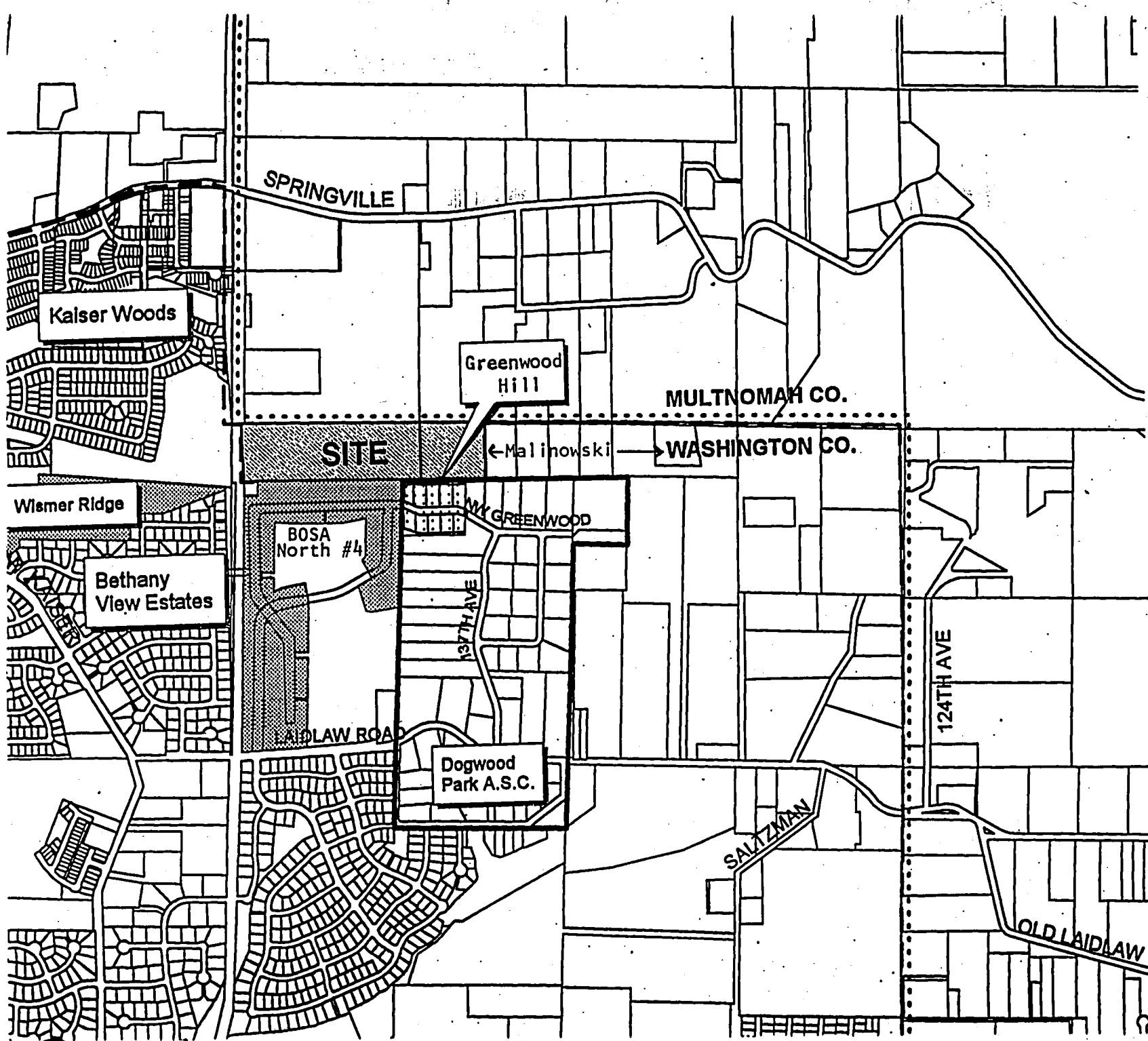
Vicinity Map

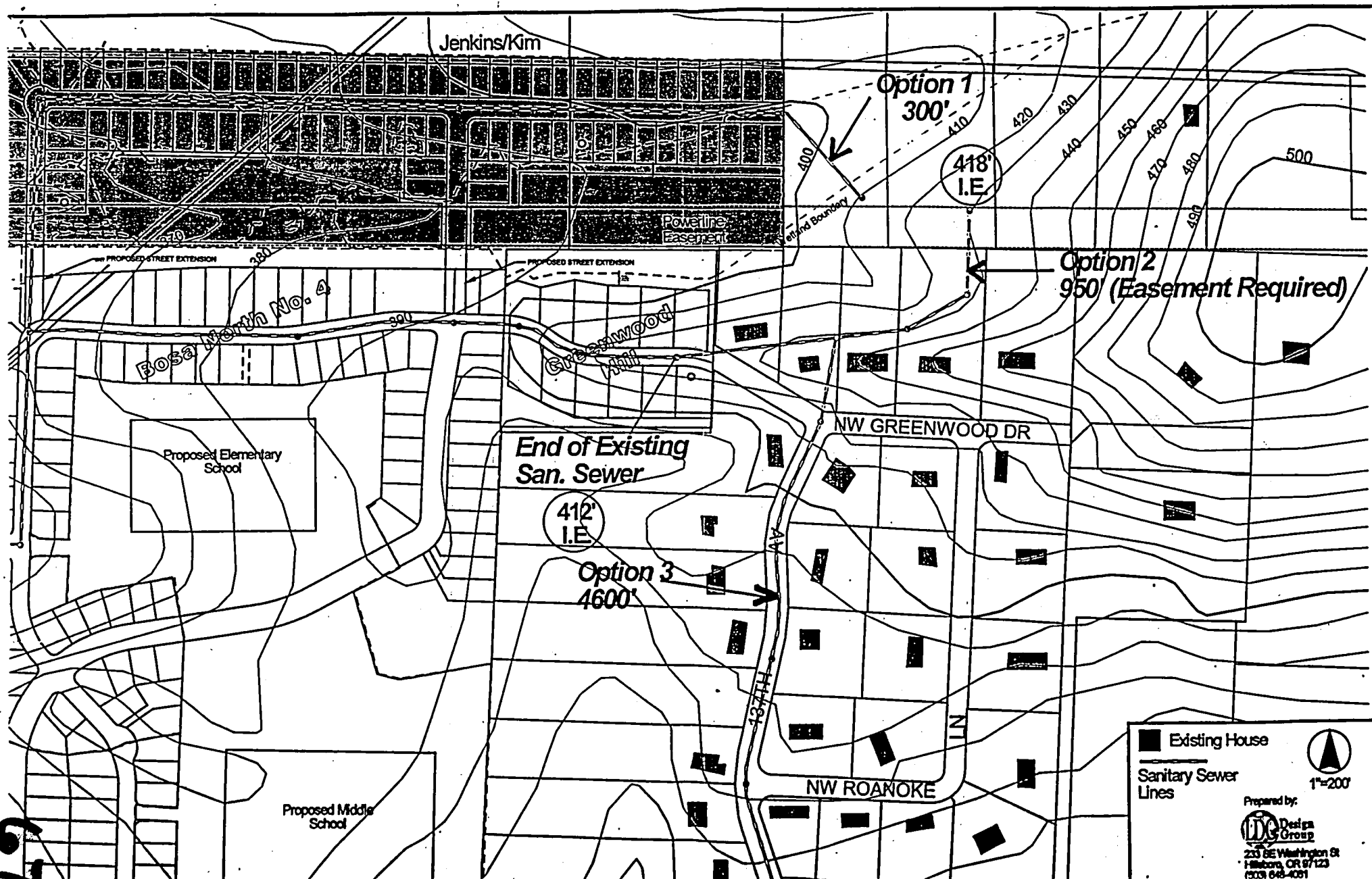
-  Approved
-  Proposed
-  Dogwood Park A.S.C.
-  UGB
-  County Line



ATTACHMENT B

Prepared by:





Agenda Item Number 9.1

Ordinance No. 99-825A, For the Purpose of Amending Metro Code Section 5.02.025 to Modify the Disposal Charge at the Metro South and Metro Central Transfer Stations.

Second Reading

**Metro Council Meeting
Thursday, October 28, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE) ORDINANCE NO. 99-825A |
SECTION 5.02.025 TO MODIFY THE DISPOSAL)
CHARGE AT THE METRO SOUTH AND METRO) Introduced by
CENTRAL TRANSFER STATIONS) Councilor Bragdon

WHEREAS, it is desirable to review the disposal fees and other fee components charged at Metro's regional solid waste facilities in light of certain amendments to significant Metro solid waste contracts; and

WHEREAS, it is necessary to adjust the Tonnage Charge of Metro's disposal rate system to take advantage of the savings resulting from these solid waste contract amendments; and

WHEREAS, the Metro Rate Review Committee convened pursuant to Chapter 5.08 of the Metro Code and reviewed the disposal fees and other fee components for the Metro Central and Metro South Transfer Stations; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.02.025 is amended to read:

(a) The fee for disposal of solid waste at the Metro South Station and at the Metro Central Station shall consist of a Tonnage Charge of ~~\$62.50~~ ~~\$62.00~~ \$62.50 for each ton of solid waste delivered for disposal and a Transaction Charge of \$5.00 for each Solid Waste Disposal Transaction.

(b) The Tonnage Charge specified in subsection (a) of this section includes:

- (1) A disposal charge of ~~\$38.61~~ ~~\$30.02~~ \$29.75 per ton;
- (2) A regional transfer charge of ~~\$7.00~~ \$6.56 per ton;
- (3) The fees specified in section 5.02.045;
- (4) An enhancement fee of \$.50 per ton; and
- (5) DEQ fees totaling \$1.24 per ton.

(c) Notwithstanding subsection (a) of this section, there shall be a minimum solid waste disposal charge at the Metro South Station and at the Metro Central Station for loads of solid waste weighing 320 pounds or less of \$15, which shall consist of a minimum Tonnage Charge of \$10.00 plus a Transaction Charge of \$5 per Transaction.

(d) Total fees assessed in cash at the Metro South Station and at the Metro Central Station shall be rounded to the nearest whole dollar amount, with any \$0.50 charge rounded down.

(e) The Director of the Regional Environmental Management Department may waive disposal fees created in this section for Non-commercial Customers of the Metro Central Station and of the Metro South Station under extraordinary, emergency conditions or circumstances.

~~(f) The following table summarizes the disposal charges to be collected by Metro from all persons disposing of solid waste at Metro South Station and Metro Central Station.~~

METRO SOUTH STATION	
METRO CENTRAL STATION	
Tonnage Charge Component	\$/Ton Rate
Disposal Charge	38.61
Regional System Fee	14.00
Metro Facility Fee	1.15
Regional Transfer Charge	7.00
Metro Tonnage Charges	\$60.76
Additional Fees	
Enhancement Fee	0.50
DEQ Fees	1.24
Total Tonnage Charges:	\$62.50
\$/Transaction	
Per Transaction Charge	\$5.00
Minimum Tonnage Charge	\$10.00

SECTION 2

The amendments to the Metro Code provided for in this Ordinance shall take effect on February 1, 2000.

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

MDF:jep
ord99-825.rdl.doc

Agenda Item Number 9.2

**Ordinance No. 99-824A, For the Purpose of Amending Metro Code Chapter 7.01 to Modify and Adjust
Excise Taxes and Making Other Related Amendments.**

Second Reading

**Metro Council Meeting
Thursday, October 28, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO
CODE CHAPTER 7.01 TO MODIFY AND ADJUST
METRO EXCISE TAXES AND MAKING OTHER
RELATED AMENDMENTS

) ORDINANCE NO. 99-824A |

) Introduced by
) Councilor Bragdon

WHEREAS, it is desirable to review the excise tax imposed use of the facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by Metro; and

WHEREAS, it is necessary to adjust the excise taxes imposed by Metro Chapter 7.01 to take advantage for the public interest of the savings resulting from certain recent amendments to significant Metro solid waste contracts; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.010 is amended to read:

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Accrual basis accounting" means revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

(b) "Cash basis accounting" means revenues are recorded when cash is received.

(c) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, including but not limited to the Metro Washington Park Zoo, Metro ERC facilities, all solid waste system facilities, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district.

(d) "Facility Retrieval Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015(i).

(d)(e) "Installment payments" means the payment of any amount that is less than the full payment owed either by any user to the district or to an operator or by an operator to the district.

~~(e)~~(f) "Metro ERC facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

~~(d)~~(g) "Operator" means a person other than the district who receives compensation from any source arising out of the use of a district facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by both.

~~(g)~~(h) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

~~(h)~~(i) "Payment" means the consideration charged, whether or not received by the district or an operator, for the use of a district facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

~~(i)~~(j) "Processing Residual shall have the meaning assigned thereto in Metro Code Section 5.02.015(s).

~~(j)~~(k) "Recovery Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015(u).

~~(i)~~(l) "Solid waste system facility" means all facilities defined as such pursuant to section 5.05.010(t) including but not limited to all designated facilities set forth in section 5.05.030 and any non-system facility as defined in section 5.05.010(i) that receives solid waste from within the Metro boundary whether pursuant to an authorized non-system license or otherwise.

~~(m)~~ "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste.

~~(n)~~ "Source-separated recyclable material" or "Source-separated recyclables" means material that has been Source Separated for the purpose of Reuse, Recycling, or Composting.

~~(j)~~(o) "Tax" means the tax imposed in the amount established in subsection 7.01.020, and includes both the tax payable by a user and the aggregate amount of taxes due from an operator during the period for which he/she is required to report and pay the tax.

~~(k)~~(p) "User" means any person who pays compensation for the use of a district facility or receives a product or service from a district facility subject to the payment of compensation

SECTION 2. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

~~(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). Each user of all solid waste system facilities shall pay an additional tax of 1.0 percent of the payment charged by the operator or the district. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.~~

~~(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.~~

~~(c) In lieu of taxes imposed under (a) of this section, for the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of all solid waste system facilities shall pay a tax of \$8.23 for each ton of solid waste exclusive of source separated recyclable materials accepted at the solid waste system facilities.~~

~~(d) The following users of solid waste system facilities shall be allowed a credit in the amount of \$4.40 per ton against the Excise Tax otherwise due under Section 7.01.020(c):~~

~~(1) Any person delivering authorized, non-putrescible waste to any landfill that is authorized to receive such waste through a Metro franchise or Designated Facility Agreement; or~~

~~(2) Any Person delivering authorized, non-putrescible waste under the authority of a Metro Non System License.~~

~~(e) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 and which attains a Facility Retrieval Rate of 10 percent or greater shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(c) or (d)~~

for disposal of Processing Residuals from the facility. The Facility Retrieval Rate and the Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

Excise Tax Credit Schedule

<u>Recovery Rate</u>		<u>Excise Tax Credit per ton of no more than</u>
<u>From Above</u>	<u>Up To & Including</u>	
<u>0%</u>	<u>20%</u>	<u>0.00</u>
<u>20%</u>	<u>25%</u>	<u>0.15</u>
<u>25%</u>	<u>30%</u>	<u>0.50</u>
<u>30%</u>	<u>35%</u>	<u>1.00</u>
<u>35%</u>	<u>40%</u>	<u>1.25</u>
<u>40%</u>	<u>100%</u>	<u>1.50</u>

~~(c)(f) In lieu of taxes imposed under (a) and (c) of this section and notwithstanding section 7.01.050(a)(6), operators of solid waste facilities licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contract operator for disposal of putrescible waste shall pay a tax in the amount of \$1.76 \$8.23 per ton of putrescible waste delivered directly to the district's contract operator for disposal of putrescible waste.~~

SECTION 2. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). ~~Each user of all solid waste system facilities shall pay an additional tax of 1.0 percent of the payment charged by the operator or the district.~~ The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all

operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.

(c) In lieu of taxes imposed under (a) of this section, for the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of all solid waste system facilities shall pay a tax of ~~\$8.23~~\$9.00 for each ton of solid waste exclusive of source separated recyclable materials accepted at the solid waste system facilities.

(d) The following users of solid waste system facilities shall be allowed a credit in the amount of ~~\$4.40~~\$5.17 per ton against the Excise Tax otherwise due under Section 7.01.020(c):

(1) Any person delivering authorized, non-putrescible waste to any landfill that is authorized to receive such waste through a Metro franchise or Designated Facility Agreement; or

(2) Any person delivering authorized, non-putrescible waste under the authority of a Metro Non System License.

(e) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 and which attains a Facility Retrieval Rate of 10 percent or greater shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(c) or (d) for disposal of Processing Residuals from the facility. The Facility Retrieval Rate and the Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

Excise Tax Credit Schedule

<u>Recovery Rate</u>		<u>Excise Tax Credit per ton of no more than</u>
<u>From Above</u>	<u>Up To & Including</u>	
<u>0%</u>	<u>20%</u>	<u>0.00</u>
<u>20%</u>	<u>25%</u>	<u>0.15</u>
<u>25%</u>	<u>30%</u>	<u>0.50</u>
<u>30%</u>	<u>35%</u>	<u>1.00</u>
<u>35%</u>	<u>40%</u>	<u>1.25</u>
<u>40%</u>	<u>100%</u>	<u>1.50</u>

(f) In lieu of taxes imposed under (a) and (c) of this section and notwithstanding section 7.01.050(a)(6), operators of solid waste facilities licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contract operator for disposal of putrescible waste shall pay a tax in the amount of ~~\$1.76~~\$9.00 per ton of putrescible waste delivered directly to the district's contract operator for disposal of putrescible waste."

SECTION 3. Alternative Interim Excise Tax for Qualifying Facilities

(a) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each Qualifying Facility as defined in this Section shall pay a tax of 8.5 percent of the payments charged by the operator or the district for the use of all solid waste system facilities, together with any tax due under Metro Code Section 5.02.045, during any month in which the provisions of this Section are effective. Such taxes shall be in lieu of the taxes imposed under Section 2 of this Ordinance.

(b) For the purpose of this section, a Qualifying Facility shall mean a solid waste system facility which obtains a negative Net Revenue Impact as calculated under this Section during any month in which the provisions of this section are effective.

(c) Net Revenue Impact shall be calculated by adding:

(i) The total amount of any charges exclusive of any excise tax that would have been due under Metro Code Section 5.02.030 prior to February 1, 2000 from the solid waste system facility, less the total amount of charges, if any, that would be due from such facility as of February 1, 2000, in the event that Section 1 of Metro Ordinance No. 99-823 is adopted;

To the sum of

(ii) The total amount of excise tax that the solid waste system facility would have been due under both Metro Code Section 5.02.045 and 7.01.020 prior to February 1, 2000, less the total amount of excise tax that would be due on such tonnage in the event that Section 2 of this Ordinance is adopted.

(d) If the result of the calculation set forth in subsection (c) is a negative number, the solid waste system facility shall be deemed a Qualifying Facility and shall be entitled to pay a tax of 8.5 percent of the payment charged by the operator for the use of such facility. If result of the calculation set forth in subsection (c) is a positive number, the solid waste system facility shall pay the tax set forth in Section 2 of this Ordinance.

(e) The provisions of this Section are repealed June 30, 2000.

SECTION 34. Section 5 of this Ordinance is added to and made a part of Metro Code Chapter 7.01.

SECTION 45. Commencing with the Metro fiscal year beginning July 1, 2002, and each year thereafter, the taxes imposed by Section 7.01.020(c) shall be increased by a percentage equal to

(a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Vancouver (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued.

SECTION 6. Section 7 is added to and made a part of Metro Code 7.01.050(a)

SECTION 7. Users disposing of solid waste that has been generated outside the district and is disposed at any privately owned facility franchised under Metro 5.01.045(c)(1), provided that the tonnage amount of out of district solid waste disposed each month at such facility does not exceed 10% of the total amount of solid waste disposed each month at the facility. Any tonnage amount of out of district solid waste which exceeds 10% of the total amount of solid waste disposed each month at such facility shall be subject to the provisions of Metro Code 7.01.020

SECTION 8. The amendments to the Metro Code provided for in this Ordinance shall take effect on February 1, 2000.

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

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

MDF:jep ord99-824.rdl.doc

Daniel B. Cooper, General Counsel

Agenda Item Number 9.3

Ordinance No. 99-823A, For the Purpose of Amending Metro Code Chapter 5.02 to Modify Changes for Direct Haul Disposal, to Modify Metro System Fees, to Create Additional Regional System Fee Credits, and Making Other Related Amendments.

Second Reading

**Metro Council Meeting
Thursday, October 28, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE)	ORDINANCE NO. 99-823A
CHAPTER 5.02 TO MODIFY CHARGES FOR DIRECT)	
HAUL DISPOSAL, TO MODIFY METRO SYSTEM)	Introduced by Mike Burton
FEES, TO CREATE ADDITIONAL REGIONAL)	Executive Officer
SYSTEM FEE CREDITS AND MAKING OTHER)	
RELATED AMENDMENTS)	

WHEREAS, it is desirable to review certain disposal fees and system fees in light of certain amendments to significant Metro solid waste contracts; and

WHEREAS, it is necessary to adjust such fees to take advantage of the savings resulting from these solid waste contract amendments and to implement new solid waste programs that are in the public interest; and

WHEREAS, the Metro Rate Review Committee convened pursuant to Chapter 5.08 of the Metro Code and reviewed such disposal fees and system fees; and

WHEREAS, it is appropriate to make certain related modifications to existing portions of Chapter 5.02 of the Metro Code; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Chapter 5.02.030 is amended to read:

Each facility licensed or franchised under Metro Code Chapter 5.01 and authorized to transport solid waste directly to the Columbia Ridge Landfill shall pay to Metro a charge of ~~\$24.93~~ \$16.78 per ton of solid waste which is generated or originates within the Metro boundary and which the facility directly transports to the Columbia Ridge Landfill

SECTION 2. Metro Code Section 5.02.045 is amended to read:

(a) Regional System Fee: Solid waste disposal facility operators shall collect and pay to Metro a Regional System Fee of ~~\$14.00~~ \$21.90 per ton for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code section 5.01.150.

(b) Metro Facility Fee: Metro shall collect a Metro Facility Fee of ~~\$1.15~~ \$2.55 per ton for all solid waste delivered to Metro Central Station or Metro South Station

(c) System fees described in paragraph (a) shall not apply to:

- (1) inert material, including but not limited to earth, sand, stone, crushed stone, crushed concrete, broken asphaltic concrete and wood chips used at disposal facilities for cover, diking, road base, or other productive use at such solid waste disposal facilities;
- (2) solid waste received at facilities which are licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 and which accomplish materials recovery and recycling as a primary operation; or
- (3) solid waste received at Transfer Facilities which deliver such wastes to a Metro-owned, licensed, franchised, or designated facility where Metro fees are collected and paid to Metro.

SECTION 3. Metro Code Section 5.02.047 is amended to read:

5.02.047 Regional System Fee Credits

(a) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 and which attains a Facility Retrieval Rate of 10 percent or greater shall be allowed a credit against the Regional System Fee otherwise due each month under Section 5.02.045 for disposal of Processing Residuals from the facility. The Facility Retrieval Rate and the Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

System Fee Credit Schedule

Recovery Rate		System Fee Credit of no more than
From Above	Up To & Including	
0%	20%	0.00
20%	25%	1.00
25%	30%	3.00
30%	35%	6.46
35%	40%	8.00
40%	45%	9.82
45%	100%	12.00

(b) The Executive Officer may establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.

(c) The following users of Metro solid waste system facilities shall be allowed a credit in the amount of \$9 per ton against the Regional System Fee otherwise due under Section 5.02.045(a):

(1) Users of Metro Central and Metro South Transfer Stations;

(2) Any Person delivering authorized waste:

(A) to any landfill or other solid waste facility that is authorized to receive such waste through a Metro license certificate franchise or Designated Facility Agreement; or

(B) under the authority of a Metro Non System License.

SECTION 4. The amendments to the Metro Code provided for in this Ordinance shall take effect on February 1, 2000.

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

MDF:jep
ord99-823.rdl.doc

Agenda Item Number 10.1

Resolution No. 99-2843, For the Purpose of Adopting the Portland Area Air Quality Conformity Determination for the FY 2000 Metropolitan Transportation Improvement Program.

**Metro Council Meeting
Thursday, October 28, 1999
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE) RESOLUTION NO. 99-2843
PORTLAND AREA AIR QUALITY)
CONFORMITY DETERMINATION FOR THE FY) Introduced by
2000 METROPOLITAN TRANSPORTATION) Councilor Jon Kvistad
IMPROVEMENT PROGRAM) JPACT Chair

WHEREAS, State and federal regulation require that no transportation project may interfere with attainment or maintenance of air quality standards; and

WHEREAS, projects allocated funding in the FY 2000 through 2003 Metropolitan Transportation Improvement Program are regionally significant with respect to their potential effect on air quality; and

WHEREAS, The Interstate MAX light rail extension project has changed the alignment and terminus from that previously analyzed for air quality effects; and

WHEREAS, Extension of light rail from Downtown to Clackamas County has been delayed from the time assumed in the last regional air quality analysis; and

WHEREAS, These events trigger a need for preparation of an Air Quality Conformity Determination to demonstrate that they conform with the State Implementation Plan for maintenance of air quality standards; and

WHEREAS, Metro has convened the Intergovernmental Consultation Subcommittee of TPAC to confirm the technical basis for preparation of an Air Quality Conformity Determination; now, therefore,

BE IT RESOLVED:

The Conformity Determination shown in Exhibit 1 of the Resolution is approved.

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

Rod Monroe, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

**Determination of Conformity
for the
FY 2000 Through 2003 Portland-area
Metropolitan Transportation Improvement Program**

I. SUMMARY AND HIGHLIGHT OF MAJOR CHANGES IN THE SYSTEM AND METHODOLOGY USED IN THIS DETERMINATION VERSUS THAT USED IN THE DETERMINATION APPROVED BY FHWA/FTA/EPA IN 1998.

Reason for Determination. This Conformity Determination is for the Portland Area FY 2000 through FY-2003 Metropolitan Transportation Improvement Program (MTIP). It has been prepared because:

- Projects or project phases have been approved for funding in the newly approved MTIP, thereby accelerating the timing of several regionally significant projects from that previously analyzed in the Conformity Determination approved by federal authorities in October 1998; and
- Metro recently approved amendment of the scope and concept of the South/North light rail extension project. The South corridor component has been delayed and the alignment and terminus of the North corridor component has also changed significantly. Funding for the project is included in the TIP.

None of these changes affects the 2015 horizon year of the RTP. The RTP continues to anticipate completion of a South/North light rail extension between Clackamas Town Center to the south and Vancouver, Washington to the north by 2015. The 2015 Financially Constrained transportation network remains the basis for determination of the region's conformity and only the scope and concept of interim analysis years has changed.

Amendment of the 1998 Conformity Determination Travel Network. Appendix 1 shows the projects that were allocated funding in the FY 2000 TIP. It first lists those for which no capacity effects can be modeled (e.g., bike and pedestrian improvements). It then lists those for which a change in system capacity has been identified in the regional transportation model.

- Of the projects capable of modeling, most are "Boulevard" design treatments intended to reduce auto speed and enhance multimodal function of select street segments in the region. The model effect of these design features is to reduce auto capacity of improved street segments by approximately 200 vehicles per hour. Though not regionally significant, Metro routinely models such improvements.

- The TIP action also advanced regionally significant projects or project phases analyzed in later analysis years of the 1998 Determination. The most notable of these projects include phase 1 of both the I-5/Hwy 217/Kruse Way Interchange reconstruction and the Sunnybrook Split Diamond Interchange project. Though timing of these first phase projects has not advanced, their receipt of TEA-21 High Priority funds has enabled expansion of their previously modeled scopes.
- The region's financing plan for the proposed South/North LRT project was rejected by the electorate in late 1998. Since that time, an alternative light rail extension proposal submitted by the City of Portland business community has been endorsed by Metro. The proposal calls for extension of MAX light rail north from Downtown to the Exposition Center running principally on Interstate Avenue. This alignment differs from that included in the 1998 Determination and would reduce Interstate Avenue from four travel lanes to two (900 vehicles per hour, peak direction, instead of the current 1,800 vehicles per hour). This represents a significant modification of project scope. The project terminus also extends further north than assumed in Interim Operating System 1 (IOS 1) analyzed in the 1998 Determination.

The southern leg of the previously analyzed South/North project has been delayed until some time after 2003, which is the start date assumed in the 1998 Determination for service to the Linwood station, just east of Clackamas Town Center. As part of this delay, a substantial number of park and ride spaces assumed in the 1998 Determination, which significantly affected some local arterial operations and increased corridor-specific transit patronage somewhat, have been removed in the present Determination. Some residual park and ride spaces will continue to be provided in 2005 and the TIP allocates funds for initial deployment of "rapid bus" concepts in the McLoughlin corridor starting in FY 2000.

Additional transit options in the corridor are under investigation but no concept has been adequately developed for modeling purposes at this time.

It bears restatement that no amendment of the 1995 RTP has been approved by Metro to eliminate or significantly alter the 2015 horizon year assumptions reflected in the Financially Constrained Network. The RTP has not changed its anticipation that by 2015, light rail will operate south to the Town Center and north to Vancouver Washington, except for the alteration to the north alignment noted above.

- A number of other arterial projects are affected by TIP allocations. Changes to their scope or timing may or may not be significant but Metro has taken this opportunity to revise previous modeling of the projects to reflect the most current timing and design information. These projects are also identified in the Table.

- Other miscellaneous changes have occurred over the last year to locally funded projects included in the previously modeled network which concern either their timing or scope. No record is kept of these routine updates but they all reflect Metro's best efforts to accurately represent the regional transportation system.

Quantitative Results.

It is anticipated that the Determination's quantitative analysis will show that the FY 2000 to 2003 Metropolitan Transportation Improvement does not interfere with maintenance of applicable air quality standards and generates fewer emissions than would occur if the newly authorized regional transportation system improvements were not funded. The Quantitative analysis should be complete by October 7. It is expected that total regional emissions with the approved projects will fall within the maintenance plan emissions budgets established in 2005, 2015 and 2020, which are also the analysis years of the Determination.

Changes to the Determination Quantitative Methodology.

- Three tailored technical modifications of the regional model run in the last Determination have now been wholly integrated into the regional transportation model. The 1998 Determination was driven largely by the need to conform extension of light rail to Portland International Airport (PDX). In the last effort, trip distributions were individually modified for all analysis zones contributing trips to and from PDX to reflect introduction of light rail as a travel option. Land use changes associated with the proposed Portland International Center development adjacent to the airport were specially integrated. Finally, the regional model also required ad hoc revision to reflect enhanced modeling procedures for passenger travel to and from PDX. All these assumptions are now integrated into this conformity determination quantitative analysis.
- The 1998 Determination had a horizon year of 2015, the same as the 1995 RTP. The current Determination adopts a 2020 horizon which responds to FHWA concern for an active "20-year" analysis period. Travel demand consistent with Metro's adopted 2020 population and employment projection are distributed on the 2015 Financially Constrained RTP travel network. In essence, an additional five years of population, employment and associated travel demand is distributed on the 2015 travel network. This is a highly conservative assumption.
- Mobil 5a-h emission factors had previously been "customized" for Portland area conditions only to 2010. Because the last Determination used the RTP horizon year of 2015, DEQ approved extrapolation of emissions for 2015 from the 2010 data. The

current determination has customized the Mobil 5a emission rates to 2020, the last year for which the program can generate results.

- The prior Determination applied a graduated post-model emission credit eventually amounting to one percent in 2015, to reflect VMT reduction attributable to the regional Employee Commute Options program. Recent data collected by the Tri-Met staff which implement the program indicate revision of this credit is appropriate. Since only 70 percent of targeted businesses have been reached by the program, this element of the ECO credit formula was reduced to show the 70 percent employer base penetration rate.

Quantitative Analysis Methodology. Analysis years of 2005, 2015 and 2020 were selected in consultation with DEQ and FHWA staff. The first analysis year of 2005 corresponds with the Interstate MAX opening day and was chosen largely for this reason; the project EIS requires an opening day ridership figure which is produced as part of the Conformity Quantitative Analysis. Also 2005 is within ten years of the following analysis year of 2015. It is not, however, a budget year for carbon monoxide (CO), hydrocarbons (HC), or nitrogen oxide (NOx). As directed in the Maintenance Plan, Metro has interpolated between HC and NOx emission budgets established for 2003 and 2006 and between 2003 and 2007 budget years for CO, in order to establish 2005 emissions budgets for these pollutants.

The 2015 analysis year is a "triple" budget year for CO, HC and NOx and is within 10 years of 2005. The 2015 analysis year was also selected per the State Rule guidance that the Determination's horizon year must encompass the last year of the RTP; the RTP forecasts transportation conditions for the 20-year period of 1995 through 2015.

As previously stated, a Determination horizon year of 2020 was selected to comply with FHWA concern for an "active" 20-year Determination period.

Key Qualitative Issues. The maintenance plan adopted a number of Transportation Control Measures (TCMs). Some TCMs are regulatory, three are funding based. The 1995 RTP, as amended, and FY 2000 MTIP do not interfere with their timely implementation. The 1995 RTP, as amended, and the FY 2000 MTIP do assure priority implementation of the funding based TCMs. An overview of the TCMs is provided in Section II.B.2.d, below.

II. QUALITATIVE ANALYSIS

A. Background

Basis of Conformity Requirement. The Clean Air Act Amendments of 1990 (the Act) required EPA to promulgate a rule containing criteria and procedures for determining conformity of regional transportation plans (RTP) and transportation improvement programs (TIP) with State Implementation Plans (SIP) for attainment and maintenance of federal air quality standards. This rule was adopted by EPA on November 24, 1993. The rule required Oregon's Department of Environmental Quality (DEQ) to submit a revision of Oregon's SIP detailing new criteria and procedures for assuring conformity of transportation projects and plans with the SIP. DEQ adopted these revisions as OAR 340-20-710 through 340-20-1080. Both the DEQ and EPA rules require that qualitative and quantitative analyses support Metro's Conformity Determinations.

RTP/TIP Relationship. The region's current RTP was adopted in July 1995. It is the "umbrella document" which integrates the various aspects of regional transportation planning into a consistent coordinated process. It identifies the long-range (20-year) regional transportation improvement strategy and 10-year project priorities established by Metro. It defines regional policies, goals, objectives and projects needed to maintain mobility and economic and environmental health of the region through 2015. The Plan is "constrained" to federal, state, local and private revenue sources that are considered "reasonably available" within the 20-year time frame of the Plan. The Plan demonstrates dedication of adequate resources to preserve and maintain the system as well as resources for limited system expansion.

All projects are retained in the RTP until implemented or until a "no-build" decision is reached, thereby providing a permanent record of proposed improvements. Projects may also be eliminated from the RTP in the course of overall amendment or update of the document. The 1995 RTP was last conformed with the SIP in October, 1998.

It is from proposed improvements found to be consistent with the RTP that projects appearing in the TIP and its three-year Approved Program are drawn. The TIP relates to the RTP as an implementing document, identifying improvement projects consistent with the RTP that are authorized to spend federal and state funds within a three-year time frame. Metro approves a fourth year of project funding that is recognized by federal agencies for informational purposes only.

Projects are allocated funding in the TIP at Metro's initiative and at the request of local jurisdictions and state and regional partners such as the Port of Portland, Tri-Met and ODOT. Metro must approve all project additions to the TIP. Among other

things, Metro must find that proposed capital improvements are consistent with RTP policies, system element plans and identified criteria in order to be eligible for inclusion in the TIP for funding.

The State Rule also specifies that regionally significant local projects must be assessed for conformity with the SIP. This is consistent with the Clean Air Act requirement that no transportation project -- not simply federally funded ones -- may interfere with achieving national air quality goals. Locally funded projects identified in the RTP financially constrained network are included in the TIP for information purposes only at a level sufficient to describe scope and concept for conformity purposes but not including financial detail. Therefore, the network used to analyze transportation system effects on air quality in the Portland region includes projects programmed in the TIP to receive federal and state funds and all other projects -- regardless of funding source -- reasonably anticipated within the next 20 years.

The State Conformity Regulations specify that a *qualitative* analysis be prepared showing that both the Region's Plan and TIP address four broad planning and technical requirements. These include:

1. a financially constrained transportation network in each analysis year is used in the analysis,
2. the Determination relies on the latest planning assumptions,
3. the latest emissions models and estimates are used; and
4. that both the RTP and TIP generally enhance or expedite implementation of transportation control measures (TCMs) identified in the SIP.

It must also be documented that preparation of the Determination conformed with interagency consultation procedures described in the Rule. The Qualitative Analysis portion of the Determination is provided, below.

B. Analysis

1. Financially Constrained Network.

a. Requirement: *The State Rule requires that analysis of emissions must result from transportation improvements that are supportable with reasonably anticipated revenues.*

Finding: The 1995 RTP estimated reasonably available revenue for the 20-year plan period and approved a network in 2015 that could be achieved with the assumed revenue stream. This network is the basis of the current Determination. The 2005 network is a subset of this larger network and

reflects projects for which funding commitments have been made and the expected date of operation determined. The 2020 roadway network is the 2015 network except that some additional local system enhancement in Urban Reserve areas is anticipated as a result of developer provided facilities. An additional five years of transit system expansion have also accounted for by in consultation with Tri-Met, by deployment of the projected 1.5 percent annual service increase, largely in corridors serving Urban Reserve lands that are expected to start more intensive development in this time period.

2. Consistency with the Latest Planning Assumptions (OAR 340-20-810).

- a. Requirement: *The State Rule requires that Conformity Determinations be based "on the most recent planning assumptions" derived from Metro's approved "estimates of current and future population, employment, travel and congestion."*

Finding: The *quantitative* analysis (see Section E, below) employs a 1994 base year that reflects Metro's official estimates of population and employment calibrated to 1990 Census data. Metro has officially adopted a pop/em projection for 2020, which is the basis for analysis of emissions in that year. Population and employment for the 2005 and 2015 analysis years are interpolated between the 1994 base- and 2020 horizon-year pop/em projections.

Travel and congestion forecasts for each analysis years are derived from the pop/em data using Metro's regional travel demand model and the EMME/2 transportation planning software

Within subroutines of the model, Metro calculates the bike/walk mode split for calculated travel demand based on variables of trip distance, car per worker relationship, total employment within one mile, intersection density and a zone-based mixed use index of the ratio of total employment to total population. Both the population and employment estimates and the methodology employed by the EMME/2 model have been the subject of extensive interagency consultation and agreement (discussed further in Section C.4. below).

The resulting estimates of future year travel and congestion are then used with the outputs of the EPA approved MOBILE 5a-h emissions model to determine regional emissions. In all respects, the model outputs reflect input of the latest approved planning assumptions and estimates of population, employment, travel and congestion.

- b. Requirement: *The State Rule requires that changes in transit policies and ridership estimates assumed in the previous conformity determination must be discussed.*

Finding: The *transit policies* which guide modeled implementation of the North Corridor LRT service are consistent with previous Conformity modeling of the South/North service start: bus resources providing downtown radial service are shifted east off Interstate and Denver. New Express service is also instituted between Vancouver and the Exposition Center to generate transit patronage as a prelude to planned northern extension of LRT service to Vancouver. Previous short-haul service between former radial trunk routes is reconfigured to support new LRT stations and surrounding neighborhoods. This represents continuation of *existing transit policy* and its extension to the expanded LRT system.

Differences between the current and past Determinations concerning transit ridership, in general, and LRT ridership, in particular, are independently generated - as always - by the demographic, travel demand and mode split factors embedded in the regional travel model. Demographic assumptions have been updated to reflect Metro's newly adopted 2020 pop/em projections. Other significant changes concern selectively increased parking costs, expanded assumption of reduced cost or free transit pass programs, increased street connectivity and increased service hours. These factors are discussed in item C.2.c, below.

The only transit related variables not "internal" to the model that have been changed between the two analyses is:

- modification of the South/North LRT project into the Interstate MAX North Corridor LRT project,
- delay of the South Corridor LRT extension (delayed from 2003 to 2015 analysis year), and
- initiation of interim bus service in the McLoughlin corridor.

Within the South Corridor, transit assignment of trip demand is reduced by delay of LRT service until the 2015 analysis year. Coincident with this delay, approximately 3,900 Park & Ride spaces previously assumed in the Corridor are absent in the 2005 analysis year of the current Determination. These two assumptions reduce allocation of travel demand to transit modes in the corridor. However, the reduction is partially offset by targeted funding, approved in the FY 2000 MTIP, for startup of McLoughlin Corridor Rapid Bus service.

Also, while the reduction of Park and Ride spaces in the South Corridor reduces transit mode share somewhat, it also eliminates some road capacity reductions that would otherwise have been generated in the model due to distribution of increased auto activity to the street network surrounding the lots.

The prior Determination assumed extension of light rail to the Airport. The current Determination has more fully integrated this assumption into the travel model. The prior Determination assumed interline service whereas the current Determination assumes through service. The Airport Extension is currently under construction.

- c. Requirement: *The State Conformity Regulations require that reasonable assumptions be used regarding transit service and increases in fares and road and bridge tolls over time.*

Finding: There are no road or bridge tolls in place in the metropolitan area and none are assumed in either the TIP, the RTP, or consequently, in the conformity determination, over time. The region is exploring feasibility of a Congestion Pricing Demonstration project. No decision to deploy such a project has been made and the Determination does not model evaluation of such a program.

Four other factors significantly effect model assumptions of transit mode choice including auto parking cost, transit fares, service hours and intersection density.

Auto parking costs. These are factored into the mode choice subroutines of the regional travel model. These costs are held constant to 1985 dollars.

Parking costs have been increased in the current Determination according to the percentages shown in Appendix 2. The previous Determination assumed parking costs would increase one percent above inflation in the Central Business and Lloyd Districts as a reflection of parking control strategies. Costs were held to inflation in all other districts. In the current Determination, the rate of increase in some additional districts, notably Tier 1 and 2 Regional Centers and Station Areas, are increased somewhat beginning in the 2005 analysis year and escalating through the 2020 analysis year (see Appendix 2). The assumed increases are justified in light of commitment of regional funding to prepare feasibility analyses of broad-scale Transportation Management Association (TMA) startups of the type that exist in Downtown and the Lloyd Center District and to provide three years of initial public funding for nascent TMAs.

Transit fares. The three zone transit fare structure adopted in 1992 is held constant through 2020. User costs (for both automobile and transit) are assumed to keep pace with inflation and are calculated in 1985 dollars. Again though, it is assumed that transit fares in select analysis zones will decrease as a result of TMA formation and consequent employer subsidy of transit costs for employees, as with the Lloyd Center and Downtown TMA experiences. These transit fare reduction schedules are also shown in Appendix 2.

Transit Service Hours. Assumptions about service hours and transit vehicle headways also affect trip assignment to transit modes. Tri-Met's most recent payroll tax revenue assumptions indicate an ability to continue providing a 1.5 percent service hour increase through 2020. This service is reflected in the current Determination. The prior Determination assumed an annual 1.5 percent "usual and customary" service hour increase for regional bus service only until startup of the formerly proposed "IOS 1" of South/North LRT service. At 2004, this increment of new bus service was slightly reallocated throughout the region and feeder service within the LRT Corridor was reinforced. Thereafter, non-LRT service hours remained flat through 2015, and the Convention Center to Clark County LRT service was added.

Intersection Density. Technical studies conducted by Metro support the assumption that more local street connections to the regional collector and arterial system are associated with congestion reduction and increased transit mode choice. Metro policies and land use regulations are anticipated to stimulate local and privately funded increases of such intersection density in locations throughout the region. Appendix 2 reflects these assumption over time and with respect to targeted land uses.

- d. Requirement: *The State Conformity Regulations require that the latest existing information be used regarding the effectiveness of TCMs that have already been implemented.*

Finding: As discussed in the prior Determination, all non-transit, funding-based TCMs were satisfied through approximately 2006 by allocations made in the FY 98 MTIP. The FY 2000 MTIP extends this compliance by funding significant Boulevard-project enhancement of both bike and pedestrian facilities on major regional facilities and by funding stand-alone bike and pedestrian improvements throughout the region. The 1.5 percent annual transit system expansion is included within the model assumptions and is reflected in the resulting transit mode split factor used in the quantitative analysis. Tri-Met revenue projections indicate capacity to sustain this increase through 2020. The bike and pedestrain system enhancements are also reflected in mode split assumptions of the model.

Adequate resources are identified in the 1995 RTP Fiscal Constraint analysis to assure ongoing implementation of these TCMs.

Effectiveness of implemented and planned TCMs is reflected in emission credits approved by DEQ for use in this Determination's calculation of daily regional emissions. Credits were assumed for compact land form called for in the Region 2040 Growth Concept, expansion of the I/M Boundary; implementation of enhanced I/M; the region's Voluntary Parking Ratio program and implementation of the Employee Commute Option (ECO) program. The ECO program credit has been reduced to reflect less than expected penetration of program activity to the region's employer base. The Voluntary Parking program has been eliminated due to very low employer participation.

3. Latest Emissions Model (OAR 340-20-820)

- a. Requirement: *The State Conformity Regulations require that the conformity determination must be based on the most current emission estimation model available.*

Finding: As discussed in greater detail in item 6(d) of this Section and in Section III of this Determination, Metro employed EPA's recommended Mobile 5a-h emission estimation model in preparation of this conformity determination. The emissions factors were updated to 202. Additionally, Metro uses EPA's recommended EMME/2 transportation planning software to estimate vehicle flows of individual roadway segments. These model elements are fully consistent with the methodologies specified in OAR 340-20-1010.

4. Consultation (OAR 340-20-830)

- a. Requirement: *The State Conformity Regulations require the MPO to consult with the state air quality agency, local transportation agencies, DOT and EPA regarding enumerated items. TPAC is specifically identified as the standing consultative body. (OAR 340-20-760(2)(b)).*

Finding: Fifteen specific topics are identified in the Regulations which require consultation. TPAC is identified as the Standing Committee for Interagency Consultation. TPAC, as allowed by the Rule, has deferred administration of the consultation requirements to a subcommittee, specifically, the TIP Subcommittee, augmented with Metro modeling staff. This committee has met on several occasions since adoption of the Rule and has consulted as required on the enumerated topics. The subcommittee recommendations are reflected within this Determination

qualitative analysis -- ***which has been submitted for full TPAC review and approval*** -- and address the following issues.

- i. Determination of which Minor Arterial and other transportation projects should be deemed "regionally significant."*

Metro models virtually all proposed enhancements of the regional transportation network proposed in the TIP, the RTP and by local and state transportation agencies. This level of detail far exceeds the minimum criteria specified in both the State Rule and the Metropolitan Planning Regulations for determination of a regionally significant facility. This detail is provided to ensure the greatest possible accuracy of the region's transportation system predictive capability. The model captures improvements to all principal, major and minor arterial and most major collectors. Left turn pocket and continuous protection projects are also represented. Professional judgement is used to identify and exclude from the model those proposed intersection and signal modifications, and other miscellaneous proposed system modifications, (including bicycle system improvements) whose effects cannot be meaningfully represented in the model. The results of this consultation were used to construct the analysis year networks identified in Appendix 3 of this Determination

- ii. Determine which projects have undergone significant changes in design concept and scope since the regional emissions analysis was performed.*

The only truly significant scope change concerns modification of the South/North LRT proposal into the North Interstate MAX project (with its corresponding reduction of Interstate Avenue peak direction capacity), and delay of the South Corridor LRT extension (including associated reduction of Park & Ride spaces in the McLoughlin Corridor). These issues were addressed in the Summary section. Timing and scope of other project phases, including the I-5/217/Kruse Way Interchange and the Hwy 213/Beavercreek Road intersection have been integrated into the current Determination, though no specific assessment has been made of whether these changes are regionally significant. Metro is not aware of more current design assumptions for any regionally significant project than those currently included in the regional transportation model.

- iii. Analysis of projects otherwise exempt from regional analysis.*

All projects capable of being modeled have been included in the Conformity Analysis quantitative networks. ODOT has received permission to continue operation of an HOV demonstration project in the I-5 North Corridor until conclusion of the Interstate Bridge painting project.

This demonstration project, and its continued operation as mitigation of the painting project, were determined to be insignificant after consultation between Metro, ODOT, DEQ, and FHWA.

iv. Advancement of TCMs.

All past and present TCMs have been implemented on schedule. There exist no obstacles to implementation to overcome.

v. PM₁₀ Issues.

The region is in attainment status for PM₁₀ pollutants.

vi. forecasting vehicle miles traveled and any amendments thereto.

Section I. Summary and Section II.B.2. address changed model variables that significantly affect mode split assumptions of the travel model and thus, VMT. No explicit change or post model correction of VMT has occurred in the analysis.

vii. determining whether projects not strictly "included" in the TIP have been included in the regional emission analysis and that their design concept and scope remain unchanged.

The 1995 RTP Financially Constrained network includes all federal, state and locally funded projects reasonably anticipated within the 2015 horizon year. The travel network also assumes developer provided improvement of local street connections in Urban Reserve lands that are projected to begin populating between the 2015 and 2020 analysis years.

viii. project sponsor satisfaction of CO and PM₁₀ "hot-spot" analyses.

The MPO defers to ODOT staff expertise regarding project-level compliance with localized CO conformity requirements and potential mitigation measures. There exist no known PM₁₀ hot spot locations of concern. The Interstate MAX project evaluates hot spot conditions in the EIS.

ix. evaluation of events that will trigger new conformity determinations other than those specifically enumerated in the rule.

At this time, the only likely trigger for a new Determination would be a request from ODOT to convert the p.m. peak period north I-5 HOV lane to permanent operation, or to retain the lane as a general purpose travel lane between the Lombard and Delta Park interchanges.

- x. *evaluation of emissions analysis for transportation activities which cross borders of MPOs or nonattainment or maintenance areas or basins.*

The Portland-Vancouver Interstate Maintenance Area (ozone) boundaries are geographically isolated from all other MPO and nonattainment and maintenance areas and basins. Emissions assumed to originate within the Portland-area (versus the Washington State) component of the Maintenance Area are independently calculated by Metro. The Clark County Regional Transportation Commission (RTC) is the designated MPO for the Washington State portion of the Maintenance area. Metro and RTC coordinate in development of the population, employment and VMT assumptions prepared by Metro for the entire Maintenance Area. RTC then performs an independent Conformity Determination for projects originating in the Washington State portion of the Maintenance Area.

Conformity of projects occurring outside the Metro boundary but within the Portland-area portion of the Interstate Maintenance Area were assessed by Metro under terms of a Memorandum of Understanding between Metro and all potentially affected state and local agencies. The Region 1 STIP has not included any funding for new modernization projects outside the MPO boundary since adoption of the 1998 Determination and no projects affecting state facilities nor any local projects in the area's subject to the MOU were declared to the MPO for this determination.

- x. *disclosure to the MPO of regionally significant projects, or changes to design scope and concept of such projects that are not FHWA/FTA projects.*

No amendment of the Financially Constrained network, except for the revisions to the South/North LRT project scope and timing have been declared to the MPO. ODOT Headquarters environmental staff consult with the MPO regarding potentially significant modification of scope and concept of approved projects moving through the design pipeline.

- xii. *the design schedule, and funding of research and data collection efforts and regional transportation model development by the MPO.*

This consultation occurs in the course of MPO development and adoption of the Unified Planning Work Program.

xiii. development of the TIP.

TIP development is routinely undertaken and approved by TPAC which includes membership by all consultative bodies identified in the Rule.

xiv. development of RTPs.

RTP development is routinely undertaken and approved by TPAC. An updated RTP is anticipated in the Winter of 1999. A new Determination will be prepared upon its adoption.

xv. establishing appropriate public participation opportunities for project level conformity determinations.

The subcommittee has not yet discussed this issue either with respect to current practices, or desirable alternatives, if any. However, Metro and DEQ staff have discussed the issue. In line with other project-level aspects of conformity determinations, it would appear most appropriate that project management staff of the state and local operating agencies be responsible for any public involvement activities that may be deemed necessary in making project-level conformity determinations.

4. Timely Implementation of TCMs (OAR 340-20-840).

- a. Requirement: *The State Conformity Regulations require MPO assurance that "the transportation plan, [and] TIP... must provide for the timely implementation of TCMs from the applicable implementation plan."*

Finding: As described in the prior Determination, all funding based TCMs have been satisfied through approximately 2006. The current TIP allocations merely extend the degree to which bike and pedestrian facilities are being implemented over and above the level required in the SIP. Additionally, the 1.5 percent annual transit service increase is now anticipated through 2020, based on the most recent forecast of Tri-Met's employer tax receipts.

5. Other Qualitative Conformity Determinations and Major Assumptions

- a. Findings: The Regional Transportation Plan (RTP) is prepared by Metro. SIP provisions are integrated into the RTP as described below, and by extension into subsequent TIPs which implement the RTP.

The scope of the RTP requires that it possess a guiding vision which recognizes the inter-relationship among (a) encouraging and facilitating

economic growth through improved accessibility to services and markets; (b) ensuring that the allocation of increasingly limited fiscal resources is driven by both land use and transportation benefits; and (c) protecting the region's natural environment in all aspects of transportation planning process. As such, the RTP sets forth three major goals:

- No. 1 - Provide adequate levels of accessibility within the region;
- No. 2 - Provide accessibility at a reasonable cost; and
- No. 3 - Provide adequate accessibility with minimal environmental impact and energy consumption.

Three objectives of Goal No. 3 directly support achievement of National Ambient Air Quality Standards (NAAQS):

1. To ensure consideration of applicable environmental impact analyses and practicable mitigation measures in the federal RTP decision-making process.
2. To minimize, as much as practical, the region's transportation-related energy consumption through improved auto efficiencies resulting from aggressive implementation of Transportation System Management (TSM) measures (including freeway ramp metering, incident response and arterial signal optimization programs) and increased use of transit, carpools, vanpools, bicycles, walking and TDM [Transportation Demand Management] programs such as telecommuting and flexible working hours.
3. To maintain the region's air quality.

Performance Criteria: Emissions of hydrocarbon and oxides of nitrogen by transportation-related sources, in combination with stationary and area source emissions, may not result in the federal eight hour ozone standard of .08 ppm being exceeded. Emissions of Carbon Monoxide from transportation-related sources may not, in combination with other sources, contribute to violation of the federal standard of 9 ppm. The three-year Approved Program Element of the region's Transportation Improvement Program (TIP) should be consistent with the SIP for air quality.

These objectives are achieved through a variety of measures affecting transportation system design and operation. The plan sets forth objectives and performance criteria for the highway and transit systems and for transportation demand management (TDM).

The highway system is functionally classified to ensure a consistent, integrated, regional highway system of principal routes, arterial and collectors. Acceptable level-of-service standards are set for maintaining an efficient flow of traffic. The RTP also identifies regional bicycle and pedestrian systems for accommodation and encouragement of non-vehicular travel. System performance is emphasized in the RTP and priority is established for implementation of transportation system management (TSM) measures.

The transit system is similarly designed in a hierarchical form of regional transitways, radial trunk routes and feeder bus lines. Standards for service accessibility and system performance are set. Park-and-ride lots are emphasized to increase transit use in suburban areas. The RTP also sets forth an aggressive demand management program to reduce the number of automobile and person trips being made during peak travel periods and to help achieve the region's goals of reducing air pollution and conserving energy.

In conclusion, review by Metro and the Oregon Department of Transportation of the 1995 Interim Federal RTP and the ozone and carbon monoxide portions of the SIP, has determined that the RTP is in conformance with the SIP in its support for achieving the NAAQS. Moreover, the RTP provides adequate statements of guiding policies and goals with which to determine whether projects not specifically included in the RTP at this time may be found consistent with the RTP in the future. Conformity of such projects with the SIP would require interagency consultation.

- b. Findings: As previously discussed, this Determination assumes broader implementation of Transportation Management Associations of the type operated in the Central City and Lloyd Center Districts. This stems largely from commitments in the last three TIP's of funding for TMA demonstration projects, and in the FY 2000 TIP, of "start-up" and capital assistance for such groups. Consequently, the regional travel model expands the number of zones that assume increased parking costs, employer transit subsidy programs.
- c. Findings: The Determination assumes 2020 population and employment will be accommodated on the 2015 roadway network. This assumes no new revenue for system expansion in the final five years of the analysis.
- d. Findings: The Determination assumes transit service hours will continue to expand at the rate of 1.5 percent a year between 2015 and 2020, consistent with assumptions of the Financially Constrained Network. Metro and Tri-Met concur that this added revenue would reinforce transit service to Urban Reserve areas that are expected to gain significant population during this period. However, the RTP does not speak directly to this issue because the Urban Reserves had not been identified at the time

the document was adopted and Urban Reserve areas are not expected to absorb significant population until after the 2015 horizon year of the current RTP.

III. QUANTITATIVE ANALYSIS

A. Background

Under OAR 340-20-890, a finding of TIP and RTP conformity requires that a quantitative analysis be conducted. This must demonstrate that emissions resulting from the entire transportation system, including all regionally significant projects expected within the time frame of the plan and TIP, must fall within budgets established in the maintenance plan for criteria pollutants. In the Portland-Vancouver AQMA these include ozone precursors (VOC and NO_x) and carbon monoxide (CO). A specified methodology must be used to calculate travel demand, distribution and consequent emissions (OAR 340-20-1010). The Portland metropolitan area has the capability to perform such a quantitative analysis.

B. Analysis

1. Determine Analysis Years.

- a. Requirement: *The State Conformity Regulations) states the first analysis year should be no later than 10 years from the base year used to validate the transportation demand planning mode I (340-20-770), that subsequent analysis years be no greater than 10 years apart and that the last year of the RTP must be an analysis year (340-20-890).*

Finding: Pursuant to OAR 340-20-770 and -890 and after consultation with DEQ and the federal EPA, Metro has adopted 2005, 2015 and 2020, as analysis years, as described in the Summary. The year 2005 is actually 11 years after the 1994 base year of the model. The Determination is supplying the Interstate MAX opening day ridership estimate. It was agreed that benefits of a 2004 and 2005 analysis year were insufficient to warrant running both years simply to keep the first analysis year within 10 years of the base-year. The 2015 analysis year is within 10 years of the first analysis year, is also a double budget year and is the RTP horizon year. The 2020 analysis year responds to FHWA concern for an "active" 20-year analysis period.

2. Demonstrate TIP Adherence to Motor Vehicle Emissions Budget.

- a. Requirement: *OAR 340-20-900 require that the TIP must meet four tests to demonstrate that it is consistent with maintenance plan emissions budgets.*
 - i. *each program year of the TIP is consistent with reasonably anticipated revenue.*

Finding: The FY 200 MTIP is consistent with expected federal revenue through FY 2003. No change to the RTP revenue assumptions has been made and they remain the region's official estimate of reasonably anticipated revenue.

ii) the TIP is consistent with the RTP(so that plan analysis shall also cover TIP emissions).

Finding:

ii-a) The travel network used in the emissions analysis(see Appendix 3) comprises both the TIP and RTP networks, as well as both significant and insignificant local and/or privately financed projects expected in the time-frame of the plan. The network table is comprehensive; regionally significant TIP projects, including those whose scope and concept have recently been revised, are captured in the travel network used to analyze RTP emissions.

ii-b) Appendix 3 identifies the year in which operation of the TIP funded projects is expected. This demonstrates that the TIP contains the projects that must be started to achieve the system envisioned in the RTP in relation to analysis years of the Determination.

ii-c) The scope and concept of the TIP projects is consistent with that assumed in the RTP.

Note: Numerous projects in all analysis years are incapable of representation within the EMME/2 model. The vast majority of these projects are bicycle and pedestrian projects/programs and other TSM activities. (This class of projects is identified in Appendix 3 with "no" entered in the "Can Be Modeled" column.) Virtually all of these projects would be expected to decrease emissions as they support non-auto and/or non-SOV travel modes, or otherwise *marginally* enhance the efficiency of the highway network, reducing emissions of CO and Ozone precursor compounds).

Historically, the region has not taken credit for benefits theoretically attributable to this class of projects. This has been mostly because the region's past quantitative analyses have not needed emission reductions in excess of those provided by projects capable of representation within the model. Given the lack of need, and because the ad hoc methodologies for calculating such off-model benefits are very labor intensive, are in most cases not well established and/or accepted and thus are subject to controversy when employed to demonstrate reductions of automotive emissions; Metro has chosen not to seek emission reduction credit for these types of projects. However, in future years, as nation-wide monitoring of CMAQ projects provides more reliable data about benefits of such projects, or should this year's analysis require

supplemental emission reductions, the region may take credit for these activities.

3. Perform the Emissions Impact Analysis.

Finding: Calculations were prepared, pursuant to the methods specified at OAR 340-20-1010, of CO and Ozone precursor pollutant emissions assuming travel in each analysis year on networks identified in Appendix 3. A technical summary of the regional travel demand model, the EMME/2 planning software and the Mobile 5a methodologies is available from Metro upon request. The methodologies were reviewed by the consultation subcommittee and by TPAC.

4. Determine Conformity.

- a. Requirement: *Emissions in each analysis year must be consistent with (i.e., must not exceed) the budgets established in the maintenance plan for the appropriate criteria pollutants (OAR 340-20-890).*

Finding: Emissions in each analysis year resulting from projects identified in the FY 2000 TIP and the 1995 RTP, including those attributable to revised North and South Corridor LRT assumptions, are expected to fall within the motor vehicle emissions budgets established for those years in the maintenance plan. Tables 1, 2 and 3, below, provide a summary of these emissions and shows that the newly approved TIP and RTP projects whose scope and concept have changed since the last Determination, conform with the SIP.

TABLE 1
Emissions Summary (lbs/day)

1995 RTP EMISSIONS COMPARED TO CO AND OZONE BUDGETS				
Lbs/day				
		Winter CO	Summer HC	Summer NOx
Budget	2005	tbd	tbd	tbd
MTIP/RTP		tbd	tbd	tbd
Difference		tbd	tbd	tbd
Budget	2015	788,000	80,000	110,000
MTIP/RTP		tbd	tbd	tbd
Difference		tbd	tbd	tbd
Budget	2020	842,000	80,000	118,000
MTIP/RTP		tbd	tbd	tbd
Difference		tbd	tbd	tbd

TABLE 2

**1995 RTP EMISSIONS
COMPARED TO CCTMP
SUB-AREA CO BUDGET**

Lbs/day

Winter CO

Budget	2005	tbd
RTP		tbd

Difference

Budget	2015	tbd
RTP		tbd

Difference

Budget	2020	tbd
RTP		tbd

Difference

TABLE 3

**1995 RTP EMISSIONS
COMPARED TO 82ND AVENUE
SUB-AREA CO BUDGET**

Lbs/day

Winter CO

Budget	2005	tbd
RTP		tbd

Difference

Budget	2015	tbd
RTP		tbd

Difference

Budget	2020	tbd
RTP		tbd

Difference

h:\Lerry\98tip\conformity\95 RTP Reconformity
August 18, 1998
TW:tw

Appendix 1

TIP #	RTP#	Project#	Modeled?	Project Description	Comments
CBI10	6102	908	No	Wilsonville: Boeckman/Town Center Loop	
CBI3	5095	532b	No	Phillip Creek Greenway Trail	
CB17	5094	532a	No	Clack Reg Ctr. Trail	
CB19	6105	907	No	Town Cntr. Park: Bike/Ped Connection	
CM2			No	Harmony/Linwood/Railroad Ave. PE	grade separation at RR
CM5			No	Sunnyside Rd./Mt. Scott Creek	already in committed
CM7			No	Clack Co ITS/ATMS	
CP1	5211	637b	No	Scott Creek Lane Ped Path	
CR2	5038	463	No	Johnson Crk. Blvd.:36th/45th	
CTr2	5169	593	No	Will Shoreline Trestle/Track Repair	
MB1	2053	409b	No	Gresham/Fairview Trail	
MM1			No	207th Connector: HalsEy/Glisan	add'l funding for cost overruns
MM7			No	Gresham Mult Co. ITS	
PBI6a	1081	129	No	E. Bank Trail -OMSI/Springwater	
PBI6b			No	E. Bank Trail -Phase2 (ROW Only)	
PBI9	1146	183	No	Greeley/Interstate	
PBL1	1080	123	No	Hawthorne: 20th/55th	
PBL3			No	W. Burnside: Brdg/NW 23rd	
PBr2a			No	Morrison Electrical	
PBr2b			No	Burnside Electrical	
PM1			No	Portland Arterial/Frwy ITS	
PM6			No	MLK/Interstate ITS	
PM10			No	SE Foster Rd./Kelly Creek	
PP2	1168	195	No	Capitol Hwy: Bertha/Bvtn Hlsd.	
PP5			No	Red Electric Line: Will Prk./Oleson	
RPIg1			No	Core Reg. Planning Program	
RPIg3			No	Regional Freight Program Analysis	
RPIg5			No	OPB Pilot	
RPIg6			No	I-5 Trade Corridor Study	
RTOD1			No	Metro TOD Program	
RT1			No	Reg. Contribution for Bus Purchase	
Rtr2			No	Service Increase for Reg/T.C. TCL	
TDM1			No	Regional TDM Program	
TDM2			No	Portland Area Telecommuting	
TDM3			No	ECO Information Clearinghouse	
TDM4			No	Region 2040 Initiatives	
TDM5			No	TMA Assistance Program	
TDM6			No	SMART TDM Program	
TE1			No	Pioneer Courthouse	
TE2			No	Portland Bike Signage	
TE3	4040	335	No	NE 47th Environmental Restoration	
WBI1	3071	78b	No	Fanno Creek: Allen/Denney	
WBI10	6007	78a	No	Fanno Creek Trail Phase 2 (PE/RW?)	
WBI5	3094	706	No	Cornell Rd. Elam Young/Ray	
WM4			No	Wash. Co. ATMS	
WP4	3194	803b	No	Sentinel Plaza: Cornell/Cedar Hills/113th	
WP5	3095	695	No	SW 170th: Merlo/Elmonica LRT Station	
WP7	3075	687	No	Cedar Hills: Walker/Butner	
WTR1			No	Wash. Co. Commuter Rail	
WTR2			No	Wash. Co. Bus Stop Enhancement Program	
PF1	1034	97	Yes	Lower Albina Overcrossing	centroid connector only - 2005
PF2	4062	295a	Yes	N. Marine Dr. Reconstruction	cap increase from 1200 to 2400 - 2005
PR10	1053	111	Yes	Naito Pkwy: Davis/Market	BLVD design - reduce cap by 200 - 2005
WM5	3138	741	Yes	Murray O'xing: Millikan/Terman	increase cap from 900 to 1650 - 2005
WM13	3113	726b	Yes	SE 10th: E Main/ SE Baseline - PE only	add prj. in 2005 network - SB rt turn lane
WM17	6066	878	Yes	I-5/Nyberg Interchange (PE/ROW)	widen oxing & SB off-ramp - 2015 network
WM19	6014	835	Yes	SW Greenburg Rd.: Wash. Sq./Tiedeman	add prj. in 2005 network - widen to 5 lanes
CM14	5018/5019	38a/38b	Yes	Hwy. 213/ Beaver Creek Rd.	add ph1 in 2005 - grade sep by 2015
MM3	2081	359	Yes	223rd O'xing (PE RPW)	increase cap by 200 - 2015
CBL1	5069	499	Yes	Harmony Rd.: 82nd/Fuller	BLVD design - reduce cap by 200 - 2005
CBL2			Yes/No	Willamette Dr. - A St. /McKilican	PE only cap increase, then decrease to original cap
CBL3	5049	462	Yes	McLoughlin: Harrison/SPRR Xing	BLVD design - reduce cap by 200 - 2005
MBL1	2047	394	Yes	Division St.: Walulla/Kelly	BLVD design - reduce cap by 200 - 2005
WBI2	3074	686	Yes	Hall Blvd: 12th/Allen	increase cap on Hall approaches to Allen-05
WBL1	3193	792c	Yes	Cornell Rd: Trail Ave/Saltzman (ROW funds)	BLVD design - reduce cap by 200 - 2005
WBL2	3169	764	Yes	Main St.:10th/20th Cornelius	BLVD design-2005, widen to 3 w/blvd-2021
WBL6	3034	674 (RND3)	Yes	Hall Blvd: Cedar Hills/Hocken (PE)	extend Hall as 3 lanes - 2005
WM1	3030	666b	Yes	Farmington Rd.: Hocken/Murray	PE only REMOVE from 2005 network - add in 2015
CB12	5080	512a	Yes	Fuller Rd.: Harmony/King	widen Fuller, ped only: Monroe to King-2005
PBI1	1062	126	Yes	Morrison Bridge PED/BIKE Access	PE only replace 1 EB auto lane with bike way - 2005

2040 Grouping	Intersection Density				Parking Factors				Transit Pass Factor				Fareless Square			
	2020	2015	2005	1998	2020	2015	2005	1998	2020	2015	2005	1998	2020	2015	2005	1998
Central City1	20	20	20	20	6.08	5.87	5.66	5.45	60%	60%	60%	60%	yes	yes	yes	yes
Central City 2	20	20	20	20	3.94	3.65	3.35	3.06	60%	60%	60%	60%	yes	yes	yes	
Central City3	20	20	20	20	2.96	2.74	2.52	2.30	65%	65%	65%	65%				
Central City4	20	20	20	20	3.94	3.65	3.35	3.06	65%	65%	65%	65%				
Central City 5	18	17	17	16	3.04	2.79	2.55	2.30	65%	65%	65%	65%				
Tier 1 Reg. Centers	14	14	14	14	0.80	0.53	0.27	0	80%	86%	93%	100%	yes	yes		
Tier 2 Reg. Centers	10	10	10	10	0.60	0.40	0.20	0	95%	97%	98%	100%				
Tier 1 Sta. Comm.	12	12	12	12	0.80	0.53	0.27	0	80%	86%	93%	100%				
Tier 2 Sta. Comm.	10	10	10	10	0.60	0.40	0.20	0	95%	97%	98%	100%				
Tier 1 Town Centers	16	16	16	16	0.45	0.30	0.15	0	85%	90%	95%	100%				
Tier 2 Town Centers	10	10	10	10	0.36	0.24	0.12	0	100%	100%	100%	100%				
Tier 3 Town Centers	8	8	8	8	0.28	0.19	0.09	0	100%	100%	100%	100%				
Tier 4 Town Centers	8	7	7	6	0.18	0.12	0.06	0	100%	100%	100%	100%				
Tier 1 Mainstreets	14	14	14	14	0.45	0.30	0.15	0	100%	100%	100%	100%				
Tier 2 Mainstreets	8	8	8	8	0.36	0.24	0.12	0	100%	100%	100%	100%				
Corridors	10	9	9	8	none	none	none	none	100%	100%	100%	100%				
Inner N'hoods	10	10	10	10	none	none	none	none	100%	100%	100%	100%				
Outer Hoods Tier 1	8	7	7	6	none	none	none	none	100%	100%	100%	100%				
Outer Hoods Tier 2	6	6	6	6	none	none	none	none	100%	100%	100%	100%				
Employment Areas	8	7	7	6	none	none	none	none	100%	100%	100%	100%				
Ind. Areas Tier 1	10	10	10	10	none	none	none	none	100%	100%	100%	100%				
Ind. Areas Tier 2	8	8	8	8	none	none	none	none	100%	100%	100%	100%				
Greenspaces	6	6	6	6	none	none	none	none	100%	100%	100%	100%				
Rural Reserves	6	6	6	6	none	none	none	none	100%	100%	100%	100%				
PDX Special Area 1	*	*	*	*	6.14	5.93	5.71	5.5	60%	74%	87%	100%				
OHSU Spec. Area 2	*	*	*	*	1.86	1.72	1.59	1.45	60%	60%	60%	60%				
Zoo Special Area 3	*	*	*	*	1.86	1.24	0.62	0	100%	100%	100%	100%				
SMART Spec Area4	*	*	*	*	*	*	*	*	*	*	*	*	yes	yes	yes	yes

* Use parent zone values

2020 = Existing Resources/Committed System

Appendix 3

List of 2005, 2015 and 2020 Travel Networks

The table will be provided at the September TPAC meeting

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 99-2843 FOR THE PURPOSE OF ADOPTING THE PORTLAND AREA AIR QUALITY CONFORMITY DETERMINATION FOR THE FY 2000 METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM

Date: September 22, 1999

Presented by: Andrew Cotugno

PROPOSED ACTION

Approval of this resolution would adopt a regional air quality conformity Determination for the FY 2000–2003 Metropolitan Transportation Improvement Program (MTIP), including revision of the alignment, terminus and timing of the Interstate MAX and South Corridor light rail system extension projects.

BACKGROUND AND ANALYSIS

By Resolution No. 99-2830, Metro approved the FY 2000 MTIP in September of this year. Funding was provided for several projects and project phases whose scope, concept and timing differ significantly from those analyzed in the previous air quality conformity determination approved by FTA/FHWA/EPA in October 1998. None of the projects though, result from, or require amendment of, the 1995 *Regional Transportation Plan*; the RTP has not been amended and does not itself require re-determination of conformity.

In addition to the MTIP approval, Metro has also formally approved alteration of the timing, alignment and scope of the South/North light rail project. A North Corridor component, the Interstate MAX project, will hopefully obtain a Full-Funding Grant Agreement by early next year. Funding for the Interstate MAX project is approved in the MTIP. The South Corridor extension has been delayed. These changes to the region's next light rail project trigger the need for a conformity Determination.

The Determination is composed of both a *Qualitative* and *Quantitative* Analysis. Exhibit 1 of the resolution contains the qualitative discussion mandated in the State Rule. The *Quantitative* Analysis consists of determining, through analytic methods, whether the region's auto emissions exceed budgets established in the region's approved maintenance plan. This analysis will be complete prior to the October JPACT meeting and the results will be included in the Exhibit at that time. It is expected the region will meet the emissions budgets. If not, the Determination will be delayed to determine how to reduce emissions sufficient to enable meeting the region's air quality budget.