

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  
DATE: January 25, 2007  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

2.1 Metro Committee on Citizen Involvement Update Warren

**3. NATURE IN NEIGHBORHOODS GRANT SHOWCASE  
FIRST ROUND** Geddes

**4. CONSENT AGENDA**

4.1 Consideration of Minutes for the January 18, 2007 Metro Council Regular Meeting.

4.2 **Resolution No. 07-3769**, Authorizing the Chief Operating Officer to Issue a Final Order Imposing a Civil Penalty on Dan Obrist Excavation, Inc. for Violation of Metro Code Sections 5.01.030(a) and 5.01.045.

**5. ORDINANCES - SECOND READING**

5.1 **Ordinance No. 06-1129A**, For the Purpose of Amending the Regional Framework Plan to Revise Metro Policies on Housing Choice and Affordable Housing and Amending Metro Code Sections 3.07.710 through 3.07.760 to Implement the New Policies. Liberty

**6. RESOLUTIONS**

6.1 **Resolution No. 07-3765**, For the Purpose of Establishing the Duties and Responsibilities of the Brownfields Task Force, and Confirming Appointment of Its Members. Liberty

**7. CHIEF OPERATING OFFICER COMMUNICATION**

## 8. COUNCILOR COMMUNICATION

### ADJOURN

#### Television schedule for January 25, 2007 Metro Council meeting

|                                                                                                                                                                                                                              |                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b><br>Channel 11 -- Community Access Network<br><a href="http://www.tvctv.org">www.tvctv.org</a> -- (503) 629-8534<br>2 p.m. Thursday, Jan. 25 (live) | <b>Portland</b><br>Channel 30 (CityNet 30) -- Portland Community Media<br><a href="http://www.pcmtv.org">www.pcmtv.org</a> -- (503) 288-1515<br>8:30 p.m. Sunday, Jan. 28<br>2 p.m. Monday, Jan. 29                                    |
| <b>Gresham</b><br>Channel 30 -- MCTV<br><a href="http://www.mctv.org">www.mctv.org</a> -- (503) 491-7636<br>2 p.m. Monday, Jan. 29                                                                                           | <b>Washington County</b><br>Channel 30 -- TVC-TV<br><a href="http://www.tvctv.org">www.tvctv.org</a> -- (503) 629-8534<br>11 p.m. Saturday, Jan. 27<br>11 p.m. Sunday, Jan. 28<br>6 a.m. Tuesday, Jan. 30<br>4 p.m. Wednesday, Jan. 31 |
| <b>Oregon City, Gladstone</b><br>Channel 28 -- Willamette Falls Television<br><a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275<br>Call or visit website for program times.                       | <b>West Linn</b><br>Channel 30 -- Willamette Falls Television<br><a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275<br>Call or visit website for program times.                                              |

**PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.**

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website [www.metro-region.org](http://www.metro-region.org) and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

**BEFORE THE METRO COUNCIL**

AUTHORIZING THE CHIEF OPERATING ) RESOLUTION NO. 07-3769  
OFFICER TO ISSUE A FINAL ORDER )  
IMPOSING A CIVIL PENALTY ON DAN )  
OBRIST EXCAVATION, INC., FOR ) Introduced by Michael Jordan,  
VIOLATION OF METRO CODE SECTIONS ) Chief Operating Officer, with the  
5.01.030(a) AND 5.01.045 ) concurrence of David Bragdon,  
 ) Council President  
 )  
 )

WHEREAS, on July 14, 2006, the Director of the Metro Solid Waste and Recycling Department (“Director”) issued Notice of Violation No. NOV-155-06 to Dan Obrist Excavation, Inc., dba Dan Obrist Recycling (“Obrist”); and

WHEREAS, NOV-155-06 stated that the Director had found that on July 6, 2006, Obrist violated Metro Code Sections 5.01.030(a) and 5.01.045 by operating a solid waste facility within the Metro region without a Metro solid waste facility license, and imposed a civil penalty of \$500.00 for the violation; and

WHEREAS, included with NOV-155-06 was a contested case notice providing Obrist with an opportunity to have a hearing regarding the NOV; and

WHEREAS, Obrist submitted a timely request for a contested case hearing and such hearing was held before Metro Hearings Officer Robert J. Harris on September 6, 2006; and

WHEREAS, following the hearing the Hearings Officer issue a proposed order, a copy of which is attached as Exhibit A to this resolution, for the Metro Council’s consideration as required by Metro Code Section 2.05.035; and

WHEREAS, the proposed order concludes that Obrist violated the Metro Code as stated in NOV-155-06 and upholds the Director’s imposition of a civil penalty of \$500.00 for such violation; and

WHEREAS, in accordance with Metro Code Section 2.05.035, the Chief Operating Officer mailed a copy of the proposed order to Obrist and informed Obrist of the deadline for filing written exceptions to the proposed order; and

WHEREAS, Obrist did not file any exceptions to the proposed order; and

WHEREAS, the Chief Operating Officer has reviewed the proposed order and recommends that certain technical revisions be made, as provided in Exhibit B to this resolution, but otherwise concurs with the proposed order and recommends that the

Council authorize the Chief Operating Officer to issue a Final Order in substantially the form as that attached as Exhibit C to this resolution; and

WHEREAS, in accordance with Metro Code Section 2.05.035, the Metro Council has been provided with a copy of the record in this matter for its review as it considers this resolution; and

WHEREAS, the Council has considered the proposed order, the record in this matter, the exhibits attached to this resolution, and any exceptions raised to the proposed order; now therefore

BE IT RESOLVED that the Council revises the Proposed Order issued by Hearings Officer Robert J. Harris in the Matter of Metro NOV-155-06 issued to Dan Obrist Excavation, Inc., dba Dan Obrist Recycling, as provided in Exhibit B, and authorizes the Chief Operating Officer to issue a Final Order substantially similar to Exhibit C to this resolution.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2007

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

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METRO CONTESTED CASE: NOTICE OF NONCOMPLIANCE 111-02

BEFORE ROBERT J. HARRIS HEARINGS OFFICER

|                                      |   |                |
|--------------------------------------|---|----------------|
| In The Matter of Notice Of Violation | ) |                |
| No. NOV-155-06                       | ) |                |
|                                      | ) | PROPOSED ORDER |
| Issued to                            | ) | FROM HEARING   |
|                                      | ) |                |
| Dan Obrist Excavation Inc, dba,      | ) |                |
| Dan Obrist Recycling                 | ) |                |
|                                      | ) |                |
| Respondent.                          | ) |                |
| _____                                | ) |                |

**BACKGROUND AND PROCEDURAL POSTURE**

On July 14, 2006, Dan Obrist, Dan Obrist Excavation Inc., dba Dan Obrist Recycling (hereinafter Obrist) was issued Notice of Violation No. NOV-155-06. The Notice of Violation (hereinafter the NOV) was sent to Mr. James D. Church, 1001 SW 5<sup>th</sup> Avenue, Suite 1520, Portland, Oregon 97204. Also included in the NOV was a Contested Case Notice.

The Violation alleged that Dan Obrist Excavation Inc., dba Dan Obrist Recycling, violated Metro Code Chapters 5.01.030 and 5.01.045 by operating a Solid Waste Facility without a license of franchise and by accepting mixed non-putrescible waste at an unlicensed facility.

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1 Exhibit C: Finding of Violation No. NON 126-03 to Dan Obrist and Dan Obsit  
2 Recycling dated January 5, 2004;

3 Exhibit D: Citation and Notice of Violation NOV -147-05 dated October 6, 2005 to  
4 Dan Obrist and Dan Obrist Recycling; and

5 Exhibit E: Status of NON 126-03 and notice of Violation NOV-147-05 dated May  
6 15, 2006.

7 **FINDINGS OF FACT**

8 1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent) owns  
9 property located at 4540 SE 174<sup>th</sup> Avenue, Portland Oregon (the site). The site is located  
10 within the Jurisdiction of Metro.

11 2. Respondent is in the business of excavation demolition and or cleanup.

12 3. On January 5, 2004 Respondent was issued a Notice of Noncompliance #NON  
13 126-03 for unlawful operation of a solid waste facility at the site without a license of franchise.  
14 Metro agreed not to take further enforcement action regarding the processing of demolition  
15 debris that was produced through Respondents own demolition business provided that  
16 Respondent started the process of appropriate land use approval and Metro licensing of the  
17 facility. The NOV also ordered Respondent to cease accepting demolition materials from third  
18 parties.

19 4. On the following date Metro staff observed Respondent accepting mixed Solid  
20 Waste from the public at the Site. August 30, and 31, 2005, September 1, 2, 6 and 7, 2005, the  
21 solid waste accepted by Respondent on those dates included carpet, plastic buckets, fiberglass  
22 panels, roofing, a mattress, household items and mixed putrescible waste.

23 5. On October 6, 2005, Metro issued a citation and Notice of Violation (NOV 147-  
24 05) to Respondent for the activities observed as outlined in paragraph 4 above. Metro granted  
25 Respondent an opportunity to cure the violations without imposition of a monetary penalty.

1 The conditions of that deferral are as set forth in Exhibit D. One of the conditions, or options,  
2 granted to Respondent was to continue to process solid waste at the site if it submitted a solid  
3 waste facility license application. Alternatively, Respondent would be required to cease  
4 processing solid waste at the facility.

5 6. On May 15, 2006, Metro sent a Status letter to Respondent. In that letter, Metro  
6 informed Respondent that as it had failed to submit a solid waste license application, and that  
7 in the meantime, Metro had placed a moratorium on new applications for non-putrescible  
8 waste processing facilities. That letter went on to notify Respondent that it could not accept  
9 unsorted mixed loads of non-putrescible solid waste at the site. Including materials generated  
10 from its own activities.

11 7. On July 6, 2006, Rob Smoot, Metro Inspector, went to the site. There he  
12 observed construction demolition debris on site, as well as piles of sorted materials. Mr. Smoot  
13 took numerous photographs of the demolition materials. See Exhibit A. The photos show  
14 several piles of mixed solid waste materials, including but not limited to: wood, metal,  
15 sheetrock, plastic, a couch, and carpet (see specifically photos numbers 10, 11 and 12 of  
16 Exhibit A). Mr. Smoot also observed sorted piles of solid waste. Mr. Smoot talked to the site  
17 manager, and confirmed that this solid waste was generated and delivered to the Site by  
18 Respondents own demolition business activity where it was sorted for recovery.

19 8. Mr. Obrist testified that he had been operating his business for fourteen (14)  
20 years and that he believed that 95% of the materials brought in are recycled or recyclable  
21 materials. All hazardous materials have been removed prior to bringing the materials to the  
22 site.

23 9. Mr. Obrist believed that he should be able to bring his own materials onto his  
24 property to sort and dispose of or recycle.

25 //



**APPLICABLE LAW**

Metro Code: Chapter 5.01.030: Provides in part:

*Except as otherwise provided in this chapter, or in Metro Code Chapter 5.05, it shall be unlawful:*

*(a) For any person to establish, operate, maintain or expand a Solid Waste Facility or Disposal Site within Metro Without an appropriate License or Franchise from Metro.*

Metro Code Chapter 5.01.010(uu): States

*“Solid Waste Facility” means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery and/or Processing, but excludes disposal*

Metro Code Chapter 5.01.010(tt) defines “Solid Waste” , in part, as

*...all Putrescible and Non-Putrescible Wastes, including, without limitation, garbage, rubbish, refuse, ashes, waste paper and Cardboard; discarded of abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid wand semi-Solid Wastes, dead animals, infectious waste as defined in ORS 459.386, petroleum-contaminated soils and other wastes...*

Metro Code Chapter 5.01.045 states in part:

*(a) A Metro Solid Waste License shall be required of the person owning or controlling a facility at which any of the following Activities are performed.*

*(1) Processing of Non-Putrescible Waste.*

Metro Code Chapter 5.01.200 provides in part:

*(a) Each violation of this chapter shall be punishable by a fine of not more than \$500. Each day a violation continues constitutes a separate violation....*

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**ULTIMATE FINDINGS OF FACT  
REASONING AND CONCLUSIONS OF LAW**

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2  
3 1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent)  
4 owns property located at 4540 SE 174<sup>th</sup> Avenue, Portland Oregon. (the site). The site is located  
5 within the Jurisdiction of Metro.

6 2. Respondent is in the business of excavation demolition and or cleanup.

7 3. On or about July 6, 2006, Respondent brought to the site non-putrescible mixed  
8 solid waste materials consisting of demolitions materials, including but not limited to: Wood,  
9 concrete, metals, insulation, plastic, a couch, sheetrock, carpet and foam. Respondent then  
10 sorted this mixed waste for recovery. Respondent’s site is a Solid Waste Facility as defined by  
11 Metro Code.

12 4. The site is not licensed as a Solid Waste Facility.

13 5. On July 6, 2006, Respondent violated Metro Code Chapter 5.01.030(a) and  
14 5.01.045 in that he operated a Solid Waste Facility without an appropriate License

**ORDER**

15  
16 Based upon the above findings of fact, ultimate findings of fact, reasoning and  
17 conclusions of law, IT IS HEREBY ORDERED THAT:

18 For Violation of Metro Code, Chapters 5.01.030 and 5.01.045 on July 6, 2006, a fine of  
19 \$500 is imposed on Dan Obrist Excavation Inc dba Dan Obrist Recycling. Said fine is due and  
20 payable ten days after this Order becomes Final.

21  
22 \_\_\_\_\_  
Robert J. Harris  
Hearing Officer

23 Dated: December 6, 2006

24 **THIS ORDER MAY BE REVIEWED PURSUANT TO THOSE PROVISIONS AS SET**  
25 **FORTH IN METRO CODE SECTION 2.05**

[NOTE: Print final copy for the Chief Operating Officer's signature on Metro letterhead.]

~~METRO CONTESTED CASE: NOTICE OF NONCOMPLIANCE 111-02~~

BEFORE ~~ROBERT J. HARRIS HEARINGS OFFICER~~ THE METRO COUNCIL

|                                      |   |                                 |
|--------------------------------------|---|---------------------------------|
| In The Matter of Notice Of Violation | ) |                                 |
| No. NOV-155-06                       | ) |                                 |
| Issued to                            | ) | <del>PROPOSED-FINAL ORDER</del> |
|                                      | ) | <del>FROM HEARING</del>         |
| Dan Obrist Excavation Inc, dba,      | ) |                                 |
| Dan Obrist Recycling                 | ) |                                 |
|                                      | ) |                                 |
| Respondent.                          | ) |                                 |
|                                      | ) |                                 |

**BACKGROUND AND PROCEDURAL POSTURE**

On July 14, 2006, Dan Obrist, Dan Obrist Excavation Inc., dba Dan Obrist Recycling (hereinafter Obrist) was issued Notice of Violation No. NOV-155-06. The Notice of Violation (hereinafter the NOV) was sent to Mr. James D. Church, 1001 SW 5<sup>th</sup> Avenue, Suite 1520, Portland, Oregon 97204. Also included in the NOV was a Contested Case Notice.

The Violation alleged that Dan Obrist Excavation Inc., dba Dan Obrist Recycling, violated Metro Code Chapters 5.01.030 and 5.01.045 by operating a Solid Waste Facility without a license or~~f~~ franchise and by accepting mixed non-putrescible waste at an unlicensed facility.

Within thirty days after the issuance and service of the NOV, Obrist requested a Contested Case Hearing. On July 25, 2006, Robert Harris, Hearings Officer for Metro sent to Obrist a Notice of Hearing, setting the hearing for August 2, 2006 at 9:30 a.m. Included in that notice were copies of the following documents: Findings of Facts regarding Metro

1 Violation No. NOV-155-06 dated July 14, 2006; Contested Case Notice dated July 14, 2006;  
2 Explanation of Rights. **That notice and the items attached thereto are all part of the record in**  
3 **this matter.**

4 On July 28, 2006, Obrist requested a reset of the Hearing. On July 31, 2006, the  
5 Hearings Officer sent out a new Hearing Notice setting the hearing for September 6, 2006 at 9:30  
6 a.m. to be held at the Metro offices located at 600 Northeast Grand Avenue, Portland, Oregon  
7 97232. **That notice is also part of the record in this matter.**

8 On September 6, 2006 at 9:30 a.m. a hearing was held as scheduled. Present were: Paul  
9 Garrahan, **Senior Assistant Metro Counsel Attorney**; Rob Smoot, Metro ~~investigator~~ **Solid Waste**  
10 **Facility Inspector**; Steve Kraten, Metro Principal Solid Waste Planner; and Dan Obrist,  
11 Respondent and principle of Dan Obrist Excavation, dba Dan Obrist Recycling. Also present  
12 was Robert Harris, **Metro Hearings eOfficer**.

14 The Hearings Officer stated on the record that there had been no ex-parte  
15 communications. The Hearings Officer recited on the record the hearing procedures, rights of  
16 the parties, and the right to appeal.

17 Prior to taking testimony, all witnesses were put under oath.

### 18 **EVIDENTIARY RULINGS**

19 **MetroETRO** offered the following Exhibits into evidence, which were accepted without  
20 objection and marked accordingly:

21 Exhibit A: Including the Inspection notes of Rob Smoot dated July 6<sup>th</sup>, 2006; 13  
22 photos of the subject site (in two different formats);

23 Exhibit B: Full page photo of entrance to facility with a sign for “Dan Obrist  
24 Recycling”;

25 Exhibit C: Finding of Violation No. NON 126-03 to Dan Obrist and Dan Obrist  
Recycling dated January 5, 2004;

1 Exhibit D: Citation and Notice of Violation NOV -147-05 dated October 6, 2005 to  
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4. The site is not licensed as a ~~S~~solid ~~W~~waste ~~F~~facility.

5. On July 6, 2006, Respondent violated Metro Code ~~Chapter-Sections~~ 5.01.030(a) and 5.01.045 in that he operated a ~~S~~solid ~~W~~waste ~~F~~facility without an appropriate ~~L~~icense.

**ORDER**

Based upon the above findings of fact, ultimate findings of fact, reasoning and conclusions of law, IT IS HEREBY ORDERED THAT:

For ~~V~~violation of Metro Code, ~~Chapters-Sections~~ 5.01.030 and 5.01.045 on July 6, 2006, a ~~fine-civil penalty~~ of \$500 is imposed on Dan Obrist Excavation Inc. dba Dan Obrist Recycling. Said ~~fine-civil penalty~~ is due and payable ten days after ~~the date of this Final Order is served on Respondent~~becomes ~~Final~~.

~~Robert J. Harris~~Michael Jordan  
~~Hearing~~Chief Operating Officer

Dated: ~~December 6, 2006~~ \_\_\_\_\_

**RIGHT OF APPEAL:**

**THIS FINAL ORDER MAY BE APPEALED BY WRIT OF REVIEW AS PROVIDED IN ORS 34.010 THROUGH 34.100**~~REVIEWED PURSUANT TO THOSE PROVISIONS AS SET FORTH IN METRO CODE SECTION 2.05~~

~~S:\REM\leslieb\Leg\Res 07-3769 Ex. B Techn edits to Proposed Order NOV 155-06 011107.doc~~~~M:\attorney\confidential\09-Solid Waste\16ENFORC\31Obrist\Res 07-3769 Ex. B Techn edits to Proposed Order NOV 155-06 011107.doc~~



*[NOTE: Print final copy for the Chief Operating Officer's signature on Metro letterhead.]*

**BEFORE THE METRO COUNCIL**

|                                      |   |             |
|--------------------------------------|---|-------------|
| In The Matter of Notice Of Violation | ) |             |
| No. NOV-155-06                       | ) |             |
|                                      | ) | FINAL ORDER |
| Issued to                            | ) |             |
|                                      | ) |             |
| Dan Obrist Excavation Inc, dba,      | ) |             |
| Dan Obrist Recycling                 | ) |             |
|                                      | ) |             |
| Respondent.                          | ) |             |
| _____                                | ) |             |

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Explanation of Rights. That notice and the items attached thereto are all part of the record in this matter.

On July 28, 2006, Obrist requested a reset of the Hearing. On July 31, 2006, the Hearings Officer sent out a new Hearing Notice setting the hearing for September 6, 2006 at 9:30 a.m. to be held at the Metro offices located at 600 Northeast Grand Avenue, Portland, Oregon 97232. That notice is also part of the record in this matter.

On September 6, 2006 at 9:30 a.m. a hearing was held as scheduled. Present were: Paul Garrahan, Senior Assistant Metro Attorney; Rob Smoot, Metro Solid Waste Facility Inspector; Steve Kraten, Metro Principal Solid Waste Planner; and Dan Obrist, Respondent and principle of Dan Obrist Excavation, dba Dan Obrist Recycling. Also present was Robert Harris, Metro Hearings Officer.

The Hearings Officer stated on the record that there had been no ex-parte communications. The Hearings Officer recited on the record the hearing procedures, rights of the parties, and the right to appeal.

Prior to taking testimony, all witnesses were put under oath.

#### **EVIDENTIARY RULINGS**

Metro offered the following Exhibits into evidence, which were accepted without objection and marked accordingly:

Exhibit A: Including the Inspection notes of Rob Smoot dated July 6<sup>th</sup>, 2006; 13 photos of the subject site (in two different formats);

Exhibit B: Full page photo of entrance to facility with a sign for “Dan Obrist Recycling”;

Exhibit C: Finding of Violation No. NON 126-03 to Dan Obrist and Dan Obrist Recycling dated January 5, 2004;

Exhibit D: Citation and Notice of Violation NOV -147-05 dated October 6, 2005 to Dan Obrist and Dan Obrist Recycling; and

Exhibit E: Status of NON 126-03 and notice of Violation NOV-147-05 dated May 15, 2006.

### **FINDINGS OF FACT**

1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent) owns property located at 4540 SE 174<sup>th</sup> Avenue, Portland Oregon (the site). The site is located within the Jurisdiction of Metro.

2. Respondent is in the business of excavation demolition and or cleanup.

3. On January 5, 2004 Respondent was issued a Notice of Noncompliance #NON 126-03 for unlawful operation of a solid waste facility at the site without a license or franchise. Metro agreed not to take further enforcement action regarding the processing of demolition debris that was produced through Respondent's own demolition business provided that Respondent started the process of appropriate land use approval and Metro licensing of the facility. The NOV also ordered Respondent to cease accepting demolition materials from third parties.

4. On the following dates Metro staff observed Respondent accepting mixed solid waste from the public at the site: August 30, and 31, 2005, September 1, 2, 6 and 7, 2005. The solid waste accepted by Respondent on those dates included carpet, plastic buckets, fiberglass panels, roofing, a mattress, household items and mixed putrescible waste.

5. On October 6, 2005, Metro issued a citation and Notice of Violation (NOV 147-05) to Respondent for the activities observed as outlined in paragraph 4 above. Metro granted Respondent an opportunity to cure the violations without imposition of a monetary penalty. The conditions of that deferral are as set forth in Exhibit D. One of the conditions, or options, granted to Respondent was to continue to process solid waste at the site if it submitted a solid

waste facility license application. Alternatively, Respondent would be required to cease processing solid waste at the facility.

6. On May 15, 2006, Metro sent a Status letter to Respondent. In that letter, Metro informed Respondent that it had failed to submit a solid waste license application, and that in the meantime, Metro had placed a moratorium on new applications for non-putrescible waste processing facilities. That letter went on to notify Respondent that it could not accept unsorted mixed loads of non-putrescible solid waste at the site, including materials generated from its own activities.

7. On July 6, 2006, Rob Smoot, Metro Inspector, went to the site. There he observed construction demolition debris on site, as well as piles of sorted materials. Mr. Smoot took numerous photographs of the demolition materials. See Exhibit A. The photos show several piles of mixed solid waste materials, including but not limited to: wood, metal, sheetrock, plastic, a couch, and carpet (see specifically photos numbers 10, 11 and 12 of Exhibit A). Mr. Smoot also observed sorted piles of solid waste. Mr. Smoot talked to the site manager, and confirmed that this solid waste was generated and delivered to the site by Respondent's own demolition business activity where it was sorted for recovery.

8. Mr. Obrist testified that he had been operating his business for fourteen (14) years and that he believed that 95% of the materials brought in are recycled or recyclable materials. All hazardous materials have been removed prior to bringing the materials to the site.

9. Mr. Obrist believed that he should be able to bring his own materials onto his property to sort and dispose of or recycle.

#### **APPLICABLE LAW**

Metro Code Section 5.01.030 provides in part:

*Except as otherwise provided in this chapter, or in Metro Code Chapter 5.05, it shall be unlawful:*

*(a) For any person to establish, operate, maintain or expand a Solid Waste Facility or Disposal Site within Metro Without an appropriate License or Franchise from Metro.*

Metro Code Section 5.01.010(uu) states

*“Solid Waste Facility” means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery and/or Processing, but excludes disposal*

Metro Code Section 5.01.010(tt) defines “Solid Waste,” in part, as

*...all Putrescible and Non-Putrescible Wastes, including, without limitation, garbage, rubbish, refuse, ashes, waste paper and Cardboard; discarded of abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid wand semi-Solid Wastes, dead animals, infectious waste as defined in ORS 459.386, petroleum-contaminated soils and other wastes...*

Metro Code Section 5.01.045 states in part:

*(a) A Metro Solid Waste License shall be required of the person owning or controlling a facility at which any of the following Activities are performed.*

*(1) Processing of Non-Putrescible Waste.*

Metro Code Section 5.01.200 provides in part:

*(a) Each violation of this chapter shall be punishable by a fine of not more than \$500. Each day a violation continues constitutes a separate violation....*

**ULTIMATE FINDINGS OF FACT  
REASONING AND CONCLUSIONS OF LAW**

1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent) owns property located at 4540 SE 174<sup>th</sup> Avenue, Portland Oregon (the site). The site is located within the Jurisdiction of Metro.

2. Respondent is in the business of excavation demolition and or cleanup.

3. On or about July 6, 2006, Respondent brought to the site non-putrescible mixed solid waste materials consisting of demolitions materials, including but not limited to: wood, concrete, metals, insulation, plastic, a couch, sheetrock, carpet and foam. Respondent then sorted this mixed waste for recovery. Respondent's site is a solid waste facility as defined by Metro Code.

4. The site is not licensed as a solid waste facility.

5. On July 6, 2006, Respondent violated Metro Code Sections 5.01.030(a) and 5.01.045 in that he operated a solid waste facility without an appropriate license.

**ORDER**

Based upon the above findings of fact, ultimate findings of fact, reasoning and conclusions of law, IT IS HEREBY ORDERED THAT:

For violation of Metro Code Sections 5.01.030 and 5.01.045 on July 6, 2006, a civil penalty of \$500 is imposed on Dan Obrist Excavation Inc. dba Dan Obrist Recycling. Said civil penalty is due and payable ten days after the date of this Final Order is served on Respondent.

\_\_\_\_\_  
Michael Jordan  
Chief Operating Officer

Dated: \_\_\_\_\_

**RIGHT OF APPEAL:**

**THIS FINAL ORDER MAY BE APPEALED BY WRIT OF REVIEW AS PROVIDED IN ORS 34.010 THROUGH 34.100**

## **HEARING RECORD**

### **METRO NOTICE OF VIOLATION 155-06**

#### **INCLUDES:**

- NOV-155-06, including Findings of Fact and Contested Case Notice;
- Hearing Notices; and
- Exhibits A through E.

**NOTE:** A copy of the audio recording of the hearing is available from Metro upon request (contact Barb Leslie at 503-797-1835).



METRO

July 14, 2006

Dan Obrist  
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling  
6431 Jenne Rd.  
Portland, OR 97236

Mr. James D. Church  
1001 SW 5th Ave. Suite 1520  
Portland, OR 97204

RE: Notice of Violation (No. NOV-155-06) and imposition of a monetary penalty for violations of Section 5.01.030(a) and Section 5.01.045(a)(1) of the Metro Code for continued operation of a solid waste facility without an appropriate license from Metro

Dear Mr. Obrist and Mr. Church:

On October 6, 2005, Dan Obrist Recycling ("DOR") was issued Notice of Violation ("NOV") No. NOV-147-05 for continuing to accept solid waste from the public and failing to abide by the conditions under which Metro had agreed to use enforcement discretion under a previous Notice of Noncompliance (NON-126-03) issued to DOR in January 2004.\* I have conducted an investigation of the operations of DOR. As set forth below, based on this investigation, I now find that DOR is again violating the same provisions of the Metro Code that elicited NON-126-03 and NOV-147-05. DOR is hereby notified of my findings.

## I. FACTS, APPLICABLE LICENSE AND CODE PROVISIONS

### A. Facts

In NOV-147-05 issued on October 6, 2005, Metro provided DOR with an opportunity to "cure" its violations by ceasing to accept any solid waste other than source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and source-separated metals. In addition, DOR was required either to cease accepting and processing mixed construction and demolition debris, including debris generated from DOR's own demolition projects or to submit a complete solid

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\* At the time the initial notice was issued, such notices were termed "Notices of Noncompliance" or "NONs." Metro now refers to such notices as "Notices of Violation" or "NOVs." There is no difference in meaning between the two terms.



waste facility license application to Metro by October 14, 2005. If DOR chose to submit a license application to Metro, then in the interim, DOR would have been allowed to continue to accept and process mixed construction and demolition debris generated from its own demolition projects until such time that Metro acted on its application.

DOR did not submit a complete application to Metro by October 14, 2005 and on February 2, 2006, the Metro Council enacted a moratorium on the acceptance of new applications for non-putrescible waste processing facilities.

In a letter to you dated May 15, 2006, I updated you on the status of NOV-147-05. The letter specifically stated, "DOR is presently prohibited from accepting solid waste, including construction and demolition waste, from any source, including demolition projects undertaken by your own demolition business." The letter also informed you that your facility would be periodically re-inspected by Metro staff to assure compliance and that if DOR failed to comply, Metro would impose monetary penalties of up to \$500 per incident of noncompliance (with each successive day of a continuing violation considered as a separate violation) and that Metro may seek an injunction to prohibit DOR from continuing prohibited activities.

During an inspection of DOR's facility located at 4540 SE 174<sup>th</sup> Avenue, in Portland, conducted on July 6, 2006, by Metro inspector Rob Smoot, the inspector again observed construction and demolition debris on site. These observations were documented in photographs and an inspection report. Conversations with the site manager and with you confirmed that the demolition debris was generated and delivered to DOR by your own demolition business.

#### B. Applicable License and Code Provisions and Finding of Violation

Section 5.01.030(a) of the Metro Code stipulates that it shall be unlawful for any person to establish, operate, or maintain a solid waste facility within the Metro region without an appropriate Metro license or franchise. "Solid Waste Facility" is defined in Code section 5.01.010(uu) to include the land and buildings used to receive solid waste for resource recovery and processing. "Solid Waste" is defined in Code section 5.01.010(tt) to specifically include demolition and construction waste. The activities being undertaken by DOR are not exempt under Code section 5.01.040. DOR is therefore in violation of section 5.01.030(a) of the Metro Code.

Section 5.01.045(a)(1) of the Metro Code stipulates that a Metro Solid Waste License shall be required of a person owning or controlling a facility that processes non-putrescible waste. DOR does not have a Metro Solid Waste License but continues to process non-putrescible waste (specifically, construction and demolition debris). DOR is therefore in violation of section 5.01.045(a)(1) of the Metro Code.

Code Section 5.01.200 stipulates that each violation of the chapter shall be punishable by a fine of not more than \$500, and that each day a violation continues is considered a separate violation.

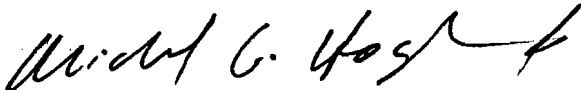
## II. IMPOSITION OF MONETARY PENALTY

The violations described above cannot be cured. In determining appropriate penalties for such violations, Metro examines the totality of the situation. In determining the appropriate penalty for these violations, I considered all of the factors described above including that this is not the first NOV issued to DOR for the same type of violation and that shortly before these violations were observed, DOR was specifically reminded of the prohibition on the acceptance of construction and demolition debris. Given these factors, I am imposing a penalty of \$500 in total for the violations documented during the June 6, 2006 inspection. Metro will continue to conduct follow-up inspections. Any additional violations will also be subject to fines of up to \$500 per violation with each day that prohibited material remains on site constituting a separate violation. Metro may also seek an injunction to prohibit DOR from continuing prohibited activities.

DOR has a right to request a hearing concerning this Notice of Violation and imposition of a monetary penalty. Formal contested case notice is provided with this letter. If DOR requests a hearing, it can be represented by legal counsel at such hearing if it so desires.

If you have any questions regarding these findings, please contact Steve Kraten at (503) 797-1678, or Roy Brower at (503) 797-1657, or have your attorney contact Paul Garrahan, Assistant Metro Attorney, at (503) 797-1661.

Sincerely,



Michael G. Hogle  
Solid Waste & Recycling Director

MH:SK:mb

cc: Roy Brower, Regulatory Affairs Division Manager  
Warren Johnson, Solid Waste Facility Inspector  
Rob Smoot, Solid Waste Facility Inspector  
Will Ennis, Solid Waste Facility Inspector  
Steve Kraten, Solid Waste Principal Planner  
Paul Garrahan, Assistant Metro Attorney  
Kathleen Stokes, Portland Bureau of Development Services  
Rebecca Esau, Portland Bureau of Development Services  
Duane Altig, DEQ  
Dave Thomsen, Multnomah County Health Department  
S:\REM\kraten\Facilities\Dan Obrist Recyc\NOV-155-06 071406 final.doc  
Queue

BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF METRO NOTICE OF )  
VIOLATION NO. NOV-155-06 AND ) CONTESTED CASE  
IMPOSITION OF A MONETARY PENALTY ) NOTICE  
ISSUED TO DAN OBRIST EXCAVATION, )  
INC., dba DAN OBRIST RECYCLING FOR )  
VIOLATIONS OF SECTIONS 5.01.030 AND )  
5.01.045 OF THE METRO CODE )

TO: DAN OBRIST EXCAVATION, INC., dba DAN OBRIST RECYCLING, 6431 Jenne Road, Portland, OR 97236

Pursuant to Metro Code § 2.05.005(c), Metro hereby provides Dan Obrist Recycling ("DOR") with contested case notice in the matter of the Solid Waste & Recycling Director's findings and imposition of a monetary penalty for the violations described in the Director's Notice of Violation No. NOV-155-06. Specifically, DOR violated Section 5.01.030(a) and Section 5.01.045(a)(1) of the Metro Code. A copy of the Director's Notice of Violation No. NOV-155-06 is being provided with this notice, and is incorporated herein by reference.

A contested case arises in this matter pursuant to Metro's authority under Article XI, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, including ORS 268.317, and Metro Code Chapters 2.05 and 5.01, including, specifically, Metro Code Sections 5.01.030, 5.01.045, 5.01.180 and 5.01.200. Pursuant to Metro Code Chapter 2.05, DOR has a right to request a hearing within 30 days of the date of the mailing of this notice. A hearing, if requested, would concern the citation and findings of the Director with regard to DOR's failure to adhere to Sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code. DOR can be represented by legal counsel at the hearing, if it so desires.

DATED the 14 day of July 2006.

  
\_\_\_\_\_  
Michael G. Hoglund  
Metro, Solid Waste & Recycling Department Director

CERTIFICATE OF SERVICE


I hereby certify that I served the foregoing NOTICE OF CONTESTED CASE on the following:

Dan Obrist  
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling  
6431 Jenne Rd.  
Portland, OR 97236

and

James D. Church, registered agent for Dan Obrist Excavation, Inc.  
1001 SW 5th Ave. Suite 1520  
Portland, OR 97204

On July, 14 2006, by mailing to said individual a complete and correct copy thereof via certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. post office at Portland, Oregon.

  
Roy W. Brower  
Regulatory Affairs Manager  
Metro

**Robert J. Harris • Attorney at Law**

**METRO Hearings Officer**

165 S.E. 26<sup>th</sup> Avenue, Hillsboro, Oregon 97123 • Phone (503) 648-4777 • Fax (503) 648-0989

July 25, 2006

Dan Obrist  
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling  
6431 Jenne Road  
Portland, Oregon 97236

*RE: Notice of Violation No. NOV-155-06  
Dan Obrist Recycling*

**Hearing Date:** August 2, 2006 at 9:30 a.m.

**PLACE:** **METRO**  
**600 Northeast Grand Avenue**  
**Portland, Oregon 97232**

06 JUL 28 AM 9:55  
METRO  
SW&R DEPT  
COPY

At Respondent's request a Hearing has been set on the above referenced matter for August 2, 2006 at 9:30 a.m.. The hearing will be held on that date at Metro Offices, located at 600 Northeast Grand Avenue, Portland, Oregon 97232. This hearing will be conducted pursuant to the provisions of Metro Code Chapter 2.05.

Please read this notice and the enclosed documents carefully. Some or all of the documents will be made a part of the record.

The following documents are enclosed:

1. Findings of Facts, regarding Metro Violation No. NOV-155-06 and dated July 14, 2006;
2. Contested Case Notice dated July 14, 2006; and
3. Explanation of Rights.

If any parties, or witnesses is in need of an interpreter or if they have any special needs, you need to contact Barbara Leslie, Metro, at (503) 797-1835, to make arrangements prior to the hearing.

Very truly yours,

Robert J. Harris  
Metro Hearings Officer

RJH:jah  
Enclosures

cc: Steve Kraten, Principal Solid Waste Planner  
Barb Leslie, Metro

**Robert J. Harris • Attorney at Law**

**METRO Hearings Officer**

165 S.E. 26<sup>th</sup> Avenue, Hillsboro, Oregon 97123 • Phone (503) 648-4777 • Fax (503) 648-0989

July 31, 2006

Dan Obrist  
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling  
6431 Jenne Road  
Portland, Oregon 97236

**COPY**  
METRO  
SW&R DEPT  
06 AUG - 10:31

**RE: NOTICE OF NEW HEARING DATE**  
**Notice of Violation No. NOV-155-06**  
**Dan Obrist Recycling**

**Hearing Date: September 6, 2006 at 9:30 a.m.**  
**PLACE: METRO**  
**600 Northeast Grand Avenue**  
**Portland, Oregon 97232**

At Respondent's request a Hearing has been set on the above referenced matter for August 2, 2006 at 9:30 a.m.. The hearing will be held on that date at Metro Offices, located at 600 Northeast Grand Avenue, Portland, Oregon 97232. This hearing will be conducted pursuant to the provisions of Metro Code Chapter 2.05.

Please read this notice and the enclosed documents carefully. Some or all of the documents will be made a part of the record.

If any parties, or witnesses is in need of an interpreter or if they have any special needs, you need to contact Barbara Leslie, Metro, at (503) 797-1835, to make arrangements prior to the hearing.

Very truly yours,

Robert J. Harris  
Metro Hearings Officer

RJH:jah

cc: Steve Kraten, Principal Solid Waste Planner  
Barb Leslie, Metro



METRO

### Inspection Notes

|                     |                                            |                     |                       |
|---------------------|--------------------------------------------|---------------------|-----------------------|
| Facility Name:      | <u>Dan Obrist Recycling</u>                | Date of Inspection: | <u>July 6, 2006</u>   |
| Inspector:          | <u>Rob Smoot</u>                           | Time of Inspection: | <u>16:00 to 16:45</u> |
| Weather Conditions: | <u>70° F., overcast, wind SSW @ 0-5mph</u> |                     |                       |

The inspector approached the subject site via Jenny Road from the south. The inspector parked across the street from the facility. The inspector did not observe any substantial amounts of litter or waste debris along the roadway as he approached the site nor did he notice any substantial malodors along that area.

The site entrance gate was open. The inspector sat in the vehicle and observed vehicles coming and going from the site. He was also able to observe some of the facility operators. At the time of arrival there were a couple of trucks unloading what appeared to be yard debris and construction waste (wood, cardboard, plastic wrap). Most vehicles entering the site were not covered. Most loads observed at the time of this inspection were yard debris.

The inspector left his vehicle across the street and walked into the site. The inspector greeted Mr. Johnny Schmitz (DOR employee that directs incoming loads). The inspector asked to observe the site and take photos; permission was granted.

The inspector took photos of waste recently deposited in front of stored material. The inspector asked if the lumber wrap, which is plastic (green in the photo), was being ground with wood. Mr. Schmitz said yes.

The inspector took photos of a large pile (30 plus cubic yards) of construction debris. The inspector asked the nature of the waste. Mr. Schmitz said that it was from demolition performed by Dan Obrist. The pile contained foam, plastic, sheetrock, roofing paper, insulation, glass, metal, etc.

There was a small amount of foam and carpet also stored on site. Mr. Schmitz said that it would be sent to Grabhorn.

The inspector observed a fair amount of non-wood type material in the ground hog fuel pile. A photo was taken to show this.

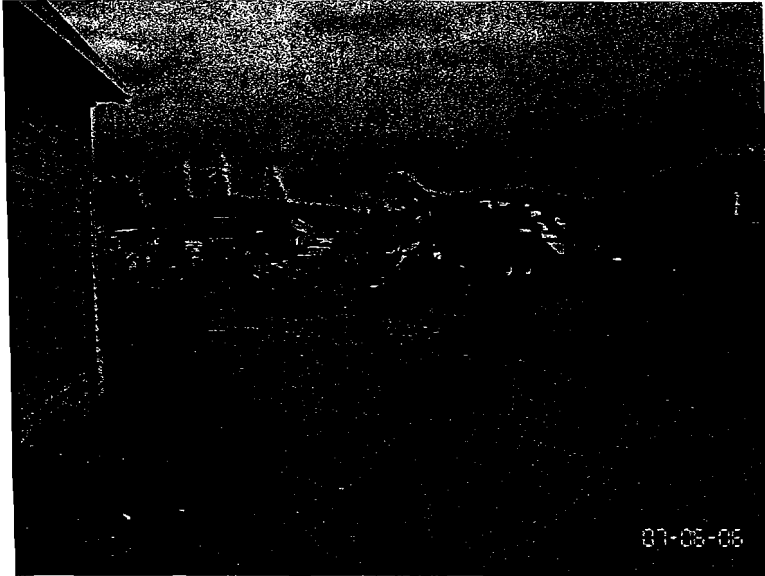
Mr. Schmitz was not aware of any complaints lodged against the facility. Mr. Obrist called Mr. Schmitz to have Mr. Schmitz ask the inspector to visit Mr. Obrist at his shop (located about a mile south of the facility, off Jenny rd.). The inspector informed Mr. Schmitz that there may not be time for that.

The inspector called Mr. Obrist on July 7, 2006 at 11:45am to inquire about the demolition debris that was observed on site. Mr. Obrist said that the material was to be ground as hog fuel. He said that they do not process the material on site.

Mr. Obrist said that he was working with an aid of one of the City Commissioners (Portland) on the plan for his perimeter wall. He also said that the Centennial School District is interested in the property for parking their busses.

13 photos were taken during the inspection.

End of Inspection Notes by Rob Smoot



from site entrance

#1



siding material with lumber wrap, glue tubes, paper, plastic, etc. from one load.

#2



scrap aluminum at NE corner of site.

#3





Aluminum and firewood along eastside of site

#4



wider view of siding waste with yard debris pile in background

#5



Demolition pile from 20 yards away

#6



Metals storage bunker

#7



wood and yard debris storage bunker

#8



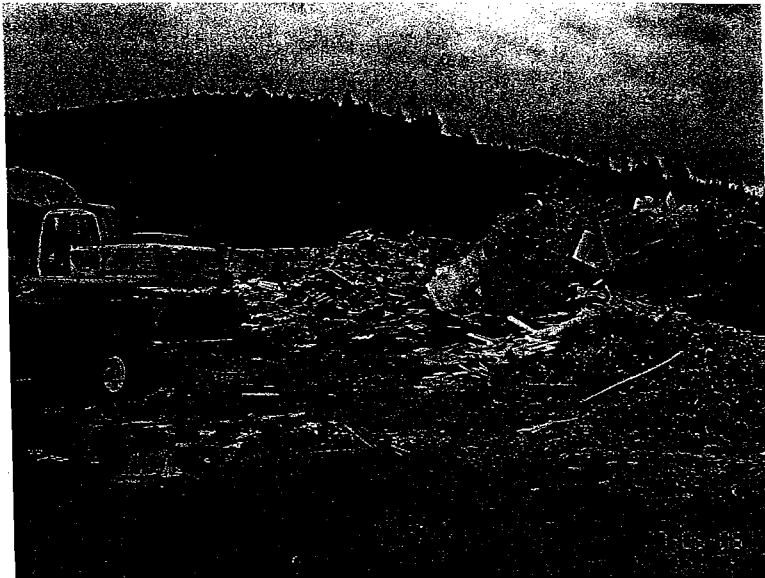
rock crushing equipment in middle of site

#9



Another view of demolition debris with foam and carpet shown to left

# 10



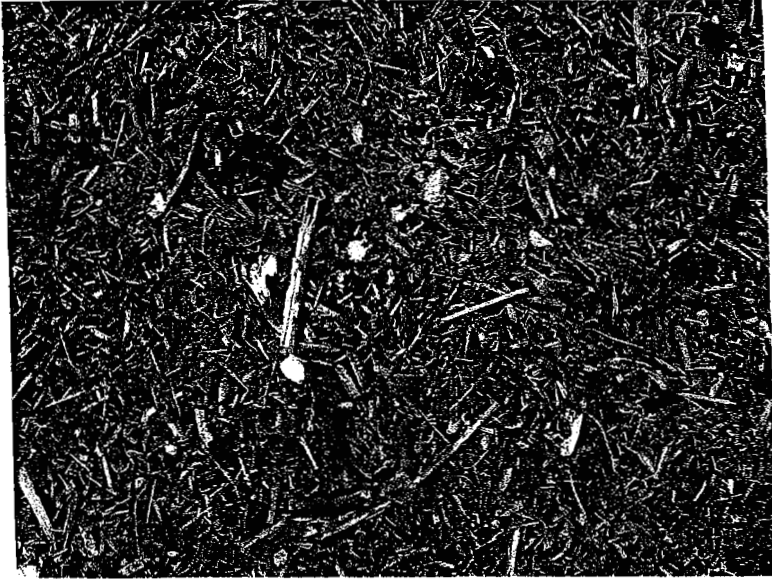
different angle of demolition debris

# 11



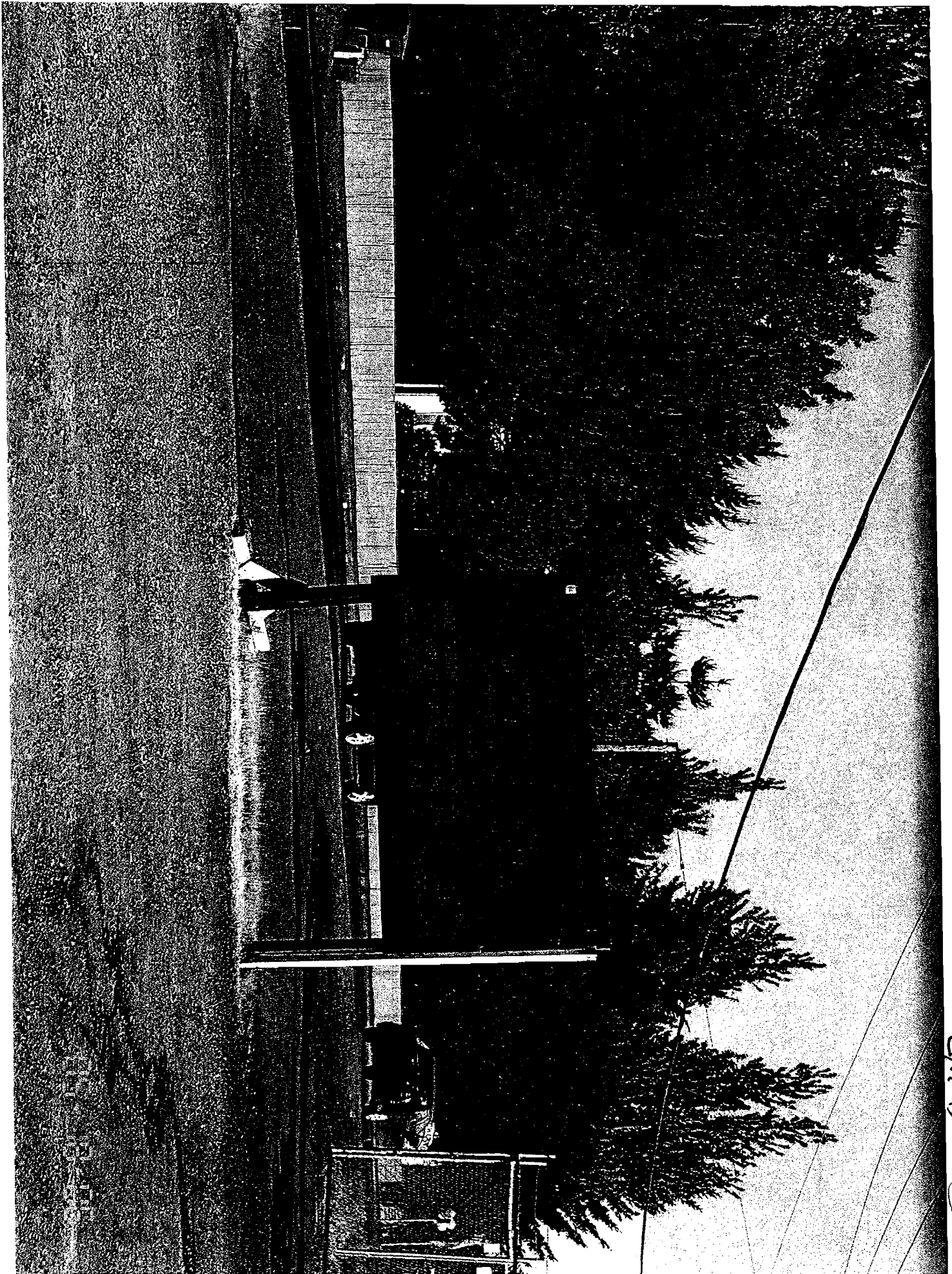
Demolition debris with better view of couch in foreground

# 12



ground hog fuel

# 13



EX. B (12)



METRO

ENTHUSIAST C

January 5, 2004

Dan Obrist  
Dan Obrist Recycling  
6431 Jenne Rd.  
Portland, OR 97236

RE: Finding of Violation for unauthorized material recovery operations at Dan Obrist Recycling (No. NON-126-03)

Dear Mr. Obrist:

Under Metro Code Sections 5.01.030(a) and 5.01.045(a)(1), it is unlawful to operate a solid waste facility or disposal site within the Metro region without a license or franchise. In addition, under Metro Code Section 5.01.030(c), it is unlawful to deliver or transport solid waste to any place other than a licensed or franchised solid waste facility or disposal site, or to an exempt facility as provided in Metro Code Section 5.01.040. Dan Obrist Recycling (DOR) operates both a demolition and waste hauling business and a solid waste sorting facility. The DOR facility, located at 4540 SE 174<sup>th</sup> Avenue, in Portland, is not an exempt facility and has not obtained a Metro solid waste facility license or franchise, yet is operating as a solid waste facility. In addition, the DOR demolition and waste hauling business has delivered or transported solid waste to the DOR facility. Therefore, as set forth below, I find that DOR has violated the Metro Code. This notice details DOR's violations.

#### I. BACKGROUND

On March 19, 2003 you participated in a license pre-application conference with Metro staff during which it was explained to you that material recovery activities may only be performed under the authority of a Metro solid waste facility license. This information was summarized in a follow-up letter to you dated March 25, 2003.

An application for a solid waste facility license requires proof of local land use approval. According to the City of Portland, you need to obtain conditional use approval from the City in order to operate a solid waste facility on your property. Although you have stated to Metro Regulatory Affairs staff that you believe your facility's activities are "grandfathered in," as documented in a progress letter dated October 29, 2003, the City of Portland has searched its files regarding your site and has found no evidence that confirms the existence of a right to a legal nonconforming use. Moreover, the listing of your facility in Metro's construction site recycling guide does not constitute or imply any kind of operating authority conferred by Metro or land use approval or authority conferred by a local government.

## II. FACTS, APPLICABLE LICENSE AND CODE PROVISIONS

### A. Facts

During a visit to DOR on October 28, 2003, Metro inspectors observed the facility running debris consisting of whole demolished houses over a picking line where wood and metal were being sorted from other materials for recovery. Although inert materials such as concrete and brick may be sorted and recovered at locations separate from the actual demolition sites at which they were generated without need of a Metro license, the processing of whole demolished buildings (or any other mixed solid waste) off-site may not be performed without a Metro license.

### B. Applicable License and Code Provisions and Finding of Violation

Section 5.01.030(c) of the Metro Code stipulates that it shall be unlawful for any person to deliver or transport solid waste to any place other than a Metro-authorized solid waste facility or a disposal site that is exempt under Chapter 5.01. Metro staff have observed that DOR continues to deliver demolition debris from your project sites to the DOR facility. Such deliveries are in violation of section 5.01.030(c) of the Metro Code.

Sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code further stipulate that it shall be unlawful for any person to establish, operate, or maintain a solid waste facility within the Metro region without an appropriate Metro license or franchise. "Solid Waste Facility" is defined in Code section 5.01.010(tt) as the land and buildings used to receive solid waste for resource recovery and processing. "Solid Waste" is defined in Code section 5.01.010(ss) to specifically include demolition waste. The activities being undertaken by DOR are not exempt under Code section 5.01.040. DOR is therefore also in violation of section 5.01.030(a) of the Metro Code.

Code Section 5.01.200 stipulates that each violation of the chapter shall be punishable by a fine of not more than \$500.

## III. OPPORTUNITY TO CURE

Metro considers these to be serious violations but will provide DOR with an opportunity to "cure" the violation without the imposition of a monetary penalty.

Metro will consider these violations "cured" only when DOR either permanently ceases accepting mixed construction and demolition debris and agrees to change its operating procedures accordingly or obtains a Metro solid waste facility license authorizing such activity. If DOR chooses to stop accepting such waste, please notify Metro of your decision in a letter. In such a case, Metro staff will continue to monitor your facility and Metro will pursue enforcement action against your facility for future violations of the Metro Code.

If you choose to pursue a solid waste facility license, in the interim period while you are seeking a license Metro will exercise its enforcement discretion to allow DOR to temporarily continue to process demolition debris from Dan Obrist demolition projects only, provided that DOR:

- does so in a manner that does not generate nuisance conditions;

- ceases accepting any demolition debris or other solid waste from any other demolition contractor or the public<sup>1</sup>; and
- makes timely progress in acquiring local land use approval and a Metro solid waste facility license.

If DOR is denied local land use approval to operate a solid waste facility, then it must cease recovery operations from construction and demolition debris at the DOR facility as of the date of such denial. In such a case, DOR may choose to deliver its demolition debris to an authorized material recovery facility.

If DOR is granted local land use approval, then it must submit a complete solid waste facility license application to Metro within 30 days of the date its local land use approval is granted. In such a case, if DOR fails to submit a complete license application but continues to process construction or demolition debris at its facility, pursuant to Metro Code 5.01.200(g), Metro will seek civil penalties of up to \$500 per day for each day it continues such activities and may seek an injunction to prohibit DOR from continuing such activities.

In the event that DOR has not secured local land use approval to operate a solid waste facility by May 1, 2004, Metro will reevaluate its decision to exercise enforcement discretion in this matter, will determine whether it believes DOR is continuing to make timely progress toward acquiring local land use approval and a solid waste facility license, and will inform DOR as to whether Metro will continue to exercise enforcement discretion in this matter.

If you have any questions regarding these findings, please contact Steve Kraten at (503) 797-1678, or have your attorney contact Paul Garrahan, Assistant Metro Attorney, at (503) 797-1661.

Sincerely,



Michael Hoglund  
Metro Solid Waste & Recycling Dept. Director

SK/MJ:bjl

cc: Michael Jordan, Chief Operating Officer  
Roy Brower, Regulatory Affairs Division Manager  
Steve Kraten, Principal Solid Waste Planner  
Paul Garrahan, Assistant Metro Attorney  
Michelle Seward, Senior Planner, Portland Bureau of Development Services  
Dave Kunz, DEQ

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<sup>1</sup> If DOR accepts any demolition debris or other solid waste from the public, then Metro will consider such acts as additional violations of the Metro Code.





METRO

Exhibit D

October 6, 2005

Dan Obrist  
Dan Obrist Recycling  
6431 Jenne Rd.  
Portland, OR 97236

RE: Citation and Notice of Violation for acceptance of unauthorized solid waste at Dan Obrist Recycling (NOV-147-05)

Dear Mr. Obrist:

Dan Obrist Recycling ("DOR") has continued to accept solid waste from the public and therefore has failed to abide by the conditions under which Metro had agreed to use enforcement discretion under a Notice of Violation issued to DOR in January 2004. Therefore, as set forth below, I find that DOR is again in violation of the Metro Code. This notice is to serve as a citation that details DOR's continuing violations.

## I. BACKGROUND

On January 5, 2004, DOR was issued Notice of Noncompliance # NON-126-03 (the "NON") for unlawfully operating a solid waste facility at 4540 SE 174<sup>th</sup> Avenue, in Portland without a license or franchise. The Notice stated that Metro would use enforcement discretion and not take further enforcement action regarding continued processing of demolition debris generated by your own demolition business provided that you made steady progress toward obtaining local land use approval and a Metro solid waste facility license. The NON also ordered DOR to cease accepting solid waste from any other demolition contractor and the public.

DOR was specifically warned in NON-126-03 that if it accepted any demolition debris or other solid waste from the public, Metro would consider such acts as additional violations of the Metro Code.

## II. FACTS, APPLICABLE LICENSE AND CODE PROVISIONS

### A. Facts

Metro staff observed DOR accepting mixed solid waste from the public at the DOR facility on August 30 and 31, and September 1, 2, 6, and 7, 2005. These observations were documented in inspection reports and photographs. Multnomah County Health Department staff

made similar observations during an inspection of the facility on August 29, 2005. County staff's observations were also documented in an inspection report and photographs. Solid waste observed at the facility during the above mentioned dates included carpet, plastic buckets, fiberglass panels, roofing, a mattress, household items, and mixed putrescible waste.

#### B. Applicable License and Code Provisions and Finding of Violation

Sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code stipulate that it shall be unlawful for any person to establish, operate, or maintain a solid waste facility within the Metro region without an appropriate Metro license or franchise. "Solid Waste Facility" is defined in Code section 5.01.010(tt) as the land and buildings used to receive solid waste for resource recovery and processing. "Solid Waste" is defined in Code section 5.01.010(ss) to specifically include demolition waste. The activities being undertaken by DOR are not exempt under Code section 5.01.040. I therefore find that DOR is engaged in continuing violations of sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code.

Code Section 5.01.200 stipulates that each violation of the chapter shall be punishable by a fine of not more than \$500, and that each day a violation continues constitutes a separate violation subject to such a fine.

#### III. OPPORTUNITY TO CURE

Metro will provide DOR with an opportunity to "cure" the current violations without the imposition of a monetary penalty. Metro will consider these current violations "cured" only if DOR:

1. Immediately ceases accepting all solid waste other than source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and source-separated metals, and
2. Either
  - a. Immediately ceases accepting and processing mixed construction and demolition debris generated from DOR's own demolition projects and informs Metro in writing no later than October 14, 2005, that DOR has ceased accepting and processing such waste and will not accept and process such waste in the future; or
  - b. Submits a complete solid waste facility license application to Metro by October 14, 2005. If DOR chooses to submit a license application to Metro, then, in the interim, DOR may continue to accept and process mixed construction and demolition debris generated from its own demolition projects. However, with respect to such mixed construction and demolition debris, DOR must provide documentation of the origin of loads upon Metro's request and, if no documentation is provided, we will presume that such waste originated from other persons and will consider that a failure to cure this violation. We note that, if you file a license application, Metro will only consider authorizing activities for which

your application includes written local land use approval (see below for additional information regarding your land use approval).

DOR will be re-inspected by Metro staff to assure compliance. If DOR fails to comply, Metro will impose monetary penalties of up to \$500 per day of noncompliance and may seek an injunction to prohibit DOR from continuing such activities. Please keep in mind also that when evaluating a solid waste facility license application, one of the factors Metro considers is the applicant's compliance history.

#### IV. LAND USE APPROVAL

DOR has recently obtained a land use decision from the City of Portland approving operation of a "recycling facility for building materials and used concrete and a manufacturing use that creates hog fuel from wood and yard debris," provided that DOR meets certain specified conditions. The City's written decision authorizes DOR to continue to conduct activities of the type it has pursued at the site for a number of years. However, the City's decision does not include authority to conduct expanded material recovery from mixed waste such as you described during your Metro license pre-application conference on July 28, 2005. Such land use authority must be provided to Metro in the form of a Land Use Compatibility Statement (LUCS) signed by an appropriate City representative before Metro will issue a solid waste facility license to DOR. The LUCS must clearly and unambiguously authorize DOR to process mixed non-putrescible solid waste in order to be considered a valid land use approval for the type of facility authorization you have indicated that you intend to seek from Metro. Your application will not be deemed "complete" without such a LUCS.

A Metro license is not required for a facility that accepts only materials that have been separated from solid waste at the site of generation. If you have any questions about this, please call Steve Kraten at (503) 797-1678.

Sincerely,



Michael G. Hoglund  
Solid Waste & Recycling Director

MH/SK:bjl

cc: Roy Brower, Regulatory Affairs Division Manager  
Warren Johnson, Solid Waste Facility Inspector  
Paul Garrahan, Assistant Metro Attorney  
Kathleen Stokes, Portland Bureau of Development Services  
Rebecca Esau, Portland Bureau of Development Services  
Duane Altig, DEQ  
Dave Thomsen, Multnomah County Health Department



METRO

Exhibit E

May 15, 2006

Dan Obrist  
Dan Obrist Recycling  
6431 Jenne Rd.  
Portland, OR 97236

RE: Status of Notice of Noncompliance number NON-126-03 and Notice of Violation number NOV-147-05 issued to Dan Obrist Recycling for acceptance of unauthorized solid waste

Dear Mr. Obrist:

On October 6, 2005, Dan Obrist Recycling ("DOR") was issued Notice of Violation ("NOV") No. NOV-147-05 for continuing to accept solid waste from the public and failing to abide by the conditions under which Metro had agreed to use enforcement discretion under a previous Notice of Noncompliance (NON-126-03) issued to DOR in January 2004.\* The purpose of this letter is to clarify the current status of DOR as regards these notices.

#### BACKGROUND

In NOV-147-05 issued on October 6, 2005, Metro provided DOR with an opportunity to "cure" its violations by ceasing to accept any solid waste other than source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and source-separated metals. In addition, DOR was required either to cease accepting and processing mixed construction and demolition debris, *including debris generated from DOR's own demolition projects* or to submit a complete solid waste facility license application to Metro by October 14, 2005. If DOR chose to submit a license application to Metro, then in the interim, DOR would have been allowed to continue to accept and process mixed construction and demolition debris generated from its own demolition projects, until such time that Metro acted on its application.

DOR initially chose the option of pursuing a Metro application and continuing to accept and process mixed construction and demolition debris generated from its own demolition projects.

\* At the time the initial notice was issued, such notices were termed "Notices of Noncompliance" or "NONs." Later, such notices came to be called "Notices of Violation" or "NOVs." There is no difference in meaning between the two terms.

However, DOR did not submit a complete application to Metro by October 14, 2005 and on February 2, 2006, the Metro Council enacted a moratorium on the acceptance of new applications for non-putrescible waste processing facilities.

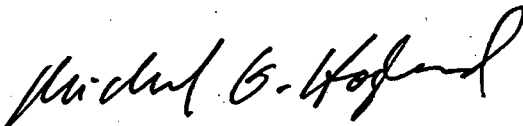
## CURRENT STATUS

Until such time as the moratorium is lifted and DOR completes its application and obtains a Metro solid waste facility license, DOR does not have authority to accept solid waste. "Solid Waste" is defined in Metro Code section 5.01.010(ss) to specifically include demolition waste. Thus, DOR is presently prohibited from accepting solid waste, including construction and demolition waste, from any source, including demolition projects undertaken by your own demolition business.

A Metro license is not required for a facility that accepts only materials that have been separated from solid waste at the site of generation. Such materials would include source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and metals. Such materials, however, may not be mixed in a single load—any load that requires processing at your facility to separate recoverable materials is not authorized. DOR may remove contaminants from any source-separated, homogeneous loads, provided that such contaminants are not present in more than trivial amounts. To repeat, DOR may not accept any loads of material that require sorting, even if the different components of a load are all recyclable.

DOR will be periodically re-inspected by Metro staff to assure compliance. If DOR remains in compliance for a period of six months following the date of this letter, then Metro will deem the existing NOV to be cured. If DOR fails to comply, Metro will impose monetary penalties of up to \$500 per incident of noncompliance (and each successive day of a continuing violation is a separate violation) and may seek an injunction to prohibit DOR from continuing prohibited activities. If you have any questions about this, please call Steve Kraten at (503) 797-1678.

Sincerely,



Michael G. Hogle  
Solid Waste & Recycling Director

SK/MT:bjl

cc: Roy Brower, Regulatory Affairs Division Manager  
Warren Johnson, Solid Waste Facility Inspector  
Steve Kraten, Solid Waste Principal Planner  
Paul Garrahan, Assistant Metro Attorney  
Kathleen Stokes, Portland Bureau of Development Services  
Rebecca Esau, Portland Bureau of Development Services  
Duane Altig, DEQ  
Dave Thomsen, Multnomah County Health Department

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE ) Ordinance No. 06-1129A  
REGIONAL FRAMEWORK PLAN TO REVISE )  
METRO POLICIES ON HOUSING CHOICE )  
AND AFFORDABLE HOUSING AND )  
AMENDING METRO CODE SECTIONS )  
3.07.710 THROUGH 3.07.760 TO IMPLEMENT ) Introduced by Councilors Rex Burkholder and  
THE NEW POLICIES ) Robert Liberty

WHEREAS, the provision of housing choice for all families and individuals across the region is a matter of regional concern because of its impact on regional economic competitiveness, access to jobs, transportation investments, environmental quality and issues of fairness to people and among communities; and

WHEREAS, Metro established the Housing Choice Task Force (“HCTF”) to make recommendations to the Metro Council on strategies to increase the supply of affordable housing and housing choices in the region; and

WHEREAS, the HCTF submitted its Regional Housing Choice Implementation Strategy (“RHCIS”) to the Metro Council in March, 2006, with a comprehensive set of recommendations for policies and mechanisms to increase housing choice and the production and preservation of affordable housing; and

WHEREAS, the Metro Council accepted the recommendations of the HFTF contained in the RHCIS by Resolution No. 06-3677B (For the Purpose of Accepting the Regional Housing Choice Task Force Strategy Recommended by the Housing Choice Task Force Appointed by the Metro Council) on April 20, 2006; and

WHEREAS, the Metro Council, by the same Resolution No. 06-3677B, directed the Chief Operating Officer to prepare an ordinance for consideration by the Council to make appropriate amendments to the Regional Framework Plan and the Urban Growth Management Functional Plan to implement the recommendations of the RHCIS; and

WHEREAS, the Metropolitan Policy Advisory Council reviewed the proposed amendments and recommended that the Metro Council adopt the amendments; and

WHEREAS, the Metro Council held a public hearing on the proposed amendments on ~~December \_\_, 2006~~ January 25, 2007, and considered public comments in their decision-making; now, therefore,

BE IT RESOLVED that:

1. Policy 1.3 of the Regional Framework Plan is amended as indicated in Exhibit A, attached and incorporated into this ordinance.
2. Metro Code sections 3.07.710 through 3.07.760 (Title 7 of the Urban Growth Management Functional Plan) are amended as indicated in Exhibit B, attached and incorporated into this ordinance.
3. The amendments to the Regional Framework Plan and the Urban Growth Management Functional Plan comply with the statewide planning goals as indicated in Exhibit C, the Findings of Fact and Conclusions of Law, attached and incorporated into this ordinance.

ADOPTED by the Metro Council this \_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A to Ordinance No. 06-1129<sup>A</sup>**  
**Amendments to the Regional Framework Plan Policy 1.3**

**1.3 ~~Housing and Affordable Housing~~ Choice**

It is the policy of the Metro Council to:

1.3.1 Provide housing choices in the region, including single family, multi-family, ownership and rental housing, and housing offered by the private, public and nonprofit sectors.

~~1.3.12~~ 1.3.2 ~~E~~As part of the effort to provide housing choices, encourage~~affordable housing opportunities in the region by~~ local governments to ensure that their land use regulations:

a. ~~Offering~~Allow a diverse range of housing types,~~available within the region, and within cities and counties inside Metro's Urban Growth Boundary.;~~

b. ~~Being~~Make housing choices available to households of all income levels~~that live or have a member working in each jurisdiction and subregion.;~~ and

c. ~~Providing an appropriate balance of jobs and housing of all types within subregions.~~

~~d.~~ Addressing current and future need for and supply of affordable housing production goals. Allow affordable housing, particularly in Centers and Corridors and other areas well-served with public services.

~~e.~~ Minimizing any concentration of poverty.

~~1.3.23~~ 1.3.3 ~~Include in the Urban Growth Management Functional Plan~~ Maintain voluntary affordable housing production goals for the region, to be revised over time as new information becomes available and displayed in Chapter 8 (Implementation), and encourage their adoption by the cities and counties of the region, to be adopted by local jurisdictions in the region as well as land use and non-land use affordable housing tools and strategies

1.3.4 Encourage local governments to consider the following tools and strategies to achieve the affordable housing production goals:

a. Density bonuses for affordable housing;

b. A no-net-loss affordable housing policy to be applied to quasi-judicial amendments to the comprehensive plan;

c. A voluntary inclusionary zoning policy;

d. A transferable development credits program for affordable housing;

e. Policies to accommodate the housing needs of the elderly and disabled;

f. Removal of regulatory constraints on the provision of affordable housing; and



- g. Policies to ensure that parking requirements do not discourage the provision of affordable housing.
- 1.3.35 Require local governments in the region to report progress towards increasing the supply of affordable housing and seek their assistance in periodic inventories of the supply of affordable housing.
- 1.3.46 ~~Acknowledge that there is a need to~~ Work in cooperation with local governments, state government, business groups, non-profit groups and citizens to create an affordable housing fund available region wide in order to leverage other affordable housing resources, and that, if the region is to be successful in increasing the amount of affordable housing, such a housing fund would need the support of a wide range of interests including local government, state and business groups.
- 1.3.7 Provide assistance to local governments to help them do their part in achieving regional goals for the production and preservation of housing choice and affordable housing.
- 1.3.8 Integrate Metro efforts to expand housing choices with other Metro activities, including transportation planning, land use planning and planning for parks and greenspaces.
- 1.3.9 When expanding the Urban Growth Boundary, assigning or amending 2040 Growth Concept design type designations or making other discretionary decisions, seek agreements with local governments and others to improve the balance of housing choices with particular attention to affordable housing.
- 1.3.10 Consider incentives, such as priority for planning grants and transportation funding, to local governments that obtain agreements from landowners and others to devote a portion of new residential capacity to affordable housing.
- 1.3.11 Help ensure opportunities for low-income housing types throughout the region so that families of modest means are not obliged to live concentrated in a few neighborhoods, because concentrating poverty is not desirable for the residents or the region.
- 1.3.12 For purposes of these policies, “affordable housing” means housing that families earning less than 50 percent of the median household income for the region can reasonably afford to rent and earn as much as or less than 100 percent of the median household income for the region can reasonably afford to buy. ~~without spending more than 30 percent of their after-tax income~~

**Exhibit B to Ordinance No. 06-1129<sup>A</sup>**  
**Amendments to Metro Code Sections 3.07.720 through 3.07.760**

**TITLE 7: ~~AFFORDABLE~~ HOUSING CHOICE**

3.07.710 Intent

The Regional Framework Plan ~~stated the need to provide affordable housing opportunities through: a) a diverse range of housing types, available within the region, and within cities and counties inside Metro's Urban Growth Boundary; b) sufficient and affordable housing opportunities available to households of all income levels that live or have a member working in each jurisdiction and subregion; c) an appropriate balance of jobs and housing of all types within subregions; d) addressing current and future need for and supply of affordable housing in the process used to determine affordable housing production goals; and e) minimizing any concentration of poverty. The Regional Framework Plan directs that Metro's Urban Growth Management Functional Plan include~~ calls for establishment of voluntary affordable housing production goals to be adopted by local ~~jurisdictions in the region as well as land use and non-land use affordable housing tools and strategies~~ governments and assistance from local governments on reports on. ~~The Regional Framework Plan also directs that Metro's Urban Growth Management Functional Plan include local governments' reporting progress towards increasing the supply of affordable housing.~~ It is the intent of Title 7 to implement these policies of the Regional Framework Plan.

~~Title 1 of this functional plan requires cities and counties to change their zoning to accommodate development at higher densities in locations supportive of the transportation system. Increasing allowable densities and requiring minimum densities encourage compact communities, more efficient use of land and should result in additional affordable housing opportunities. These Title 1 requirements are parts of the regional affordable housing strategy.~~

3.07.720 Voluntary Affordable Housing Production Goals

Each city and county within the Metro region should adopt the Affordable Housing Production Goal indicated in Table 3.07-7, ~~for their city or county~~ as amended over time, as a guide to measure progress toward increasing housing choices and meeting the affordable housing needs of households with incomes between 0% and 50% of the regional median family income.

3.07.730 Requirements for Comprehensive Plan and Implementing Ordinance Changes

A. Cities and counties within the Metro region shall ensure that their comprehensive plans and implementing ordinances:

1. Include strategies to ensure a diverse range of housing types within their jurisdictional boundaries.
2. Include in their plans actions and implementation measures designed to maintain the existing supply of affordable housing as well as increase the opportunities for new dispersed affordable housing within their boundaries.
3. Include plan policies, actions, and implementation measures aimed at increasing opportunities for households of all income levels to live within their individual jurisdictions in affordable housing.

~~B. Cities and counties within the Metro region shall consider amendment of their comprehensive plans and implementing ordinances with the following affordable housing land use tools and strategies identified below. Compliance with this subsection is achieved when the governing body of a city or county considers each tool or strategy in this subsection and either amends its comprehensive plan and implementing ordinances to adopt the tool or strategy or explains in writing why it has decided not to adopt it.~~

~~1. Density Bonus. A density bonus is an incentive to facilitate the development of affordable housing. Local jurisdictions could consider tying the amount of bonus to the targeted income group to encourage the development of affordable units to meet affordable housing production goals.~~

~~2. Replacement Housing. No Net Loss housing policies for local jurisdictional review of requested quasi-judicial Comprehensive Plan Map amendments with approval criteria that would require the replacement of existing housing that would be lost through the Plan Map amendment.~~

~~3. Inclusionary Housing.~~

- ~~a. Implement voluntary inclusionary housing programs tied to the provision of incentives such as Density Bonus incentives to facilitate the development of affordable housing.~~
- ~~b. Develop housing design requirements for housing components such as single-car garages and maximum square footage that tend to result in affordable housing.~~
- ~~e. Consider impacts on affordable housing as a criterion for any legislative or quasi-judicial zone change.~~

~~4. Transfer of Development Rights.~~

- ~~a. Implement TDR programs tailored to the specific conditions of a local jurisdiction.~~
- ~~b. Implement TDR programs in Main Street or Town Center areas that involve upzoning.~~

~~5. Elderly and People with Disabilities. Examine zoning codes for conflicts in meeting locational needs of these populations.~~

~~6. Local Regulatory Constraints; Discrepancies in Planning and Zoning Codes; Local Permitting or Approval Process.~~

- ~~a. Revise the permitting process (conditional use permits, etc.).~~
- ~~b. Review development and design standards for impact on affordable housing.~~
- ~~c. Consider using a cost/benefit analysis to determine impact of new regulations on housing production.~~
- ~~d. Regularly review existing codes for usefulness and conflicts.~~
- ~~e. Reduce number of land use appeal opportunities.~~

~~f. Allow fast tracking of affordable housing.~~

~~7. Parking.~~

~~a. Review parking requirements to ensure they meet the needs of residents of all types of housing.~~

~~b. Coordinate strategies with developers, transportation planners and other regional efforts so as to reduce the cost of providing parking in affordable housing developments.~~

~~3.07.740 Requirements for Inventory and Progress Reports on Housing Supply~~

~~Progress made by local jurisdictions in amending comprehensive plans and implementing ordinances and consideration of land use related affordable housing tools and strategies to meet the voluntary affordable housing production goals shall be reported according to the following schedule:~~

~~A. By January 31, 2002, cities and counties within the Metro region shall submit a brief status report to Metro as to what items they have considered and which items remain to be considered. This analysis could include identification of affordable housing land use tools currently in use as well as consideration of the land use tools in Section 3.07.730(B).~~

~~B. By December 31, 2003, each city and county within the Metro region shall provide a report to Metro on the status of its comprehensive plan and implementing ordinances explaining how each tool and strategy in subsection 3.07.730B was considered by its governing body. The report shall describe comprehensive plan and implementing ordinance amendments pending or adopted to implement each tool and strategy, or shall explain why the city or county decided not to adopt it.~~

~~C. By June 30, 2004, each city and county within the Metro region shall report to Metro on the outcome of the amendments to its comprehensive plan and implementing ordinances pending at the time of submittal of the report described in subsection B of this section and on the public response, if any, to any implementation adopted by the city or county to increase the community's stock of affordable~~

~~housing, including but not limited to the tools and strategies in subsection 3.07.730B.~~

~~3.07.750 Metro Assessment of Progress~~

~~A. Metro Council and MPAC shall review progress reports submitted by cities and counties and may provide comments to the jurisdictions.~~

~~B. Metro Council shall:~~

~~1. In 2003, estimate 2000 baseline affordable housing units affordable to defined income groups (less than 30 percent, 31-50 percent, 51-80 percent of the region's median family income) using 2000 U.S. Census data;~~

~~2. By December 2004, formally assess the region's progress made in 2001-2003 to achieve the affordable housing production goals in Table 3.07-7;~~

~~3. By December 2004, review and assess affordable housing tools and strategies implemented by local governments and other public and private entities;~~

~~4. By December 2004, examine federal and state legislative changes;~~

~~5. By December 2004, review the availability of a regional funding source;~~

~~6. By December 2004, update the estimate of the region's affordable housing need; and~~

~~7. By December 2004, in consultation with MPAC, create an ad hoc affordable housing task force with representatives of MPAC, MTAC, homebuilders, affordable housing providers, advocate groups, financial institutions, citizens, local governments, state government, and U.S. Housing and Urban Development Department to use the assessment reports and census data to recommend by December 2005 any studies or any changes that are warranted to the existing process, tools and strategies, funding plans or goals to ensure that significant progress is made toward providing affordable housing for those most in need.~~

A. Local governments shall assist Metro in the preparation of a biennial affordable housing inventory by fulfilling the reporting requirements in subsection 3.07.120D of Title 1 (Requirements for Housing and Employment Accommodation) and subsection B of this section.

B. Local governments shall report their progress on increasing the supply of affordable housing to Metro on a form provided by Metro, to be included as part of the biennial housing inventory described in subsection A. Local governments shall submit their first progress reports on April 15, 2007, and by April 15 every two years following that date. Local governments may report their progress as part of the capacity reports required by subsection 3.07.120D of Title 1 (Requirements for Housing and Employment Accommodation). Progress reports shall include, at least, the following information:

1. The number and types of units of affordable housing preserved and income groups served during the reporting period, as defined in Metro's form;

2. The number and types of units of affordable housing built and income groups served during the reporting period;

3. Affordable housing built and preserved in Centers and Corridors; and

4. City or county resources committed to the development of affordable housing, such as fee waivers and property tax exemptions.

~~3.07.760~~ 3.07.750 Recommendations to Implement Other Affordable Housing Strategies Technical Assistance

~~A. Local jurisdictions are encouraged to consider implementation of the following affordable housing land use tools to increase the inventory of affordable housing throughout the region. Additional information on these strategies and other land use strategies that could be considered by local jurisdictions are described in Chapter Four of the Regional Affordable Housing Strategy and its Appendixes.~~

- ~~1. Replacement Housing. Consider policies to prevent the loss of affordable housing through demolition in urban renewal areas by implementing a replacement housing ordinance specific to urban renewal zones.~~
  - ~~2. Inclusionary Housing. When creating urban renewal districts that include housing, include voluntary inclusionary housing requirements where appropriate.~~
- ~~B. Local jurisdictions are encouraged to analyze, adopt and apply locally appropriate non land use tools, including fee waivers or funding incentives as a means to make progress toward the Affordable Housing Production Goal. Non land use tools and strategies that could be considered by local jurisdictions are described in Chapter Four of the Regional Affordable Housing Strategy and its Appendixes. Cities and Counties are also encouraged to report on the analysis, adoption and application of non land use tools at the same intervals that they are reporting on land use tools (in Section 3.07.740).~~
- ~~C. Local jurisdictions are also encouraged to continue their efforts to promote housing affordable to other households with incomes 50% to 80% and 80% to 120% of the regional median household income.~~
- ~~D. Local jurisdictions are encouraged to consider joint coordination or action to meet their combined affordable housing production goals.~~

Cities and counties are encouraged to take advantage of the programs of technical and financial assistance provided by Metro to help achieve the goal of increased production and preservation of housing choices and affordable housing and to help fulfill the monitoring and reporting requirements of this title.



**Table 3.07-7**  
**Five-Year Voluntary Affordable Housing Production Goals**  
 (Section 3.07.720)

| <b>Jurisdiction</b>                         | <b>2001-2006 Affordable Housing Production Goals</b>                                                        |                                                                                                      |              |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|--------------|
|                                             | <i>Needed new housing units<br/>for households earning less<br/>than 30% of median<br/>household income</i> | <i>Needed new housing units<br/>for households earning<br/>30-50% of median<br/>household income</i> | <i>Total</i> |
| Beaverton                                   | <b>427</b>                                                                                                  | <b>229</b>                                                                                           | <b>656</b>   |
| Cornelius                                   | <b>40</b>                                                                                                   | <b>10</b>                                                                                            | <b>50</b>    |
| Durham                                      | <b>6</b>                                                                                                    | <b>4</b>                                                                                             | <b>10</b>    |
| Fairview                                    | <b>42</b>                                                                                                   | <b>31</b>                                                                                            | <b>73</b>    |
| Forest Grove                                | <b>55</b>                                                                                                   | <b>10</b>                                                                                            | <b>65</b>    |
| Gladstone                                   | <b>43</b>                                                                                                   | <b>10</b>                                                                                            | <b>53</b>    |
| Gresham                                     | <b>454</b>                                                                                                  | <b>102</b>                                                                                           | <b>556</b>   |
| Happy Valley                                | <b>29</b>                                                                                                   | <b>28</b>                                                                                            | <b>57</b>    |
| Hillsboro                                   | <b>302</b>                                                                                                  | <b>211</b>                                                                                           | <b>513</b>   |
| Johnson City                                | <b>0</b>                                                                                                    | <b>0</b>                                                                                             | <b>0</b>     |
| King City                                   | <b>5</b>                                                                                                    | <b>0</b>                                                                                             | <b>5</b>     |
| Lake Oswego                                 | <b>185</b>                                                                                                  | <b>154</b>                                                                                           | <b>339</b>   |
| Maywood Park                                | <b>0</b>                                                                                                    | <b>0</b>                                                                                             | <b>0</b>     |
| Milwaukie                                   | <b>102</b>                                                                                                  | <b>0</b>                                                                                             | <b>102</b>   |
| Oregon City                                 | <b>123</b>                                                                                                  | <b>35</b>                                                                                            | <b>158</b>   |
| Portland                                    | <b>1,791</b>                                                                                                | <b>0</b>                                                                                             | <b>1,791</b> |
| Rivergrove                                  | <b>1</b>                                                                                                    | <b>1</b>                                                                                             | <b>2</b>     |
| Sherwood                                    | <b>67</b>                                                                                                   | <b>56</b>                                                                                            | <b>123</b>   |
| Tigard                                      | <b>216</b>                                                                                                  | <b>103</b>                                                                                           | <b>319</b>   |
| Troutdale                                   | <b>75</b>                                                                                                   | <b>56</b>                                                                                            | <b>131</b>   |
| Tualatin                                    | <b>120</b>                                                                                                  | <b>69</b>                                                                                            | <b>189</b>   |
| West Linn                                   | <b>98</b>                                                                                                   | <b>71</b>                                                                                            | <b>169</b>   |
| Wilsonville                                 | <b>100</b>                                                                                                  | <b>80</b>                                                                                            | <b>180</b>   |
| Wood Village                                | <b>16</b>                                                                                                   | <b>1</b>                                                                                             | <b>17</b>    |
| Clackamas County, Urban,<br>Unincorporated  | <b>729</b>                                                                                                  | <b>374</b>                                                                                           | <b>1,103</b> |
| Multnomah County, Urban,<br>Unincorporated* | <b>81</b>                                                                                                   | <b>53</b>                                                                                            | <b>134</b>   |
| Washington County, Urban<br>Unincorporated  | <b>1,312</b>                                                                                                | <b>940</b>                                                                                           | <b>2,252</b> |
| <b>Total</b>                                | <b>6,419</b>                                                                                                | <b>2,628</b>                                                                                         | <b>9,047</b> |

\* Strategies and implementation measures addressing these housing goals are in the Progress Reports of the Cities of Portland, Gresham and Troutdale.

**Exhibit C to Ordinance No. 06-1129A**  
**Findings of Fact and Conclusions of Law**

Ordinance No. 06-1129A amends Metro's Regional Framework Plan (RFP) and Title 7 (Affordable Housing) of the Urban Growth Management Functional Plan (UGMFP) in order to enhance local and regional efforts to provide housing choices and affordable housing to people of the region. The practical effects of these changes are as follows:

- By elevating the voluntary affordable housing production goals from Title 7 to Regional Framework Plan policies, Metro makes the production goals the guide for all regional efforts to provide affordable housing, not just the efforts of cities and counties under Title 7.
- By moving specified strategies and tools recommended by Metro to cities and counties from Title 7 to the Regional Framework Plan, Metro makes the strategies and tools the focus of its efforts to assist cities and counties.
- New policy moves the region from a recognition that it needs to a regional fund for affordable housing fund to a commitment to create such a fund.
- New policy commits Metro to seek agreements with cities, counties and private and public providers of affordable housing - when expanding the UGB and changing 2040 Growth Concept design-type designations - to devote a portion of new residential capacity to affordable housing.
- Clarifies city and county affordable housing reporting requirements in Title 7 by linking them to the reporting requirements in Title 1 (Requirements for Housing and Employment Accommodation).

These amendments to the Regional Framework Plan and Title 7 are a culmination of long efforts by affordable housing leaders in the region, as members of Metro's Housing Choice Task Force, to enhance the work of the region to provide housing choices and affordable housing. These efforts, and the reflection of them in this ordinance, continue the region's understanding that concerted, voluntary efforts by all sectors, public, private and non-profit, to provide affordable housing remain the best way to accomplish the region's affordable housing goals. The amendments to the RFP and Title 7 are consistent with state and regional planning goals, as explained below.

**I. STATEWIDE PLANNING GOALS**

Statewide Planning Goal 1 – Citizen Involvement: Metro provided notice of the proposed amendments to stakeholders and the general public by following the notification requirements in its acknowledged code. Metro provided notice to the Oregon Department of Land Conservation and Development Commission as provided in ORS 197.610 and OAR 660-018-0020. Metro sought and received comment from its Metropolitan Policy Advisory Committee (MPAC), which sought the advice of its Metropolitan Technical Advisory Committee (MTAC), both of which recommended approval of the amendments. The Metro Council held a public hearing on the proposed ordinance on January 25, 2007. The Council concludes that these activities conform to Metro's code and policies on citizen involvement and comply with Goal 1.

Statewide Planning Goal 2 – Land Use Planning: Metro sought and received comment from the local governments that comprise the metropolitan region and from the general public. The Metro Charter establishes MPAC, composed principally of representatives of local governments in the region, and requires the Metro Council to seek its advice on amendments to the Regional Framework Plan and its components, such as the UGMFP. MPAC reviewed the ordinance and recommended revisions to the draft, which the Metro Council adopted. The Council concludes that the ordinance complies with Goal 2.

Statewide Planning Goal 3 – Agricultural Lands: Ordinance No. 06-1129A does not apply to land outside the UGB. Goal 3 does not apply to the ordinance.

Statewide Planning Goal 4 – Forest Lands: Ordinance No. 06-1129A does not apply to land outside the UGB. Goal 4 does not apply to the ordinance.

Statewide Planning Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: Ordinance No. 06-1129A does not revise acknowledged land use regulations that protect Goal 5 resources. The amendments made by the ordinance do not change the boundaries on any regulatory map that applies to resources protected by Goal 5. The Council concludes that the ordinance is consistent with Goal 5.

Statewide Planning Goal 6 – Air, Land and Water Resources Quality: Ordinance No. 06-1129A does not affect resources protected by Goal 6 or revise land use regulations that protect those resources. The Council concludes that the amendments are consistent with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Disasters and Hazards: Ordinance No. 06-1129A does not affect areas subject to natural disasters and hazards or revise land use regulations that protect those resources. The Council concludes that the amendments are consistent with Goal 7.

Statewide Planning Goal 8 – Recreational Needs: Ordinance No. 06-1129A does not affect resources protected by Goal 8 or revise land use regulations that provide for recreation needs. The Council concludes that the amendments comply with Goal 8.

Statewide Planning Goal 9 – Economic Development: Ordinance No. 06-1129A calls for the creation of a regional affordable housing fund. Goal 9 does not apply to Metro. Nonetheless, if such a fund is created and funded, it will result in construction of new housing units. The Council concludes that the amendments are consistent with Goal 9.

Statewide Planning Goal 10 – Housing: Goals 10 calls for an inventory of buildable lands for residential use and encouragement for the availability of adequate numbers of needed housing units at price ranges and rent levels commensurate with the financial capabilities of Oregon households. The Metropolitan Housing Rule (OAR 660 Division 007) sets housing density and housing type mix standards for the Portland metropolitan region. The rule requires cities and counties to establish specific comprehensive plan designations and clear and objective review standards for review of proposed residential development. The rule expressly charges Metro with “regional coordination”:

“(1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region's long-range population and housing projections.

(2) Metro shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans. “

LCDC acknowledged Title 1 (Requirements for Housing and Employment Accommodation) of Metro's Urban Growth Management Functional Plan (UGMFP), which requires each city and county to provide a specified capacity for housing and to allow accessory dwelling units in zones that authorize dwelling units, for compliance with the statewide planning goals on December 8, 2000. The Commission acknowledged amendments to Title 1 made by Ordinance No. 02-969B on December 5, 2002, for compliance with the goals on July 7, 2003.

LCDC acknowledged the policies of the Regional Framework Plan, including Policy 1.3 (Housing and Affordable Housing), on December 8, 2000. Amendments to Policy 1.3 by Ordinance No. 05-1086 on August 18, 2005, were acknowledged by operation of law on September 9, 2005.

Title 7 of the UGMFP and a series of amendments to it were acknowledged by operation of law by Ordinances 98-769 on September 10, 1998, 00-882C on January 18, 2001, and 03-1005A on June 29, 2003.

Metro fulfilled its periodic review “regional coordination” requirements under section 660-007-0050 of the Metropolitan Housing Rule (set forth above) by adoption of Ordinance No. 02-969B. LCDC acknowledged Ordinance No. 02-969B, including the Housing Needs Analysis (HNA) (Periodic Review Subtask 12b) and the 2002-2022 Urban Growth Report: A Residential Land Needs Analysis (Periodic Review Subtask 14a), on July 7, 2003. The Council incorporates its findings on Goal 10 from Ordinance No. 02-969B (Exhibit P, Section IC, page 2) here. In its order acknowledging Metro Ordinance No. 02-969B, LCDC discussed the HNA and Title 7:

“Although the HNA reflects and increase in rental households paying more than 30 percent of household income on housing in the next 20 years, Metro expects its Title 7 affordable housing programs, adopted as part of the Urban Growth Management Functional Plan (UGMFP), to offset much of the increase....Ultimately, through the combination of adequate land supply within the UGB and other measures, Metro has ‘encourage[d] the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households[.]’”

Ordinance No. 06-1129A makes no changes to the housing requirements of Title 1. It also makes no changes to the acknowledged HNA or the Urban Growth Report. The ordinance adds new sub-policies to Policy 1.3 (Housing Choice) that strengthen Metro's commitment to

affordable housing, as described in the first paragraph of these findings. The ordinance clarifies city and county reporting requirements and deletes provisions from Title 7 that were voluntary only for cities and counties of the region. Based upon the work and recommendations to Metro of the Housing Choice Task Force, the Council expects that regional housing programs under the amended Regional Framework Plan and Title 7, especially the call in Policy 1.3.6 for a regional affordable housing fund and in Policy 1.3.7 for technical assistance to local governments, will improve the region's prospects for meeting the need for affordable housing identified in the HNA. The Council concludes that Ordinance No. 06-1129A makes complies with Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services: Ordinance No. 06-1129A does not affect acknowledged public facility plans or revise land use regulations affecting those plans. The Council concludes that the amendments are consistent with Goal 11.

Statewide Planning Goal 12 – Transportation: Ordinance No. 06-1129A does not directly affect transportation or revise the acknowledged Regional Transportation Plan or acknowledged city or county transportation system plans. Nor does it require changes to those plans. The Council concludes that the amendments are consistent with Goal 12.

Statewide Planning Goal 13 – Energy Conservation: Ordinance No. 06-1129A does not affect resources protected by Goal 13 or revise land use regulations that protect those resources. The Council concludes that the amendments are consistent with Goal 13.

Statewide Planning Goal 14 – Urbanization: Ordinance No. 06-1129A does not amend or involve the UGB. Nor does the ordinance affect urbanizable land or revise Metro regulations to protect the urban potential of urbanizable land. Goal 14 governs the establishment and change of UGBs. For these reasons, the Council concludes that the amendments are consistent with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway: Ordinance No. 06-1129A does not affect the Willamette River Greenway. The Council concludes that Goal 15 does not apply to the amendments.

### III. REGIONAL FRAMEWORK PLAN

Policy 1.1 – Urban Form: This policy calls for a compact urban form and affordable housing choices. New policies in the RFP adopted by Ordinance No. 06-1129A (1.3.2; 1.3.6 and 1.3.8) will increase the likelihood that affordable housing will be built in Centers and Corridors, leading to a more compact urban form in the region. The Council concludes that the amendments are consistent with Policy 1.1.

Policy 1.2 – Built Environment: This policy seeks fair-share and equitable growth. New policies in the RFP adopted by Ordinance No. 06-1129A (1.3.1; 1.3.3; 1.3.9 and 1.3.11) will increase the likelihood that housing choices and affordable housing will be more equitably distributed around the region. The Council concludes that the amendments are consistent with Policy 1.2.

Policy 1.3 – Affordable Housing: This policy seeks opportunities for a wide range of housing opportunities. New policies in the RFP adopted by Ordinance No. 06-1129A (1.3.1; 1.3.6; 1.3.7; 1.3.9 and 1.3.10) will increase housing choice and affordable housing. The Council concludes that the amendments are consistent with Policy 1.3.

Policy 1.4 – Economic Opportunity: For the reasons set forth in the findings under Statewide Planning Goal 14, the Council concludes that Ordinance No. 06-1129A is consistent with Policy 1.4.

Policy 1.6 – Growth Management: This policy calls for efficient management of urban land, among other things. For the reasons set forth in the discussion of the application of Policy 1.1 to the amendments, the Council concludes that the amendments are consistent with Policy 1.6.

Policy 1.9 – Urban Growth Boundary: For the reasons set forth in the findings under Statewide Planning Goal 14, the Council concludes that the amendments are consistent with Policy 1.9.

Policy 1.13 – Participation of Citizens: The public involvement actions described above under Statewide Planning Goal 1 comply with Metro’s code and Policy 1.13.

Policy 2.1 - Public Involvement: The public involvement actions described above under Statewide Planning Goal 1 comply with Metro’s code and Policy 2.1

Policy 2.2 – Intergovernmental Coordination: For the reasons set forth in the findings under Statewide Planning Goal 2, the Council concludes that the amendments are consistent with Policy 2.1.

Policy 2.3 – Urban Form: For the reasons set forth in the findings under Policy 1.1, the Council concludes that the amendments are consistent with Policy 2.3.

Policy 2.4 – Consistency between Land Use and Transportation Planning: New policies in the RFP adopted by Ordinance No. 06-1129A (1.3.2; 1.3.6 and 1.3.8) will increase the likelihood that affordable housing will be built in Centers and Corridors, leading to a more compact urban form in the region. The region’s transportation system is based upon the development of a compact urban form. The Council concludes that the amendments are consistent with Policy 2.2.

Policy 2.5 – Barrier-Free Transportation: For reasons set forth in the findings under Policy 1.1, Ordinance No. 06-1129A will improve transportation choices.

Policy 2.6 – Interim Job Access and Reverse Commute Policy: For reasons set forth in the findings under Policy 1.2, Ordinance No. 06-1129A will better meet the transportation needs of the economically disadvantaged.

Policy 2.7 – Transportation Safety and Education: This policy does not apply to Ordinance No. 06-1129A.

Policy 2.8 – The Natural Environment: For the reasons set forth in the findings under Statewide Planning Goal 5, the Council concludes that the amendments are consistent with Policy 2.8.

Policy 2.9 – Water Quality: For the reasons set forth in the findings under Statewide Planning Goal 6, the Council concludes that the amendments are consistent with Policy 2.9.

Policy 2.10 – Clean Air: For the reasons set forth in the findings under Statewide Planning Goal 6, the Council concludes that the amendments are consistent with Policy 2.10.

Policy 2.11 – Energy Efficiency: For the reasons set forth in the findings under Statewide Planning Goal 13 and Policy 1.1, the Council concludes that the amendments are consistent with Policy 2.11.

Policies 2.12 through 2.43: These policies do not apply to Ordinance No. 06-1129A.

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 06-1129 FOR THE PURPOSE OF AMENDING THE REGIONAL FRAMEWORK PLAN AND FUNCTIONAL PLAN, TITLE 7 TO CLARIFY AND REVISE CITY AND COUNTY RESPONSIBILITIES

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Date: [November 3, 2006](#)

Prepared by: Gerry Uba

#### BACKGROUND

On January 18, 2001, the Metro Council adopted Ordinance No. 00-882C, amending the affordable housing policy in the Regional Framework Plan and amending the Urban Growth Management Functional Plan Title 7, entitled "Affordable Housing." Title 7 required local governments to adopt voluntary local affordable housing production goals, amend their comprehensive plans and implementing ordinances by adopting land use tools and strategies, and submit progress reports in 2002, 2003 and 2004.

Reviews of local government's progress reports in the Annual Compliance Report for the Urban Growth Management Functional Plan by MPAC, MTAC and the Metro Council in 2004 and 2005 concluded that it was important to determine the reasons for very limited actions by local governments. On February 15, 2005, MPAC chair, Jack Hoffman and Metro Council President, David Bragdon sent a letter to local governments to assess: 1) local interest in exploring the possibility of implementing an affordable housing plan developed by local and regional housing experts to meet their share of regional affordable housing production goals; 2) housing units built in the communities and sold for \$120,000 or less; and 3) rents for apartment units that have been built or rehabilitated since 2000. The assessment revealed the following categories of barriers and interest to local governments' adoption of Title 7 strategies and tools:

- "We're already in compliance through implementation of State housing requirements"
- "One size doesn't fit all due to unique local conditions"
- "It costs too much – no funding/not enough staff"
- "Little vacant land exist or land is too expensive"
- "Political barriers due to local charter provisions that limit local actions"
- "We will welcome assistance to explore opportunities available for affordable housing development and redevelopment"

Following the requirements in Title 7 and the result of the MPAC and Metro Council assessment, the Metro Council created the Housing Choice Task Force (HCTF) on February 10, 2005 by action of Resolution No. 05-3536. The HCTF was charged to meet for one year (March 2005 to March 2006), and was charged to:

1. Offer recommendations for policies and programs to facilitate housing production in 2040 mixed-use areas and to meet the Five-Year Affordable Housing Production Goals in the Urban Growth Management Functional Plan
2. Help build support for regional housing supply solutions by working closely with those individuals and organizations that are in a position to help implement them.
3. Recommend to the Metro Council actions that they should take as part of the broader strategy for implementing regional housing supply solutions.
4. Recommend how Metro could move beyond current requirements for local government reporting on their implementation of specific land use and non-land use strategies in Functional Plan Title 7.



The goal of the Task Force was to refocus the efforts of the region's policy makers and housing providers on the task of overcoming obstacles to bolstering the region's supply of a broad range of housing, particularly in the 2040 Centers and corridors.

#### HCTF Report and Recommendations:

The HCTF built on the lessons learned from the 1998 Affordable Housing Technical Advisory Committee and local governments implementation of Title 7 to develop an implementation strategy for increasing the supply of housing choice, and specifically affordable housing in the locations with services, so as to reduce expenditures for low income households. In March 2006, the HCTF submitted its recommendations in the report entitled the "Regional Housing Choice Implementation Strategy" to the Metro Council. Following is the summary of the key recommendations for Metro:

- a) Integrate housing supply concerns, and specifically affordable housing, into all policy making and funding allocations
- b) Create a permanent Housing Choice Advisory Committee to advise the Metro Council
- c) Work toward development of a new, permanent regional resource
- d) Seek increased funding at the federal, state and regional levels
- e) Work to remove regulatory barriers for affordable housing supply
- f) Work to reduce the cost of developing housing, and specifically affordable housing in the 2040 centers and corridors
- g) Provide technical assistance to local governments
- h) Current policy directing local jurisdictions to adopt land use and non-land use affordable housing tools and strategies should be amended to remove the reporting requirement
- i) Current policy directing local governments to adopt the voluntary affordable housing production goals for the assessment of their progress should be retained, while focusing on results oriented reporting process.
- j) Conduct biennial housing survey for the assessment of the progress toward achieving the region's housing choices implementation strategy.
- k) Require local governments to assist Metro in a biennial housing survey.

#### Metro Council Action on the HCTF Recommendations:

On April 20, 2006, the Metro Council directed staff to:

1. Prepare an ordinance for appropriate amendments to the Regional Framework Plan and the Urban Growth Management Functional Plan to implement the recommendations in the Regional Housing Choice Implementation Strategy, and to establish a process for reporting by local governments on their progress in meeting affordable housing and a diversity of housing options goals and objectives;
2. Prepare a resolution for the creation of a Housing Choice Policy Advisory Committee with representatives of MPAC, MTAC, and other stakeholders.
3. Prepare a resolution for the creation of an ad hoc housing financing study committee with representatives of elected officials, housing developers, major employers, realtors, affordable housing advocates, and federal and state housing officials to assist Metro and other entities involved in providing affordable housing to develop a politically feasible mechanism for implementing the funding solutions recommended by the Housing Choice Task Force.
4. Work cooperatively with local governments in the region to provide technical assistance to preserve and develop affordable housing, including inventoring of publicly owned land that could be potential sites for establishing housing choice.

#### Proposed Changes in the Regional Framework Plan and Functional Plan:

*Regional Framework Plan: The summary of changes is as follows:*

A. Metro's policies on how it will work with local governments to implement housing choices:

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- Local governments will be encouraged to implement land use regulations (allowing diverse range of housing types and affordable housing especially in the 2040 Centers and Corridors, making housing choices available for all income levels), adopt affordable housing production goals, and assist Metro to conduct affordable housing inventory.
  - Local governments will be required to report on their progress.
- B. Metro's policies on how it will implement housing choices:
- Work with stakeholders to create a regional fund to leverage other affordable housing resources
  - Integrate housing issues and solutions with other Metro programs, including consideration of affordable housing in the prioritization of grants
  - During UGB expansion process, see opportunities to devote a portion of residential capacity to affordable housing
  - Create opportunities that will discourage concentration of poverty

*Functional Plan Title 7: The summary of changes is as follows:*

- A. Local governments are encouraged to adopt affordable housing production goals as a guide to measure progress
- B. Local governments are required to assist Metro to conduct affordable housing inventory
- C. Local governments are required to report on their progress, with first report due on April 15, 2007, and by April 15 every other two years
- D. Local governments are encouraged to use Metro's technical and financial assistance services

Other Metro Actions:

Metro staff is developing a "Regional Housing Choice Work Plan" and have started collaborating with local governments' staff to establish a regional housing inventory team and develop a regional affordable housing database. Local programs currently participating in the inventory are the Housing Authorities of Clackamas County, Portland, Washington County and Clark County, Washington, and the Portland Development Commission and the City of Beaverton.

**ANALYSIS/INFORMATION**

**1. Known Opposition**

Staff is not aware of any opposition to the proposed legislation

**2. Legal Antecedents**

Metro Regional Framework Plan established a policy to encourage local governments to ensure diversity of housing types available to households of all income level. Metro Code 3.07.710 established course of actions for affordable housing for local governments and Metro to comply.

**3. Anticipated Effects**

Ordinance No. 06-1129 would amend Title 7 of the Urban Growth Management Functional Plan to help focus local efforts on results oriented progress reporting and Metro technical assistance.

**4. Budget Impacts**

The provision and expansion of technical assistance services to local governments will require additional resources in the future.

### **RECOMMENDED ACTION**

Staff recommends the adoption of Ordinance No. 06-1129 to encourage local governments to assist Metro to assess the region's effort to increase affordable housing supply, and take advantage of Metro's technical assistance services to increase the supply of housing choices in the centers, corridors and other areas of their jurisdictions.

BEFORE THE METRO COUNCIL

|                                     |   |                                              |
|-------------------------------------|---|----------------------------------------------|
| FOR THE PURPOSE OF ESTABLISHING THE | ) | RESOLUTION NO. 07-3765                       |
| DUTIES AND RESPONSIBILITIES OF THE  | ) |                                              |
| BROWNFIELDS TASK FORCE, AND         | ) | Introduced by Michael Jordan, Chief          |
| CONFIRMING APPOINTMENT OF ITS       |   | Operating Office in concurrence with Council |
| MEMBERS                             |   | President Bragdon                            |

WHEREAS, establishing a Brownfields Program that complements ongoing efforts by cities and counties in the region will enhance the efficient use of land, eliminate environmentally contaminated sites and generate additional tax revenues for local governments; and

WHEREAS, identifying and prioritizing Brownfields in the region is an important part of increasing the developable short-term land supply in the region and could provide significant redevelopment opportunities for affordable housing in local communities; and

WHEREAS, the Council, by Resolution 05-3644 (For the Purpose of Establishing a Brownfields Program and a Brownfields Task Force) adopted on December 1, 2005, directed the Chief Operating Officer to develop a strategic work program and a draft membership list for the Brownfields Task Force;

WHEREAS, Metro received a grant from the U.S. Environmental Protection Agency for the purpose of developing and maintaining a region-wide inventory of Brownfields, and prioritization and assessment of select sites; and

WHEREAS, a notice soliciting membership in the Brownfields Task Force was distributed on January 3, 2007; now, therefore

BE IT RESOLVED that the Metro Council:

1. Hereby establishes the Brownfields Task Force to:
  - Provide recommendations on developing and maintaining a region-wide brownfields inventory;
  - Review criteria for selecting brownfields sites for further assessment;
  - Prioritize sites for environmental assessments;
  - Provide recommendations regarding redevelopment of brownfields sites throughout local Communities.
2. Hereby appoints the persons listed in Exhibit A, attached and incorporated into this resolution, to be members of the Brownfields Task Force.
3. Directs the Brownfields Task Force to meet quarterly, with administrative and technical support from Metro staff, and to submit recommendations to the Council on a periodic basis as they are approved by the Task Force.

ADOPTED by the Metro Council this 25th day of January, 2007

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

## **EXHIBIT A TO RESOLUTION NO. 07-3765**

### **Members of the Brownfields Task Force**

1. Mr. Charlie Allcock  
Director of Economic Development, Portland General Electric  
East Metro Economic Alliance
2. The Honorable Catherine Arnold  
Councilor, City of Beaverton
3. The Honorable Carlotta Collette  
Councilor, City of Milwaukie
4. Mr. Craig Kelley  
Project Manager, Housing Development Center
5. Mr. John Haines  
Executive Director, MercyCorps Northwest
6. Mr. Chuck Harman  
Site Assessment Specialist/NWR Brownfields Coordinator, Oregon DEQ
7. Mr. Clark Henry  
Portland Brownfield Program, Bureau of Environmental Services, City of Portland,
8. Ms. Karen Homolac,  
Brownfields Program and Policy Coordinator
9. Mr. Dick Loffelmacher  
PacTrust  
Westside Economic Alliance
10. Ms. Renate Mengleberg  
Business and Economic Development Team, Clackamas County
11. Ms. Michelle Reeves  
Real Estate Broker, Windermere Commercial
12. Mr Ramsay Weit  
Executive Director, Community Housing Fund

## **SUPPLEMENTAL STAFF REPORT**

### **RESOLUTION NO. 07-3765, FOR THE PURPOSE OF ESTABLISHING THE DUTIES AND RESPONSIBILITIES OF THE BROWNFIELDS TASK FORCE, AND CONFIRMING APPOINTMENT OF ITS MEMBERS**

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**Date: January 11, 2007**

**Prepared by: Lisa Miles**

#### **INTRODUCTION**

The Metro Council adopted Resolution No.05-3605, For the Purpose of Expressing Support for the Comprehensive Economic Strategy and Taking Action to Help Achieve the Region's Objective to Improve the Economy of the Metro Region on July 28, 2005. Resolution No. 05-3605 also outlined a short-term strategy for completing several projects that were both within the agency's core competencies and would have positive economic impacts on the region. One of the short-term items was developing a proposal to address the problem of brownfields in the region. On December 1, 2005, Metro Council adopted Resolution No.05-3644, For the Purpose of Establishing a Brownfields Program and a Brownfields Task Force.

To proceed with these economic development initiatives, staff applied for two Environmental Protection Agency (EPA) Brownfield grants, and was successful in receiving a \$200,000 grant in September, 2006 to create a region-wide inventory of brownfields contaminated with petroleum, and to perform environmental assessments on select sites. In December 2006, staff submitted a second application for additional grant funds to inventory and assess brownfield sites contaminated with other hazardous substances. Program efforts will be targeted toward economically distressed parts of the region and to build on work that has already been completed by the City of Portland, Clackamas County and the City of Gresham.

The current EPA Brownfields Grant will allow Metro to complete the following work:

1. Complete a region-wide inventory of petroleum brownfields;
2. Focus site characterizations (Phase I and II assessments) in areas that are economically distressed; Phase I and II assessments are required before clean-up funding can be sought in successive grant cycles; site characterization could lead to redevelopment of sites for mixed uses and/or affordable housing;
3. Form a Brownfields Task Force (BTF) and establish a mechanism to inform and engage the public in the brownfields program
4. Develop a strategy to assess and prioritize sites, focus cleanup, convene and create partnerships to actively encourage redevelopment; and
5. Develop a bank of sites that could be used for redevelopment in centers, corridors, and possibly for affordable housing.

Resolution No. 07-3765 will appoint the Brownfields Task Force (BTF) to provide recommendations in developing and implementing the brownfield program. In recommending members for the task force, staff have carefully considered the varied expertise and perspectives that will be helpful to support the efforts of Metro's Brownfields Program. The proposed members of the BTF listed in Exhibit A of the resolution will bring a range of experience in environmental and regulatory aspects of brownfields, economic development, affordable housing, construction project management, real estate, banking/investing, local government and community development.

## **ANTICIPATED EFFECTS**

The Brownfields Task Force will contribute valuable expertise to help to shape the work of Metro's Brownfields Program. Identifying brownfields sites throughout the region and assessing the level of contamination of select sites will lay the groundwork for possible future redevelopment of such sites, and thus support Metro's efforts to focus development and investment in existing Centers and Corridors.

## **LEGAL ANTECEDENTS**

The appointment of the members of the Brownfields Task force is consistent with Metro Council Resolution No. 05-3644, For the Purpose of Establishing a Brownfields Program and a Brownfields Task Force.

## **BUDGET IMPACTS**

Staff resources for this program will be provided from staff assignments that are included in the 2006/2007 budget for economic development. Grant funds will cover costs of interns; data resource center staff time to support mapping; communications efforts and consultants to complete this work.

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