

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING - REVISED 6/11/98
DATE: June 18, 1998
DAY: Thursday
TIME: 2:00 PM
PLACE: Council Chamber

<u>Approx. Time*</u>		<u>Presenter</u>
2:00 PM	CALL TO ORDER AND ROLL CALL	
(5 min.)	1. INTRODUCTIONS	
(5 min.)	2. CITIZEN COMMUNICATIONS	
(5 min.)	3. EXECUTIVE OFFICER COMMUNICATIONS	
(5 min.)	4. AUDITOR COMMUNICATIONS	
(5 min.)	5. MPAC COMMUNICATIONS	
	6. CONSENT AGENDA	
2:25 PM (5 min.)	6.1 Consideration of Minutes for the June 11, 1998 Metro Council Regular Meeting.	
	7. ORDINANCES - SECOND READING	
2:30 PM (30 min.)	7.1 Ordinance No. 98-730C , For the Purpose of Amending Ordinance Nos. 96-647C and No. 97-715B, to amend Title 3 of the Urban Growth Management Functional Plan, and amend the Regional Framework Plan, appendix A, and adopt the Title 3 Model Ordinance and Water Quality and Flood Management Maps.	Naito
3:00 PM (5 min.)	7.2 Ordinance No. 98-741 , For the Purpose of Granting a Yard Debris Processing Facility License to McFarlane's Bark, Inc. to Operate a Yard Debris Processing Facility, and Declaring an Emergency.	Morissette

8. RESOLUTIONS

- | | | | |
|----------------------|-----|--|-------------------------------------|
| 3:05 PM
(5 min.) | 8.1 | Resolution No. 98-2658 , For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the Oregon Parks and Recreation Department for Management of property in the Sandy River Gorge Target Area. | Naito |
| 3:10 PM
(5 min.) | 8.2 | Resolution No. 98-2659 , For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the Tualatin Hills Park and Recreation District for the Management of Property in the Cooper Mountain Target Area. | Regional
Facilities
Committee |
| 3:15 PM
(5 min.) | 8.3 | Resolution No. 98-2660 , For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Portland for the Management of Property in the East Buttes Boring Lava Domes Target Area. | McFarland |
| 3:20 PM
(5 min.) | 8.4 | Resolution No. 98-2664 , For the Purpose of Confirming the Appointment of Judy Rice to the Metropolitan Exposition Recreation Commission. | Regional
Facilities
Committee |
| 3:25 PM
(10 min.) | 9. | COUNCILOR COMMUNICATION | |

ADJOURN

CABLE VIEWERS: Council Meetings, the second and fourth Thursdays of the month are shown on City Net 30 (Paragon and TCI Cablevision) the first Sunday after the meeting at 8:30 p.m. The entire meeting is also shown again on the second Monday after the meeting at 2:00 p.m. on City Net 30. The meeting is also shown on Channel 11 (Community Access Network) the first Monday after the meeting at 4:00 p.m. The first and third Thursdays of the month are shown on Channel 11 the Friday after the meeting at 2:00 p.m. and the first Sunday and Wednesday after the meeting on Channels 21 & 30 at 7:00 p.m.

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

Consideration of the June 11, 1998 Metro Council Regular meeting minutes.

**Metro Council Meeting
Thursday, June 18, 1998
Council Chamber**

MINUTES OF THE METRO COUNCIL MEETING

June 11, 1998

Council Chamber

Councilors Present: Jon Kvistad (Presiding Officer) Ruth McFarland, Susan McLain, Ed Washington, Don Morissette

Councilors Absent: Lisa Naito, Patricia McCaig

Presiding Officer Kvistad convened the Regular Council Meeting at 2:03 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

Art Lewellan, 3205 SE 8th #9 Portland, OR spoke again of his LOTI plan, an alternate to the South North Light Rail. He said he felt the Council's questions at the end of his previous testimonies proved that Council did not listen to anything he had to say. He urged Council to take a good look at his alternative which so far had never been considered. He reiterated all the obvious advantages to his alignment over anything Metro was looking at.

Aleta Woodruff, MCCI 2143 NE 95th Place Portland OR 97220 commented on the tour of the Metro facilities some MCCI members had taken the previous Tuesday with Margaret Sprinkle. She felt the tour was extremely informative and related the events of the day.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATION

Councilor McLain said Councilors would soon be getting a letter regarding MPAC's desire to continue coordinating monthly meetings. She said they would like a conversation with Presiding Officer Kvistad regarding meeting quarterly or monthly. She talked about the need to go forward with Functional Plan discussions including parks, school siting and affordable housing.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the June 4, 1998 Regular Council Meeting and the May 28, 1998 Metro Council/MPAC Joint Meeting.

Motion: Councilor McFarland moved to adopt the meeting minutes of June 4, 1998 Regular Council Meeting and the May 28, 1998 Metro Council/MPAC Joint Meeting.

Seconded: Councilor Morissette seconded the motion.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

7. ORDINANCES - FIRST READING

7.1 Ordinance No. 98-764, For the Purpose of Granting a Yard Debris Processing Facility License to C.L. Dannar Nursery to Operate a Yard Debris Processing Facility and Declaring an Emergency.

Presiding Officer Kvistad assigned Ordinance No. 98-764 to the Regional Environmental Management Committee.

7.2 Ordinance No. 98-744, For the Purpose of Adding to Designated Urban Reserve Areas for the Portland Metropolitan Urban Growth Boundary; Amending RUGGO Ordinance No. 95-625A; and Declaring an Emergency.

Presiding Officer Kvistad assigned Ordinance No. 98-744 to Growth Management Committee.

7.3 Ordinance No. 98-761, For the Purpose of Amending the Regional Solid Waste Management Plan.

Presiding Officer Kvistad assigned Ordinance No. 98-761 to the Regional Environmental Management Committee.

7.4 Ordinance No. 98-762, For the Purpose of Amending the Metro Code Chapter 5.01 regarding Solid Waste Facility Regulations and Making Related Adjustments to Chapter 5.02.

Presiding Officer Kvistad assigned Ordinance No. 98-762 to the Regional Environmental Management Committee.

8. ORDINANCES - SECOND READING

8.1 Ordinance No. 98-740, An Ordinance Amending the FY 1997-98 Budget and Appropriations Schedule by Transferring \$45,469 from Capital Outlay to Debt Service in the General Revenue Bond Fund for the Purpose of Correcting a Technical Error, and Declaring an Emergency.

Motion: Councilor McFarland moved to adopt Ordinance No. 98-740.

Seconded: Councilor Washington seconded the motion.

Councilor McFarland said all of the ordinances she carried to this meeting were technical amendments and for that reason asked staff to explain them.

Craig Prosser, Financial Planning Division Manager, said debt service fees for the OEDD loan in the general revenue bond fund had been inadvertently understated and they had accidentally overstated the capital outlay amount, this Ordinance would correct the errors.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-740. There being no one present to testify, **Presiding Officer Kvistad** closed the public hearing.

Discussion: **Councilor McFarland** urged adoption of the ordinance.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

8.2 Ordinance No. 98-741, For the Purpose of Granting a Yard Debris Processing Facility to McFarlane's Bark, Inc. to Operate a Yard Debris Processing Facility, and Declaring an Emergency.

Motion: **Councilor Morissette** moved to adopt Ordinance No. 98-741.

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

Councilor Morissette reviewed the facility licensing process. He said there were still some concerns that were being discussed. He felt the ordinance would encourage recycling in the region and urged support.

Councilor Washington asked what the worst alternative would be.

Councilor Morissette said one alternative would be to move the facility, but the rural folks would not like that either. He said another bad part would be that if there were no recycling facilities the recyclables would end up in a landfill.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-741.

Mr. Brian Brophy, CR Brophy Machine, 13377 SE Johnson Rd Clackamas, OR said his objection to the plan was it was improper to submit a plan for traffic management required use of a shared roadway. He said he would not accept that plan. He said he would accept a traffic plan that did not use the common roadway but not their plan to stop cars on their shared roadway. He said he had been talking to his attorneys already.

Presiding Officer Kvistad asked if **Mr. Brophy** felt the negotiations were proceeding.

Mr. Brophy responded they had been proceeding for 3 years.

Mr. Dan Chandler, representing **McFarlane's, 1727 NW Hoyt #B Portland OR 97209** said the plan would make the odor and traffic problems better if not fix them. He said 2 relatively small businesses had been trying to work out an easement for the road and he thought the agreement had been drafted this morning though not everyone had seen the document. He said this had been a dispute between 2 neighbors and Metro did not need to be in the middle of it. He asked Council to approve the plan and the neighbor dispute would be worked out.

Mr. Neil Alongi, Maul Foster and Alongi, 7223 NE Hazel Dell Ave Vancouver, WA 98665 introduced himself as the civil engineer on the site plan for McFarlane Bark. He said he had provided plans to separate inbound traffic and fix the problem of trucks competing for the same roadway. He said they had worked out a method of payment that would change for peak days so the queuing problem would soon be resolved.

Presiding Officer Kvistad closed the public hearing.

Discussion: **Councilor McLain** said that the franchisee had met all of the licensing requirements of Metro although there was still the debatable issue in traffic management. She agreed that the neighbors might appreciate the other elements, like the compost maintenance to control odor and dust should be done as soon as possible. She stated the importance of people being able to come to Metro with problems such as these and said that Metro would stay vigilant of these problems when licensing.

Presiding Officer Kvistad commented that he had always requested the submissions be complete before they were turned in. He said he would vote to approve but his qualifier would be resolution as soon as possible and in a positive way. He said he would follow up to be sure it was moving along.

Councilor Washington said he would vote no until the problems were resolved.

Councilor Morissette suggested analyzing the entire process because of the stringent requirements put on McFarlane's. He felt they had done a lot to make their facility better. He urged support of the Council.

Vote: The vote was 4 aye/ 1 nay/ 0 abstain with Councilor Washington voting nay. [Mr. Dan Cooper indicated that due to the emergency clause in the ordinance, it required a vote of 5 aye. He said a 4 - 1 vote neither defeated nor passed it so it could be held over. The alternative would be to amend it, remove the emergency clause, continue it a week because it was amended, and have another vote.]

Presiding Officer Kvistad said the item would be held over to the next agenda.

8.3 Ordinance No. 98-746, An Ordinance Amending the FY 1997-98 Budget and Appropriations Schedule to Recognize \$44,000 in New Grant Revenues, Reclassify Certain Expenditures, Transfer Funds from the Regional Parks Fund Contingency to Various Line Items within the Fund, and Declaring an Emergency.

Motion: **Councilor McFarland** moved to adopt Ordinance No. 98-746.

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

Mr. Prosser explained this \$44,000 was for part of the dredging needed at the M. James Gleason boat ramp due to flooding and reclassifying certain expenditures would adjust items inherited from other departments to fit into Metro's budget classifications.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-746. There being no one present who wished to testify, **Presiding Officer Kvistad** closed the public hearing.

Discussion: None.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

8.4 Ordinance No. 98-747, An Ordinance Amending the FY 1997-98 Budget and Appropriations Schedule transferring \$4,000,000 from Open Space Fund Contingency to Capital Outlay in the Open Space Fund in the Regional Parks and Greenspaces Department to provide Funding for Unanticipated Expenditures, and Declaring an Emergency.

Motion: **Councilor McFarland** moved to adopt Ordinance No. 98-747..

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

Mr. Prosser explained the unanticipated expenditures had to do with acquisition of land.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-747. There being no one present who wished to testify, **Presiding Officer Kvistad** closed the public hearing.

Discussion: **Councilor McFarland** urged Council's aye vote.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

8.5 Ordinance No. 98-749, An Ordinance Amending the FY 1997-98 MERC Operating Fund Budget and Appropriations Schedule for the Purpose of Transferring Appropriations to Increase Operating Expenses, Debt Service and Capital Outlay, and Declaring an Emergency.

Motion: **Councilor McFarland** moved to adopt Ordinance No. 98-749.

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

Discussion: **Norman Kraft, MERC Financial Operations Analyst**, addressed the issues presented in the ordinance. He said timing of some debt service payments and additional outlay for the Expo Center were the major things. He said the money was needed to improve the sound system between buildings at the Expo Center and their parking lot improvement project in progress had found more money was needed to complete the project. He said that would move the parking lot improvement project from operating capital to CIP.

Councilor Morissette asked if the amount covered improvement for the entire parking lot. He said his concern was that CIP had been pretty aggressive with their resources when they laid out their budget and now these problems seemed to all stem from CIP's underestimation of their allowances. He wondered at what point CIP would need to be revisited because there wasn't enough money to finish everything it called for.

Mr. Prosser said the money was for specific repairs and stripping for upkeep only. He said CIP started very early in the fiscal year and that, in fact, they had been in the process of getting ready to start the Capital Improvement Planning process for 1999-2000. He explained that the original estimate of this project placed it below the threshold of CIP inclusion but that the additional amount needed by the project brought it above the \$50,000 threshold Councilor Morissette had asked about. He said the budget process was the way to handle the problem.

Councilor Washington asked if the parking lot was being capped so it did not have to be torn up.

Mr. Kraft said they were not capping but fixing cracks. He said in some places they had to dig it out and in some places they could patch it substantially with what was there and put a cover coat on top to prevent water from coming through. He added that the lot had to be restriped after the work was done.

Councilor Washington asked how large the area was that was being patched.

Mr. Kraft answered the areas were north of the building and down into the lower parking lot, which was the part they had underestimated. He said it was not all in one area, but where needed.

Councilor McFarland said they had had this discussion about the surface before and this would come under "an ounce of prevention is worth a pound of cure". She said the cracks needed to be fixed quickly to stop deterioration that would cost a lot more to fix.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-749. There being no one that came forward to testify, Presiding Officer Kvistad closed the public hearing.

Discussion: **Councilor McFarland** urged an aye vote.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

8.6 Ordinance No. 98-751, An Ordinance Amending the FY 1997-98 Budget and Appropriations Schedule in the Support Services Fund and in the Building Management Fund for Various Funding Purposes, and Declaring an Emergency.

Motion: **Councilor McFarland** moved to adopt Ordinance No. 98-751.

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

Discussion: **Jennifer Sims, Chief Financial Officer**, explained this ordinance would correct a misunderstanding about a debt service payment which inadvertently resulted in additional fees and charges of \$1,200. She proposed a transfer from contingency to debt service. She explained the circumstances that resulted in a shortfall for expenses in the parking garage and an unexpected \$25,000 repair of the sewer in the Metro building. She said there had also been some lower operational costs for the facility. She said that resulted in a \$38,000 shortfall. She proposed a transfer of the \$38,000 from support services to the building fund of discretionary revenue that had been derived from the Contractor's Licensing Program profits.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-751. There being no one that came forward, **Presiding Officer Kvistad** closed the public hearing.

Discussion: **Councilor McFarland** urged an aye vote.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

8.7 Ordinance No. 98-752, An Ordinance Amending the FY 1997-98 Budget and Appropriations Schedule by transferring \$120,000 from Contingency to Personal Services in the Zoo Operating Fund to Provide for Increased Temporary Staffing in the Washington Park Zoo (Oregon Zoo). and Declaring an Emergency.

Motion: **Councilor McFarland** moved to adopt Ordinance No. 98-752..

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

Discussion: **Councilor McFarland** said there was a need to overlap certain personnel and was justified by all the things that would get done at the zoo.

Mr. Prosser said more money was needed for temporary seasonal help due to the increase in the minimum wage. He said "temporary" meant no longer than 6 months and provided seasonal help for the zoo such as groundskeepers, food service, education aides, custodial, etc. He said there had been some custodial time lost due to injury and illness and there had been and would need to be extra coordination with the construction at the zoo.

Councilor Morissette asked if this had anything to do with the working relationship between the administrators and the staff at the zoo.

Mr. Prosser said not to his knowledge.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-752. No one came forward to testify. **Presiding Officer Kvistad** closed the public hearing.

Discussion: **Councilor McFarland** urged an aye vote.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those presented.

8.8 Ordinance No. 98-754A, An Ordinance Amending the FY 1997-98 Budget and Appropriations Schedule by transferring \$12,000 from Contingency to the Office of General Counsel Portion of the Support Services Fund for Various Funding Purposes, and Declaring an Emergency.

Motion: **Councilor McFarland** moved to adopt Ordinance No. 98-754A.

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

Mr. Prosser said the Office of the General Counsel had experienced additional costs this fiscal year. He explained 1) the-LUBA appeal cost was higher than anticipated, 2) remodeling of the basement gallery space had incurred additional and unexpected capital outlay costs, and 3) the appeal of the Convention Center Bond Measure ballot title had cost more than anticipated.

Councilor McLain asked if the \$12,000 covered everything and was told it did.

Presiding Officer Kvistad opened a public hearing on Ordinance No. 98-754A. No one came forward to testify. **Presiding Officer Kvistad** closed the public hearing.

Discussion: **Councilor McFarland** urged an aye vote.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

9. RESOLUTIONS

9.1 **Resolution No. 98-2640B**, For the Purpose of Establishing Timelines for Meeting Metro's Obligation to Expand the Urban Growth Boundary.

Motion: **Councilor Morissette** moved to adopt Resolution No. 98-2640B.

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

Discussion: **Councilor Morissette** said this would meet the requirement to add 50% of the need into the Urban Growth Boundary. He said the goal was to lay out a timeframe to work through that process. He said there was a lot of work to be done and asked the Presiding Officer to fill the committee as he was the only one left on it. He said he was excited about the additions to the UGB and felt it was a step toward helping with the affordable housing problems of the region. He thanked staff for the opportunity to help figure out the solution to meet the legal requirements. He hoped Council would support the resolution.

Councilor McLain said a discussion was taken up at the MPAC and they had made a motion to support the resolution. She said there would be a letter regarding specific issues that needed to be reviewed.

Councilor Morissette urged support of the resolution.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

9.2 **Resolution No. 98-2649**, For the Purpose of Authorizing the Release of RFB 98B-32-REM, for the Construction of an Extension of the Main Transfer Building at Metro South Station.

Motion: **Councilor Washington** moved to adopt Resolution No. 98-2649.

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

Discussion: Councilor Washington explained the necessity for this resolution and the need for the expanded room for tipping on weekends. He was concerned about the cost.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

9.3 **Resolution No. 98-2650, For the Purpose of Authorizing the Release of RFB #98B-33-REM, for the Construction of a Truck Wash at Metro South Station.**

Motion: Councilor McFarland moved to adopt Resolution No. 98-2650.

Seconded: Councilor Morissette seconded the motion.

Discussion: Counselor McFarland explained the need for a new truck wash and urged Council's support.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

9.4 **Resolution No. 98-2653, For the Purpose of Authorizing the Execution and Delivery of a Lease/Purchase Agreement, Declaring Intent to Reimburse Expenditures, and Related Matters.**

Motion: Councilor McFarland moved to adopt Resolution No. 98-2653.

Seconded: Councilor Washington seconded the motion.

Discussion: Councilor McFarland asked Craig Prosser to explain the Resolution.

Mr. Prosser explained this resolution would authorize \$135,750 for a 3 year lease-purchase of computer equipment necessary for the upgrade of Metro's central computer network. He said the dollar amount was as expected in the CIP but the interest rate was lower.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

9.5 **Resolution No. 98-2656, For the Purpose of Authorizing the Release of RFB #98-35-REM, for the Provision of Diesel Fuel.**

Motion: Councilor McLain moved to adopt Resolution No. 98-2656.

Seconded: Councilor Morissette seconded the motion.

Discussion: Councilor McLain said this would let a bid for 1.4 million gallons of #2 low sulfur diesel fuel to be provided at separate locations. She said the request was for the Executive Office to let it to the lowest bid.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

9.6 **Resolution No. 98-2663**, For the Purpose of Authorizing a Request for Proposals for a Personal Services Contract to Represent Metro before the 1999 Session of the Oregon Legislature.

Motion: **Councilor McFarland** moved to adopt Resolution No. 98-2663.

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

Discussion: **Councilor McFarland** reviewed the resolution. She said this had happened every year to be ready for the legislative session and urged support.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

Presiding Officer Kvistad recessed the Metro Council meeting and convened the Contract Review Board.

10. CONTRACT REVIEW BOARD

10.1 **Resolution No. 98-2654**, For the Purpose of Authorizing Change Order No. 1 to the Contract for Operating Metro Central and South Transfer Stations.

Motion: **Councilor McLain** moved to adopt Resolution No. 98-2654.

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

Discussion: **Councilor McLain** said this would establish prices for BFI with a change for Metro for the following items: expanded hours for haulers using automated scale system, transfer of the treated medical waste, labor to assist the public in unloading at Metro South and landscape maintenance at Metro Central. She explained the reasons for the request. She said the contract would go up \$921,713 for the 5 years of the contract

Councilor Morissette said that it was his understanding that there was no budget impact, it was a user pay program.

Councilor McLain said she could agree that it was a budget neutral item because of the demand for the services.

Vote: The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

Presiding Officer Kvistad adjourned the Contract Review Board and reconvened the Metro Council Meeting.

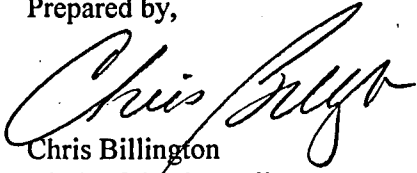
11. COUNCILOR COMMUNICATION

None.

12. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Kvistad adjourned the meeting at 3:11 p.m.

Prepared by,



Chris Billington
Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
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Agenda Item Number 7.1

Ordinance No. 98-730C, For the Purpose of Amending Ordinance Nos. 96-647C and No. 97-715B, to amend Title 3 of the Urban Growth Management Functional Plan, and amend the Regional Framework Plan, appendix A, and adopt the Title 3 Model Ordinance and Water Quality and Flood Management Maps.

Second Reading

**Metro Council Meeting
Thursday, June 18, 1998
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO 98-730C
ORDINANCE NOS. 96-647C AND NO. 97-)
715B, TO AMEND TITLE 3 OF THE) Introduced by Councilors Naito and McLain
URBAN GROWTH MANAGEMENT)
FUNCTIONAL PLAN, AND AMEND)
THE REGIONAL FRAMEWORK PLAN,)
APPENDIX A, AND ADOPT THE)
TITLE 3 MODEL ORDINANCE AND)
WATER QUALITY AND FLOOD)
MANAGEMENT MAPS)

WHEREAS, the Regional Growth Goals and Objectives - Objective 12 identifies the need to manage watersheds to protect, restore and ensure to the maximum extent practicable the integrity of streams, wetlands, and floodplains.

WHEREAS, Ordinance No. 96-647C, the Urban Growth Management Functional Plan (UGMFP), adopted November 21, 1996, delayed implementation of Title 3 of the UGMFP until Metro adopted a Model Ordinance to demonstrate one method of implementing Title 3, and Water Quality and Flood Management Area maps.

WHEREAS, Ordinance No. 97-715B, the Regional Framework Plan, adopted December 18, 1997, incorporates the UGMFP at Appendix A. The Regional Framework Plan is awaiting acknowledgment before the Land Conservation and Development Commission.

WHEREAS, the Water Resources Policy Advisory Committee (WRPAC), during 1997, drafted a Model Ordinance and maps to comply with Title 3, Section 6 of the UGMFP. WRPAC released a preliminary draft of the proposed Model Ordinance and maps in August 1997, and a revised draft on September 4, 1997. The proposed Model Ordinance was then forwarded to the Metro Policy Advisory Committee (MPAC) and the Metro Technical Advisory Committee (MTAC) for review.

WHEREAS, WRPAC and MTAC formed a joint subcommittee to further refine the Model Ordinance and maps and consider amendments to the UGMFP, Title 3, Sections 1-4, and Sections 6 and 7. The joint subcommittee met twice per month beginning September 26, 1997 and ending December 19, 1997. The joint subcommittee forwarded proposed amendments to Title 3, dated December 30, 1997, to WRPAC and MTAC. The same proposed amendments were released for public comment prior

to Metro's Stream and Floodplain Protection Plan workshops which began January 17, 1998.

WHEREAS, MTAC reviewed the joint subcommittee's proposed amendments to Title 3 at its January 8, 22, February 5, 19, March 5, 19, 26, April 2, 16, and May 21, 1998 meetings.

WHEREAS, WRPAC reviewed the joint subcommittee's proposed amendments to Title 3 at its January 26, February 9, March 9, 25, April 13 and May 11, 1998, meetings. At the March 25 meeting, WRPAC members reviewed and commented on MTAC's proposed changes to Title 3 and provided those comments to MPAC at chair Judie Hammerstad's request.

WHEREAS, the Metro Growth Management staff gave a presentation on Metro's "Stream and Floodplain Protection Plan" (Title 3) to MPAC at its February 11, 1998 meeting. MPAC also received a copy of the joint subcommittee's proposed Title 3 amendments.

WHEREAS, MPAC reviewed the joint subcommittee's proposed amendments to Title 3 at its February 11, 25, and March 11, and 25, 1998 meetings. At its March 25, 1998 meeting, MPAC passed forward recommended changes to Title 3 to the Metro Council after considering a package of WRPAC/MTAC recommendations.

WHEREAS, concurrently with WRPAC and MTAC's review of the joint subcommittee's proposed amendments to Title 3, Metro held Stream and Floodplain Protection Plan workshops on January 17, 20, 27 and 31, 1998. Copies of the joint subcommittee's proposed amendments to Title 3, the September 4, 1997, draft Model Ordinance and Title 3 maps were available for public review and comment.

WHEREAS, the Growth Management Committee considered proposed amendments to Title 3, the Model Ordinance and maps at a work session held on February 17, and at public hearings on March 17, April 7, May 5 and 28, 1998.

WHEREAS, the Metro Council considered proposed amendments to Title 3, the Model Ordinance and maps at public hearings held on February 26, May 7 and June 4, 1998.

WHEREAS, Title 3 of the UGMFP as adopted November 21, 1996, has a different effective date and compliance date than the UGMFP generally. The UGMFP has an effective date of February 19, 1997, with compliance required by February 19, 1999. Originally, Sections 1-4 of

Title 3 were not effective until 24 months after the Metro Council adopted a Model Ordinance and maps addressing Title 3 because it was anticipated that drafting the Model Ordinance would take three to four months. That drafting process took one year. MPAC, WRPAC and MTAC recommended that compliance be required within 18 months of Metro Council adoption of the Model Ordinance and maps.

WHEREAS, through review at WRPAC, MTAC and MPAC, Sections 1-4 of Title 3 have been extensively reorganized. For that reason, Exhibit A will fully replace Title 3, Sections 1-4 as adopted by the Metro Council on November 21, 1996.

WHEREAS, no significant changes have been made to Section 5 of Title 3. Sections 6 and 7 have been amended and clarified. Therefore, Exhibit B only amends Title 3, Sections 5-7 as adopted by the Metro Council on November 21, 1996, now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.310 through 3.07.340 are hereby replaced to read as shown in Exhibit A which is attached and incorporated by reference into this ordinance.

Section 2. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.350 through 3.07.370 are hereby amended to read as shown in Exhibit B which is attached and incorporated by reference into this ordinance.

Section 3. As required by Ordinances No. 96-647C and No. 97-715B, Appendix A, as amended, the Model Ordinance at Exhibit C, and the Water Quality and Flood Management Area maps at Exhibit D are hereby adopted to implement Title 3 of the Urban Growth Management Functional Plan.

Section 4. To provide effective notice to affected property owners of the first city or county hearing on the ordinance to implement Title 3, the following effective dates, local hearing and property owner notice requirements are added to Title 8.

Section 1 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.810 is hereby amended to read:

"A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan within twenty-four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible.

B. Notwithstanding subsection A of this section, cities and counties are required to amend their comprehensive plans and implementing ordinances to comply with Sections 1-4 of Title 3 within 18 months after the Metro Council has adopted the Model Ordinance and Water Quality and Flood Management Areas Map."

Section 5. Section 2A of Title 8 at Metro Code Section 3.07.820 is hereby replaced to read:

"A. On or before six months prior to the 24 month deadline established in Section 1A, cities and counties shall transmit to Metro the following:

1. An evaluation of their local plans, including public facility capacities and the amendments necessary to comply with this functional plan;
2. Copies of all applicable comprehensive plans and implementing ordinances and public facility plans, as proposed to be amended;

3. Findings that explain how the amended city and county comprehensive plans will achieve the standards required in Titles 1 through 6 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept.”

Section 6. Section 2 of Title 8 at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

“F. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall schedule their first hearing on the ordinance to implement Sections 1-4 of Title 3, or a hearing on implementation of Title 3, if no code amendments are proposed to comply with Title 3, and transmit notice of that hearing and a copy of the proposed ordinance to Metro at least 30 days prior to the hearing.

1. Metro shall prepare and mail a notice of the city or county hearing to each affected property owner.
2. The Metro notice shall include the date, time, location and the title and number of any local ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.
3. Metro shall review any amendments to Title 3 proposed by cities and counties based on the testimony of property owners.”

Section 7. Section 2 of Title 8 at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

“G. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall transmit to Metro the following:

1. An evaluation of their local plans, including any relevant existing regulations and the amendments necessary to comply with Title 3 of this functional plan;
2. Copies of all applicable comprehensive plans, maps and implementing ordinances as proposed to be amended;

3. Findings that explain how the amended city and county comprehensive plans, maps and implementing ordinances will achieve the standards required in Title 3 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept."

Section 8. In accordance with Title 8, Section 3 of the Urban Growth Management Functional Plan, Ordinances No. 96-647C and No. 97-715B, Appendix A, any amendment of city or county comprehensive plans or implementing ordinances shall be consistent with Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.310 through 3.07.370 of the Metro Urban Growth Management Functional Plan as amended after the date this ordinance becomes effective.

Section 9. Cities and counties are hereby required to comply with Title 3, Sections 1-4 of the Urban Growth Management Functional Plan, as amended herein, within 18 months of the adoption of this ordinance.

Section 10. Ordinances No. 96-647C and No. 97-715B, Appendix A, Section 3.07.1000 is hereby amended to add and replace definitions shown in Exhibit E which is attached and incorporated by reference into this ordinance.

Section 11. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.

ADOPTED by the Metro Council this _____ day of _____ 1998.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

EXHIBIT A

TITLE 3: WATER QUALITY, FLOOD MANAGEMENT AND FISH AND WILDLIFE CONSERVATION

Section 1. Intent

To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities, protecting life and property from dangers associated with flooding and working toward a regional coordination program of protection for Fish and Wildlife Habitat Areas.

Section 2. Applicability

A. This Title applies to:

1. Development in Water Quality Resource and Flood Management Areas.
2. Development which may cause temporary or permanent erosion on any property within the Metro Boundary.
3. Development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 5 analysis and mapping are completed.

B. This title does not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies provided that after the emergency has passed, adverse impacts are mitigated in accordance with the performance standards in Section 4.

Section 3. Implementation Alternatives for Cities and Counties

A. Cities and counties shall comply with this Title in one of the following ways:

1. Amend their comprehensive plans and implementing ordinances to adopt all or part of the Title 3 Model Ordinance or code language that substantially complies with the performance standards in Section 4 and the intent of this Title, and adopt either the Metro Water Quality and Flood Management Area Map or a map which substantially complies with the Metro map. Cities and counties may choose one of the following options for applying this section:
 - a. Adopt code language implementing this Title which prevails over the map and uses the map as reference; or

- b. Adopt a city or county field verified map of Water Quality and Flood Management Areas based on the Metro Water Quality and Flood Management map, updated according to Section 7, implementing this Title which prevails over adopted code language.

Field verification is a process of identifying or delineating Protected Water Features, Water Quality Resource Areas and Flood Management Areas shown on the Metro Water Quality and Flood Management Areas map. This process includes examination of information such as site visit reports, wetlands inventory maps, aerial photographs, and public input and review. The field verification process shall result in a locally adopted Water Quality and Flood Management Areas map which:

1. Applies the Title 10 definitions of Protected Water Feature, Water Quality Resource Areas and Flood Management Areas to all those protected areas on the Metro Water Quality and Flood Management Areas map to show the specific boundaries of those protected areas on the locally adopted Water Quality and Flood Management Areas map; and
 2. Is subject to amendment by applying adopted code language to add Protected Water Features, Water Quality Resource Areas and Flood Management Areas and to correct errors in the local Water Quality and Flood Management Areas map as required by Section 7 and consistent with Section 3.D.
2. Demonstrate that existing city and county comprehensive plans and implementing ordinances substantially comply with the performance standards in Section 4 and the intent of this Title.
 3. Any combination of 1. and 2. above that substantially complies with all performance standards in Section 4.

- B. Cities and counties shall hold at least one public hearing prior to adopting comprehensive plan amendments, ordinances and maps implementing the performance standards in Section 4 of this Title or demonstrating that existing city or county comprehensive plans and implementing ordinances substantially comply with Section 4, to add Protected Water Features, and wetlands which meet the criteria in Section 7.C., to their Water Quality and Flood Management Area

map. The proposed comprehensive plan amendments, implementing ordinances and maps shall be available for public review at least 45 days prior to the public hearing.

- C. Cities and counties shall conduct a review of their Water Quality and Flood Management Areas map concurrent with local periodic review required by ORS 197.633 (1997).
- D. Some areas which would otherwise be mapped as Protected Water Features, Water Quality Resource Areas and Flood Management Areas do not appear on the Metro Water Quality and Flood Management Areas map because streams had been culverted, wetlands had been filled or a fill permit had been approved, or the area was demonstrated to have existing conflicting water dependent uses, or existing plans or agreements for such uses, or the area was developed or committed to other uses.

Notwithstanding any other provision of this Title, cities and counties are not required to establish Protected Water Features, Water Quality Resource Areas and Flood Management Areas through adopted code provisions or mapping for areas which were examined but not included on the Water Quality and Flood Management Areas map adopted by the Metro Council.

Section 4. Performance Standards

A. Flood Management Performance Standards.

1. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to human life and property, and maintain functions and values of floodplains such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems.
2. All development, excavation and fill in the Flood Management Areas shall conform to the following performance standards:
 - a. Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.
 - b. All fill placed at or below the design flood elevation in Flood Management Areas shall be balanced with at least an equal amount of soil material removal.
 - c. Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

- d. Minimum finished floor elevations for new habitable structures in the Flood Management Areas shall be at least one foot above the design flood elevation.
 - e. Temporary fills permitted during construction shall be removed.
 - f. Uncontained areas of hazardous materials as defined by DEQ in the Flood Management Area shall be prohibited.
3. The following uses and activities are not subject to the requirements of Subsection 2:
- a. Excavation and fill necessary to plant new trees or vegetation.
 - b. Excavation and fill required for the construction of detention facilities or structures, and other facilities such as levees specifically designed to reduce or mitigate flood impacts. Levees shall not be used to create vacant buildable lands.
 - c. New culverts, stream crossings, and transportation projects may be permitted if designed as balanced cut and fill projects or designed to not significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in Flood Management Areas and to minimize erosive velocities. Stream crossing shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

B. Water Quality Performance Standards

- 1. The purpose of these standards is to: 1) protect and improve water quality to support the designated beneficial water uses as defined in Title 10, and 2) protect the functions and values of the Water Quality Resource Area which include, but are not limited to:
 - a. providing a vegetated corridor to separate Protected Water Features from development;
 - b. maintaining or reducing stream temperatures;
 - c. maintaining natural stream corridors;
 - d. minimizing erosion, nutrient and pollutant loading into water;
 - e. filtering, infiltration and natural water purification;

- f. stabilizing slopes to prevent landslides contributing to sedimentation of water features.
2. Local codes shall require all development in Water Quality Resource Areas to conform to the following performance standards:
- a. The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in the table below. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.

Table 1

Protected Water Feature Type (see definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor
Primary Protected Water Features ¹	< 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	50 feet
Primary Protected Water Features ¹	≥ 25% for 150 feet or more ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	200 feet
Primary Protected Water Features ¹	≥ 25% for less than 150 feet ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	Distance from starting point of measurement to top of ravine (break in ≥25% slope) ³ , plus 50 feet. ⁴
Secondary Protected Water Features ²	< 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	15 feet
Secondary Protected Water Features ²	≥ 25% ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	50 feet

¹ Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs .

² Secondary Protected Water Features include intermittent streams draining 50-100 acres.

³ Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the ≥ 25% slope (see slope measurement in Appendix).

⁴ A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).

⁵ Vegetated corridors in excess of 50-feet for primary protected features, or in excess of 15-feet for secondary protected features, apply on steep slopes only in the *uphill* direction from the protected water feature.

- b. Water Quality Resource Areas shall be protected, maintained, enhanced or restored as specified in Section 4.B.2.
- c. Prohibit development that will have a significant negative impact on the functions and values of the Water Quality Resource Area, which cannot be mitigated in accordance with 2.f.
- d. Vegetative cover native to the Portland metropolitan region shall be maintained, enhanced or restored, if disturbed, in the Water Quality Resource Area. Invasive non-native vegetation may be removed from the Water Quality Resource Area and replaced with native cover. Only native vegetation shall be used to enhance or restore the Water Quality Resource Area. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by local surface water management agencies.
- e. Uncontained areas of hazardous materials as defined by DEQ in the Water Quality Resource Area shall be prohibited.
- f. Cities and counties may allow development in Water Quality Resource Areas provided that the governing body, or its designate, implement procedures which:
 - 1. Demonstrate that no practicable alternatives to the requested development exist which will not disturb the Water Quality Resource Area; and
 - 2. If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use; and
 - 3. Where the development occurs, require mitigation to ensure that the functions and values of the Water Quality Resource Area are restored.
- g. Cities and counties may allow development for repair, replacement or improvement of utility facilities so long as the Water Quality Resource Area is restored consistent with Section 4.B.2(d).
- h. The performance standards of Section 4.B.2 do not apply to routine repair and maintenance of existing structures, roadways, driveways, utilities, accessory uses and other development.

3. For lots or parcels which are fully or predominantly within the Water Quality Resource Area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetated corridor practicable. Cities and counties shall encourage landowners to voluntarily protect these areas through various means, such as conservation easements and incentive programs.

C. Erosion and Sediment Control

1. The purpose of this section is to require erosion prevention measures and sediment control practices during and after construction to prevent the discharge of sediments.
2. Erosion prevention techniques shall be designed to prevent visible and measurable erosion as defined in Title 10.
3. To the extent erosion cannot be completely prevented, sediment control measures shall be designed to capture, and retain on-site, soil particles that have become dislodged by erosion.

D. Implementation Tools to protect Water Quality and Flood Management Areas

1. Cities and counties shall either adopt land use regulations, which authorize transfer of permitted units and floor area to mitigate the effects of development restrictions in Water Quality and Flood Management Areas, or adopt other measures that mitigate the effects of development restrictions.
2. Metro encourages local governments to require that approvals of applications for partitions, subdivisions and design review actions be conditioned upon one of the following:
 - a. Protection of Water Quality and Flood Management Areas with a conservation easement;
 - b. Platting Water Quality and Flood Management Areas as common open space; or
 - c. Offer of sale or donation of property to public agencies or private non-profits for preservation where feasible.

3. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development in the Water Quality and Flood Management Area may be allowed provided that:
 - a. The addition, alteration, rehabilitation or replacement is not inconsistent with applicable city and county regulations, and
 - b. The addition, alteration, rehabilitation or replacement does not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways or accessory uses and development, and
 - c. The addition, alteration, rehabilitation or replacement satisfies section 4.C. of this Title.
 - d. In determining appropriate conditions of approval, the affected city or county shall require the applicant to:
 1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
 2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and
 3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
4. Cities and counties may choose not to apply the Water Quality and Flood Management Area performance standards of Section 4 to development necessary for the placement of structures when it does not require a grading or building permit.
5. Metro encourages cities and counties to provide for restoration and enhancement of degraded Water Quality Resource Areas through conditions of approval when development is proposed, or through incentives or other means.

6. Cities and counties shall apply the performance standards of this Title to Title 3 Wetlands as shown on the Metro Water Quality and Flood Management Areas map and locally adopted Water Quality and Flood Management Areas maps. Cities and counties may also apply the performance standards of this Title to other wetlands.

E. Map Administration

Cities and counties shall amend their comprehensive plans and implementing ordinances to provide a process for each of the following:

1. Amendments to city and county adopted Water Quality and Flood Management Area maps to correct the location of Protected Water Features, Water Quality Resource Areas and Flood Management Areas. Amendments shall be initiated within 90 days of the date the city or county receives information establishing a possible map error.
2. Modification of the Water Quality Resource Area upon demonstration that the modification will offer the same or better protection of water quality, the Water Quality and Flood Management Area and Protected Water Feature.
3. Amendments to city and county adopted Water Quality and Flood Management Area maps to add Title 3 wetlands when the city or county receives significant evidence that a wetland meets any one of the following criteria:
 - a. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size;

or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
 - b. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet;

or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

- c. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41 (1996).

Examples of significant evidence that a wetland exists that may meet the criteria above are a wetland assessment conducted using the 1996 Oregon Freshwater Wetland Assessment Methodology, or correspondence from the Division of State Lands that a wetland determination or delineation has been submitted or completed for property in the city or county.

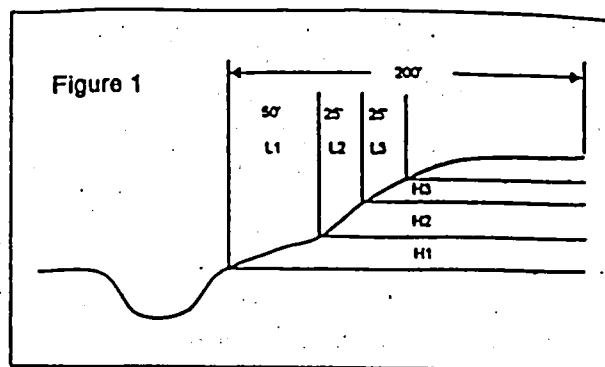
4. Cities and counties are not required to apply the criteria in Section 4.E.3. to water quality or stormwater detention facilities.

APPENDIX

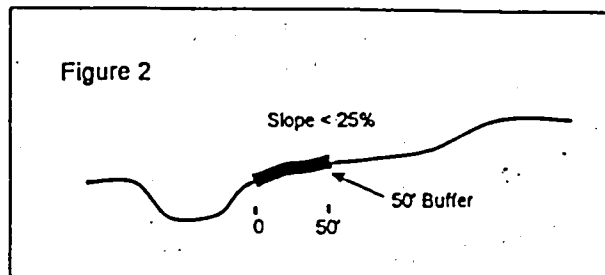
Proposed Method for Determining Vegetated Corridors Next to Primary Protected Water Features

How measure slope (Figure 1)

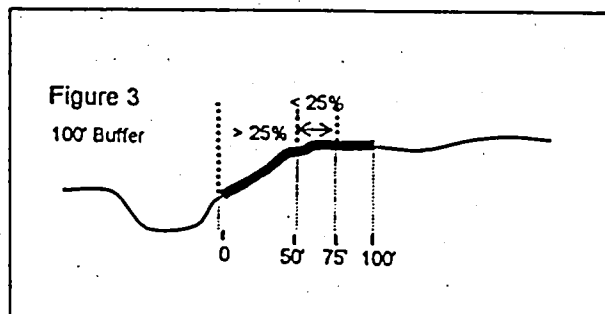
Measure 50 feet horizontally (L1) from the stream (top of bank) and determine the slope ($H1/L1$ - the difference in elevation divided by the difference in horizontal distance multiplied by 100).



If the slope in this 50-foot area is less than 25%, the corridor width is 50 feet from the top of bank (see Figure 2).



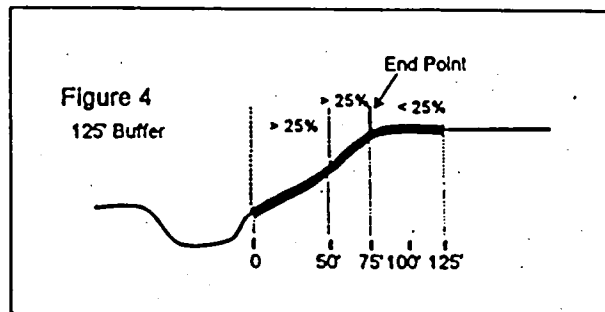
If the slope in the 50-foot area is 25% or greater, measure another 25 feet horizontally. If the slope in this incremental 25-foot area is now less than 25% ($H2/L2 < 25\%$), the vegetated corridor width would be 100 feet (50 feet for the horizontal distance from the top of bank with slope greater than 25% PLUS an additional 50 feet). (See Figure 3.)



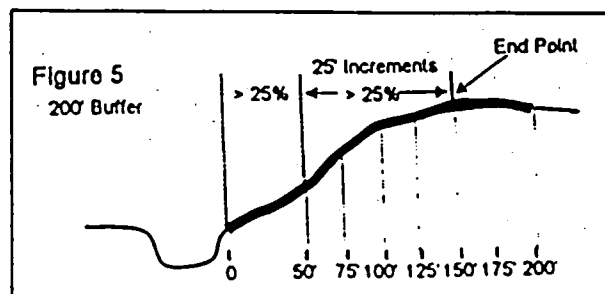
If the slope is greater than 25% in this incremental 25-foot area, continue measuring the slope every 25 feet (H/L) until you either:

- (a) find a slope less than 25% (see Figure 4), or

(When you find a slope less than 25%, the vegetated corridor equals the distance from the stream's top of bank to the *end point* of the last surveyed 25-foot increment with a slope greater than 25% PLUS an additional 50 feet).



- (b) reach 200 feet (the maximum corridor width). (See Figure 5.)



Advantages:

- Provides protection for most steep slopes, yet corridor widths can be varied to fit a number of different situations (corridor widths include 50 feet to 100 feet, 125 feet, 150 feet, 175 feet, and 200 feet)
- Provides flexibility.

Disadvantages:

- Does not protect slopes that rise steeply after a gradual "floodplain" area.

EXHIBIT B

Section 5. Fish and Wildlife Habitat Conservation Area

A. The purpose of these standards is to conserve, protect, and enhance fish and wildlife habitat within the fish and wildlife habitat conservation areas to be identified on the water quality and flood management area map by establishing performance standards and promoting coordination by Metro of regional urban water sheds.

B. Fish and Wildlife Habitat Conservation Area Recommendations

These areas shall be shown on the Water Quality and Flood Management Area Map. Fish and Wildlife Habitat Conservation Areas generally include and/or go beyond the Water Quality and Flood Management Areas. These areas to be shown on the map are will be Metro's initial-inventory of significant fish and wildlife habitat conservation areas. Metro hereby recommends that local jurisdictions adopt the following temporary standards:

1. ~~Prohibit development in the Fish and Wildlife Conservation Areas~~ that adversely impacts fish and wildlife habitat.

Exceptions: It is recognized that urban development will, at times, necessitate development activities within or adjacent to Fish and Wildlife Habitat Conservation Areas. The following Fish and Wildlife Habitat Conservation Mitigation Policy, except for emergency situations, applies to all the following exceptions:

A project alternatives analysis, where public need for the project has been established, will be required for any of the exceptions listed below. The alternatives analysis must seek to avoid adverse environmental impacts by demonstrating there are no practicable, less environmentally damaging alternatives available. In those cases where there are no practicable, less environmentally damaging alternatives, the project proponent will seek alternatives which reduce or minimize adverse environmental impacts. Where impacts are unavoidable, compensation, by complete replacement of the impacted site's ecological attributes or, where appropriate, substitute resources of equal or greater value will be provided in accordance with the Metro Water Quality and Flood Management model ordinance.

- a. Utility construction within a maximum construction zone width established by cities and counties.
- b. Overhead or underground electric power, telecommunications and cable television lines within a sewer or stormwater right-of-way or within a maximum construction zone width established by cities and counties.

- c. Trails, boardwalks and viewing areas construction.
 - d. Transportation crossings and widenings. Transportation crossings and widenings shall be designed to minimize disturbance, allow for fish and wildlife passage and crossings should be preferably at right angles to the stream channel.
2. Limit the clearing or removal of native vegetation from the Fish and Wildlife Habitat Conservation Area to ensure its long term survival and health. Allow and encourage enhancement and restoration projects for the benefit of fish and wildlife.
 3. Require the revegetation of disturbed areas with native plants to 90 percent cover within three years. Disturbed areas should be replanted with native plants on the Metro Plant List or an approved locally adopted plant list. Planting or propagation of plants listed on the Metro Prohibited Plant List within the Conservation Area shall be prohibited.
 4. Require compliance with Oregon Department of Fish and Wildlife (ODFW) seasonal restrictions for in-stream work. Limit development activities that would impair fish and wildlife during key life-cycle events according to the guidelines contained in ODFW's "Oregon Guidelines for Timing of In-water Work to Protect Fish and Wildlife Resources."

C. Fish and Wildlife Habitat Protection

Within eighteen (18) months from the effective date of this functional plan, Metro shall complete the following regional coordination program by adoption of functional plan provisions.

1. Metro shall establish criteria to define and identify regionally significant fish and wildlife habitat areas.
2. Metro shall adopt a map of regionally significant fish and wildlife areas after (4a) examining existing Goal 5 data, reports and regulation from cities and counties, and (2b) holding public hearings.
3. Metro shall identify inadequate or inconsistent data and protection in existing Goal 5 data, reports and regulations on fish and wildlife habitat. City and county comprehensive plan provisions where inventories of significant resources were completed and accepted by a LCDC Periodic Review Order after January 1, 1993, shall not be required to comply until their next periodic review.

4. Metro shall complete Goal 5 economic, social, environmental and energy (ESEE) analyses for mapped regionally significant fish and wildlife habitat areas only for those areas where inadequate or inconsistent data or protection has been identified.
5. Metro shall establish performance standards for protection of regionally significant fish and wildlife habitat that must be met by the plans implementing ordinances of cities and counties.

Section 6. Metro Model Ordinance Required

Metro shall adopt a Water Quality and Flood Management Areas Model Ordinance and map. ~~for use by local jurisdictions to comply with this section.~~ The Model Ordinance shall represent one method of complying with this Title. The Model Ordinance shall be advisory, and cities and counties are not required to adopt the Model Ordinance, or any part thereof, to substantially comply with this Title. However, cities and counties which adopt the Model Ordinance in its entirety and a Water Quality and Flood Management Areas Map shall be deemed to have substantially complied with the requirements of this Title.

Sections 1-4 of this Title shall not become effective until 24~~18~~ months after the Metro Council has adopted a Model Code~~the Model Ordinance and map~~ Water Quality and Flood Management Areas Map that addresses all of the provisions of this title. Section 5 of this Title shall be implemented by adoption of new functional plan provisions. The Metro Council may adopt a Model Code and Fish and Wildlife Habitat Conservation Areas Model Ordinance and m~~Map~~ Map for protection of regionally significant fish and wildlife habitat. ~~Section 5 of this title shall be implemented by adoption of new functional plan provisions.~~

Section 7. Variances

City and county comprehensive plans and implementing regulations are hereby required to include procedures to consider claims of map error and hardship variances to reduce or remove ~~stream corridor~~ Fish and Wildlife Habitat ~~p~~Protection for any property demonstrated to be converted to an unbuildable lot by application of Fish and Wildlife Habitat P~~p~~rotection regulations.

EXHIBIT C

Title 3 Model Ordinance

Growth Management Committee
May 28, 1998



METRO

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Appendix

EXHIBIT C

Metro Water Quality and Flood Management Area Model Ordinance

Introduction

Attached is the model ordinance required by Title 3, Section 6 of Metro's *Urban Growth Management Functional Plan*.

The purpose of this model ordinance is to provide a specific example of provisions approved by the Metro Council that can be used by a city or county to comply with the performance standards for *Title 3: Water Quality, Flood Management, and Fish and Wildlife Conservation* described in the *Metro Urban Growth Management Functional Plan*. Title 3 describes specific performance standards and practices for floodplain and water quality protection. It also requires that Metro adopt a Water Quality and Flood Management Model Ordinance and map for use by local jurisdictions to comply with Title 3. This model ordinance fulfills the Title 3 requirement. It is also consistent with Metro's policies in the 1995 *Future Vision Report*, in the 1995 *Regional Urban Growth Goals and Objectives* (RUGGOs) in the 1992 *Greenspaces Master Plan*, and in the 1997 *Regional Framework Plan*.

The purpose of Title 3 is to protect water quality and floodplain areas. Floodplains protect the region's health and public safety by reducing flood and landslide hazards and pollution of the region's waterways. This Model Ordinance and Map address that purpose. Another purpose of Title 3 is to protect fish and wildlife habitat. Statewide land use Goal 5 measures, which include fish and wildlife habitat protection, will be addressed in a Metro study that will be conducted within the next 18 months. Title 3 will apply to development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 5 analysis and mapping are completed. As additional issues are addressed, further regulations may be imposed on areas contained within or outside of the Water Quality Resource Area and Flood Management Area Overlay Zones addressed in this Model Ordinance.

The Metro *Future Vision*, *Greenspaces Master Plan*, *Regional Urban Growth Goals and Objectives* (RUGGOs), and *Regional Framework Plan* identify water quality protection, floodplain management, fish and wildlife habitat protection, development of recreational trails, acquisition of open space and maintenance of biodiversity as critical elements of maintaining healthy, livable communities.

This Model Ordinance, however, only provides specific examples of local ordinance provisions for a portion of the issues identified in Title 3: protection of the region's floodplains, water quality and reduction of flood hazards and the implementation of erosion control practices throughout the Portland metropolitan region. Other issues

including fish and wildlife habitat, watershed-wide stormwater management, steep slopes, landslide hazards and biodiversity are addressed in the December 1997 Metro *Regional Framework Plan*.

The approach in Sections 2, 3 and 4 of Title 3 is to implement Oregon Statewide Goal 6 and Goal 7. *Goal 6: Air, Water and Land Resources Quality* and *Goal 7: Areas Subject to Natural Disasters and Hazards* are addressed by protecting streams, rivers, wetlands, and areas adjacent to streams and floodplains within the Water Quality Resource and Flood Management Areas.

Cities and counties are required to amend their plans and implementing ordinances, if necessary, to ensure that they comply with Title 3 in one of the following ways:

Adopt the applicable provisions of the Metro Water Quality and Flood Management Area model ordinance and map, which is entitled the Metro Water Quality and Flood Management Area Map.

Local jurisdictions have two options with regard to their adoption of code language and a map (either the Metro Water Quality and Flood Management Area Map or a city or county field verified map that substantially complies with the Metro map):

The code language that describes the affected area prevails and the map is a reference; or the field verified map prevails and the descriptive code language is used to correct map errors when they are discovered and for delineating and marking the overlay zone boundary in the field. This map must be reviewed concurrently with local periodic review.

The advantage of the first approach above is that the final boundary is determined at the time of the development application, based on a detailed survey of the site. If a large scale, precise boundary can be mapped, the official map should prevail. This method allows for a more efficient permit process and more certainty for the property owner. In this case, the language is used to correct mapping errors when they are discovered. A map, however, should only be used if it has a level of detail and clarity equal to or better than 1" = 300 feet, and has been field-checked for accuracy.

Adopt plans and implementing ordinances and maps that substantially comply with the performance standards of Title 3.

Any combination of the above that substantially complies with all performance standards in Title 3, Section 4 (see Title 3, Section 3).

The purpose of the map adopted by Metro is to provide the performance standard for the location of Water Quality Resource and Flood Management Areas. Therefore, the map is the basis for evaluation of substantial compliance of local maps for those jurisdictions that choose to develop their own field verified map of Water Quality Resource and Flood Management Areas. "Substantial compliance" means that the city and county

comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

Water Quality and Flood Management Area Model Ordinance

Section 1. Intent

The purpose of this ordinance is to comply with Sections 1-4 of Title 3 of Metro's Urban Growth Management Functional Plan.

- A. To protect and improve water quality, to support the designated beneficial water uses and to protect the functions and values of existing and newly established Water Quality Resource Areas, which include, but are not limited to:
 - 1. Provide a vegetated corridor to separate Protected Water Features from development;
 - 2. Maintain or reduce stream temperatures;
 - 3. Maintain natural stream corridors;
 - 4. Minimize erosion, nutrient and pollutant loading into water;
 - 5. Provide filtration, infiltration and natural water purification;
 - 6. Stabilize slopes to prevent landslides contributing to sedimentation of water features.

- B. To protect Flood Management Areas, which provide the following functions:
 - 1. Protect life and property from dangers associated with flooding;
 - 2. Flood storage, reduction of flood velocities, reduction of flood peak flows and reduction of wind and wave impacts;
 - 3. Maintain water quality by reducing and sorting sediment loads, processing chemical and organic wastes and reducing nutrients;
 - 4. Recharge, store and discharge groundwater;
 - 5. Provide plant and animal habitat, and support riparian ecosystems.

- C. To establish two overlay zones for Water Quality Resource Areas and Flood Management Areas, which operate contemporaneously with the base zone and implement the performance standards of Title 3 of the Urban Growth Management Functional Plan.

Section 2. Applicability

- A. This ordinance applies to:
1. Development in the Water Quality Resource Area and Flood Management Area Overlay Zones. The overlay zones restrict the uses that are allowed in the base zone by right, with limitations, or as conditional uses.
 2. Development that may cause visible or measurable erosion on any property within the Metro Boundary.
- B. This ordinance does not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies provided that after the emergency has passed, adverse impacts are mitigated in accordance with Table 2 standards for restoring marginal existing vegetated corridors.

Section 3. Administration

- A. Title 3 of the Urban Growth Management Functional Plan allows for two methods for applying the provisions of this ordinance to applications to allow development in the Water Quality Resource Areas and Flood Management Areas Overlay Zones. The purpose of this section is to show how this ordinance is applied under each method.

Alternative 1 requires the text of this ordinance, including definitions, to describe and regulate the protected areas shown on the city/county Water Quality and Flood Management Areas map using the map as a reference.

Alternative 2 requires the city/county Water Quality and Flood Management Areas map to describe and regulate the areas shown on the map after the city or county has field verified the protected areas on Metro's map and identified or delineated those areas, and other Protected Water Features, Water Quality Resource Areas and Flood Management Areas the city/county may identify, on the city/county map.

- B. Map as Reference (Alternative 1)
1. The text provisions of this ordinance shall be used to determine whether applications to allow development in the Water Quality Resource Area and Flood Management Area Overlay Zones are subject to the requirements of this ordinance.
 2. The Water Quality and Flood Management Areas map shall be a reference for identifying areas subject to the Water Quality Resource Area or Flood Management Area Overlay Zones.

3. Applicants are required to provide the city/county with a delineation of the Water Quality Resource Areas and Flood Management Areas on the subject property as part of their application. An application shall not be complete until this delineation is submitted to the city/county.
4. Wetlands which meet the criteria in Section 10.D.2 shall be subject to the standards which apply to the Water Quality Resource Areas and Flood Management Areas Overlay Zones.

C. Field Verified Map (Alternative 2)

1. A field verified Water Quality and Flood Management Areas map shall be used to determine whether applications to allow development in the Water Quality Resource Areas and Flood Management Areas Overlay Zones are subject to the requirements of this ordinance.
2. The city/county shall identify and delineate the areas shown on the Metro Water Quality and Flood Management Areas map by:
 - a. Conducting a site visit, with the owner's permission, of the property where a Water Quality Resource Area or Flood Management Area is shown on Metro's map to delineate the resource area; and
 - b. Gathering and reviewing other information such as wetland inventory maps, aerial photographs and other significant evidence submitted by citizens; and
 - c. Mapping the specific boundaries of the Water Quality Resource Areas and Flood Management Areas on the city/county Water Quality and Flood Management Areas map.
3. The city/county Water Quality and Flood Management Areas map shall be amended to add wetlands which meet the requirements of Section 10.D.2 and to correct the locations of Protected Water Features, Water Quality Resource Areas and Flood Management Areas in accordance with Section 10.B.

- D. The city/county shall review the Water Quality and Flood Management Areas Map during periodic review as required by ORS 197.633 (1997).**

Section 4. Water Quality Resource Areas

- A. The purpose of this section is to protect and improve the beneficial water uses and functions and values of Water Quality Resource Areas.
- B. This ordinance establishes a Water Quality Resource Area Overlay Zone, which is delineated on the Water Quality and Flood Management Area map attached and incorporated by reference as part of this ordinance.

(Note: If it has been determined during local public review that the code language is to prevail, adoption of these standards as written is appropriate. If a map is to prevail, this section should be used for map correction and interpretation, and the definition of areas should be by adopting an official map by reference.)

- C. The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in the Table One. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.

Table 1

Protected Water Feature Type (see definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor
Primary Protected Water Features ¹	< 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	50 feet
Primary Protected Water Features ¹	≥ 25% for 150 feet or more ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	200 feet
Primary Protected Water Features ¹	≥ 25% for less than 150 feet ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	Distance from starting point of measurement to top of ravine (break in ≥25% slope) ³ , plus 50 feet. ⁴
Secondary Protected Water Features ²	< 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	15 feet
Secondary Protected Water Features ²	≥ 25% ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	50 feet

¹Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs

²Secondary Protected Water Features include intermittent streams draining 50-100 acres.

³Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the ≥ 25% slope (see slope measurement in Appendix).

⁴A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).

⁵Vegetated corridors in excess of 50-feet for primary protected features, or in excess of 15-feet for secondary protected features, apply on steep slopes only in the *uphill* direction from the protected water feature.

(Note: The following methodology is an alternative for the purposes of substantial compliance: a jurisdiction can meet the performance standards in Title 3 by applying the following method to the water quality resource area: for areas with zero slope (as measured parallel to the ground) the buffer will be 50 feet from top of waterway bank, but for every one percent (1%) slope after that point, add six (6) feet.)

D. Uses Permitted Outright

1. Stream, wetland, riparian and upland enhancement or restoration projects; and farming practices as defined in ORS 30.930 and farm uses, excluding buildings and structures, as defined in ORS 215.203.

2. Placement of structures that do not require a grading or building permit.

(Note: City and Counties have the option of choosing to apply the Water Quality and Flood Management Area performance standards of Table 1 to all structures.)

3. Routine repair and maintenance of existing structures, roadways, driveways, utility facilities, accessory uses and other development.

(Note: Local jurisdictions may choose to place this subsection – D3 – in subsection E as item 3, Uses under Prescribed Conditions, and prescribe those conditions.)

E. Uses Under Prescribed Conditions

1. Repair, replacement or improvement of utility facilities where:

a. The disturbed portion of the Water Quality Resource Area is restored; and

b. Non-native vegetation is removed from the Water Quality Resource Area and replaced with vegetation from the Metro Native Plant List.

2. Additions, alterations, rehabilitation, or replacement of existing structures that do not increase existing structural footprint in the Water Quality Resource Area where the disturbed portion of the Water Quality Resource Area is restored using native vegetative cover.

F. Conditional Uses

The following uses are allowed in the Water Quality Resource Area Overlay Zone subject to compliance with the Application Requirements and Development Standards of subsections H and I:

1. Any use allowed in the base zone, other than those listed in subsection D and E above.

2. Measures to remove or abate nuisances, or any other violation of State statute, administrative agency rule or city or county ordinance.

3. Roads to provide access to Protected Water Features or necessary ingress and egress across Water Quality Resource Areas.
4. New public or private utility facility construction.
5. Walkways and bike paths. (Subsection I.5).
6. New stormwater pre-treatment facilities (Subsection I.6).
7. Widening an existing road adjacent to or running parallel to a Water Quality Resource Area.
8. Additions, alterations, rehabilitation or replacement of existing structures, roadways, accessory uses and development that increase the structural footprint within the Water Quality Resource Area consistent with Subsection I.7.

G. Prohibited Uses

1. Any new structures, development, other than those listed in subsection D, E and F, construction activities, gardens, lawns, dumping of any materials of any kind.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

H. Application Requirements

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone must provide the following information in addition to the information required for the base zone:

1. A topographic map of the site at contour intervals of five feet or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the city/county Water Quality and Flood Management Area map, and that meets the definition of Water Quality Resource Areas in Table 1.
2. The location of all existing natural features including, but not limit to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH), natural drainages on the site, springs, seeps and outcroppings of rocks, or boulders within the Water Quality Resource Area.
3. Location of Title 3 wetlands. Where Title 3 wetlands are identified, the applicant shall follow the Division of State Lands recommended wetlands

delineation process. The delineation shall be prepared by a professional wetlands specialist.

4. An inventory and location of existing debris and noxious materials.
5. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 2.
6. An inventory of vegetation, including percentage ground and canopy coverage.
7. Alternatives analysis demonstrating that:
 - a. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and
 - b. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
 - c. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 2; and
 - d. It will be consistent with a Water Quality Resource Area Mitigation Plan.
 - e. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.
 - f. For applications seeking an alteration, addition, rehabilitation or replacement of existing structures:
 1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
 2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and

3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
8. A Water Quality Resource Area Mitigation Plan shall contain the following information:
- a. A description of adverse impacts that will be caused as a result of development.
 - b. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 2.
 - c. A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.
 - d. A map showing where the specific mitigation activities will occur.
 - e. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

I. Development Standards

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone shall satisfy the following standards:

1. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 2.
2. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area. Trees in the Water Quality Resource Area shall not be used as anchors for stabilizing construction equipment.
3. Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in the Metro Native Plant List, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare

areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.

4. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as allowed in Subsection F. Such markings shall be maintained until construction is complete.
5. Walkways and bike paths:
 - a. A gravel walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature.
 - b. A paved walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. For any paved walkway or bike path, the width of the Water Quality Resource Area must be increased by a distance equal to the width of the path. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature; and
 - c. A walkway or bike path shall not exceed 10 feet in width.
6. Stormwater pre-treatment facilities:
 - a. The stormwater pre-treatment facility may only encroach a maximum of 25 feet into the outside boundary of the Water Quality Resource Area of a primary water feature; and
 - b. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the subject property.
7. Additions, alterations, rehabilitation and replacement of lawful structures.
 - a. For existing structures, roadways, driveways, accessory uses and development which are nonconforming, this ordinance shall apply in addition to the nonconforming use regulations of the city/county zoning ordinance.

- b. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development shall not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways, accessory uses and development

8. Off-site Mitigation:

- a. Where the alternatives analysis demonstrates that there are no practicable alternatives for mitigation on site, off-site mitigation shall be located as follows:
 - 1. As close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable;
 - 2. Within the watershed where the development will take place or as otherwise specified by the city or county in an approved Wetland Mitigation Bank.
- b. In order to ensure that the mitigation area will be protected in perpetuity, proof that a deed restriction has been placed on the property where the mitigation is to occur is required.

Table 2

WATER QUALITY RESOURCE AREA REQUIREMENTS

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Good Existing Corridor:</u> Combination of trees, shrubs and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Prior to construction, a biologist or landscape architect shall prepare and submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature and nutrients sediment control temperature control or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.</p> <p>Inventory and remove debris and noxious materials.</p>

Note: The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Marginal Existing Vegetated Corridor:</u> Combination of trees, shrubs and groundcover are 80% present, and 25-50 percent canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with, non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> <p>Revegetate with native species using a City/County approved plan developed to represent the vegetative composition that would naturally occur on the site. Seeding may be required prior to establishing plants for site stabilization.</p> <p>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

Note: The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Degraded Existing Vegetated Corridor:</u> Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any non-native species.</p>	<p><i>Vegetate bare areas with plantings from approved Native Plant List.</i></p> <p><i>Remove non-native species and revegetate with plantings from approved Native Plants List.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with appropriate plants from Native Plants List.</p> <p>Remove non-native species and revegetate with non-nuisance plantings from Native Plants List.</p> <p>Plant and seed to provide 100 percent surface coverage.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

Note: The middle column, being italicized, indicates that it is an option for consideration in the development review process.

Section 5. Flood Management

- A. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to human life and property, and maintain the functions and values of floodplains, such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems.
- B. This ordinance establishes a Flood Management Area Overlay Zone, which is delineated on the Water Quality and Flood Management Area Map attached and incorporated by reference as a part of this ordinance.
- C. The Flood Management Areas mapped include:
1. Land contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance maps and the area of inundation for the February 1996 flood; and
 2. Lands that have physical or documented evidence of flooding within recorded history. Jurisdictions shall use the most recent and technically accurate information available to determine the historical flood area, such as the aerial photographs of the 1996 flooding and digitized flood elevation maps.
 3. The standards that apply to the Flood Management Areas apply in addition to local, state or federal restrictions governing floodplains or flood hazard areas.
- D. Uses Permitted Outright:
1. Excavation and fill required to plant any new trees or vegetation.
 2. Restoration or enhancement of floodplains, riparian areas, wetland, upland and streams that meet federal and state standards.
- E. Conditional Uses:
- All uses allowed in the base zone or existing flood hazard overlay zone are allowed in the Flood Management Overlay Zone subject to compliance with the Development Standards of subsection H.

F. Prohibited Uses:

1. Any use prohibited in the base zone or existing flood hazard overlay zone.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

G. Development Standards

All development, excavation and fill in the floodplain shall conform to the following balanced cut and fill standards:

1. No net fill in any floodplain is allowed. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
2. Excavation areas shall not exceed fill areas by more than 50 percent of the square footage.
3. Any excavation below bankful stage shall not count toward compensating for fill.

(Note: These areas would be full of water in the winter and not available to hold stormwater.)

4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.
5. For excavated areas identified by the city or county to remain dry in the summer, such as parks or mowed areas, the lowest elevation of the excavated area shall be at least 6 inches above the winter "low water" elevation, and sloped at a minimum of two percent towards the Protected Water Feature. One percent slopes will be allowed in smaller areas.
6. For excavated areas identified by the city or county to remain wet in the summer, such as a constructed wetland, the grade shall be designed not to drain into the Protected Water Feature.
7. Minimum finished floor elevations must be at least one foot above the design flood height or highest flood of record, whichever is higher, for new habitable structures in the Flood Area.

8. Short-term parking in the floodplain may be located at an elevation of no more than one foot below the ten-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area. Long-term parking in the floodplain may be located at an elevation of no more than one foot below the 100-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area.
9. Temporary fills permitted during construction shall be removed.
10. New culverts, stream crossings and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in Flood Management Areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.
11. Excavation and fill required for the construction of detention facilities or structures, and other facilities, such as levees, specifically shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

Section 6. Subdivisions and Partitions (optional)

- A. The purpose of this section is to amend the city/county regulations governing land divisions to require that new subdivision and partition plats delineate and show the Water Quality Resource Area as a separate tract.
- B. The standards for land divisions in Water Quality Resource Areas Overlay Zone shall apply in addition to the requirements of the city/county land division ordinance and zoning ordinance.
- C. Prior to preliminary plat approval, the Water Quality Resource Area shall be shown as a separate tract, which shall not be a part of any parcel used for construction of a dwelling unit.
- D. Prior to final plat approval, ownership of the Water Quality Resource Area tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:
 1. Private open space held by the owner or homeowners association; or
 2. For residential land divisions, private open space subject to an easement conveying storm and surface water management rights to the city/county and preventing the owner of the tract from activities and uses inconsistent with the purpose of this ordinance; or

3. At the owner's option, public open space where the tract has been dedicated to the city/county or other governmental unit; or
 4. Any other ownership proposed by the owner and approved by the Director.
- E. Where the Water Quality Resource Area tract is dedicated to the city/county or other governmental unit, development shall be subject to a minimum 3-foot setback from the Water Quality Resource Area.

Section 7. Density Transfers

- A. The purpose of this section is to allow density accruing to portions of a property within the Water Quality Resource Area and Flood Management Area Overlay Zones to be transferred outside the overlay zones.
- B. Development applications that request a density transfer must provide the following information:
1. A map showing the net buildable area to which the density will be transferred.
 2. Calculations justifying the requested density increase.
- C. Density transfers shall be allowed if the applicant demonstrates compliance with the following standards:
1. The density proposed for the lot receiving the density is not increased to more than two (2) times the permitted density of the base zone. Fractional units shall be rounded down to the next whole number.
(Note: This is one way of restricting density.)
 2. Minimum density standards will not increase due to the density transfers.
- D. The area of land contained in a Water Quality Resource Area may be excluded from the calculations for determining compliance with minimum density requirements of the zoning code.
- E. All standards of the base zone other than density requirements continue to apply.
- F. Density transfers shall be recorded on the title of the lot in the Water Quality Resource Area and on the title of the transfer lot.

- G. Once density is transferred from a lot in the Water Quality Resource Area, the density increase allocated to the transfer lot may not be transferred to any other lot.

Section 8. Erosion Prevention and Sediment Control

- A. The purpose of this section is to require erosion prevention measures and sediment control practices for all development inside and outside the Water Quality Resource Area and Flood Management Area Overlay Zones during construction to prevent and restrict the discharge of sediments, and to require final permanent erosion prevention measures, which may include landscaping, after development is completed. Erosion prevention techniques shall be designed to protect soil particles from the force of water and wind so that they will not be transported from the site. Sediment control measures shall be designed to capture soil particles after they have become dislodged by erosion and attempt to retain the soil particles on site.
- B. Prior to, or contemporaneous with, approval of an application that may cause visible or measurable erosion, the applicant must obtain an Erosion and Sediment Control Permit:
- C. An application for an Erosion and Sediment Control Permit shall include an Erosion and Sediment Control Plan, which contains methods and interim measures to be used during and following construction to prevent or control erosion. The plan shall demonstrate the following:
1. The Erosion and Sediment Control Plan meets the requirements of the *Erosion Prevention and Sediment Control Plans, Technical Guidance Handbook (Handbook)* attached and incorporated by reference as part of this ordinance;
 2. The Erosion and Sediment Control Plan will:
 - a. Prevent erosion by employing prevention practices such as non-disturbance, construction schedules, erosion blankets and mulch covers; or
 - b. Ensure that where erosion cannot be completely avoided, the sediment control measures will be adequate to prevent erosion from entering the public stormwater system, surface water system, and Water Quality Resource Areas; and
 - c. Allow no more than a ten percent cumulative increase in natural stream turbidities, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction or other legitimate

activities, and that cause the standard to be exceeded may be authorized provided all practicable turbidity control techniques have been applied.

3. The applicant will actively manage and maintain erosion control measures and utilize techniques described in the Permit to prevent or control erosion during and following development. Erosion and sediment control measures required by the Permit shall remain in place until disturbed soil areas are permanently stabilized by landscaping, grass, approved mulch or other permanent soil stabilizing measures;
 4. No mud, dirt, rock or other debris will be deposited upon a public street or any part of the public stormwater system, surface water system, Water Quality Resource Area, or any part of a private stormwater system or surface water system that drains or connects to the public stormwater or surface water system.
- D. The Erosion and Sediment Control Plan shall be reviewed in conjunction with the requested development approval. If the development does not require review under Sections 3 and 4 of this ordinance, the Director may approve or deny the permit with notice of the decision to the applicant.
 - E. The city or county may inspect the development site to determine compliance with the Erosion and Sediment Control Plan and Permit.
 - F. Erosion that occurs on a development site that does not have an Erosion and Sediment Control Permit, or that results from a failure to comply with the terms of such a Permit, constitutes a violation of this ordinance.
 - G. If the Director finds that the facilities and techniques approved in an Erosion and Sediment Control Plan and Permit are not sufficient to prevent erosion, the Director shall notify the permittee. Upon receiving notice, the permittee shall immediately install interim erosion and sediment control measures as specified in the *Handbook*. Within three days from the date of notice, the permittee shall submit a revised Erosion and Sediment Control Plan to the city or county. Upon approval of the revised plan and issuance of an amended Permit, the permittee shall immediately implement the revised plan.

Section 9. Variances

- A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would deprive an owner of all economically viable use of land.

- B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.
- C. The Director shall provide the following notice of variance applications:
1. Upon receiving an application to vary the requirements of this ordinance, the Director shall provide notice of the request to all property owners within (100) feet inside the urban growth boundary, (250) feet outside the urban growth boundary and Metro.
 2. Within (7) days of a decision on the variance, the Director shall provide notice of the decision to all property owners within (100) feet inside the urban growth boundary, (250) feet outside the urban growth boundary and Metro.
- D. Development may occur on lots located completely within the Water Quality Resource Overlay Zone that are recorded with the county assessor's office on or before the date this ordinance is adopted. Development shall not disturb more than 5,000 square feet of the vegetated corridor, including access roads and driveways, subject to the erosion and sediment control standards of this ordinance.
- E. Hardship Variance

Variances to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of this ordinance, the applicant must demonstrate the following:

1. The variance is the minimum necessary to allow the proposed use or activity;
2. The variance does not increase danger to life and property due to flooding or erosion;
3. The impact of the increase in flood hazard, which will result from the variance, will not prevent the city or county from meeting the requirements of this ordinance. In support of this criteria the applicant shall have a qualified professional engineer document the expected height, velocity and duration of flood waters, and estimate the rate of increase in sediment transport of the flood waters expected both downstream and upstream as a result of the variance;
4. The variance will not increase the cost of providing and maintaining public services during and after flood conditions so as to unduly burden public agencies and taxpayers;

5. Unless the proposed variance is from Section 4.H.8 (mitigation) or Section 8 (erosion control), the proposed use will comply with those standards; and
6. The proposed use complies with the standards of the base zone.

F. Buildable Lot Variance

A variance to avoid the loss of all economically viable use of a lot that is partially inside the Water Quality Resource Overlay Zone is permitted. Development on such lots shall not disturb more than 5,000 square feet of the vegetated corridor, including access roads and driveways, subject to the erosion and sediment control standards in Section 8 of this ordinance. Applicants must demonstrate the following:

1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:
 - a. The proposed use cannot meet the standards in Section 9.E (hardship variance); and
 - b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
2. The proposed variance is the minimum necessary to allow for the requested use;
3. The proposed variance will comply with Section 4.H.8 (mitigation) and Section 8 (erosion control); and
4. The proposed use complies with the standards of the base zone.

G. Variance Conditions

The Director may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief. If a variance is granted pursuant to subsections E. 1-6, the variance shall be subject to the following conditions:

1. The minimum width of the vegetated corridor shall be 15 feet on each side of a Primary Protected Water Feature, except as allowed in Section 4F;

2. No more than 25 percent of the length of the Water Quality Resource Area for a Primary Protected Water Feature within a development site can be less than 30 feet in width on each side of the water feature; and
3. In either case, the average width of the Water Quality Resource Area shall be a minimum of 15 feet on each side for Secondary Protected Water Features, a minimum of 50 feet on each side for Primary Protected Water Features; or up to 200 feet on each side in areas with slopes greater than 25 percent. The stream shall be allowed to meander within this area, but in no case shall the stream be less than 10 feet from the outer boundary of the Water Quality Resource Area.

Section 10. Map Administration

- A. The purpose of this section is to provide a process for amending the Water Quality and Flood Management Areas map to add wetlands and correct the location of Protected Water Features and the Water Quality Resource Areas and Flood Management Area Overlay Zones.

B. Map Corrections

1. Within 90 days of receiving information establishing a possible error in the existence or location of a Protected Water Feature, Water Quality Resource Area Overlay Zone or Flood Management Area Overlay Zone, the city/county shall provide notice to interested parties of a public hearing at which the city/county will review the information.
2. The city/county shall amend the Water Quality and Flood Management Areas map if the information demonstrates:
 - a. That a Primary or Secondary Protected Water Feature no longer exists because the area has been legally filled, culverted or developed prior to the adoption of this ordinance; or
 - b. The boundaries of the Water Quality Resource Area Overlay Zone or Flood Management Area Overlay Zone have changed since adoption of the Water Quality and Flood Management Areas map.

C. Modification of the Water Quality Resource Area

To modify the Water Quality Resource Area Overlay Zone, the applicant shall demonstrate that the modification will offer the same or better

protection of the Protected Water Feature, Water Quality Resource Area and Flood Management Area by:

1. Preserving a vegetated corridor that will separate the Protected Water Feature from proposed development; and
2. Preserving existing vegetated cover or enhancing the Water Quality Resource Area sufficient to assist in maintaining or reducing water temperatures in the adjacent Protected Water Feature; and
3. Enhancing the Water Quality Resource Area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent Protected Water Feature; and
4. Protecting the vegetated corridor sufficient to provide filtration, infiltration and natural water purification for the adjacent Protected Water Feature; and
5. Stabilizing slopes adjacent to the Protected Water Feature.

D. Adding Title 3 Wetlands

1. Within 90 days of receiving evidence that wetland meets any of one of the criteria in D.2., the city/county shall provide notice to interested parties of a public hearing at which the city/county will review the evidence.
2. A wetland shall be protected by the standards set forth in this ordinance if the wetland meets any one of the following criteria:
 - a. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size;

or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
 - b. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet;

or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

- c. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41 (1996).

Section 11. Consistency

Where the provisions of this ordinance are less restrictive or conflict with comparable provisions of the zoning ordinance, regional, state or federal law, the provisions that are more restrictive shall govern. Where this ordinance imposes restrictions that are more stringent than regional, state and federal law, the provisions of this ordinance shall govern.

Section 12. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of the City or County, any officer or employee thereof, or the Federal Insurance Administration, for any damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Section 13. Severability

The provisions of this ordinance are severable. If any section, clause or phrase of this ordinance is adjudged to be invalid by a court of competent jurisdiction, the decision of that court shall not affect the validity of the remaining portions of this ordinance.

Section 14. Enforcement

- A. No person shall engage in or cause to occur any development, use or activity that fails to meet the standards and requirements of this ordinance. Development, uses or activities that are not specifically allowed within the Water Quality Resource Area are prohibited. All activities that may cause visible or measurable erosion are prohibited prior to the applicant obtaining an Erosion and Sediment Control Permit.
- B. In addition to other powers the city or county may exercise to enforce this ordinance, the city or county may:
 - 1. Establish a cooperative agreement between the (enforcement authority) and the applicant (or responsible party) to remedy the violation.

2. Issue a stop work order.
 3. Impose a civil penalty of not more than \$ ___ for each violation upon the permittee, contractor or person responsible for carrying out the development work. Each day of violation shall constitute a separate offense.
 4. Cause an action to be instituted in a court of competent jurisdiction.
 5. Authorize summary abatement and subsequent recovery of costs incurred by the city or county.
- C. Upon notification by the city or county of any violation of this ordinance the applicant, permittee, contractor or person responsible for carrying out development work may be required to immediately install emergency erosion and sediment control measures that comply with Section 8.

Section 15. Definitions

Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted to give them the same meaning as they have in common usage and to give this classification its most reasonable application.

Architect - An architect licensed by the State of Oregon.

Bankful Stage - Defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begin to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankful stage.

Created Wetlands - Those wetlands developed in an area previously identified as a non-wetland to replace, or mitigate wetland destruction or displacement. A created wetland shall be regulated and managed the same as an existing wetland.

Constructed Wetlands - Those wetlands developed as a water quality or quantity facility, subject to change and maintenance as such. These areas must be clearly defined and/or separated from naturally occurring or created wetlands.

Debris - discarded man-made objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic or styrofoam. Debris does not include objects necessary to a use allowed by this ordinance, or ornamental and recreational structures. Debris does not include existing natural plant materials or natural plant materials which are left after flooding, downed or standing dead trees or trees which have fallen into protected water features.

Department of Environmental Quality (DEQ) Water Quality Standards - The numerical criteria or narrative condition needed in order to protect an identified beneficial use.

Design Flood Elevation -the elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

Development - any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that more than 10 percent removal of vegetation on a lot must comply with Section 4C - Erosion and Sediment Control. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930

and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).

Disturb - man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

enhancement or restoration of the Water Quality Resource Area;

planting native cover identified in the Metro Native Plant List.

Division of State Lands Wetland Determinations - As defined in OAR 141-86-200 (1997) (definitions for Local Wetland Inventory Standards and Guidelines), "wetland determination" means identifying an area as wetland or non-wetland.

Emergency - any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Engineer - A registered professional engineer licensed by the State of Oregon.

Enhancement - the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

Engineering Geologist - A registered professional engineering geologist licensed by the State of Oregon.

Erosion - Erosion is the movement of soil particles resulting from actions of water or wind.

Fill - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a Title 3 wetland or floodplain for the purposes of development or redevelopment.

Floodway Fringe - The area of the floodplain, lying outside the floodway, which does not contribute appreciably to the passage of flood water, but serves as a retention area.

Floodplain - The land area identified and designated by the United States Army Corps of Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city that has been or may be covered temporarily by water as a result of a storm event of identified frequency. It is usually the flat area of land adjacent to a stream or river formed by floods.

Floodway - The portion of a watercourse required for the passage or conveyance of a given storm event as identified and designated by the (identify name) city/county pursuant to this Ordinance. The floodway shall include the channel of the watercourse and the adjacent floodplain that must be reserved in an unobstructed condition in order to discharge the base flood without flood levels by more than one foot.

Flood Management Areas - all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

Invasive Non-native or Noxious Vegetation - plant species that have been introduced and due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities, or which are not listed on the Metro Native Plant List as adopted by Metro Council resolution.

Lot - Lot means a single unit of land that is created by a subdivision of land. (ORS 92.010(3)).

Mitigation - the reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the effected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas.

Native Vegetation - any vegetation native to the Portland metropolitan area or listed on the Metro Native Plant list as adopted by Metro Council resolution.

ODFW Construction Standards - Oregon Department of Fish and Wildlife construction guidelines for building roads, bridges and culverts or any transportation structure within a waterway.

Open Space - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farm land. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

Ordinary Mean High Water Line - As defined in OAR 141-82-005 as the line on the bank or shore to which water ordinarily rises in season; synonymous with Mean High Water (ORS 274.005).

Ordinary Mean Low Water Line - As defined in OAR 141-82-005 as the line on the on the bank or shore to which water ordinarily recedes in season; synonymous with Mean Low Water (ORS 274.005).

Owner or Property Owner - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser thereunder.

Parcel - Parcel means a single unit of land that is created by a partitioning of land. (ORS 92.010(7)).

Perennial Streams - means all primary and secondary perennial water ways mapped by the U.S. Geological Survey.

Plans - The drawings and designs that specify construction details as prepared by the Engineer.

Post-Construction Erosion Control - Consists of re-establishing groundcover or landscaping prior to the removal of temporary erosion control measures.

Practicable - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

Protected Water Features

Primary Protected Water Features shall include:

- a. Title 3 wetlands; and
- b. rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- c. streams carrying year-round flow; and
- d. springs which feed streams and wetlands and have year-round flow and
- e. natural lakes.

Secondary Protected Water Features shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

Restoration - the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

“Resource” versus “Facility” - The distinction being made is between a “resource,” a functioning natural system such as a wetland or stream; and a “facility” which refers to a created or constructed structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Riparian - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

Routine Repair and Maintenance - activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

Set-back Adjustment - The placement of a building a specified distance away from a road, property line or protected resource.

Significant Negative Impact - an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

Statewide Planning Goal 5 - Oregon’s statewide planning goal that addresses open space, scenic and historic areas, and natural resources. The purpose of the goal is to conserve open space and protect natural and scenic resources.

Statewide Planning Goal 6 - Oregon’s statewide planning goal that addresses air, water and land resources quality to “maintain and improve the quality of the air, water and land resources of the state” as implemented by the Land Conservation and Development Commission (LCDC).

Statewide Planning Goal 7 - Oregon’s statewide planning goal that addresses areas subject to natural disasters and hazards to “protect life and property from natural disasters and hazards” as implemented by the Land Conservation and Development Commission (LCDC).

Steep slopes - Steep slopes are those slopes that are equal to or greater than 25%. Steep slopes have been removed from the “buildable lands” inventory and have not been used in calculations to determine the number of acres within the urban growth boundary which are available for development.

Stormwater Pre-treatment Facility – any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Stream - a body of running water moving over the earth’s surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and

intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

Structure - A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components, that are not customarily regulated through zoning codes.

Substantial Compliance - city and county comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

Title 3 Wetlands - wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C. Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

Top of Bank - The same as "bankful stage" defined in OAR 141-85-010(2).

Utility Facilities - buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

Variance - means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstances unique to a specific property.

Vegetated Corridor - the area of setback between the top of bank of a Protected Water Feature and the delineated edge of the Water Quality Resource Area as defined in Table 1.

Visible or Measurable Erosion - Visible or measurable erosion includes, but is not limited to:

Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or onto the storm and surface water system, either by direct deposit, dropping discharge, or as a result of the action of erosion.

Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.

Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.

Water Quality Resource Areas - vegetated corridors and the adjacent water feature as established in Title 3.

Water Quality and Floodplain Management Area - The area that identifies where the Water Quality Resource Area and Floodplain Management Area Overlay Zone is applied.

Water Quality Facility - Any structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement. It may also include, but is not limited to, existing features such as constructed wetlands, water quality swales, and ponds that are maintained as stormwater quality control facilities.

Watershed - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

Wetlands - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

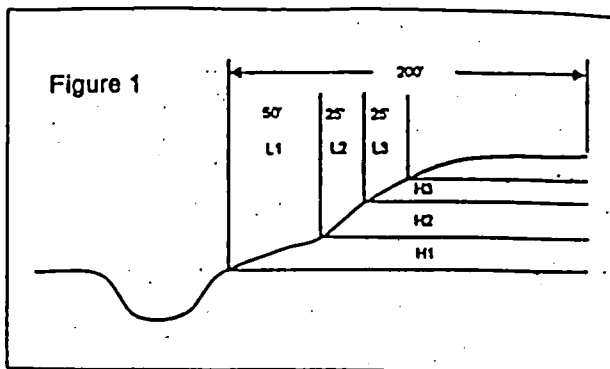
APPENDIX

EXHIBIT C

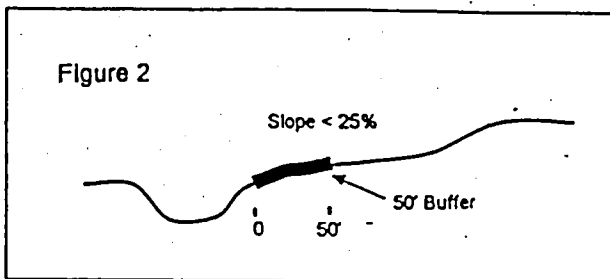
Proposed Method for Determining Vegetated Corridors Next to Primary Protected Water Features

How measure slope (*Figure 1*)

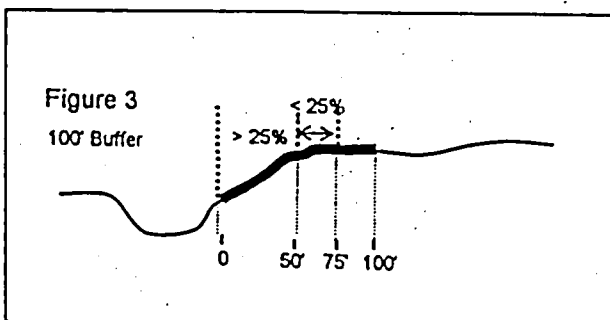
Measure 50 feet horizontally (L1) from the stream (top of bank) and determine the slope ($H1/L1$ - the difference in elevation divided by the difference in horizontal distance multiplied by 100).



If the slope in this 50-foot area is less than 25%, the corridor width is 50 feet from the top of bank (*see Figure 2*).



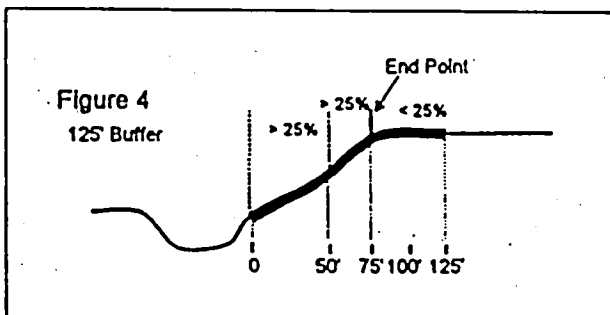
If the slope in the 50-foot area is 25% or greater, measure another 25 feet horizontally. If the slope in this incremental 25-foot area is now *less than 25%* ($H2/L2 < 25\%$), the vegetated corridor width would be 100 feet (50 feet for the horizontal distance from the top of bank with slope greater than 25% **PLUS** an additional 50 feet). (*See Figure 3.*)



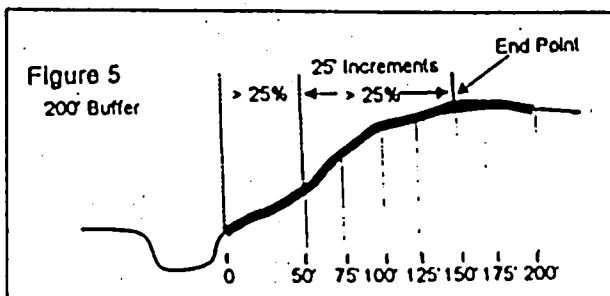
If the slope is greater than 25% in this incremental 25-foot area, continue measuring the slope every 25 feet (H/L) until you either:

- (a) find a slope less than 25% (*see Figure 4*), or

(When you find a slope less than 25%, the vegetated corridor equals the distance from the stream's top of bank to the *end point* of the last surveyed 25-foot increment with a slope greater than 25% **PLUS** an additional 50 feet).



- (b) reach 200 feet (the maximum corridor width). (*See Figure 5.*)



Advantages:

- Provides protection for most steep slopes, yet corridor widths can be varied to fit a number of different situations (corridor widths include 50 feet to 100 feet, 125 feet, 150 feet, 175 feet, and 200 feet)
- Provides flexibility.

Disadvantages:

- Does not protect slopes that rise steeply after a gradual "floodplain" area.

EXHIBIT D

The Metro Water Quality and Flood Management Areas map consists of quadrangle maps which were adopted by the Metro Council on June 18, 1998, as part of Ordinance 98-730C. The maps are available for review and may be copied at the Metro Regional Headquarters.

EXHIBIT E

DEFINITIONS (Title 10)

Design Flood Elevation -the elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

Development - any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that more than 10 percent removal of vegetation on a lot must comply with Section 4C - Erosion and Sediment Control. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).

Emergency - any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Enhancement - the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

Fill - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a wetland or floodplain for the purposes of development or redevelopment.

Flood Management Areas - all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

Invasive Non-native or Noxious Vegetation - plant species that have been introduced and due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities, or which are not listed on the Metro Native Plant List as adopted by Metro Council resolution.

Mitigation - the reduction of adverse effects of a proposed project by considering, in the following order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the

effected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas.

Native Vegetation - any vegetation native to the Portland metropolitan area or listed on the Metro Native Plant list as adopted by Metro Council resolution.

Protected Water Features

Primary Protected Water Features shall include:

- a. Title 3 wetlands; and
- b. rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- c. streams carrying year-round flow; and
- d. springs which feed streams and wetlands and have year-round flow and
- e. natural lakes.

Secondary Protected Water Features shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

Restoration - the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

Routine Repair and Maintenance - activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

Significant Negative Impact - an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

Stream - a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

Substantial Compliance - city and county comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

Title 3 Wetlands - wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C. Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

Visible or Measurable Erosion - visible or measurable erosion includes, but is not limited to:

- a. Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or onto the storm and surface water system, either by direct deposit, dropping discharge, or as a result of the action of erosion.
- b. Evidence of concentrated flows of water over bare soils; turbid or sediment laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.
- c. Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.

Utility Facilities - buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television.

Water Quality Resource Areas - vegetated corridors and the adjacent water feature as established in Title 3.

Wetlands - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

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**GROWTH MANAGEMENT COMMITTEE AND COUNCIL WORK SESSION
REPORT**

CONSIDERATION OF ORDINANCE NO. 98-730C, FOR THE PURPOSE OF AMENDING ORDINANCE Nos. 96-647C AND NO. 97-715B, TO AMEND TITLE 3 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND AMEND THE REGIONAL FRAMEWORK PLAN, APPENDIX A, AND ADOPT THE TITLE 3 MODEL ORDINANCE AND WATER QUALITY AND FLOOD MANAGEMENT MAPS.

Date: June 9, 1998

Presented by: Counselor Naito

Committee Action: At its May 28, 1998 meeting, the Growth Management Committee amended Ordinance 98-730A and then voted 2-1 to recommend Council adoption of Ordinance 98-730B. The ordinance is also referred to as the Stream and Floodplain Protection Plan. Voting in favor: councilors McCaig, and Naito. Voting against: councilor Morissette.

Council Action: The full Council held a work session on Ordinance 98-730B, on June 4, 1998, and accepted further amendments, generally of a technical nature as proposed by legal counsel or staff.

Current Document: The ordinance consists of:

- The cover ordinance --References the relation of this ordinance to RUGGO's, the Urban Growth Management Functional Plan and the Regional Framework Plan; detailing review performed by advisory committees, Growth Management Committee and the Council; and specifying the impact of this Ordinance on the Framework Plan and Metro code.
- Exhibit A--Contains sections 1-4, revising Title 3 of the Urban Growth Management Functional Plan (which was adopted in the fall of 1996). Section 4 contains performance standards with which cities and counties must comply. These sections been extensively reorganized compared to the original Title 3.
- Exhibit B--Sections 5-7 references Fish and Wildlife Habitat Conservation, and requirements for Model Ordinance and Map Adjustment Process. This exhibit was not significantly revised from the original Title 3.
- Exhibit C--The Model Ordinance. Its creation was required by the original Title 3, and is one way cities and counties can demonstrate compliance. In addition, the performance standards in Exhibit A do not become effective until 18 months after Metro Council adoption of the Model Ordinance and the Water Quality and Flood Management Areas Map.

- Exhibit D--Water Quality and Flood Management Areas Map.
- Exhibit E--Definitions applying to Title 3 of the Urban Growth Management Functional Plan, but residing in Title 10 of same.

Committee and Council Issues/Discussion: The following amendments to the March 25 MPAC recommended version of the ordinance, were adopted by the Growth Management Committee. Council amendments are indicated by *.

Cover Ordinance

Accepted language recommended by Office of General Counsel clarifying that no substantive changes were made to the Original Title 3, sections 5-7.

The cover ordinance was also amended to direct that sections 1 and 2 of Title 8 of the Urban Growth Management Functional Plan (Compliance) be amended. Title 8 will now contain explicit references to Title 3 and direct the timing of local hearings, information to be transmitted to Metro and Metro's role in notice to citizens and review of the results of the hearings.

* A new section, section 11, was added to provide a severability clause, protecting those parts of the ordinance which are not part of an appeal, or ultimately found to be contrary to law.

Exhibit A

Revised Table 1, describing vegetated corridor requirements, to be consistent with a similar, but more condensed table in the model ordinance. Specifications remain the same. Table 1 was also revised to make clearer where measurements begin when delineating water features.

Agreed with MPAC recommendation concerning language for existing structures and alternatives analysis (Section 4.D.3.d).

A key amendment known as "Discussion draft 1B" modified several components of exhibit A, especially "Section 3--Implementation Alternatives for Cities and Counties." It clarified the relation between map and text in the identification of, and application of title 3 to wetlands. In summary, a local jurisdiction will have the option of adopting a field verified map, or code language in complying with performance standards. The application of field verified maps was also clarified and expanded. In addition, cities and counties will be required to hold at least one public hearing prior to adopting comprehensive plan amendments, implementing ordinances and maps, and documents related to same must be available for public review at least 45 days prior to the public hearing.

*Language relating to map administration was moved from Section 7 of Exhibit B, into (a new) section 4.E., Map Administration. It had already been revised to clarify the timing and process for amending maps where errors had been identified. The process, when related to wetlands was been clarified and expanded. By moving the language into the Performance Measures section, the Council made it clear that map criteria and requirements are properly attached to Title 3 performance standards, not Fish and Wildlife Habitat Protection (Exhibit B).

Exhibit B

* With the removal of map procedures language, section 7 now reverts to Title 3 language originally adopted in 1996, covering variances related to fish and wildlife habitat.

Exhibit C

Agreed to a housekeeping motion to include the table of contents and appendix to the model ordinance.

Amended model Ordinance to be consistent with change to Exhibit A, replacement and rehabilitation of existing structures and alternatives analysis (Section 3.H.7.f).

Agreed with MPAC recommendation to section 3.I.7 clarifying regulation of nonconforming uses in the vegetated corridors.

Agreed to definitions for “disturb” and “stormwater pre-treatment facility” in the definitions section (section 14) of the Model Ordinance. Also agreed to revise the definition of “development” to include application to buildings associated with farm practices and farm uses, to be consistent with similar change to Exhibit E (below).

Directed legal council to review model ordinance for consistency with all May 28 amendments.

* A new section 3 was added, titled “Administration”, which corresponds to map/text requirements in the performance standards section (4) of Exhibit A.

*A new section 10, ”Map Administration”, was also added which corresponds to Section 4E mentioned above.

Exhibit D

* Four map amendments were approved. They were related to map errors, and had been submitted with sufficient lead time to be reviewed by staff and others.

Exhibit E

Amended definition of “development” to include application to buildings associated with farm practices and farm uses. The language was suggested by legal counsel, at the request of MPAC.

Included a definition for “debris”.

The definition of wetland has been revised to be consistent with the Department of State Lands (DSL). A definition of “Title 3 Wetlands” is also created to refer to wetlands of metropolitan concern.

* Invasive Non-Native or Noxious Vegetation now refers to a list to be adopted separately, by Metro Council Resolution.

Future Council Action: Ordinance 98-730C will appear on the June 18 Council agenda for final adoption.

Agenda Item Number 7.2

Ordinance No. 98-741, For the Purpose of Granting a Yard Debris Processing Facility to McFarlane's Bark, Inc. to Operate a Yard Debris Processing Facility, and Declaring an Emergency.

Second Reading

**Metro Council Meeting
Thursday June 18, 1998
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A YARD)
DEBRIS PROCESSING FACILITY LICENSE TO)
MCFARLANE'S BARK, INC. TO OPERATE)
A YARD DEBRIS PROCESSING FACILITY)
AND DECLARING AN EMERGENCY)

ORDINANCE NO. 98-741

Introduced by Mike Burton,
Executive Officer

WHEREAS, Section 5.01.030 of the Metro Code requires an owner or operator of a yard debris processing facility to be licensed by Metro; and

WHEREAS, Section 5.01.040 of the Metro Code requires yard debris processing facilities to comply with the licensing requirements in Chapter 5.01; and

WHEREAS, Metro Code Section 5.01.060(a) requires applications for a license to be filed on forms provided by the Executive Officer, and specifies that licenses are subject to approval by the Council; and

WHEREAS, McFarlane's Bark, Inc. has submitted a yard debris processing facility license application to operate its existing yard debris composting facility in Milwaukie, Oregon; and

WHEREAS, the Metro Code Chapter 5.01.230 to 5.01.380 sets forth provisions relating to the licensing of yard debris processing facilities; and

WHEREAS, based on information submitted by McFarlane's Bark, Inc., specified in the Staff Report or otherwise submitted, the Executive Officer has found that with the special conditions set forth in the license agreement, the facility is in compliance with applicable provisions and standards in the Metro Code related to the licensing of yard debris processing facilities; and

WHEREAS, the facility is an existing operation providing necessary services to the public; and

WHEREAS, nuisance impacts from yard debris processing facilities such as odor, dust and noise can adversely affect the health, safety, and welfare of the public; and

WHEREAS, the purpose of the licensing agreement is to protect the health, safety, and welfare of Metro area residents; and

WHEREAS, the Council finds that it is necessary for the welfare of the Metro area that this ordinance take effect immediately, pursuant to Sections 37(2) and 39(1) of the Metro Charter; and

WHEREAS, The Executive Officer recommends that the Council grant the attached license to McFarlane's Bark, Inc.; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Council authorizes the Executive Officer to enter into the attached licensing agreement for a yard debris processing facility within ten days of the effective date of this ordinance.
2. An emergency having been declared for the reasons stated above, this ordinance shall take effect immediately, pursuant to Sections 37 (2) and 39 (1) of the 1992 Metro Charter.

ADOPTED by the Metro Council this _____ day of _____ 1998.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

EXHIBIT A

YARD DEBRIS COMPOSTING FACILITY LICENSE

issued by

METRO

600 N.E. Grand Avenue
Portland, Oregon 97232-2736
(503) 797-1700

LICENSE NUMBER: _____
DATE ISSUED: _____ (see Section 2)
AMENDMENT DATE: _____ N/A
EXPIRATION DATE: _____
ISSUED TO: _____ MCFARLANE'S BARK, INC.
NAME OF FACILITY: _____ MCFARLANE'S BARK, INC.
ADDRESS: _____ 13345 SE JOHNSON ROAD
CITY, STATE, ZIP: _____ MILWAUKIE, OR 97222
LEGAL DESCRIPTION: _____ (see attached application)
NAME OF OPERATOR: _____ MCFARLANE'S BARK, INC.
PERSON IN CHARGE: _____ DAN MCFARLANE, PRESIDENT
ADDRESS: _____ 13345 SE JOHNSON ROAD
CITY, STATE, ZIP: _____ MILWAUKIE, OREGON 97222
TELEPHONE NUMBER: _____ (503) 659-4240

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LICENSE AGREEMENT

This License is issued by Metro, a municipal corporation organized under the Constitution of the State of Oregon and the 1992 Metro Charter ("Metro"), to McFarlane's Bark, Inc. ("Licensee").

In recognition of the promises made by Licensee as specified herein, Metro issues this License, subject to the following terms and conditions:

1. DEFINITIONS

The definitions in Metro Code Section 5.01.010 shall apply to this License, as well as the following definitions. Defined terms are capitalized when used.

"Composting" means the controlled biological decomposition of organic materials through microbial activity which occurs in the presence of free oxygen. Composting does not include the stockpiling of organic material.

"Facility" means the site where one or more activities that the Licensee is authorized to conduct occur.

"Hazardous Waste" has the meaning specified in ORS 466.005.

"Prohibited Wastes" has the meaning set forth in Section 5.2 of this License.

2. TERM OF LICENSE

This License is issued for a term of five years from the date signed by Metro and the Licensee, following approval by the Metro Council.

3. LOCATION OF FACILITY

The licensed Facility is located at 13345 SE Johnson Road, Milwaukie, Oregon 97222. Tax lot 00202-00400-00402-00802-00803; Section 05, Township 25 South, Range 2 East.

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY

4.1 The owner of the Facility is McFarlane's Bark, Inc.

4.2 The owner of the property underlying the Facility is Marjorie McFarlane, 3964 SE Boise, Portland, Oregon 97202, and Daniel McFarlane, 1515 Windsor Drive, Gladstone, Oregon 97027. Licensee warrants that owner has consented to Licensee's use of the property as described in this License.

4.3 The operator of the Facility is McFarlane's Bark, Inc. Licensee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer.

5. AUTHORIZED AND PROHIBITED ACTIVITIES AND WASTES

5.1 Subject to the following conditions, Licensee is authorized to operate and maintain a yard debris composting facility.

5.1.1 Licensee shall accept only yard debris, landscape waste, and clean wood wastes (e.g., untreated lumber, wood pallets). No other wastes shall be accepted at the Facility unless specifically authorized in writing by Metro.

5.2 Prohibited Wastes

5.2.1 Licensee is prohibited from receiving, processing or disposing of any solid waste not authorized in this License.

5.2.2 Licensee shall not accept Hazardous Waste. Any Hazardous Waste inadvertently received shall be handled, stored, and removed pursuant to state and federal regulations.

6. MONITORING AND REPORTING REQUIREMENTS

6.1 Licensee shall monitor facility operation and maintain accurate records of the following:

6.1.1 Amount of feedstock received and quantity of product produced at the facility.

6.1.2 Records of any special occurrences encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.

6.1.3 Records of any public nuisance complaints (e.g., noise, dust, vibrations, litter) received by the operator, including:

(a) The nature of the complaint;

(b) The date the complaint was received;

(c) The name, address, and telephone number of the person or persons making the complaint; and

(d) Any actions taken by the operator in response to the complaint.

6.1.4 For every odor complaint received, the licensee shall record the date, time, and nature of any action taken in response to an odor complaint, and record such information within one business day after receiving the complaint. Records of such information shall be made available to Metro and local governments upon request.

6.2 Records required under this section shall be reported to Metro no later than thirty (30) days following the end of each quarter. The report shall be signed and certified as accurate by an authorized representative of Licensee.

- 6.3 The licensee shall submit to Metro duplicate copies of regulatory information submitted to the DEQ and local jurisdictions pertaining to the facility, within 30 days at the same time of submittal to DEQ and/or a local jurisdiction.

7. DESIGN AND OPERATIONAL REQUIREMENTS

- 7.1 Activities shall be conducted in accordance with the Metro approved facility design plan, operations plan and odor minimization plan submitted as part of the License Application. In addition:

7.1.1 To control odor and dust the Licensee shall:

- (a) Install dust control and odor systems whenever excessive dust and odor occur, or at the direction of Metro. Alternative dust and odor control measures may be established by the Licensee with Metro approval.
- (b) Take specific measures to control odors in order to avoid or prevent any violation of this License, which measures include (but are not limited to) adherence to the contents of the odor minimization plan.

7.1.2 The following conditions shall apply:

- (a) Install and maintain effective on-site traffic directional signage and lane marking to manage the flow of traffic within 30 days of the effective date of this License Agreement.
- (b) Implement the proposed operational modifications and site plan improvements (Attachment 4 to the Staff Report-Proposed Operational Modifications), in a substantial and satisfactory manner to control nuisance and traffic impacts by December 1, 1998.
- (c) Within sixty (60) days of the effective date of this License Agreement, the applicant shall increase the density and variety of the tree buffer zone at the facility property lines adjacent to businesses. Replant where trees have died, and plant additional rows of evergreen trees to create a more substantial buffer zone. The trees should be tall and fast growing varieties. Applicant should verify plant material with a landscape architect and/or local nurseries to determine type, availability and performance of plant material.

7.1.3 With respect to vector control, the Licensee shall manage the Facility in a manner that is not conducive to infestation of rodents or insects. If rodent or insect activity becomes apparent, Licensee shall initiate and implement additional vector control measures.

- 7.2 The Licensee shall provide an operating staff which is qualified to perform the functions required by this License and to otherwise ensure compliance with the conditions of this License.

- 7.3 The licensee shall utilize functionally aerobic composting methods for processing authorized wastes at the facility.
- 7.4 All facility activities shall be conducted consistent with applicable provisions in Metro Code Chapter 5.01: Additional Provisions Relating to the Licensing of Yard Debris Processing Facilities (Sections 5.01.230 - 5.01.380). Licensee may modify such procedures. All proposed modifications to facility plans and procedures shall be submitted to the Metro Regional Environmental Management Department for review and approval. The Executive Officer shall have 10 business days from receipt of proposed modifications to object to such modifications. If the Executive Officer does not object, such modifications shall be considered approved following the 10-day period. Licensee may implement proposed modifications to Facility plans and procedures on a conditional basis pending Metro review and notice from Metro that such changes are not acceptable.
- 7.5 Licensee shall remove compost from the Facility as frequently as possible, but not later than one year after processing is completed.

8. FACILITY CLOSURE

- 8.1 In the event of closure of the facility, all yard debris, composting material, end-product, and other solid wastes must be removed from the facility within 180 days following the commencement of closure.
- 8.2 Licensee shall close the facility in a manner which eliminates the release of landscape waste, landscape waste leachate, and composting constituents to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment.
- 8.3 Within 30 days of completion of closure, Licensee shall file a report with Metro verifying that closure was completed in accordance with this section.

9. ANNUAL LICENSE FEE

Licensee shall pay an annual license fee of \$300, as established under Metro Code Section 5.01.320. The fee shall be delivered to Metro within thirty (30) days of the effective date of this License and on the same date for each year thereafter. Metro reserves the right to change its license fees at any time, by action of the Metro Council, to reflect license system oversight and enforcement costs.

10. INSURANCE

- 10.1 Licensee shall purchase and maintain the following types of insurance, covering Licensee, its employees, and agents:
- (a) Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (b) Automobile bodily injury and property damage liability insurance.

- 10.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 10.3 Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change or cancellation.
- 10.4 Licensee, its contractors, if any, and all employers working under this License are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

11. INDEMNIFICATION

Licensee shall indemnify and hold Metro, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with licensee's performance under the license, including patent infringement and any claims or disputes involving subcontractors. Licensee shall not assume liability for any negligent or intentionally wrongful act of Metro, its officers, agents or employees.

12. COMPLIANCE WITH LAW

Licensee shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this License, including all applicable Metro Code provisions whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this License by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this License, as well as any existing at the time of issuance of this License and not attached, and permits or conditions issued or modified during the term of this License.

13. METRO ACCESS TO FACILITY

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this License. Access to inspect is authorized during all business hours.

14. DISPOSAL RATES AND FEES

- 14.1 The rates charged at licensed facilities are exempt from Metro rate setting.
- 14.2 Licensee is exempted from collecting and remitting Metro fees on waste received at the Facility. Licensee is fully responsible for paying all costs associated with disposal of residual material generated at the facility, including all Metro fees and taxes. A licensee shall obtain a non-system license prior to disposal of residuals at any facility not designated by Metro.

14.3 Licensee shall adhere to the following conditions with regard to disposal rates charged at the facility:

- (a) A licensee may modify rates to be charged on a continuing basis as market demands may dictate. Rate schedules should be provided to Metro on a regular basis, and shall be provided to Metro on request.
- (b) Public rates charged at the facility shall be posted on a sign near where fees are collected. Rates and disposal classifications established by a licensee shall be reasonable and nondiscriminatory.

15. GENERAL CONDITIONS

- 15.1 Licensee shall be responsible for ensuring that its contractors and agents operate in compliance with the terms and conditions of the license.
- 15.2 This License shall not vest any right or privilege in the licensee to receive specific quantities of yard debris during the term of the license.
- 15.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by a license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against licensee.
- 15.4 This License may not be transferred or assigned without the prior written approval of Metro, which will not be unreasonably withheld.
- 15.5 To be effective, a waiver of any term or condition of a license must be in writing, signed by the executive officer. Waiver of a term or condition of a license shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 15.6 This License shall be construed, applied, and enforced in accordance with the laws of the State of Oregon and all pertinent provisions in the Metro Code.
- 15.7 If any provision of a license is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in the license shall not be affected.

16. REVOCATION

Suspension, modification or revocation of this License shall be as specified herein and in the Metro Code.

17. MODIFICATION

- 17.1 At any time during the life of this License, either the Executive Officer or the Licensee may propose amendments or modifications to this License. Except as specified in the Metro Code, no amendment or modification shall be effective unless it is in writing, approved by the Metro Council, and executed by the Licensee and the Executive Officer.
- 17.2 The Executive Officer shall review the License annually, consistent with Section 6 of this License, in order to determine whether the License should be changed and whether a

recommendation to that effect needs to be made to the Metro Council. While not exclusive, the following criteria and factors may be used by the Executive Officer in making a determination whether to conduct more than one review in a given year:

- a) Licensee's compliance history;
- b) Changes in waste volume, waste composition, or operations at the Facility;
- c) Changes in local, state, or federal laws or regulations that should be specifically incorporated into this License;
- d) A significant release into the environment from the Facility;
- e) A significant change or changes to the approved site development plan and/or conceptual design; or
- f) Any change in ownership that Metro finds material or significant.
- g) Community requests for mitigation of impacts to adjacent property resulting from Facility operations.

18. NOTICES

18.1 All notices required to be given to the Licensee under this License shall be delivered to:

Dan McFarlane
McFarlane's Bark, Inc.
13345 SE Johnson Road
Milwaukie, OR 97222

18.2 All notices required to be given to Metro under this License shall be delivered to:

Bill Metzler, Licensing Program Administrator
Metro Regional Environmental Management
600 N.E. Grand Avenue
Portland, OR 97232-2736

18.3 Notices shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed, postage prepaid, to the address for the party stated in this License, or to such other address as a party may specify by notice to the other.

MCFARLANE'S BARK, INC.

METRO

Facility Owner or
Owner's Representative

Mike Burton, Executive Officer
Metro

Date

Date

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EXECUTIVE SUMMARY

ORDINANCE 98-741 GRANTING A YARD DEBRIS PROCESSING FACILITY LICENSE TO MCFARLANE'S BARK, INC.

PROPOSED ACTION

- Grants a yard debris processing facility license, with conditions, to McFarlane's Bark, Inc. to operate its existing yard debris composting facility located in Milwaukie, Oregon.

WHY NECESSARY

- Metro Code Section 5.01.030 requires an owner or operator of a yard debris processing facility to be licensed by Metro.
- The terms of the license will be to protect public health, safety, and welfare. The declaration of an emergency is required for the license agreement to take effect immediately.

DESCRIPTION

- The site is zoned Light Industrial. The facility was established in 1972, and all such uses were then allowed outright. Clackamas County recognizes the facility as a valid, allowed non-conforming use.
- The facility accepts loads of yard debris from commercial and residential sources. The facility is open to the public.
- The six-acre facility accepts approximately 230,000 cubic yards of yard debris per year (appx. 35,000 tons/year depending on compaction).
- In 1997, the applicant implemented a series of site and operational modifications to reduce odor and dust impacts on surrounding businesses. The modifications included lowering the compost piles and the installation of sprinkler systems to control fugitive dust and odors.
- The applicant is proposing to implement additional facility modifications to improve operations and control nuisance impacts. As part of the implementation plan, the applicant is currently testing a composting aeration system with significantly lower pile heights. It is expected that these modifications will be completed by December 1, 1998.

ISSUES/CONCERNS

- Based on staff's experiences with this facility and discussions with businesses impacted by the McFarlane's Bark operations, staff is aware of concerns regarding nuisance impacts (odor, dust and traffic) associated with the facility operations.
- Since the proposed facility modifications are not yet implemented, and certain operational impacts are not fully resolved, it is staff's recommendation that the License Agreement contain conditions related to traffic management measures, improvements to the landscape buffer zone at the perimeter of the facility adjacent to businesses, and implementation of the applicants proposed operational modifications.

BUDGET / FINANCIAL IMPACTS

- There will be a slight increase in revenues from the annual license fee of \$300 per year paid by the licensee. Current staffing levels are expected to be adequate to handle any technical assistance or enforcement requirements that might arise from licensing this facility.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 98-741 FOR THE PURPOSE OF GRANTING A YARD DEBRIS PROCESSING FACILITY LICENSE TO MCFARLANE'S BARK, INC. TO OPERATE A YARD DEBRIS PROCESSING FACILITY AND DECLARING AN EMERGENCY

Date: April 13, 1998

Presented by: Bruce Warner
Bill Metzler

INTRODUCTION

The purpose of this report is to provide the information necessary for the Metro Council to act on the recommendation that McFarlane's Bark, Inc. be awarded a license, with conditions, to operate a yard debris composting facility located in Milwaukie, Oregon. The license agreement is attached to Ordinance No. 98-741 as Exhibit A.

This report is divided into four main parts: (a) a description of the facility and other relevant applicant information, (b) list of submittals; (c) staff analysis of the application and whether the facility meets the standards as specified in Metro Code in order to be awarded a license; and (d) staff's recommendations and specific conditions to be contained in the license agreement.

The purpose of the licensing program is to help ensure that yard debris processing facilities are designed and operated in a manner that minimizes nuisance impacts on surrounding communities and businesses.

Key Findings and Recommendations Include:

- Yard debris processing facilities are licensed by the Metro Council if they submit the required plans and show compliance with applicable provisions in Metro Code Chapter 5.01 (Sections 5.01.230 - 5.01.380)
- The applicant has recently implemented a series of site and operational modifications to reduce odor and dust impacts on surrounding businesses. The modifications included lowering the compost piles and the installation of sprinkler systems to control fugitive dust and odors.
- The applicant is proposing to implement additional facility modifications to improve operations and control nuisance impacts (reference Attachment 4). As part of the implementation plan, the applicant is currently testing a composting aeration system with significantly lower pile heights. It is expected that these modifications will be completed by December 1, 1998.
- Staff recommendations include conditions to the License Agreement related to traffic management measures, improvements to the landscape buffer zone at the perimeter of the facility adjacent to businesses, and the applicants proposed operational modifications in Attachment 4.
- The declaration of an emergency is pursuant to the Metro Charter. It is necessary for the welfare of the Metro region that this license agreement takes effect immediately. The facility is an existing operation providing necessary services, and potential nuisance impacts can adversely affect the health and welfare of the public.

I. FACILITY AND APPLICANT INFORMATION

Location

- Facility address: 13345 SE Johnson Road, Milwaukie, Oregon 97222 (see Attachment 1 - Site Location Air Photo).
- The facility lies in Section 05, Township 2 South, Range 2 East, W.M. Clackamas County Oregon. Tax Lot numbers 00202, 00400, 00402, 00802, 00803.

Zoning and Permitting

- The site is zoned I-2, Light Industrial (see Attachment 2 - Zoning Map). The facility was established in 1972, and all such uses were then allowed outright. Clackamas County recognizes the facility as a valid, allowed non-conforming use.
- The applicant is working with the DEQ to obtain a required National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit.

General Facility Description

- The six-acre site is owned by Marjorie McFarlane and Daniel McFarlane.
- The facility accepts loads of yard debris from commercial and residential sources. The facility is open to the public.
- The facility accepts for processing approximately 230,000 cubic yards of yard debris per year (appx. 35,000 tons/year depending on compaction). The applicant uses a conversion rate of 300 pounds per cubic yard.
- The facility currently uses a static anaerobic pile composting method. Static anaerobic pile composting consists of placing the mixture of raw (typically ground and mixed) materials in a large pile that is not turned on a regular basis. With this type of composting method, an odor control technique is to minimize disturbance of the material which contains anaerobic by products in the pile until sufficient time has passed for the process to proceed to the point that the byproducts are stabilized.
- The applicant is proposing to implement an aerobic composting method (aerated static pile) in 1998. Reference Attachment 4 - Proposed Operational Modifications. Implementation of the aerated static pile method is expected to be complete by December 1998. On-site composting trials for the new methods are currently underway at the facility.

Completeness and Sufficiency of Application

Applicants for yard debris processing facility licenses are required to complete the application form and provide additional information as requested. The license application form and other material required to process the license were submitted and has been determined to be complete and adequate (see Section II - List of Submittals).

Applicant Qualifications

McFarlane's Bark is a family owned and operated composting business, which has been at its current location since 1972. On its six-acre site, McFarlane's takes in yard debris and other organic material and processes it into compost and other ground amendment products to serve the landscape industry. As a service to the community, McFarlane's accepts free of charge, Christmas trees and material from clean-up days from church groups, the Boy Scouts, and the Girl Scouts to aid those group's fund raising efforts. McFarlane's employs approximately 30 full-time employees not counting its seasonal staff, which is much larger.

II. LIST OF SUBMITTALS / ATTACHMENTS

Attachment 1: Site location/aerial photograph (RLIS).

Attachment 2: Zoning overlay/aerial photograph (RLIS).

Attachment 3: Revised Application for a Yard Debris Processing Facility License, dated September 22, 1997.

Attachment 4: Proposed Operational Modifications (Maul Foster & Alongi, January 1998), with attached traffic evaluation (Group Mackenzie, January 1998).

III. ANALYSIS OF LICENSE APPLICATION

A license will be granted if the Metro Council finds the applicant complies with Metro Code Chapter 5.01 - Additional Provisions Relating to the Licensing of Yard Debris Processing Facilities and Yard Debris Reload Facilities.

Staff have reviewed the license application and other supporting documentation and have found that the facility is eligible for a yard debris processing facility license with conditions of approval (see Section IV, Conclusions - Special Conditions). The conditions specified in this report and in the License Agreement will provide sufficient assurances that the facility meets all applicable Metro Code requirements. The following table summarizes staff's analysis:

Key Metro Code Licensing Provisions	Acceptable with Conditions
5.01.260 Yard Debris Facility Design Requirements & Design Plans	X
5.01.270 General Operating Requirements for Yard Debris Facilities	X
5.01.280 Yard Debris Processing Operations Plan	X
5.01.290 Yard Debris Facility Odor Minimization Plans	X

I. FACILITY DESIGN AND OPERATING PLAN

The facility design and operational requirements are intended to ensure that the facility is designed and operated in safe and suitable manner that minimizes nuisance impacts on surrounding communities and businesses, while protecting public health and safety. These requirements ensure that the operations can support the type of processing and the quantity of material that the applicant is proposing to process.

The applicant has recently made a number of site and operational improvements that are intended to help control dust and odor impacts on surrounding businesses. These modifications, outlined below, resulted from a series of meetings between McFarlane's Bark, Metro, the DEQ, Clackamas County and adjacent impacted businesses. The meetings were held in 1996-1997 and focused on both short-and long-term solutions to the nuisance impacts associated with the McFarlane's Bark facility.

In addition, McFarlane's Bark is in the process of implementing a new facility plan (reference Attachment 4). The plan was developed to improve the existing operations and implement necessary site design modifications to control and mitigate nuisance impacts (e.g. noise, traffic congestion, dust and odor).

Existing facility design and operating plan:

As stated above, the facility operations have been modified over the past few years in order to address nuisance concerns from surrounding businesses. The following is a summary of the most significant modifications:

- The height of the compost piles has been lowered (25%) to 30 feet to better manage dust and odor problems.
- Sprinkler systems have been installed to control dust.

Current composting method: Yard debris is tipped on a concrete tipping slab area and then ground and piled up. The facility currently uses a deep-pile anaerobic composting method. At 10-14 day intervals the active compost piles are rolled and turned. This process is repeated 5-6 times. The compost is then screened into a finished size, piled and allowed to stand for an additional 30 days to finish the curing process. The current composting method results in pile sizes of 25-30 feet high with a base of 150' x 300'.

- Noise: Noise levels are managed by maintaining the manufacturers mufflers on machinery and trucks.
- Vector control: Vectors are controlled by rapidly processing the incoming yard debris. Active compost piles and finished product rarely attract or harbor vectors. If vectors become a problem, applicant will contract with a vector control company to remedy the situation.
- Dust control: Dust is controlled by using water sprays and vertical misters. Applicant has also contracted with a professional road sweeping service for cleaning the roadway. Future plans call for additional paving and striping to aid in dust and traffic control. Applicant also sprays the gravel portion of the roadway and regular cleaning and sweeping other portions of the road and tipping area also helps to control dust. Water sprays have been added to processing machinery and along loading areas.
- Litter: The facility grounds are cleaned of litter on a daily basis.
- Fire prevention and control measures Applicant's processing yard has an 8" loop system that has 8 hydrants attached.
- Traffic management. This continues to be an area of concern, and is being addressed by the applicant through the new facility design plan described below.

Transition plan and composting trials

The applicant has outlined a plan for transitioning from the current composting method (deep static pile) to the new aerated static pile method to be implemented in 1998 (see Attachment 4). Part of the transition plan involves demonstration tests of the proposed method that will assist in designing the new composting pads. The transition plan contains a timeline with a schedule of proposed site improvements.

New facility design / site plan elements

The applicant has submitted a new facility design and operations plan that will be implemented in 1998. The operational modifications and site plan are described in Attachment 4 - Proposed Operational Modifications McFarlane's Bark Composting Facility. The following is a summary:

Proposed composting method:

- The new method actively aerates the compost piles and will provide for reductions in pile height (15' – 18').
- The active composting and stabilization areas will be combined into a single pad to facilitate continuous processing of compost. In addition the pad area will be aerated from a central blower gallery. Shredded yard debris will be placed at the south end of the pad and will be moved to the north as composting progresses.
- The compost will be screened after stabilization and placed in bins on-site or transported to McFarlane's facility in Vancouver, Washington.
- The composting areas have been sized to accommodate 36,000 to 40,000 tons of raw material per year. The facility is currently accepting approximately 35,000 tons of yard debris per year (230,000 cubic yards).

Traffic management

In evaluating the license application for the McFarlane's facility, traffic management concerns have been raised by Metro, Clackamas County, and neighbors regarding vehicle queues extending through the common shared easement with Brophy Machine Works and onto Johnson Road. Both Clackamas County and the Metro licensing standards do not allow vehicles to queue in the public right-of-way.

Long lines of traffic along Johnson Road and congestion in the common shared easement are caused by vehicles waiting to drop off yard debris and circulation of other vehicles around these queues. In order to address these concerns, the applicant has proposed specific site design and operational modifications that are detailed in the traffic management practices in Attachment 4. These will be implemented by the applicant to reduce queue lengths and encroachment on the common easement adjacent to the Brophy Machine Works facility. The following is a summary:

- The active unload area will be expanded to handle more vehicles. The queue can be accommodated with the use of one lane along the south side of the site.
- The traffic flow pattern has been modified to allow the required queuing and the maximum possible separation of public access from operational traffic. McFarlane's trucks will proceed along the east and north side of the site.
- A flat rate method of charges will be instituted on peak days, which will avoid the requirement to weigh vehicles in and out of the facility.
- Customers purchasing materials will be directed to the customer loading area or to parking on the east side of the building.
- A separate inbound bypass lane is provided for traffic destined for Brophy Machine Works. Outbound traffic will be accommodated in a single lane with improved turning radius at the site exit.
- The applicant's site plan calls for lane striping as well as signage to direct traffic flow at the site.

Comments:

- The applicant has taken steps to solve some of the nuisance problems with dust and odors generated by the facility operations. Traffic management and nuisance impacts, however, continue to be a source of concern from surrounding businesses.

- It is staff's recommendation that until the proposed plan is implemented, the license agreement should contain special conditions to mitigate the unresolved facility impacts. The conditions are detailed in Section IV of this report, and include implementation of traffic management measures and improvements to the landscape buffer zone at the perimeter of the facility adjacent to businesses.
- The applicant's completed license application and submittals will constitute the required Design Plan and the Operations Plan.

2. ODOR MINIMIZATION PLAN

The purpose of the Metro Code odor minimization plan requirement is to ensure that the facility is operated in a manner that minimizes, manages and monitors odor impacts on surrounding communities and businesses.

General Description

The applicant recognizes that it is essential to minimize the impact of odors generated by anaerobic conditions. If an odorous condition is found or expected to be found, that section of the compost pile is turned more gradually, and immediately mixed with clean stable material which dilutes the smell. The source of the smell is then covered with cured compost to reduce the opportunity for odors to escape from the processing pile.

To further reduce odors, the applicant proposes to implement a new aerated static pile composting method starting in 1998, with exclusive use by December 1998. The aeration process will be used to reduce anaerobic conditions, which are the primary odor sources. The lower pile height (15 feet) will also reduce the possibility of interior spaces that are deprived of oxygen for significant periods of time. The modified odor control plan is contained in Attachment 4 – Proposed Operational Modifications.

Odor complaints: Complaints are recorded and the facility is inspected by facility staff for possible problem sources. The plant manager works with the complainant to resolve any problems. Since lowering the piles to between 25 feet and 30 feet in height in 1997, there has been a reduction in the number of odor and dust complaints from adjacent businesses.

Comments:

- The applicant's completed license application and submittals constitutes the Odor Minimization Plan, and meets all applicable Metro Code requirements for Section 5.01.290 - Yard Debris Facility Odor Minimization Plans.
- As previously described, this facility is in the process of implementing a new design plan that is intended to provide for improved operations and odor control methods through the use of an aerated static pile system. The application and the proposed plan reflect that the facility will be designed and operated in a manner that meets the Metro Code requirements for odor control and minimization.

IV. CONCLUSIONS

In assessing the McFarlane's Bark yard debris processing facility for compliance with the relevant Metro Code provisions, staff has reviewed all required submittals and has determined that that in order for this facility to meet Metro Code requirements and be granted a Metro License, the applicant must implement the changes as proposed in the application and submittals, and comply with the conditions of the License Agreement.

To address nuisance impacts on surrounding businesses and comply with the Metro licensing standards for yard debris processing facilities, the applicant has implemented mitigation measures and submitted a proposed plan to further modify the facility design and operations. Once fully implemented, the facility modifications are

intended to reduce traffic impacts and control nuisances while improving the processing capacity at the facility to handle current and projected incoming volumes of yard debris.

Based on staff's experiences with this facility, the license application submittals, site visits, and discussions with businesses impacted by the McFarlane's Bark operations, there remain a number of unresolved concerns about the current facility layout and operations. Since the proposed facility modifications contained in Attachment 4 are not yet implemented, and the nuisance impacts are not yet resolved, it is staff's recommendation that the License Agreement contain special conditions.

Special Conditions in the License Agreement

The following conditions shall apply and are included in the License Agreement (reference the License Agreement, Section 7.1.2 - Design and Operational Requirements):

1. Install and maintain effective on-site traffic directional signage and lane marking to manage the flow of traffic, within 30 days of the effective date of the License Agreement.
2. The proposed operational modifications and site plan improvements described in Attachment 4, shall be implemented in a substantial and satisfactory manner that controls nuisance and traffic impacts by December 1, 1998.
3. Within sixty (60) days of the effective date of the License Agreement, the applicant shall increase the density and variety of the tree buffer zone at the facility property lines adjacent to businesses. Replant where trees have died, and plant additional rows of evergreen trees to create a more substantial buffer zone. The trees should be tall and fast growing varieties. Applicant should verify plant material with a landscape architect and/or local nurseries to determine type, availability and performance of plant material.

The license agreement ensures that the facility will operate in accordance with the purpose of Metro's licensing program to protect public health and safety and maintain consistency with the Regional Solid Waste Management Plan. The Metro licensing program includes problem resolution through intergovernmental cooperation, technical assistance and enforcement measures.

V. BUDGET IMPACTS

There will be a slight increase in revenues from the annual license fee paid by the licensee of \$300 per year. Current staffing levels are expected to be adequate to handle any technical assistance or enforcement requirements that might arise from licensing this facility.

VI. STAFF RECOMMENDATION

Based on the preceding analysis it is the opinion of staff that McFarlane's Bark, Inc. should be granted a yard debris processing facility license, with conditions, in accordance with the provisions of the License Agreement attached to Ordinance No. 98-741 as Exhibit A.







VII. EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 98-741.



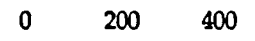
McFarlane's Bark

1997 Aerial Photos

-  Metro Boundary
-  Urban Growth Boundary
-  Parks and Open Space
-  Taxlots
-  County Line
-  Subject Property (white boundaries)

Attachment I

Scale: 1" = 400'

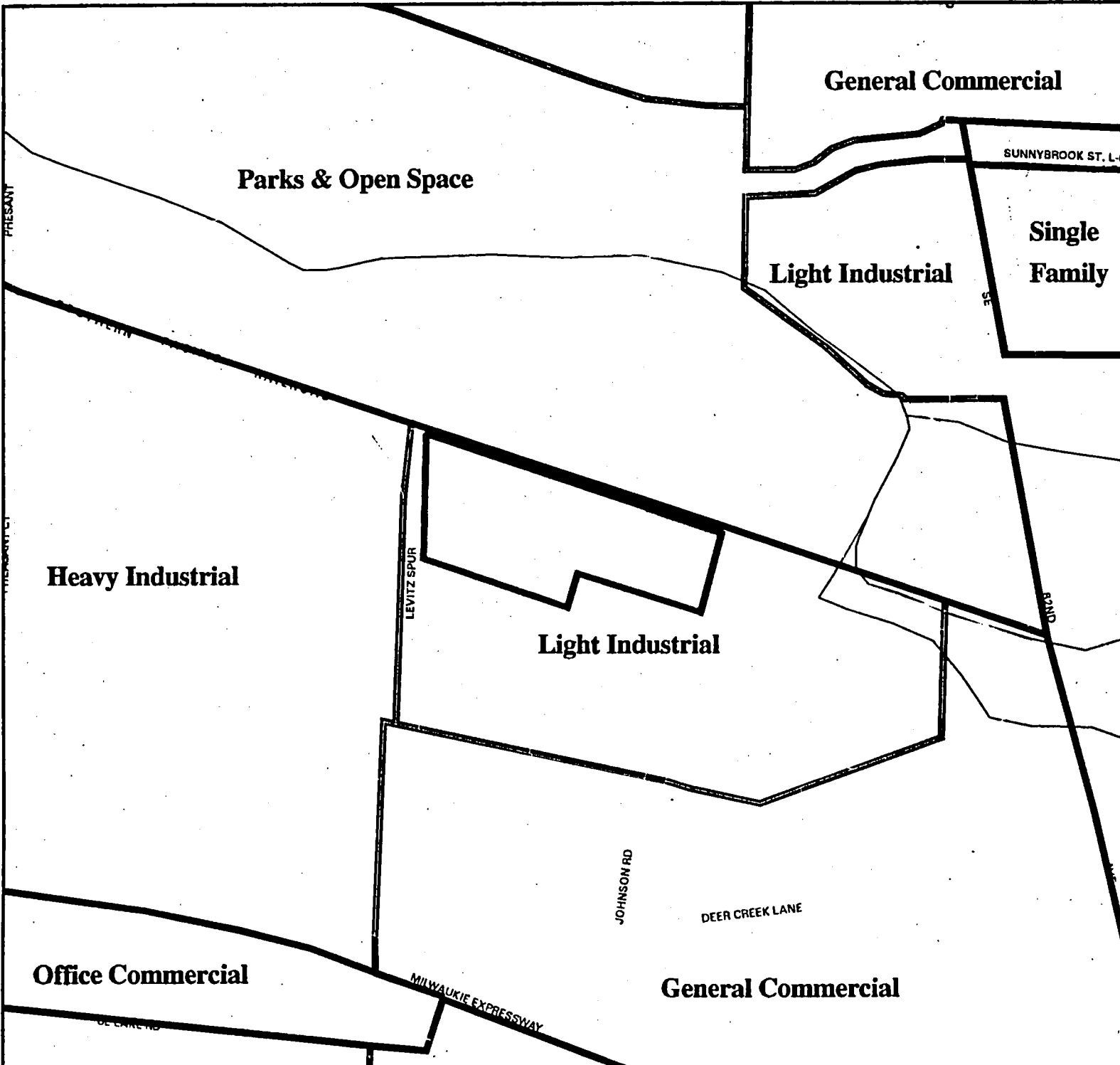


METRO

600 NE Grand Ave.
Portland, OR 97232-2736
Voice 503 797-1742
FAX 503 797-1809
Email drc@metro.or.us

McFarlane's Bark

Zoning



Attachment 2



METRO

500 NE Grand Ave.
Portland, OR 97232-2735
Voice 503 797-1742
FAX 503 797-1909
Email drc@metrodot.or.us

MAIL THIS APPLICATION TO:

DATE RECEIVED BY METRO:

Metro
Attn: Bill Metzler
Regional Environmental Management
600 NE Grand Avenue
Portland, OR 97232-2736

**AMENDED LICENSE APPLICATION FORM
YARD DEBRIS PROCESSING FACILITY**

Applicant submitted its original application for a yard debris processing facility to Metro on August 14, 1997. In a letter dated August 28, 1997, Bill Metzler, Associate Solid Waste Planner for Metro, notified applicant that the original application was "insufficient" and requested additional information. This amended application responds to the questions in the Metzler letter by providing the requested information.

Check all that apply;

Yard Debris Composting X

Other (specify) Transactions are based on the volumes at our yard debris recycling area only.

Barkdust sales are separate transactions for purposes of this application.

Date of Application: August 4, 1997.
Revised 9/10/97

PART 1

1. NAME OF FACILITY McFarlane's Bark, Inc.
Facility Address: 13345 SE Johnson Rd.
 Milwaukie, OR 97222

2. PROSPECTIVE LICENSEE

Public Agency: _____ Private x

Name of Licensee: McFarlanes, Bark, Inc.

Mailing Address: 13345 SE Johnson Rd. Milwaukie, OR 97222

Phone Number: 503/659-4240

3. OWNERS OF PROPERTY

Name:	<u>Marjorie McFarlane</u>	<u>Daniel McFarlane</u>
	<u>3964 SE Boise</u>	<u>1515 Windsor Drive</u>
	<u>Portland, OR 97202</u>	<u>Gladstone, OR 97027</u>
Phone:	<u>771-3776</u>	<u>656-4708</u>

4. SUBCONTRACTORS

Name, address and function of any prospective licensee's facility operation subcontractors:
None

5. SITE LEGAL DESCRIPTION

(Include tax lot(s), descriptions, section, Township and Range);

Tax Lot numbers: 00202-00400-00402-00802-00803

Section 05 Township 25 Range 2E

6. ZONING

Present Land Use Zone: I-2 Light Industrial

Restrictions: _____

7. Is a conditional use permit necessary for your facility?

Yes _____ No X _____

If required, has the permit been obtained?

Yes _____ No _____

8. PUBLIC HEARING(S)

Date(s) and nature of Public Hearing(s) held if any:

None

9. PERMITS ISSUED OR APPLIED FOR

List name and number of all permits (i.e. DEQ Solid Waste Disposal Permit, Conditional Use Permit, National Pollution discharge Elimination System permit, etc.) plus name, address and contact person at the agency responsible for issuing the permit(s).

Permit(s) Applied for:

No Land Use permits are required for the Milwaukie site. Bark storage and yard debris collection, storage and composting began when McFarlane's Bark purchased the property in February 1972. All such uses were then allowed by all applicable land use regulations and have been continued, at their current intensities, without interruption since that date. Clackamas County has recognized the facility as a valid, allowed nonconforming use. Under state and local land use laws and regulations such a nonconforming use must be allowed to be continued on the property.

Circumstances that would trigger the need for a land use permit are as follows:

- A. Restoration of the use if damaged or destroyed by causality or natural disaster.
- B. Physical expansion of the use or a material increase in its intensity.
- C. Change of use to another nonconforming use.

Permit(s) Received: NA

10. ESTIMATED QUANTITY OF YARD DEBRIS TO BE ACCEPTED

Annually: 230,000 cubic yards Daily: 640 cubic yards
 Annually: 35,000 tons (optional) Daily: 100 Tons (optional)

11. PUBLIC/COMMERCIAL OPERATIONS

Will the facility be open to the public? Yes X No _____

Will the facility be open to commercial solid waste collectors? Yes X No _____

12. OPERATING HOURS AND TRAFFIC VOLUME

Open: 7 days a week.
Operating hours are the same for public and commercial use.

Peak Season: 7a.m to 7p.m.
Off Season : 8a.m to 5p.m.

<u>Est. Avg. vehicles per day</u>	<u>Public</u>	<u>Commercial</u>	<u>Total</u>
Peak Season	500	100	600
Off Season	5	95	100

13. Does the owner/operators of this facility own, operate, maintain, have a proprietary interest in, or is the owner financially associated with or subcontracting the operation of the facility to any individual, partnership or corporation involved in the business of Collecting residential, commercial, industrial or demolition refuse within the boundary of Metro?

Yes _____ No X

14. Will the facility be open to solid waste collection companies who collect outside the boundary of Metro?

Yes X No _____

PART 2

GENERAL FACILITY DESIGN PLAN

1. Describe how stormwater is managed at the facility.

Applicant's current water retention ditch around its dirt pile now also serves as the water detention pond. From this pond, applicant recycles detained water to the piles for fire prevention, compost facilitation and dust control. The ditch has a storage capability of approximately 16,000 cubic feet.

As shown in the attached site plan, the planned storm water system is split. Parking

areas, building roof and non production areas run to catch basins and are part of the conventional storm water system. Production area drainage will be detained and recycled.

Drainage gutters will provide positive drainage to the settling pond from the production areas of the site. The settling pond allows the particulate to settle out. Clean water flows through the perforated weir into the detention pond.

The detention pond allows for the disposal of water through surface evaporation. Further evaporation occurs when the water is used in the vertical misting system to control dust at all stages of the composting, loading and unloading processes.

The new pond will have a storage capacity of 20,000 cubic feet.

The new plan will begin as quickly as possible, but no later than January 1, 1998, with estimated full implementation by December 1 of that year.

This plan is consistent with the DEQ action plan referenced in Mr. Metzler's letter. That plan calls for implementation of an impervious surface and runoff management system. The plan calls for both of these improvements

Is precipitation run-on diverted around the processing area?

Yes No

Is Run-off from the facility controlled?

Yes No

2. Describe any barriers that the facility has (or will have) to prevent unauthorized entry and dumping (fencing, gates, locks).

Applicant has ditches circling the entire property. Applicant is negotiating with a neighbor to install a security gate at the common entrance.

3. Are there all weather access roads to the site?

Yes No

4. Does (or will) the facility have scales?

Yes No

5. Does the facility have signs (at entrance, directing traffic flow, public information)?

Yes No

Please describe the location(s) and type of sign(s):

Signs explaining what is accepted are located at the scale house. Applicant's site plan calls for lane striping as well as signs to control traffic flow at the site. This aspect of the plan is discussed below.

6. What is the estimated capacity (cubic yards) of the facility storage area(s) for incoming yard debris waiting to be processed?

Approximately 5000 cubic yards, (110 x 100 x 30').

7. What is the estimated capacity (cubic yards) for finished product storage?

Estimated capacity on-site is 5000 cubic yards. At other sites, such as applicant's Vancouver, Washington, yard, an additional 20,000 cubic yards, (200 x 60 x 30).

8. Please describe how you handle, store and remove hazardous or other non-permitted or non-compostable wastes delivered to the facility.

Applicant assigns staff to check each load for contamination and/or unacceptable waste. Applicant requires customers remove any material that is unacceptable. Waste wood from construction demolition is ground for hog fuel and delivered to paper mills. Plastics, glass & metals are recycled through appropriate recycling centers. Hazardous waste is not accepted. Applicant instructs customers to take such waste to a Metro transfer station.

PART 3

GENERAL OPERATING PLAN

1. Describe your methods of measuring and keeping records of incoming yard debris.

Applicant's rates are calculated using weight by ton with conversion. Applicant then charges a flat rate by the yard. The conversion used is 300 lbs per yard.

2. How often are the facility grounds cleaned of litter?

Applicant cleans the yard and road daily and as-needed. Garbage is hauled off 1-2 times per week, or as needed.

3. Describe how you encourage delivery of yard debris in covered loads.

Signs remind customers that there are rules pertaining to the legality of uncovered loads on the highway.

4. Describe how you control the types of materials you receive, and methods for removing, recovering and disposing of non-compostables.

Staff checks each load as it comes in. Checks are done before unloading and at least one or two times during the unloading process. Customers must remove any unacceptable material from the load. If a load contains hazardous or municipal solid waste, staff requires customers to immediately remove it from the site. Such customers are told to take such waste to the nearest Metro Transfer Station for disposal.

5. Where do you dispose of non-compostable wastes?

Along with our typical non-compostable business waste, any materials that we accumulate are disposed of through specific recycling centers (glass, cans, etc.) or taken to the Metro Transfer Station for disposal.

6. Please give a general description of the steps you take to process yard debris (from delivery to end-product).

All loads are dumped on a concrete slab area, then they are put through a grinder and piled up. At 10-14 day intervals the active compost piles are rolled and turned. At this stage the internal temperatures range from 135-145, with just below surface temperatures of approximately 100 degrees. This process is repeated 5-6 times, then the compost is screened into finished sizes. The compost is then piled and allowed to stand for an additional 30 days to finish curing. *See*

also responses to sections 3.9, 4 & Site Plan, below, which describe plans for changing the composting process, the schedule for such a change, and impacts of the change on composting periods.

7. What is the maximum length of time required to process each day's receipt of:

Yard Debris 3 days

Grass Clippings are mixed in with stable product the same day

8. How long does it typically take to process yard debris at your facility (from receipt to finished product)?

10 to 14 weeks (includes curing) (These time frames are consistent with E & A Environmental Consultants and "On Farm Composting" By The Northeast Regional Agricultural Engineering Services, NRAES-54)

How long do you cure the finished product?

30 days

9. If applicable, what are the dimensions of the windrows or piles that are typically constructed at your facility (length, width, height)?

In Mr. Metzler's letter he said that the DEQ action plan called for piles to be reduced to 20 feet and noted that the application called for higher piles. As an initial comment, the DEQ action plan did not call for a reduction of the piles to 20 feet. Instead, it called for a reduction of 25 percent. DEQ has subsequently acknowledged that a 25 percent reduction might still allow piles in excess of 20 feet. Nevertheless, it is applicant's goal, as explained below, to reduce the pile heights to approximately 20 feet.

Currently, applicant's method of composting results in pile sizes of 25-30 feet high, with a base of 150' x 300'. Under the current method we rotate the pile as internal temperatures reach 135-145 degrees.

According to the schedule provided below, applicant intends to adopt a new method of composting that will allow it to reduce the height of the pile and make the diameter wider to accommodate the same amount of material. This new model will consist of an aerated static pile with height of 15-20 feet. Under this method, the composting process should take approximately 49 days. Product will then be

screened with coarse cover materials mixed back into green incoming yard debris. Screened sizes will be moved into finish piles.

A further description of the current and planned methods appears below at section 4 & Site Plan.

10. How do you manage the windrows or piles? What kind of equipment do you use?

Applicant uses bulldozers and backhoes to turn and stack the piles. Applicant uses loaders for feeding grinders and screens.

11. Describe how you control the following:

A. Noise

Applicant maintains the manufacturers mufflers on machinery and trucks. Applicant uses screen planting as a noise barrier where needed.

B. Vectors (insects, birds, rodents):

Vectors are not currently a problem at this site. Should such a problem arise, applicant would contract with a vector control firm to take care of the situation.

C. Dust

The only dust complaints to date were brought to applicant's attention at a meeting with Metro, Clackamas County, DEQ, and applicant's neighbors Precision Castparts and representatives of Tramel Crow on January 11, 1996. Since that time, applicant has implemented water sprays and vertical misters, and it has contracted with a professional road sweeping service for cleaning the roadway. Future plans for paving and striping to aid in dust and traffic control have had a positive response with Clackamas County. Paving the roadway depends, however, on the consent of Brophy Machine Works, which controls part of the road by easement. So far, Brophy has refused to agree to paving the road, but we are still in active negotiations on this issue. According to a recent letter of Brophy's counsel, resolution of the matter seems to turn primarily on finding an acceptable mechanism by which to allow Brophy a remedy if the road is congested. Applicant will explain in detail its traffic management plan below, which it hopes can be used to satisfy Brophy. Nevertheless, applicant plans to implement the traffic plan, with only partial paving, if necessary, no later than September 1998, regardless of the status of negotiations with Brophy. See below.

Recirculating wastewater to the piles has had good results in dust control. Spraying the gravel portion of the road as well as regular cleaning and sweeping of other portions of the road and dumping area also contributes to dust control. Upon completion of roadway paving, the entire roadway will be swept and/or moistened regularly. Water sprays have been added to processing machinery and along loading areas for keeping the dust under control. Vertical misters are always used in dry weather during loading operations to minimize dust. This approach has successfully mitigated dust impacts to surrounding properties.

D. Litter

Yard personnel pick up litter by hand each day.

12. Describe the fire prevention, protection and control measures used at the facility.

Applicant's processing yard has an 8" loop system that has 8 hydrants attached. Periodic recirculating of water on the brush piles is also helpful in fire protection. Inside the processing plants, machinery is washed as needed to prevent any dust fires and machinery that is being repaired is wet down as needed.

13. Does (or will) the facility have legible sign(s) at public entrances including:

- | | |
|---|----------------------------|
| Name of facility? | Yes <u>x</u> No <u> </u> |
| Name of the operator ? | Yes <u>x</u> No <u> </u> |
| Hours of operation? | Yes <u>x</u> No <u> </u> |
| List of materials that will and will not be accepted? | Yes <u>x</u> No <u> </u> |
| Schedule of charges? | Yes <u>x</u> No <u> </u> |
| Phone numbers in case of emergency? | Yes <u> </u> No <u>x</u> |

14. Describe your methods for monitoring and adjusting the following (during processing):

Temperature:

Thermometers are used to monitor desired temperatures before rolling.

Oxygen levels:

None currently, but applicant will probably implement monitoring and adjustment of oxygen levels as it implements aerated static piles, as described elsewhere in this application.

Moisture levels:

Compost is kept moist, not soaked. Water added by soaker hoses and sprinklers as required.

15. In general, what are your plans (existing or proposed) for marketing the finished product?

Applicant's current markets are sales to the general public, landscapers, nurseries and other wholesalers. Products are used for mulch, potting and soil mixes.

PART 4

ODOR MINIMIZATION PLAN

1. Generally describe how you handle loads of bad smelling yard debris and grass clippings?

Odorous loads are mixed and diluted with other more stable materials as loads come in. More stable materials absorb odors and reduce impacts. Problem loads are not accepted and are diverted from site.

2. Describe your procedures for receiving, recording and remedying odor complaints or odor problems at the facility.

All complaints are forwarded to the Office Manager, who investigates to get all pertinent information. The Plant Foreman and Plant Managers are notified, and required to report back with a plan for action to be taken. Actions in accordance with this plan will be taken immediately to rectify any Odor impacts. If requested or required, the Office Manager will call the complainant back with a report of steps taken to fix the problem.

To minimize the impact of odors from loads, applicant's staff constantly inspects all loads delivered to the facility. Loads having very strong odors are rejected immediately and removed from the site. Where loads with odors are accepted, they are, as recommended in Metro's yard reprocessing regulations, immediately mixed with clean stable material, which dilutes the smell. They are then covered with cured compost to reduce the opportunity for odors to escape from the processing pile. In applicant's experience, this approach has been successful in reducing odors from loads delivered to the facility.

Applicant recognizes that it is essential to minimize the impact of odors generated by anaerobic conditions. If an odorous condition is found or expected to be found, applicant's policy is to turn that section of pile more gradually, and immediately

mix it with clean stable material, which dilutes the smell. The source of the smell is then covered with cured compost to reduce the opportunity for odors to escape from the processing pile.

To further reduce odors, applicant expects to implement a new composting method by January 1, 1998, with exclusive use by December of that year. That method will consist of an aerated static pile with height of 15-20 feet. Because this method uses aeration the chances of encountering an anaerobic condition are significantly reduced. This is consistent with Metro's regulations that call for minimization of such conditions and is an integral part of applicant's odor control plan. In addition, the broader pile base and lower height of such piles will themselves reduce the possibility of interior spaces that are deprived of oxygen for significant periods of time.

Few odor complaints have come to our attention directly. In spring 1996, office management received a call concerning a chemical odor but determined that it was not generated by this facility. The complainant was assured that our operation does not use chemicals and, thus, cannot produce such odors. Another odor complaint received fall of 1996 was handled by explaining what our operation does and that our proposed improvements, once implemented, will reduce the odors.

The only dust complaints to date were brought to applicant's attention at a meeting with Metro, Clackamas County, DEQ, and our neighbors Precision Castparts and representatives of Tramel Crow on January 11, 1996. Since that time, applicant has implemented the water sprays and contracted with a professional road sweeping service for cleaning the roadway. Future plans for paving and striping to aid in dust control have had a positive response with Clackamas County. Paving the roadway depends, however, on the consent of Brophy Machine Works, which controls part of the road by easement. So far, Brophy has refused to agree to paving the road, but we are still in active negotiations on this issue. According to a recent letter of Brophy's counsel, resolution of the matter seems to turn primarily on finding an acceptable mechanism by which to allow Brophy a remedy if the road is congested. Applicant will explain in detail its traffic management plan below.

Recirculating wastewater to the piles has had good results in dust control. Spraying the dirt portion of the road as well as regular cleaning and sweeping of other portions of the road and dumping area also contributes to dust control. Upon completion of roadway paving, the entire roadway will be swept and/or moistened regularly. Water sprays have been added to processing machinery and along loading areas for keeping the dust under control. This approach has successfully mitigated dust impacts to surrounding properties.

Currently nuisance complaints have not been forwarded to us from Government agencies, but Mr. Metzler's letter says that they continue receive them. Applicant would welcome the opportunity to respond to such complaints, if Metro would provide it with details.

3. Describe your methods for minimizing and controlling odors at the facility.

Odors from applicant's facility can result in either of two ways. First, applicant could receive a load of material that has a high odor content. Second, applicant can encounter odors when turning the piles. In the latter case, the odor results when portions of the pile become anaerobic. This produce an ammonia-like smell.

Odors from loads are far less likely to impact surrounding properties than those arising from turning the pile. For the most part, applicant's neighbors are light industrial, commercial and office uses. Considering the distances involved, odors from either source are unlikely to impact residences to any material degree. As to surrounding uses, the facility can occasional cause odors detectible off of the property. Applicant's policy is, however, to minimize such odors to the maximum extent possible.

To minimize the impact of odors from loads, applicant's staff constantly inspects all loads delivered to the facility. Loads have very strong odors are rejected immediately and removed from the site. Where loads with strong odors are accepted, they are, as recommended in Metro's yard reprocessing regulations, immediately mixed with clean stable material, which dilutes the smell. They are then covered with cured compost to reduce the opportunity for odors to escape from the processing pile. In applicant's experience, this approach has been successful in reducing odors from loads delivered to the facility.

Applicant recognizes that it is essential to minimize the impact of odors generated by anaerobic conditions. The current static pile composting system is primarily operating in the anaerobic or anoxic biological environment. The outer layers of the pile will have penetration of oxygen to form a narrow aerobic zone and a thicker anoxic zone. With this type of system, an odor control technique is to minimize disturbance of the material which contains the anaerobic byproducts in the pile until sufficient time has passed that the anaerobic composting process proceeds to the point that the byproducts are stabilized. There will still be some release of odorous byproducts, but the release will be minimized. Surface movement of the aerobic and anoxic zones may be useful to assist with the stabilization process by introducing oxygen deeper in the pile while not disturbing the fully anaerobic material. Hence, if an odorous condition is found or expected to be found, applicant's policy is to turn that section of pile more gradually, and immediately mix it with clean stable material, which dilutes the smell. The source of the smell is then covered with cured compost to reduce the opportunity for odors to escape from the processing pile.

To further reduce odors, applicant expects to implement a new composting method by January 1, 1998, with exclusive use by December of that year. That method will consist of an aerated static pile. This process controls odor by maintaining aerobic conditions in the composting pile. Aerobic conditions tend to result in the degradation of organic matter to carbon dioxide, water and residual complex organics (humus). Some intermediate degradation products are released in aerobic composting, but they are generally less odorous than the by-products of anaerobic composting. Odorous by-products of anaerobic composting include sulfides, mercaptans and organic acids. Provided that the aerated material is maintained in a

moist, controlled temperature atmosphere, odorous compounds such as these will be minimized. *See* more detailed description below.

Because the aerated static method uses aeration, the chances of encountering an anaerobic condition are significantly reduced. This is consistent with Metro's regulations that call for minimization of such conditions and is an integral part of applicant's odor control plan. In addition, the broader pile base and lower height of such piles will themselves reduce the possibility of interior spaces that are deprived of oxygen for significant periods of time.

Applicant also notes that since this facility only receives yard debris, the only practical method of adjusting the compost mix is to recycle previously composted material, either in screen overs or unders or unscreened form. This assists in odor control by correcting the carbon to nitrogen ratio during high grass content conditions and by absorbing odors.

To summarize, procedures that will be common to either method of composting include the following:

1. Odorous loads will either be rejected or mixed as quickly as possible, and always on the same day they are received, with stable product. Mixing allows the absorption of odors and prepares the material for incorporation into the composting pile in a form that will be less likely to generate odors.
 2. All materials will be placed in the composting pile within three days of the day they are received.
 3. To the maximum extent possible, atmospheric conditions and potential impacts off of the site will be considered when undertaking any operation that might release odors.
- 4. Describe your procedures to avoiding delay in processing yard debris during all weather conditions.**

The weather has minimal effect on operations. We continue to do grinding and screening on regularly scheduled days. We schedule normal maintenance of equipment so there is little or no interruption to scheduled work.

- 5. Prior to turning or moving composted material, describe how the following factors are considered:**

There is a greater potential for odor when an anaerobic condition in the existing pile is found. When a portion of the pile has gone anaerobic, that portion of the pile is turned mid afternoon to try to lessen any impact of re-aerating the pile. This is done slowly mixing other aerobic product in to stabilize and minimize any odor impact that may be generated.

Time of Day

Piles are generally rotated between 8:00 and 6:00 pm. The impact of turning and final pile breakdown of odorous material may, however, be reduced by limiting operations involving such materials to times of the day and weather conditions that are least contributory to movement of odors to neighboring property without significant dilution by atmospheric conditions. Hence, where an odor-causing condition is suspected, it is applicant's policy to rotate the pile in the mid-afternoon, when the possibility of impacts on surrounding uses are less. (Applicant would, however, be willing to adopt a different schedule, if that would reduce such impacts.) Applicant's policy is also not to rotate such portion of the pile in unfavorable weather conditions. Under applicant's new method of composting, that will be implemented by January 1, 1998, with exclusive use by December of that year, the piles will be rotated during shorter periods of time, reducing the periods when odors might be inadvertently generated.

Wind direction

When wind is at a higher velocity, there are fewer odor impacts because of almost immediate dispersion of smells. However, because of site location, with neighbors on most sides of the operation, a policy of not turning piles when the wind is blowing in particular directions would not be an effective mitigation method. Instead, applicant has taken and will take other mitigation methods as described in this application.

Percent moisture

The piles are kept damp at 40% moisture and above by the recirculating water. As explained above, this reduces the possibility of odor.

Estimated odor potential

See above.

SITE PLAN

As requested by Metro staff, a current and planned revised site plan is attached. Applicant intends to begin implementing the new site plan on November 1, 1997, in the area of the future active pile. Benchmarks for the new construction required for this plan appears in the table below. Applicant's deadline for operation of the aerated system and complete transformation to the new site plan is December 1, 1998, although applicant will attempt to reach that point sooner.

IMPLEMENTATION DATES--PERMITS REQUESTED IN FEBRUARY 1998		
<i>Benchmark</i>	<i>Start</i>	<i>Finish</i>
Pond excavation	June 1998	August 1998
Slab Excavation	July 1998	August 1998
Slab Pours	September 1998	October 1998

IMPLEMENTATION DATES--PERMITS REQUESTED IN FEBRUARY 1998		
<i>Benchmark</i>	<i>Start</i>	<i>Finish</i>
Electrical	July 1998	October 1998
Road Improvements (Johnson Road)	February 1998	April 1998.
Road Improvements (Easement)	September 1998	November 1998
Financing and/or easement restrictions may change the above-targeted dates. Applicant will proceed more quickly than this schedule if possible.		

The site plan shows a new settling pond on the northwest end of the property for water circulation. This pond will have a capacity 20,000 cubic feet, calculated using the KC Surface Water Design Manual (November 1995 rev.) Based on a 25 year 24 hours rainfall event.

The aerated slabs with 20336 square feet are shown for the active stage with a 21 day period. A stabilization cure slab 16,616 square feet with a period of 28 days is also shown. Materials will then be screened and moved to the finish pile. The screened product will then be allowed to cure for seven more days before it is offered for sale.

This system is called an aerobic static pile method in which the aerated product is moved only once in the first 21 days, then again after 28 days. These calculations and recommendations concerning this method were made by Larry Sasser of E&A Environmental. The plan is based on 40,000 tons per year of yard debris with pile heights from 15 to 20 feet.

In regard to traffic, both the county planning and traffic departments favor the site plan's set up of traffic flow. The plan consists of three travel lanes. The right lane will be a designated queuing lane for yard debris dumping, with breaks as designated on the plan for office and yard exists. This lane terminates at the scale house. The center lane will be marked, signed and maintained free for through traffic. The purpose of this lane is for ingress of vehicles going to our neighbor, Brophy, or to allow vehicles to proceed to areas of applicant's site other than the brush dumping area. The exit lane will be kept clear by, if necessary, immediate intervention of applicant's staff for outgoing traffic. Signs will prominently display instructions to customers as to the use of the lanes.

Applicant will pave the roadway, contingent on resolving its dispute with Brophy's concerning the common easement, which is discussed below. Paving will take some additional time, however, because of scheduling surveys and obtaining permits. Applicant hopes to resolve the dispute with Brophy's and obtain permits so that the paving can be completed within the next 12 months.

Applicant recognizes that Brophy's has complained about congestion in the active easement area, and applicant considers it a high priority to resolve this issue. Hence, it has designed a site plan that will ensure free flow of traffic and has committed itself to policies that will ensure that the plan works. Designated employees will be charged with keeping the traffic flowing under this plan. When needed such employees will immediately attend to customers who may not be following instructions and ensure that problems are promptly resolved. With regard to Brophy's, applicant is continuing to negotiate a solution. Based on recent correspondence with counsel for Brophy's, applicant understands that resolution of this dispute revolves around finding an enforcement mechanism that will give Brophy's some confidence that congestion problems can be quickly resolved. In concept, applicant is open to this approach, and based on the exchange of the letters between counsel, expects that a mediation should be possible to find a solution. Although it is of course impossible to predict a resolution of this matter with certainty, applicant is optimistic. Furthermore, most aspects of the traffic circulation plan, other than paving, can be implemented without Brophy's consent. Applicant intends to go forward and complete the plan and resolve traffic congestion problems whatever the situation with Brophy's. To that end, all employees of applicant have been and will be instructed to assist in the immediate resolution of all traffic problems.

In his letter, Mr. Metzler noted that the site plan originally submitted had traffic going into a bunker area. The revised plan rectifies this error.

LICENSE APPLICANT

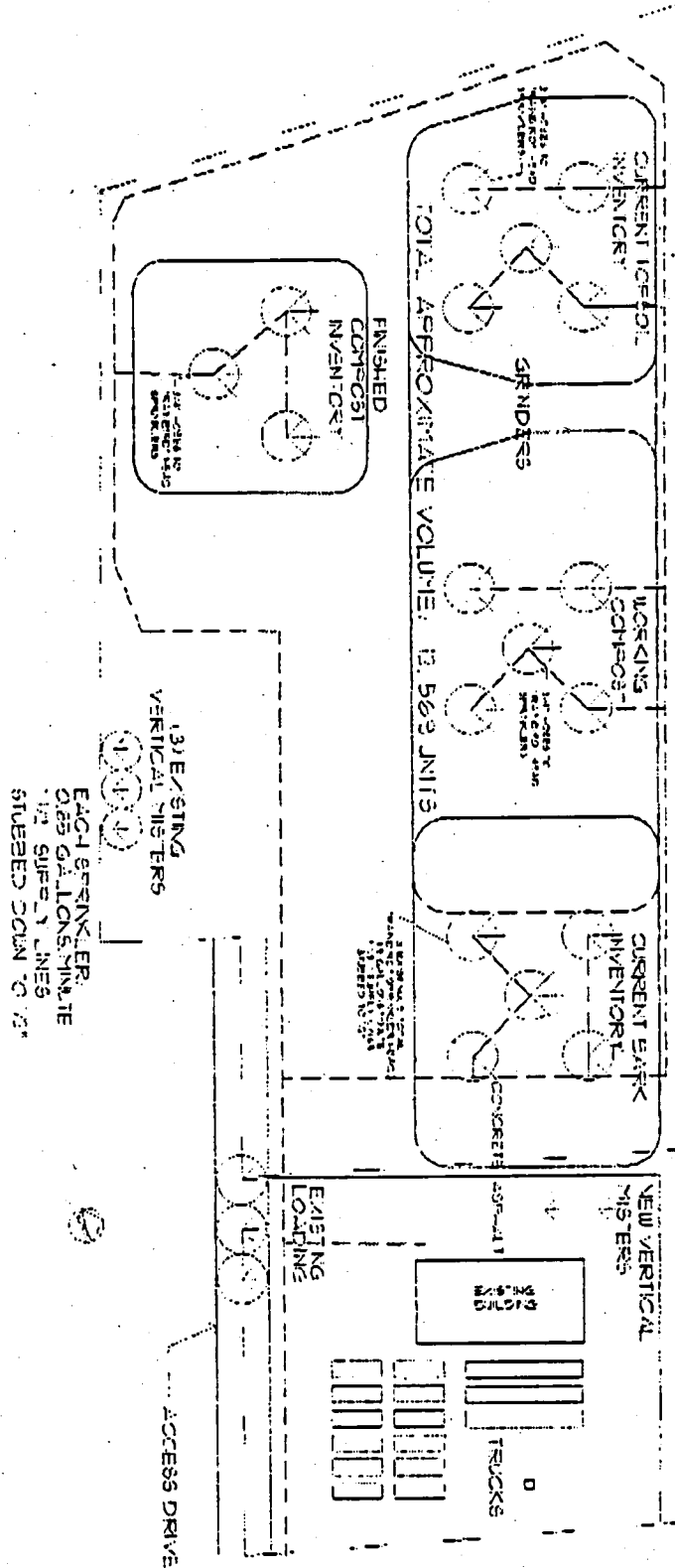
I hereby certify that the information contained in this application is true and correct to the best of my knowledge. I agree to notify Metro within 10 days of any change in the information submitted as a part of this application.

Signature and title of person completing this application:

SIGNATURE Dan McFarlane TITLE President

DATE 9-22-97 PHONE NUMBER (503) 659-1240

DRAWING 1349: C.A.MERLEY



CURRENT SITE PLAN

SCALE IS

	<p>McFARLANE'S BARK - MILWAUKIE</p> <p style="font-size: small;">PLANT & DESIGN</p>		<p style="font-size: x-small;">Approved Soil Advertisement</p> <p>Hawthorne Crest</p> <p style="font-size: x-small;">P.O. Box 700 Hawthorne, OR 97134 503-631-7600 • FAX 503-631-7607</p>
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**PROPOSED OPERATIONAL MODIFICATIONS
MCFARLANE'S BARK COMPOSTING FACILITY
MILWAUKIE, OREGON**

**PREPARED BY
MAUL FOSTER & ALONGI, INC.**

JANUARY 26, 1998

McFARLANE'S BARK SITE PLAN NARRATIVE

The attached site plan shows the proposed layout for the composting and bark operations at the Johnson Road site. After meeting with Metro and Clackamas County, and more recently with the neighboring industry (Brophy Machine Works), a site plan and operations approach has been finalized that solves access and queuing issues at the site.

The active composting and stabilization areas have been combined into a single pad in order to facilitate the continuous processing of compost. Aeration of the two different pad areas can be controlled separately due to the lateral feed of air from the blower gallery. Shredded yard debris will be placed at the south end of the pad and will be moved to the north as composting progresses.

The compost will be screened after stabilization and placed in fine, medium, and coarse compost bins on-site or transported to McFarlane's Vancouver, Washington facility for storage. "Overs" or oversized material will be reserved and used during peak grass season as a means of improving air flow through the piles. The composting areas have been sized to accommodate 36,000 to 40,000 tons of raw material per year (see E & A Environmental section on composting operations).

The mode of operation on peak days will be modified to a flat rate method of charges which will avoid the requirement to weigh vehicles in and out of the facility. In addition, the active unload area will be expanded to handle more vehicles. These two changes result in a significant reduction in queue lengths with queue for the delivery of yard debris to the site becoming less than 300 feet (see Group MacKenzie traffic evaluation). This queue can be accommodated with the use of one lane along the south side of the site.

The traffic flow pattern has been modified to allow the required queuing and the maximum possible separation of public access from operational traffic. McFarlane trucks will proceed along the east and north side of the site. Customers purchasing materials will be directed to the customer loading area or to parking on the east side of the building. A separate inbound bypass lane is provided for traffic destined for Brophy Machine Works. Outbound traffic will be accommodated in a single lane with an improved turning radius at the site exit.

McFARLANE'S BARK TRANSITION PLAN

BACKGROUND

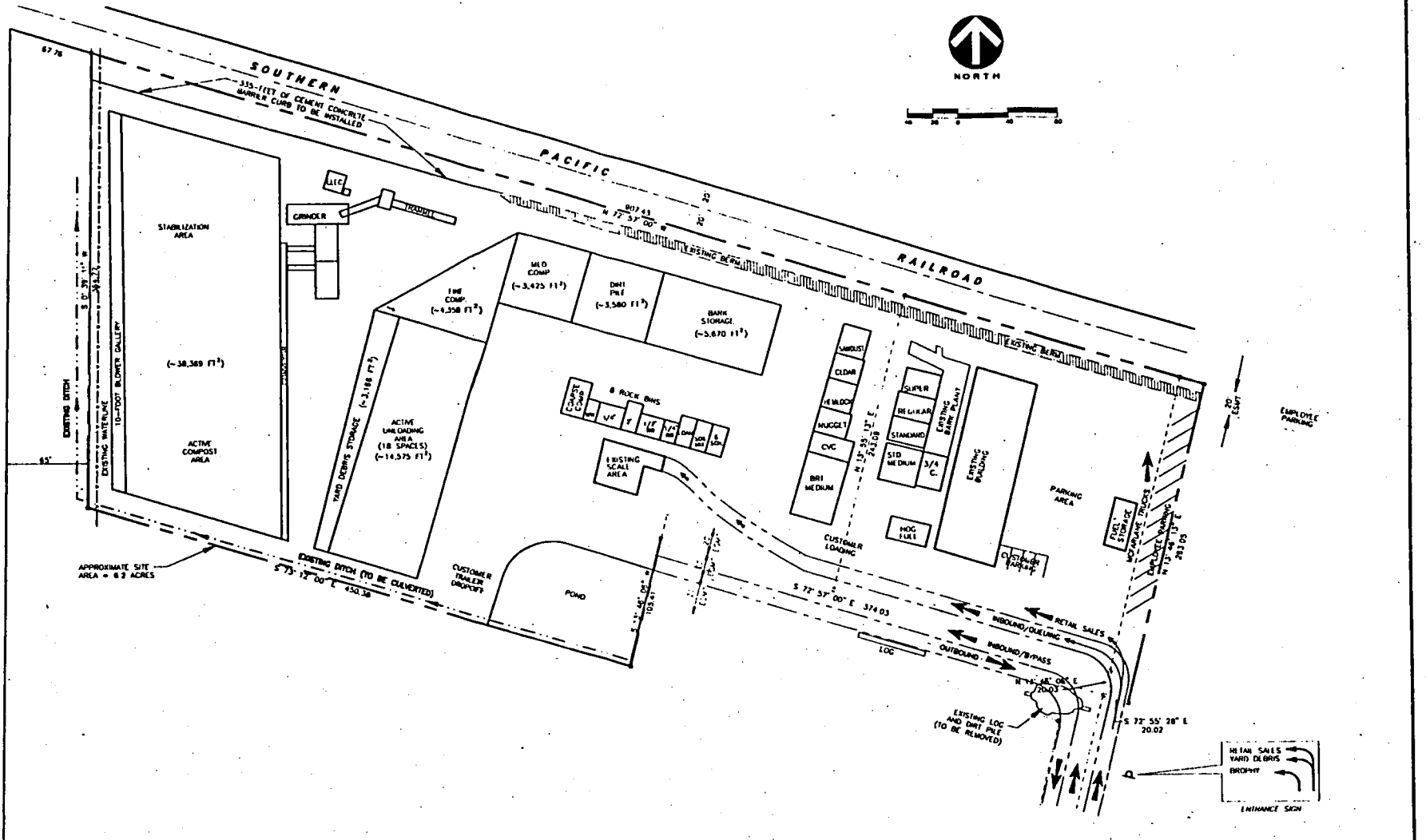
The current composting method (deep static pile) will be phased out and the new method (aerated static pile) will be implemented during 1998. The proposed compost method requires permanent installation of pads, blowers, and piping in order to start up operation. Part of the transition plan involves demonstration tests of the proposed method that will assist in designing the new composting pads. These tests will use large scale temporary on-site pads that will accommodate a portion of the material to be composted. The composting plan developed by E & A Environmental describes the approach and need for conducting the demonstration tests.

TRANSITION SCHEDULE

A schedule for implementing the anticipated improvements is attached. The schedule describes the ongoing demonstration testing which began approximately mid-November using fall material including leaves and shredded woody yard debris. This will be followed in the late spring of 1998 with a demonstration test using a mix of grass clippings, as well as other yard debris material. Since this is also the peak season for quantity of material and the most difficult to control odors, the results of this demonstration test will be very important to the design of the permanent facility.

Implementing the revisions to the traffic pattern will be somewhat dependent on completing the transition to the proposed composting method. To the extent practicable, traffic revisions will be made in early 1998 in order to better accommodate traffic management. The remaining traffic improvements will be made after the transition to the proposed composting method is completed.

The transition will require the relocation and substantial reduction of the existing dirt pile to make room for construction of the compost/stabilization pad. The current deep static compost pile will begin being phased out by first diverting new material to the new compost pad. Some material in the deep static pile could be relocated to the new compost pad if space is available. Once the deep static compost pile has been removed or relocated, then the rest of the site improvements can proceed.



NOT FOR CONSTRUCTION

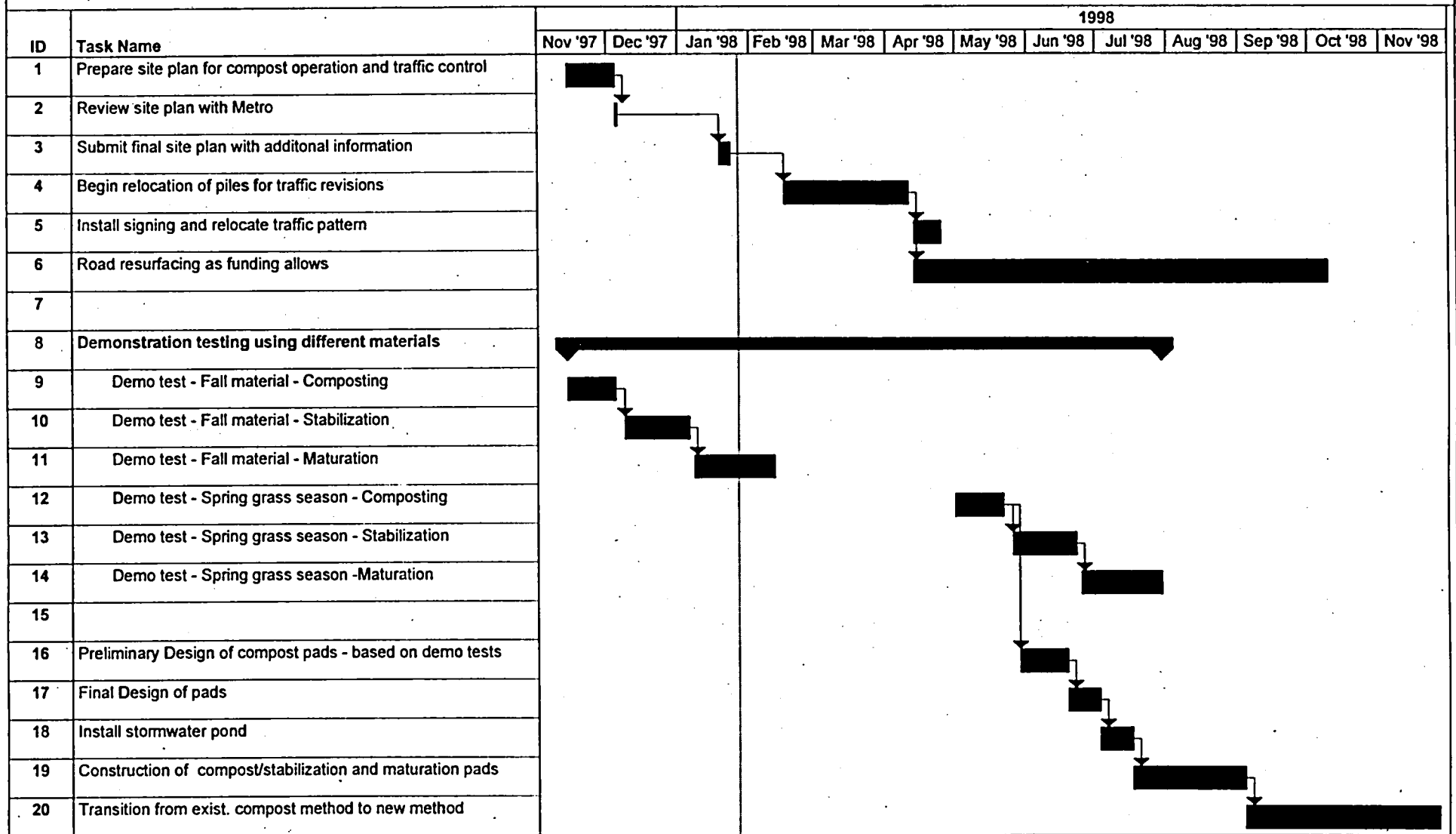
REV	DATE	BY	CHKD	APP'D
1	12/27	T. KILNE	R. ALLEN	T. ALLEN

Maui Foster & Alongi, Inc.

MCFARLANE HARK
SITE PLAN LAYOUT

DRAWING NO.
 PROJ 001 001

McFarlane's Bark Composting Operation Schedule of Improvements



Project: SCHEDULE2
Date: Tue 1/27/98

Task	█	Summary	▾	Rolled Up Progress	█
Progress	█	Rolled Up Task	█		
Milestone	◆	Rolled Up Milestone	◇		

COMPOSTING OPERATIONS AND ODOR CONTROL PLAN
E & A ENVIRONMENTAL CONSULTANTS, INC.

McFarlane Bark, Inc.
Composting Operations and Odor Control Plan

PROCESS PLAN

Composting Process Selection

The objective of the composting process selection is to provide a composting facility that maintains the capacity of the current process while significantly reducing the potential for odor impact on neighboring properties. The approach used to select the composting process involved consideration of available space and available technologies for minimizing odor generation. All alternative technologies considered involve processes that provide aerobic environments while minimizing space requirements. The windrow process was eliminated from consideration based on space requirement. The aerated static pile process operated in the negative mode and with the process air treated by biofiltration was also eliminated based on the space required for a biofilter. Use of either of these technologies at this site could only be accomplished with a significantly reduced processing capacity.

The two technologies that were considered include:

1. Aerated and Turned Mass Bed - This technology has been successfully utilized at the Pierce County Composting Facility operated by Land Recovery Inc. (LRI) at Purdy, Washington. An aerated pad is provided and the material is turned and moved across the pad using a SCAT turning machine. This facility has had considerable success composting yard debris with minimal odor impact on neighboring residents. However, the LRI facility is more isolated from residences than is the McFarlane site.
2. Aerated Static Pile, Deep Pile and Positive Aeration Variation - This process shares some similarities to that used by Cedar Grove Composting Company in Maple Valley, Washington. A significant difference is that Cedar Grove uses negative aeration and biofiltration for odor control. The variation of the aerated static pile process being considered relies on aeration to provide aerobic conditions within the pile which encourage rapid degradation while minimizing generation of odorous by-products.

The aerated static pile process was selected for implementation primarily because it can be utilized without an aeration floor. The process also has the potential for use of deeper piles than the turned process. The Scat turning machine has a maximum pile depth of about 10 feet. The static pile process has the potential for successful composting to depths of 15 feet and possibly greater. The functional depth limitation for the aerated static pile process will depend on several factors including the initial moisture content of the feed mix, the energy release pattern of the feedstock and the resulting temperature and moisture gradient through the depth profile of the

pile as composting proceeds. A series of demonstration tests is recommended to document the suitability of the selected design criteria and the ability of the process to operate successfully through the full range of operating conditions and feedstock variation.

Current Process Description

The current process utilized by McFarlane involves the deep static pile process that has been utilized at several composting facilities in the Pacific Northwest. Facilities currently using a similar technology include GroCo, Inc. in Kent, WA (with sawdust and biosolids) and Pacific Topsoils, Inc. near Everett, WA (with Yard debris. The technology was previously used by Cedar Grove Composting but was discarded in favor of an aerated process.

Proposed Composting Process

The proposed composting process consists of three identifiable processing zones:

1. The active zone using the aerated static pile composting process using deep, extended (mass bed) piles and positive aeration. Material is composted in this zone for 21 days at the design loading when recycled screen overs are used. During the grass season, the screen overs will be added to improve porosity. During this period active composting will be for an estimated 15 days.
2. The stabilization/curing zone also using the deep extended aerated static pile process with a processing period of 28 days.
3. The maturation zone using an unaerated deep extended pile for a period of five weeks or greater.

The layout of the extended piles and the associated aeration systems (blower gallery) are shown on the site plan layout. This configuration was selected because of the space constraint associated with the site in order to provide the desired capacity. Space is not available for biofilters, requiring a system designed to operate in the positive aeration mode. In this configuration, air is forced through the composting material from distribution pipes located at the base of the pile and exiting from the surface of the pile. The air provides oxygen to assure aerobic degradation. Air also provides pile cooling to maintain temperatures within a range for efficient degradation with minimum release of odorous by-products. Heating energy is removed from the pile by evaporation of water. Therefore, the availability of sufficient water in the composting mix is critical for both the support of biological activity and evaporative cooling.

The operational objective of the proposed system is to provide near optimum conditions for rapid biological degradation of the yard debris to a product that is sufficiently stable for commercial sales. This rapid conversion is intended to allow composting in a shorter period than could be accomplished with the process historically used at this site, while using shallower pile heights. The process is also operated in an aerated mode rather than the anaerobic condition that likely

predominated in the deep static pile process. The aerated static pile process is, however, an active process compared to the relatively passive process previously used. Air passing through the interior of the pile is continuously released to the atmosphere.

The facility as laid out is designed to process 3,100 cubic yard per week of shredded yard debris. Table 1 shows the annual material quantities that would be received and processed and the resulting product if the facility operates continuously at this rate. The equivalent weekly quantities are provided on Table 2. These quantities and the changes that occur during the composting process are preliminary and will be developed based on actual operating data during the demonstration testing of the process.

	Weight (tons)	Density (lbs/cubic yard)	Volume (cubic yards)
Incoming Yard Debris	40,000	250	320,000
Shredded Yard Debris	40,000	500	160,000
Screened Fines (mulch product)	27,300	600	91,000
Screen Overs (mulch product)	9,200	400	46,000
Compost Product	25,000	900	56,000

Table 2 provides the peak weekly design capacities for the proposed system.

	Weight (tons)	Density (lbs/cubic yard)	Volume (cubic yards)
Incoming Yard Debris	770	250	6,150
Shredded Yard Debris	770	500	3,080
Screened Fines (mulch product)	525	600	1,750
Screen Overs (mulch product)	180	400	885
Compost Product	480	900	1,080

The design criteria for the proposed facility are listed in Table 3.

	Units	Capacity
ACTIVE COMPOSTING		
Pile Depth	Feet	15
Aeration Rate	Cfm per SF	3.85
Pile Volume	Cubic yards	9,300
STABILIZATION/CURING		
Pile Depth	Feet	15
Aeration Rate	Cfm per SF	0.75

Pile Volume	Cubic yards	7,400
MATURATION		
Pile Depth	Feet	18
Aeration Rate		None
Pile Volume	Cubic yards	8,300

Demonstration Testing

The purpose of the demonstration testing is to 1) determine the suitability of the composting process for composting at this site, 2) provide operational experience to determine compatibility with site operations and 3) document the characteristics of the composting material as it passes through the process.

Several innovative modifications of the aerated static pile process are proposed as a means of maximizing the composting capacity of the available operating space. The effectiveness of the process using these modifications needs to be verified before full-scale operations are begun. Considering this need, the specific objectives of the demonstration testing include:

1. Odor minimization capability
2. Evaluate pile depth impacts on pile temperatures and moisture content distribution
3. Documentation of pile detention times relative to product quality
4. Evaluate aeration without a plenum in the yard debris material
5. Evaluate optimal aeration rates

First Phase - Fall Material

The first phase of the demonstration testing will utilize yard debris generated during the fall and winter. This material generally includes more leaves and woody material than material generated in the spring and summer. This material is lower in energy and results in a composting situation that is generally easier to control. This is an excellent feedstock for initial evaluation and operations.

Second Phase - Peak Loading - Spring

The second phase of process demonstration will be during the peak grass season in the spring. This is the most difficult yard debris material to manage. Grass is very reactive, high in energy and degrades rapidly. The fine texture also tends toward matting and low porosity for air movement. This can lead to anaerobic conditions and production of highly offensive odors. The

proposed process will manage this condition by using reserved screen overs to bulk up the grassy material to assure porosity for aeration.

Composting of this material will be the final demonstration of the process prior to full-scale implementation. It is expected that adjustments will be made to the proposed process after each phase of the demonstration testing.

ODOR CONTROL PLAN

Odor management planning involves a thorough evaluation of the composting operation and evaluation of available control technologies needed to control odors to acceptable levels. This evaluation utilizes the following evaluation process:

- Identify sources of odor
- Determine the character and intensity of odors from each source
- Determine the impact of each odor source on odors at the property boundary or other critical locations
- Evaluate odor control methods for each activity that results in odor release
- Select of the most appropriate control techniques for the situation
- Implement the selected odor control procedures
- Evaluate the effectiveness of the implemented control methods
- Adjust the odor control plan, if necessary

Although experience at other composting facilities is of use in evaluating the McFarlane operation, each composting facility receives somewhat different feedstocks which are managed differently and result in unique odor conditions considering local development and atmospheric conditions. Each facility evaluation needs to consider each step in the composting process from receipt to sales. Materials handling steps that have been identified as potential odor sources at other composting facilities include:

- Receiving area
- Feedstock stockpiles
- Grinding
- Compost pile formation
- Compost pile turning
- Compost pile aeration
- Compost pile breakdown
- Screening
- Curing, particularly if unaerated
- Product storage

A variety of techniques can be used to control odors at a composting facility. In summary, the techniques are categorized as composting process adjustments, weather based operational controls, enclosure of odorous processes and collection and treatment of odorous air streams. Considering these available odor control methods, the site constraints and potential impacts on

neighboring properties, a cost effective program for improving odor conditions at the McFarlane Bark facility has been developed. Aspects of each type of odor management approach, which is within economic feasibility for this operation, have been used. The basic concepts that are proposed to control odors at this facility include:

- Process and place received material in the composting pile within 18 hours of receipt.
- Maintain highly aerated composting piles with temperatures maintained consistently below 65oC (149oF) with normal operating temperatures of 55oC (131oF) or lower.
- Maintain moisture content between 45 and 60 percent throughout the composting process.
- Utilize screen overs and other coarse woody material as a bulking material when necessary to maintain a porous mix for aeration.
- Provide high rate aeration and pile cooling prior to pile breakdown.
- Control of runoff to prevent stagnant, anaerobic conditions.
- Restrict potentially odor producing activities during weather conditions (such as stagnant inversions) that increase off site odor impacts.

The effectiveness of these activities will be determined through direct monitoring of the process, property line impact evaluation and routine contact with neighbors to assess performance.

Contingency plans for additional odor control approaches are a prudent backup for any odor management plan. Additional odor control methods that will be considered for this facility if the planned improvements do not provide the desired level of odor control include the following:

- Provide an aerated pad for the delivered yard debris to reduce odors from material that is odorous as it is received.
- Modify the aerated static pile process. Changes to the pile configuration, detention times and turning events and adjusting mix with recycled screen overs may further reduce odors. These steps would likely reduce the composting capacity of this site. This would significantly reduce the composting capacity of the site.
- Operate the aerated static pile process in the negative aeration mode and provide biofiltration.
- Evaluate the use of odor management sprays and additives.
- Evaluate the use of a scat turning machine in conjunction with aeration to improve moisture control and porosity in the composting material.

Another significant aspect of odor management is the development of a program for working with and responding to neighbors that may be impacted by odors. Key elements of the program include:

- Routine self evaluation - Routine tours of the property boundary initially and the composting area secondarily by an employ who is not normally located at the site provides excellent information on the performance of the odor control methods. Reports should document atmospheric conditions and operational activities that create undesirable off site odors.
- Responding to odor complaints - Immediate response to any odor complaint provides information needed to determine the significance of each complaint and the opportunity to evaluate and adjust activities. A quick response also helps maintain a working relationship with neighbors that provides assurance that odor control is taken seriously and any problems will b addressed.
- Verifying conditions - All odor observations whether routine or in response to a complaint provide valuable data for evaluating the performance of the odor control plan. Specific information about location, odor strength and character and atmospheric conditions should be collected for each situation.
- Determining the source of odors - Determination of the source of off site odors in the key to correcting problems. This allows focusing of odor control efforts on the primary sources and assists with cost effective odor control.
- Evaluating the potential for improved control - Based on routine review of odor conditions and complaints which provide an alert of off site conditions the odor plan should be periodically reviewed for effectiveness and alternatives considered for any site activities that are creating off site odor problems.
- Communication of plans - Communicating plans for odor control adjustments to site neighbors provides an avenue for communication and assurance for the neighbors that continuous vigilance is being applied to odor control.

TRAFFIC EVALUATION

GROUP MACKENZIE

G R O U P

MACKENZIE

January 28, 1998

McFarlane's Bark, Inc.
Attention: Daniel McFarlane
13345 S.E. Johnson Road
Milwaukie, OR 97222

Re: McFarlane's Bark Vehicle Queuing Survey
Group Mackenzie Project #197407

Dear Mr. McFarlane:

Group Mackenzie has reviewed the operation of your facility on Johnson Road in Milwaukie for queuing and circulation requirements in conjunction with the revised composting and bark operations.

Concerns have been raised by Metro, Clackamas County and neighbors regarding vehicle queues extending through the easement with Brophy Machine Works and onto Johnson Road. Peak vehicle queues have extended back as far as the old Costco driveway on Johnson Road. The long queues are caused by vehicles waiting to drop off brush and circulation of other vehicles around these queues. Clackamas County has indicated that vehicles will not be allowed to queue in the public right-of-way on Johnson Road and the neighbors have expressed concern over vehicles queuing within the common easement.

This report addresses the existing brush dumping operation, peak season demands and impacts, as well as proposed mitigation measures. The current operation, with vehicles being weighed prior to and after dumping brush, is limited to approximately 45 vehicles per hour. This compares to a demand of 60 vehicles per hour during the peak season. The proposed mitigation will significantly increase the brush dumping capacity, and thus reduce vehicle queues.

The proposed mitigation plan would use a flat rate payment during peak use periods, instead of weighing each vehicle on an inbound and outbound scale. This would reduce inbound peak queues from 1400 to 280 ft., and eliminate the need for an outbound scale transaction. The brush dumping area will be improved, with clearly delineated spaces and reduced conflicts with equipment. The inbound queues will be accommodated in a signed and striped lane extending from the existing scale house back towards the Johnson Road entrance.

FACILITY PROCESSES

BRUSH DUMPING

The brush dumping facility primarily serves private vehicles and some commercial vehicles with yard debris. The area consists of two scales on either side of a scale house with an adjacent area for dumping brush. Operation is comprised of three distinct steps. First, the vehicles are weighed on the north (entering) scale, the customers pay a deposit and are issued a ticket. Second, the vehicles go to the brush

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The tradition of
Mackenzie
Engineering and
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continues

Daniel McFarlane
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dumping area to unload. Finally, the vehicle is weighed on the south (outbound) scale and any additional payment or refund of the deposit is made. McFarlane's indicated that customers are also allowed to pay for products such as bark dust, gravel, and compost material at this scale.

RETAIL/OFFICE

McFarlane's Bark offices and small retail area are located in a building at the east end of the site near the termination of Johnson Road. Employees park to the east of the building, while customers generally park in front of (south side) or beside (east side) the building's retail area. The retail area is for product sales of bark dust, gravel, and compost material. Access to the building and parking area are often blocked by brush dumping queues during the peak season.

PRODUCT BINS

The products for sale at McFarlane's Bark are stored in bins to the west of the building. Gravel is stored in bins south of the scales and barkdust is in bins located between the scales and the building. Circulation of loaders and customer vehicles accessing the product bins currently conflicts with the brush dumping operation and queues at the inbound scale.

OBSERVATIONS/SURVEY

SUMMARY

Group Mackenzie staff visited the site on Saturday November 1, 1997 to observe existing operations and review the site layout. Data was collected on queue lengths, time on the scales and time dumping brush. A traffic study prepared by Lancaster Engineering in 1993 for the facility proposed on SE 130th Avenue was also reviewed. Applying this information in conjunction with peak season transaction estimates produced an estimate of vehicle queuing requirements for the site.

During the visit, the brush dumping operation was observed for a one hour period between 2:35 and 3:35 pm. McFarlane's indicated that Saturdays are the busiest days, with peak operation between 11:00 am and 3:00 pm. The weather was clear and sunny which provided a steady stream of vehicles. A total of 41 vehicles were observed in the brush dumping facilities during the hour with 29 vehicles entering and 34 exiting. Twelve vehicles were in the system at the beginning of the survey and seven remained at the end.

At the beginning of the survey, one person was operating the scales, conducting transactions and directing traffic in the brush dumping area. As a result, longer waiting times were experienced at the scales and in the queues. Between 2:45 and 3:00 pm, the peak fifteen minutes of the survey, a second person directed traffic in the brush dumping area which helped reduce the scale times. According to McFarlane's, a person is stationed in the brush dumping area during the peak season to direct traffic. We also noticed that McFarlane's staff gives priority to the outbound scale and brush dumping areas when congested.

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INBOUND SCALE

Average service times on the entering scales were 98 seconds for the hour and 64 seconds during the peak 15 minutes. The attached spreadsheets present this data. For purposes of this analysis, the shorter 64 second scale time will be used to assess queuing during the peak times when two employees will run the operation. Time spent in the queue waiting for the entering scales was 140 seconds on average for the hour, and 82 seconds in the peak 15 minutes

BRUSH DUMPING AREA

Although times for brush dumping were not specifically surveyed, they can be estimated from the time a vehicle leaves the inbound scale until it leaves the outbound scale (17:54), minus the average outbound scale time (1:20) and an estimate of the outbound scale queue time (2:20). The resultant total existing brush dumping time is 14:14. This includes the time spent waiting in queues, positioning the vehicles and dumping brush.

The current brush dumping area is not well defined and has frequent conflicts between vehicles dumping brush and McFarlane's equipment. Based upon Group Mackenzie's observation, the brush dumping time can be reduced by clearly marking the brush dumping stalls and eliminating conflicts with equipment. With these improvements, it is estimated that the time needed to travel from the scales to the stalls, dump the brush and enter the outbound scale queue would be an average of 10 minutes per vehicle.

The service rate of the brush dumping area depends on the number of vehicles which can be accommodated simultaneously. At 10 minutes per vehicle, a total of six vehicles can be served by each stall. McFarlane's has estimated that the new site layout would accommodate a minimum of 15 vehicles. This would result in a service rate of one vehicle every 40 seconds or 90 vehicles per hour.

OUTBOUND SCALE

The outbound scale also develops queues which can impede operation of the brush dumping area. These queues are a factor of the service rate on the outbound scales. On average, the service time for this scale was 80 seconds for both the hour and peak 15 minutes. Total time dumping brush and waiting in the outbound queue averaged 989 seconds, or 16:29, with a minimum of 6:48 and maximum of 24:37. Specific dumping time or queue time for the outbound scale was not surveyed.

OBSERVATIONS

On several occasions, the brush dumping area was congested. The congestion was primarily caused by customers unsure about where to go, queues backing up from the outbound scale, inadequate space for brush dumping and interaction with trucks and loaders. During the worst congestion, queues from this area were observed back onto the inbound scale. This in turn reduces the number of vehicles the inbound scale can serve, and increases the inbound queue lengths.

Based upon the survey, the scales currently accommodate 56 vehicles per hour inbound and 45 vehicles per hour outbound. The brush dumping area would be able to accommodate 90 vehicles per hour with 15 dumping locations.

Daniel McFarlane
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Without changes to the operation or vehicle demand, average queues of 630 ft. and peak queues of 1400 ft. could be expected at the Johnson Road brush dumping facility. This is based upon existing service times for the two scales and brush dumping area assuming 15 brush dumping locations. Queue lengths are estimated to be a distance of 35 ft. per vehicle. The outbound scale appears to be the critical link in the system; however, the brush dumping area is close behind in its capacity limitations.

PROPOSED MITIGATION MEASURES

Several measures were considered which ranged from accommodating queues of up to 1400 ft., to reducing vehicle demand during the peak season, to increasing capacity of the brush dumping process. The selected mitigation scenario involves using a flat rate charge system which significantly reduces delays involved in scaling incoming and outgoing loads.

The service rates used in the mitigation scenario are based upon Group Mackenzie's survey and observations and are as follows:

Inbound Scale	64 seconds/vehicle	56 vehicles/hour
Brush Dumping Area	600 seconds/vehicle	6 vehicles/hour/space
Outbound Scale	80 seconds/vehicle	45 vehicles/hour

McFarlane's has indicated a willingness to allow vehicles to choose to pay a flat rate, instead of paying by weight which necessitates using both scales and results in two transactions. With a flat rate, the customer would simply pay a fee based upon the load size or vehicle capacity prior to dumping brush. It is estimated that this transaction would take 30 seconds, compared with the 64 seconds needed to weigh a vehicle, pay a deposit and issue a ticket.

Under the proposed mitigation plan, all customers would pay a flat rate during peak use periods. This transaction would occur at the existing scale house. Again, the transaction time upon entering the site would be 30 seconds. Vehicle queues would be a maximum of 280 ft., with the brush dumping area being the limiting factor for capacity. The brush dumping area would be reconfigured to allow 18 stalls for the vehicles. The need for an outbound scale transaction is eliminated with a flat rate.

QUEUING REQUIREMENTS

All queuing calculations were conducted based upon the anticipated peak hour demand during the busy seasons as provided by McFarlane's Bark. They have indicated an expected 600 vehicles per day utilizing the brush dumping facilities during the peak season. Of these, 500 would be private vehicles. The other 100 are commercial flat rate users, which do not use the scales or pay for each transaction, but do share the brush dumping area. It is expected that 12 percent of the daily traffic will arrive during the peak hour. This is based upon information in a study prepared by Lancaster Engineering in 1993. Thus, the transaction demand would be 60 vehicles per hour and the brush dumping demand would be 72 vehicles per hour.

A poisson distribution was assumed, with peak queues representing a 95% probability of occurrence and average queues at 50% probability. In cases where demand is greater than capacity during the peak hour, queuing was estimated based upon a random arrival scenario. Based upon information provided in the Lancaster study, the peak demand may last for up to three hours, with the peak hour only slightly higher than the other two. For this reason, queuing for three hours was considered. The three peak hours were broken down into 36 five minute intervals. Random number generation was used to simulate arrivals during each interval. The number of vehicles served in each interval was subtracted from the queue, while the unserved vehicles were added to the next interval's arrival volume. Queue lengths are based upon an average of 35 ft. per vehicle. This accounts for larger vehicles and trailers, as compared to 25 ft. for typical passenger vehicle queues. It should be noted that the queuing calculations assume the transaction and brush dumping area operate independently, which is not necessarily the case.

Queues at the brush dumping area may actually be less than reported due to the uniform arrival of vehicles from inbound transaction area to pay the flat rate fee.

Copies of the queuing calculations are enclosed with this letter. The following information summarizes the pertinent information for the selected queuing mitigation measure as well as the estimated queues.

Daily Vehicles	Public	500
	Private	100
Peak Hour Demand (veh/hr)	Public	60
	Private	12
	Flat Rate	60
	Brush Dumping ...	72
Brush Dumping Spaces	18
Service Rates (veh/hr)	Flat Rate	120
	Brush Dumping ...	102
Average Queues (ft)	Flat Rate	35
	Brush Dumping ...	35
Peak Queues (ft)	Flat Rate	140
	Brush Dumping ...	280

INBOUND SCALE/TRANSACTION AREA

With continued use of the inbound scale for all vehicles, seasonal peak queues of up to 1400 ft. would be expected. These queue can be significantly reduced by the proposal to use a flat rate fee during peak periods. The scales may continue to be used at other times. Peak queues of 140 ft. would be expected at the transaction area, but may be impacted by limitations of the brush dumping area, resulting in slightly longer queues. The queuing lane for inbound vehicles will extend from the existing scale house, back to

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the entrance on Johnson Road. It will be clearly delineated with striping and signing. Peak queues will extend to the existing building's retail area.

BRUSH DUMPING AREA

Plans for the brush dumping area include 18 stalls, reduced conflicts with McFarlane's equipment and well defined stall areas. Peak queues of 280 ft. were estimated with 18 stalls. Average queues are expected to be only one vehicle, or 35 ft.. The peak queue may back up to the scale house and transaction area, causing additional queuing for inbound vehicles. This queuing is not expected to be more than the 280 ft.

OUTBOUND SCALE

Operation of an outbound scale with the anticipated peak demands would cause backups into the brush dumping area and inbound scale. Using a flat rate fee payment reduces inbound queues, and eliminates the need for an outbound scale transaction. The outbound scale may still be used during non peak times.

CONCLUSIONS AND RECOMMENDATIONS

With the proposed changes to your composting process, several mitigation options were considered to reduce the brush dumping operation vehicle queues. They included accommodating the anticipated 1400 ft. of queuing with the current operation, limiting the peak demands and providing a flat rate option, which eliminates the need for scales. In addition to improving the queuing, we desired to reduce the potential of cross traffic circulation and provide clear delineation of the queuing area and brush dumping spaces.

The proposed mitigation plan would use a flat rate payment during peak use periods, instead of weighing each vehicle on an inbound and outbound scale. This flat rate transaction would occur at the existing scale house. It is estimated that the transaction service rate would be improved from 56 vehicles per hour to 120 vehicles per hour. Under independent operation, peak queues of 140 ft. would be expected.

With the flat rate payment, vehicle queues would be a maximum of 280 ft., with the brush dumping area being the limiting factor for capacity. A total of 18 vehicle stalls will be providing in the brush dumping area. During the peak times, queues may develop at the brush dumping area. These can be accommodated by holding vehicles at the scale house transaction area. This would result in peak inbound queues of 280 ft., instead of the 140 ft.

The need for an outbound scale transaction is eliminated with a flat rate. At this time, McFarlane's intends to keep the inbound and outbound scales for use during non-peak times.

The queuing lane for inbound vehicles will extend from the existing scale house, back to the entrance on Johnson Road. It will be clearly delineated with striping and signing. Peak queues will extend to the existing building's retail area. Inbound lanes will be provided on both sides of the transaction line, with an egress lane to the south. This provides clear access circulation for Brophy Machine Works. Entering vehicles for retail customers will use the inbound lane north of the transaction line.

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Upon leaving the retail area and product bins, these vehicles will exit to the west between the scale house and brush dumping area. This is the main area of potential vehicle conflicts.

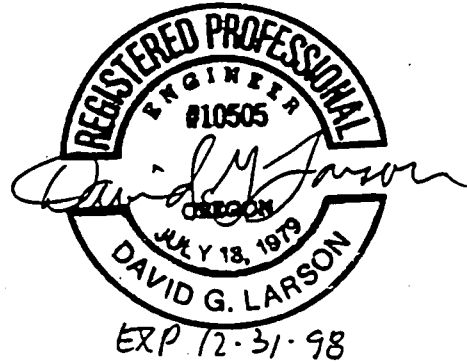
The proposed site layout significantly reduces the cross circulation and conflict potential between customer vehicles and McFarlane's equipment.

Sincerely,



Brent Ahrend
Traffic Analyst

/BTA/kc



c: Frank Hammond - O'Donnell, Ramis, Crew, Corrigan & Bachrach
Neil Alongi - Maul Foster & Alongi, Inc.

QUEUEING ANALYSIS
 Inbound Scale Peak Hour
 Scenario 4 Peak Season

ARRIVAL RATE na (veh/hr) 0.0 (veh/min)
 CAPACITY na (veh/hr) 0.0 (veh/min)
 UTILIZATION FACTOR (p) ERR

$P(n)=p^n \cdot P(0)$ where $P(0)=1-p$ ERR

P(n)	$P(x=n)=p^n \cdot P(0)$	$P(x<n)$	
0	ERR	ERR	ERR
1	ERR	ERR	ERR
2	ERR	ERR	ERR
3	ERR	ERR	ERR
4	ERR	ERR	ERR
5	ERR	ERR	ERR
6	ERR	ERR	ERR
7	ERR	ERR	ERR
8	ERR	ERR	ERR
9	ERR	ERR	ERR
10	ERR	ERR	ERR
11	ERR	ERR	ERR
12	ERR	ERR	ERR
13	ERR	ERR	ERR
14	ERR	ERR	ERR
15	ERR	ERR	ERR

STORAGE REQ= na VEH @ 35 FEET/VEH = 0 FEET

QUEUEING ANALYSIS
 Flat Rate Peak Hour
 Scenario 4 Peak Season

ARRIVAL RATE 60 (veh/hr) 1.0 (veh/min)
 CAPACITY 120 (veh/hr) 2.0 (veh/min)
 UTILIZATION FACTOR (p) 0.500

$P(n)=p^n \cdot P(0)$ where $P(0)=1-p$ 0.500

P(n)	$P(x=n)=p^n \cdot P(0)$	$P(x<n)$	
0	0.500	0.500	-
1	0.250	0.750	-
2	0.125	0.875	-
3	0.063	0.938	-
4	0.031	0.969	*
5	0.016	0.984	*
6	0.008	0.992	*
7	0.004	0.996	*
8	0.002	0.998	*
9	0.001	0.999	*
10	0.000	1.000	*
11	0.000	1.000	*
12	0.000	1.000	*
13	0.000	1.000	*
14	0.000	1.000	*
15	0.000	1.000	*

STORAGE REQ= 4 VEH @ 35 FEET/VEH = 140 FEET

QUEUEING ANALYSIS
 Brush Dumping Area Peak Hour
 Scenario 4 Peak Season

ARRIVAL RATE 72 (veh/hr) 1.2 (veh/min)
 CAPACITY 102 (veh/hr) 1.7 (veh/min)
 UTILIZATION FACTOR (p) 0.706

$P(n)=p^n \cdot P(0)$ where $P(0)=1-p$ 0.294

P(n)	$P(x=n)=p^n \cdot P(0)$	$P(x<n)$	
0	0.294	0.294	-
1	0.208	0.502	-
2	0.147	0.648	-
3	0.103	0.752	-
4	0.073	0.825	-
5	0.052	0.876	-
6	0.036	0.913	-
7	0.026	0.938	-
8	0.018	0.956	*
9	0.013	0.969	*
10	0.009	0.978	*
11	0.006	0.985	*
12	0.005	0.989	*
13	0.003	0.992	*
14	0.002	0.995	*
15	0.002	0.996	*

STORAGE REQ= 8 VEH @ 35 FEET/VEH = 280 FEET

QUEUEING ANALYSIS
 Outbound Scale Peak Hour
 Scenario 4 Peak Season

ARRIVAL RATE na (veh/hr) 0.0 (veh/min)
 CAPACITY na (veh/hr) 0.0 (veh/min)
 UTILIZATION FACTOR (p) ERR

$P(n)=p^n \cdot P(0)$ where $P(0)=1-p$ ERR

P(n)	$P(x=n)=p^n \cdot P(0)$	$P(x<n)$	
0	ERR	ERR	ERR
1	ERR	ERR	ERR
2	ERR	ERR	ERR
3	ERR	ERR	ERR
4	ERR	ERR	ERR
5	ERR	ERR	ERR
6	ERR	ERR	ERR
7	ERR	ERR	ERR
8	ERR	ERR	ERR
9	ERR	ERR	ERR
10	ERR	ERR	ERR
11	ERR	ERR	ERR
12	ERR	ERR	ERR
13	ERR	ERR	ERR
14	ERR	ERR	ERR
15	ERR	ERR	ERR

STORAGE REQ= na VEH @ 35 FEET/VEH = 0 FEET

Agenda Item Number 8.1

Resolution No. 98-2658, For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the Oregon Parks and Recreation Department for Management of property in the Sandy River Gorge Target Area.

**Metro Council Meeting
Thursday, June 18, 1998
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE AN)
INTERGOVERNMENTAL AGREEMENT)
WITH THE OREGON PARKS AND)
RECREATION DEPARTMENT FOR)
MANAGEMENT OF PROPERTY IN THE)
SANDY RIVER GORGE TARGET AREA)

RESOLUTION NO. 98-2658

Introduced by Mike Burton
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on July 11, 1996 via resolution 96-2357, the Metro Council adopted a refinement plan for the Sandy River Gorge regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments in the acquisition of land along the Sandy River and its tributaries; and

WHEREAS, in April 1998, Metro acquired 4.7 acres on the Sandy River (the "Property"), adjacent to Dabney State Park and in the Sandy River Gorge target area; and

WHEREAS, the Oregon Parks and Recreation Department (OPRD) and Metro desire that OPRD should operate, manage, and maintain the Property; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and OPRD would benefit the Property, as well as the public in general by providing increased care for the Property and by encouraging public use; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for OPRD, requiring that the Property be managed for protection of the Property's natural resources; enhancement, restoration and protection of wildlife habitat; pedestrian and bicycle use; and public recreation consistent with these goals; with the primary goal being to manage the Property as part of Dabney State Park; now therefore

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with OPRD, attached hereto as Exhibit A, wherein OPRD will manage the Property in the Sandy River Gorge Target Area.

ADOPTED by the Metro Council this _____ day of _____, 1998.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

INTERGOVERNMENTAL AGREEMENT**Russ Property**

This Intergovernmental Agreement ("Agreement") dated this ____ day of _____, 1998, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the Oregon Parks and Recreation Department ("OPRD"), located at 1115 Commercial Street, NE, Salem, Oregon 97310-1001.

WITNESSETH:

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26, Open Spaces, Parks, and Streams, authorizing Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams ("Metro Open Spaces Bond Measure"); and

WHEREAS, OPRD is a parks provider which owns and manages Dabney State Park on the Sandy; and

WHEREAS, pursuant to the Metro Open Spaces Bond Measure, Metro purchased certain property on the Sandy River in unincorporated Multnomah County, with Open Spaces Bond Measure proceeds, as follows:

- Approximately 4.7 acres of real property known as the Russ property, at 31100 E Crown Point Highway, Troutdale, as more particularly described in Exhibit A attached hereto [legal description] ("The Property"); and

WHEREAS, the Sandy River watershed was identified as a regionally significant area in the Metro Greenspaces Master Plan, and the Property is within the Sandy River Gorge Target Area established pursuant to the Metro Open Spaces Bond Measure;

WHEREAS, Metro purchased the Property with proceeds from the Metro Open Spaces Bond Measure to preserve it as open space in accordance with the measure;

WHEREAS, Metro and OPRD wish to preserve the Property as an open space in accordance with the Metro Open Spaces Bond Measure and with the Metro Greenspaces Master Plan;

WHEREAS, in a letter dated October 6, 1997, State Parks and Recreation Director Robert Meinen indicated that OPRD was willing to assume management, operation and maintainance responsibilities arising from the Property;

WHEREAS, on _____, 1998, the Metro Council authorized Metro to enter into this Agreement to provide funding for the acquisition of and transfer of management responsibility for the Property in accordance with the terms set forth in this Agreement, and

WHEREAS, Metro and OPRD wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, maintenance and operation of the Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. On March 20, 1998, Metro purchased the Property in fee simple ownership with Metro Open Spaces Bond Measure proceeds.
2. Metro shall take full fee title to the Property.

B. Management, Maintenance, and Operation

1. OPRD shall be responsible for the ongoing management, maintenance, and operation of the Property in accordance with the terms of this Agreement.
2. The Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, and the management plan for Dabney State Park. These Plans shall constitute the Resource Protection Plans for the Property, as described in the Metro Greenspaces Master Plan. In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
3. If Metro executes an agreement to purchase additional property within the Sandy River Gorge Target Area and adjacent to Dabney State Park which Metro would like OPRD to manage under the terms of this Agreement, Metro shall notify OPRD in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). OPRD shall notify Metro if OPRD does not wish to accept management responsibilities for that property in accordance with this Agreement, using OPRD's best efforts to make this notification prior to the closing date for the acquisition. If OPRD has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then OPRD shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.
4. Metro grants to OPRD, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property.

5. The term of OPRD's management, maintenance, and operation responsibilities for the Property shall be ten (10) years from the date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.

C. Limitations on Use

1. The Property shall be managed, maintained and operated in accordance with its intended use as natural area open space, with the primary goal being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
2. The Property may be used by the public, in OPRD's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement. Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the Property, and OPRD shall give Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Property. In any event, no improvements or trails shall be constructed on the Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement or with the Plans.
3. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the Property. Any changes in the Plans made or proposed by OPRD that relate to management, maintenance, or operation of the Property shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Measure. OPRD shall give Metro written notice as soon as possible, but in any event no less than 90 days in advance of a proposal to amend OPRD's Plans where such amendment would alter OPRD's management, maintenance or operation of the Property.
4. The Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource, except as necessary for construction of trail or other improvements, for the purpose of improving resource values, or as necessary to protect public safety.
5. OPRD shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as OPRD may deem necessary to increase safety on the Property, and to preserve and protect the Property's natural resources.

D. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property OPRD agrees to be responsible for funding the operation and maintenance of the Property with OPRD's own resources. OPRD's management responsibility shall include responsibility for all taxes or assessments for the Property.

2. OPRD shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by OPRD to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. OPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any management, maintenance or operation issues that may arise with respect to the Property.

E. General Provisions

1. **Indemnification.** OPRD, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Property, including but not limited to construction of trails or in relation to any other improvement on the Property.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of the Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. OPRD covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event OPRD breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. **Signage.** OPRD may provide on-site signage informing the public that OPRD is managing the site. Metro will provide on-site signage which shall be installed by OPRD stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. OPRD shall also document in any publication, media presentation or other presentations, that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. All signage will be consistent with Metro guidelines for Open Spaces Projects..
4. **Joint Termination for Convenience.** Metro and OPRD may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro, subject to the mutual written agreement of the parties.

5. Termination for Cause. Either party may terminate this Agreement in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.
7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
Charles Ciecko
Director, Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736

To State: Oregon Parks and Recreation Department
Robert Meinen, Director
1115 Commercial Street, NE
Salem, Oregon 97310-1001

8. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Property.

No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

Oregon Parks and Recreation Department

METRO

By: _____
Title: Director, Oregon Parks and Recreation.
Department

By: _____
Title: Executive Officer

EXHIBIT "A"

That certain tract of land lying in the Northeast one-quarter of the Northwest one-quarter of Section 5, Township 1 South, Range 4 East, of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at an iron pipe driven in the West line of said Northeast one-quarter of Northwest one-quarter of said Section 5, Township 1 South, Range 4 East and South $0^{\circ}13'15''$ East 985.7 feet from the Northwest corner of said Northeast one-quarter of the Northwest one-quarter; thence South $89^{\circ}12'$ East 600 feet on a line parallel with the North line of said Section 5 to a point and place of beginning of tract of land to be described; thence South $89^{\circ}12'$ East 194.93 feet to the center of Columbia River Highway; thence Easterly tracing the center line of said highway 520.0 feet, more or less, to the East line of said Northeast one-quarter of the Northwest one-quarter; thence South 351.3 feet to a 1- $\frac{1}{2}$ inch iron pipe driven at the Southeast corner of said Northeast one-quarter of the Northwest one-quarter; thence North $89^{\circ}12'$ West 714 feet tracing the South line of said Northeast one-quarter of the Northwest one-quarter to a point; thence North $0^{\circ}48'$ East 334.3 feet, more or less, to the point of beginning.

EXHIBIT BNotice of Acquisition

_____, 199__

Oregon Parks and Recreation Department
Robert Meinen, Director
1115 Commercial Street, NE
Salem, Oregon 97310-1001

Re: Acquisition of Property along [target area

Dear Director:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro _____ dated _____, 1998, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

[Property Address], in the County of Multnomah and State of Oregon, being more particularly described in Exhibit I attached hereto ("the Property").

Pursuant to the Intergovernmental Agreement, Metro requests that OPRD manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if OPRD does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if OPRD does not so notify Metro within thirty (30) days of receipt of this letter, OPRD shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond, Manager
Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

REGIONAL FACILITIES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 98-2658, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON PARKS AND RECREATION DEPARTMENT FOR MANAGEMENT OF PROPERTY IN THE SANDY RIVER GORGE TARGET AREA.

Date: JUNE 11, 1998

Presented by: Councilor Naito

Committee Action: At its June 3, 1998 meeting, the Regional Facilities Committee unanimously recommended Council adoption of Resolution No. 98-2658. Voting in favor: Councilors McCaig, Naito and McFarland.

Council Issues/Discussion: Charles Ciecko made the staff presentation. This IGA is related to a 4.7 acre purchase in the Sandy River Gorge Target Area. The property is adjacent to Dabney State Park, on the Sandy River, and closes the last gap in public ownership in a 1.5 mile stretch of river. The Oregon Parks and Recreation Department will manage the property consistent with Metro Open Spaces and other policies, relieving Metro of management costs, and increasing the likelihood of public use at an earlier date.

Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2658 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON PARKS AND RECREATION DEPARTMENT FOR MANAGEMENT OF PROPERTY IN THE SANDY RIVER GORGE TARGET AREA

Date: May 11, 1998

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 98-2658 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the Oregon Parks and Recreation Department (OPRD) for management of a property in the Sandy River Gorge Target Area.

Background and Analysis

In April 1998, Metro purchased from Roger and Beverly Russ a 4.7-acre property in the Sandy River Gorge Target Area ("the Property"). The Property is adjacent to Dabney State Park, which is owned by the State of Oregon and managed by OPRD. Metro's acquisition of the Property closed the only gap in public ownership along a stretch of the east bank of the Sandy River extending nearly 1.5 miles.

OPRD is committed to assuming management responsibilities for the Property. The IGA enumerates these responsibilities. In order to effectively transfer management responsibilities arising from the Property, the Metro Council is requested to authorize the Executive Officer to execute the IGA.

Findings

Authorization of the Executive Officer's execution of the IGA with OPRD is recommended based on the following:

- The Sandy River Gorge Target Area Refinement Plan includes an objective for properties classified as Tier 1A which encourages the acquisition of riparian land between Dodge Park and the Stark Street Bridge, in order to conserve the wildlife habitat and water quality that is so rich in this area. Adjacent to Dabney State Park and on the Sandy River, the Property expands the deer and elk habitat already protected in Dabney State Park.
- The Sandy River Gorge Target Area objectives also encourage partnerships involving Metro and OPRD which serve to expand recreational opportunities at existing facilities such as Dabney State Park.
- The proximity of the Property to Dabney State Park makes management of the site more efficient, and therefore appropriate, for OPRD, rather than a Metro.

- Under the IGA, the Property is more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities and the property is landbanked for an indefinite period of time.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to the protection of riparian properties on the Sandy River.

Budget Impact

OPRD would become responsible for the management, maintenance and operation of the Property, in conjunction with its own adjacent park facilities. This would reduce Metro's landbanking costs and future operation and maintenance expenses.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 98-2658.

Agenda Item Number 8.2

Resolution No. 98-2659, For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the Tualatin Hills Park and Recreation District for the Management of Property in the Cooper Mountain Target Area.

**Metro Council Meeting
Thursday, June 18, 1998
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE AN)
INTERGOVERNMENTAL AGREEMENT)
WITH TUALATIN PARKS AND RECREATION)
DISTRICT FOR THE MANAGEMENT OF)
PROPERTY IN THE COOPER MOUNTAIN)
TARGET AREA)

RESOLUTION NO. 98-2659

Introduced by Mike Burton
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on February 15, 1996 via resolution 96-2275A, the Metro Council adopted a refinement plan for the Cooper Mountain regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments; and

WHEREAS, in April 1998, Metro entered into an agreement to purchase 8.98 acres in the Cooper Mountain target area on the northeast side of Cooper Mountain (the "Property"); and

WHEREAS, Tualatin Hills Parks and Recreation District (THPRD) and Metro desire that THPRD should operate, manage, and maintain the Property; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and THPRD would benefit the Property, as well as the public in general by providing enhanced public access to the northeast side of Cooper Mountain and property already owned and managed by THPRD; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for THPRD, requiring that the Property be managed for protection of the Property's natural resources; enhancement, restoration and protection of wildlife habitat; and public recreation consistent with these goals; with the primary goal being to manage the Property as an access point and general use for the Cooper Mountain target area; now therefore

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with THPRD, attached hereto as Exhibit A, wherein THPRD will manage the Property in the Cooper Mountain Target Area.

ADOPTED by the Metro Council this _____ day of _____, 1998.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

INTERGOVERNMENTAL AGREEMENT**Nora Woods Property**

This Intergovernmental Agreement ("Agreement") dated this ___ day of ____, 1998, is by and between Metro, a Metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the Tualatin Hills Parks and Recreation District, 15707 S.W. Walker Road, Beaverton, OR 97006 ("THPRD").

WITNESSETH:

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26, Open Spaces, Parks, and Streams, authorizing Metro, a Metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams ("Metro Open Spaces Bond Measure"); and

WHEREAS, Cooper Mountain was identified as a regionally significant open space and natural area in the Metro Greenspaces Master Plan, the Cooper Mountain Target Area was established pursuant to the Metro Open Spaces, Parks and Streams Bond Measure 26-26, and the Cooper Mountain Target Area Refinement Plan was adopted by the Metro Council on February 15, 1996; and

WHEREAS, pursuant to the Metro Open Spaces Bond Measure, Metro is negotiating to purchase 8.98 acres of real property, located off Kemmer Road on Cooper Mountain in Washington County, with Open Spaces Bond Measure proceeds, commonly referred to as the Nora Woods Property, as more particularly described in Exhibit A attached hereto; and

WHEREAS, the Nora Woods Property is within tier II of the Cooper Mountain Target Area, established pursuant to the Metro Open Spaces, Parks and Streams Bond Measure 26-26, and is adjacent to public open space (Deer Park "Tract A") dedicated to THPRD as a condition of the approval of the Deer Park Subdivision; and

WHEREAS, Metro and THPRD, a local parks provider, wish to jointly acquire the Nora Woods Property and preserve it as open space in accordance with the Metro Open Spaces Bond Measure and with the Metro Greenspaces Master Plan; and

WHEREAS, the acquisition of the Nora Woods Property may be accomplished via a property line adjustment with THPRD's Deer Park "Tract A," commonly known as Tax Lot 05800, Township 1 South, Range 1 West, Section 30, as more particularly described in Exhibit B attached

hereto (hereafter, "Tax Lot 05800"), wherein the southerly boundary of Tax Lot 05800 would be moved further to the south, adjusting it to envelop all of the Nora Woods Property, thereby enlarging Tax Lot 05800, which Metro and THPRD would thereafter own as tenants in common, each as to an undivided 1/2 interest (hereafter, "Property Line Adjustment"); and

WHEREAS, Metro and THPRD wish to enter into this Agreement to provide for their joint acquisition of the Nora Woods Property, which shall be accomplished via a Property Line Adjustment of the Nora Woods Property into THPRD's Tax Lot 05800, and to provide for the transfer of management responsibility for the Nora Woods Property to THPRD in accordance with the terms set forth in this Agreement;

Now, therefore, the parties agree as follows:

A. Acquisition

1. Metro and THPRD hereby agree to jointly purchase the Nora Woods Property for FIVE HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED DOLLARS (\$531,300.00) At Closing, Metro shall contribute (\$500,000) FIVE HUNDRED THOUSAND DOLLARS, and THPRD shall to contribute (\$31,300) THIRTY-ONE THOUSAND THREE HUNDRED DOLLARS (THPRD) towards the purchase price.
2. THPRD shall execute the application for the Property Line Adjustment, attached hereto as Exhibit C, and shall cooperate with Metro and the Seller of the Nora Woods Property in aid of their efforts to obtain Washington County's approval of the Property Line Adjustment.
3. At the closing of the acquisition of the Nora Woods Property, THPRD shall convey an undivided 1/2 interest as a tenant in common in Tax Lot 05800, Township 1 South, Range 1 West, Section 30. Simultaneously at closing, Metro and THPRD shall take title to the Nora Woods Property as tenants in common, each as to an undivided 1/2 interest. Upon the recording of the Property Line Adjustment at closing and thereafter, Metro and THPRD shall hold title to the 16.48 acre adjusted Tax Lot 05800 (hereafter, "Adjusted Tax Lot 05800") as tenants in common, each as to an undivided 1/2 interest.
4. Metro has entered into an Agreement of Purchase and Sale for the Nora Woods Property, and shall be responsible for conducting Metro's normal due diligence investigations prior to closing, pursuant to Metro Open Spaces Measure practices. If THPRD requires any due diligence investigations not normally performed by Metro, THPRD shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.

B. Management, Maintenance, and Operation

1. THPRD shall be responsible for the ongoing management, maintenance, and operation of the Nora Woods Property in accordance with the terms of this Agreement.

2. The Nora Woods Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, The Tualatin Hills Parks and Recreation District's Southwest Hills Resource Protection Plan (collectively, "the Plans"). These Plans shall constitute the Resource Protection Plans for the Nora Woods Property, as described in the Metro Greenspaces Master Plan. In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
3. The term of THPRD's management, maintenance, and operation responsibilities for the Nora Woods Property shall be ten (10) years from the date of this Agreement, renewal by written mutual consent for additional ten (10) year periods, subject to the termination provisions set forth in § E. (4) & (5), below.

C. Limitations on Use

1. The Nora Woods Property shall be managed, maintained and operated in accordance with its intended use as natural area open space, with the primary goal being protection of the Nora Woods Property's natural resources, enhancement and protection of wildlife habitat, and passive public recreation consistent with the foregoing.
2. The Nora Woods Property may be used by the public, in THPRD's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement. Metro shall have the right to approve of any THPRD improvements, including any public access provided off Kemmer Road or Nora Road, any future vehicular parking, trails or alteration of any water or timber resource on the Nora Woods Property, which approval shall not be unreasonably withheld. THPRD shall provide Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Nora Woods Property. In no event shall improvements or trails be constructed on the Nora Woods Property, nor shall alteration of water or timber resources occur that are inconsistent with this Agreement or with the Plans.
3. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the Nora Woods Property, which approval shall not be unreasonably withheld. Any changes in the Plans made or proposed by THPRD that relate to management, maintenance, or operation of the Nora Woods Property shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Measure. THPRD shall give Metro written notice as soon as possible, but in any event no less than 90 days in advance of a proposal to amend THPRD's Plans where such amendment would alter THPRD's management, maintenance or operation of the Nora Woods Property.
4. The Nora Woods Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Nora Woods Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource,

except as necessary for construction of trail or other improvements, for the purpose of improving resource values, or as necessary to protect public safety.

5. THPRD shall maintain security of the Nora Woods Property, and shall provide additional fencing, gates, signage, and other measures as THPRD may deem necessary to increase safety on the Nora Woods Property, and to preserve and protect the Nora Woods Property' natural resources.

D. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Nora Woods Property, THPRD agrees to be responsible for funding the operation and maintenance of the Nora Woods Property with THPRD's own resources. THPRD's management responsibility shall include responsibility for all future taxes or assessments for the Nora Woods Property.
2. THPRD shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Nora Woods Property.
3. Any permits granted by THPRD to users of the Nora Woods Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. THPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any management, maintenance or operation issues that may arise with respect to the Nora Woods Property.

E. General Provisions

1. **Indemnification.** THPRD, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Nora Woods Property, including but not limited to construction of trails or in relation to any other improvement on the Nora Woods Property.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of Metro's funds for the acquisition of the Nora Woods Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. THPRD covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional

limitations or the income tax exempt status of the bond interest. In the event THPRD breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

3. **Funding Declaration and Signage.** THPRD may provide on-site signage informing the public that THPRD is managing the Nora Woods Property. Metro will provide signage to be installed by THPRD on the site, informing the public that funding for the acquisition of the Nora Woods Property came in part from Metro Open Spaces Measure bond proceeds. Any publication, media presentation or other presentation on the Nora Woods Property made by THPRD shall include a statement that funding for the acquisition of the Nora Woods Property came in part from Metro Open Spaces Measure bond proceeds.
4. **Joint Termination for Convenience.** METRO and THPRD may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by METRO, subject to the mutual written agreement of the parties.
5. **Termination for Cause.** Either party may terminate this Agreement in full, or in part, at any time before the closing date of the acquisition of the Nora Woods Property, whenever that party determines, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default. After the closing of the acquisition of the Nora Woods Property, either party may terminate this Agreement in full, or in part, at any time whenever either party determines, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed which that party was contractually obligated to do, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
6. **Termination Due to Dissolution.** Either party to this Agreement may terminate this Agreement in full, at any time before the expiration date, upon a majority vote approving the dissolution of the other party. Termination under this provision shall be effective upon ten (10) days written notice issued by either party.
7. **Ownership Upon Termination for Convenience, Cause, or Due to Dissolution.** Notwithstanding section C (4), set forth above, the parties agree that, upon termination, the either party may pursue the division of the Adjusted Tax Lot 05800, to the extent permitted by law and ordinance, into two parcels of 8.24 acres each. The lot division shall be accomplished, to the extent permitted by law and ordinance, via a partition, which shall be performed at the shared expense of the parties if the termination is for convenience, or at the expense of the terminating or surviving party if the termination is for cause or due to dissolution. In the case of

termination for convenience or cause, THPRD shall retain ownership of the northerly 8.24 acre parcel, and Metro shall retain ownership of the southerly 8.24 acre parcel upon legal partition. If termination is due to the dissolution of one of the parties, and THPRD is the surviving party, THPRD shall retain ownership of the northerly 8.24 acre parcel upon legal partition. If termination is due to the dissolution of one of the parties, and Metro is the surviving party, Metro shall retain ownership of the southerly 8.24 acre parcel upon legal partition.

8. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.
9. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Charles Ciecko
 Director, Metro Regional Parks and Greenspaces
 600 N.E. Grand Avenue
 Portland, OR 97232-2736

To THPRD: Ron Willoughby
 General Manager, Tualatin Hills Parks and Recreation District
 1507 S.W. Walker Road.
 Beaverton, OR 97006

8. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Nora Woods Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

**TUALATIN HILLS PARKS
AND RECREATION DISTRICT**

METRO

By: _____
Title: _____

By: _____
Title: _____



PORTION OF BRUMBAUGH PROPERTY
BOUNDARY LEGAL DESCRIPTION

FEBRUARY 27, 1998

A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED TO DARRELL M. BRUMBAUGH, RECORDED UNDER DOCUMENT NUMBER 91009113, WASHINGTON COUNTY DEED RECORDS, BEING A PORTION OF LOT 15, MOUNTAIN VIEW HEIGHTS, A PLAT OF RECORD IN WASHINGTON COUNTY, SITUATED IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 21, MOUNTAIN VIEW HEIGHTS, A PLAT OF RECORD IN WASHINGTON COUNTY; THENCE ALONG THE WEST LINE OF SAID LOT 21, S 00°00'18" E, 655.34 FEET TO THE SOUTHWEST CORNER THEREOF; THENCE ALONG THE WEST LINE OF LOT 20 OF SAID PLAT, S 00°02'25" W, 635.38 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF S.W. NORA ROAD; THENCE ALONG SAID LINE, S 89°52'23" W, 328.33 FEET; THENCE LEAVING SAID LINE, ALONG THE MOST SOUTHERLY WEST LINE OF THAT TRACT OF LAND DESCRIBED IN DEED TO DARRELL M. BRUMBAUGH, RECORDED UNDER DOCUMENT NUMBER 91009113, WASHINGTON COUNTY DEED RECORDS, N 00°16'14" W, 637.38 FEET; THENCE ALONG THE MOST WESTERLY SOUTH LINE OF SAID BRUMBAUGH TRACT OF LAND, S 89°52'23" W, 77.24 FEET; THENCE LEAVING SAID LINE, N 00°10'24" E, 160.09 FEET; THENCE N 58°01'40" E, 185.54 FEET; THENCE N 25°38'19" E, 155.94 FEET; THENCE N 51°01'52" E, 40.21 FEET; THENCE N 28°53'59" E, 87.68 FEET; THENCE N 61°05'42" W, 316.67 FEET TO THE NORTH LINE OF SAID LOT 15; THENCE ALONG SAID LINE, N 89°58'06" E, 387.21 FEET TO THE POINT OF BEGINNING.

CONTAINING 8.98 ACRES.

SUBJECT TO AND TOGETHER WITH A 15.00-FOOT WIDE EASEMENT FOR WATERLINE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF S.W. NORA ROAD WITH THE MOST SOUTHERLY WEST LINE OF THAT TRACT OF LAND DESCRIBED IN DEED TO DARRELL M. BRUMBAUGH, RECORDED UNDER DOCUMENT NUMBER 91009113, WASHINGTON COUNTY DEED RECORDS; THENCE ALONG SAID WEST LINE, N 00°16'14" W, 637.38 FEET; THENCE LEAVING SAID LINE, N 89°52'23" E, 15.00 FEET; THENCE ALONG A LINE PARALLEL WITH AND 15.00 FEET DISTANT AND EASTERLY FROM SAID WEST LINE, S 00°16'14" E, 637.38 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF S.W. NORA ROAD; THENCE ALONG SAID LINE, S 89°52'23" W, 15.00 FEET.

SUBJECT TO AND TOGETHER WITH A 25.00-FOOT WIDE EASEMENT FOR STORM DRAINAGE, SANITARY SEWER, AND WATERLINE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT IN THE BOUNDARY OF THAT TRACT OF LAND DESCRIBED IN DEED TO DARRELL M. BRUMBAUGH, RECORDED UNDER DOCUMENT NUMBER 91009113, WASHINGTON COUNTY DEED RECORDS, WHICH BEARS N 00°16'14" W, 637.38 FEET FROM THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF S.W. NORA ROAD WITH THE MOST SOUTHERLY WEST LINE OF SAID BRUMBAUGH TRACT OF LAND; THENCE N 06°14'07" E, 224.37 FEET; THENCE N 68°01'40" E, 31.82 FEET; THENCE S 06°14'07" W, 241.26 FEET; THENCE S 89°52'23" W, 25.15 FEET TO THE POINT OF BEGINNING.



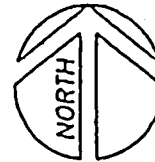
SUBJECT TO AND TOGETHER WITH A 12.50-FOOT WIDE TEMPORARY CONSTRUCTION EASEMENT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT IN THE BOUNDARY OF THAT TRACT OF LAND DESCRIBED IN DEED TO DARRELL M. BRUMBAUGH, RECORDED UNDER DOCUMENT NUMBER 91009113, WASHINGTON COUNTY DEED RECORDS, WHICH BEARS N 00°16'14" W, 637.38 FEET FROM THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF S.W. NORA ROAD WITH THE MOST SOUTHERLY WEST LINE OF SAID BRUMBAUGH TRACT OF LAND; THENCE ALONG THE MOST WESTERLY SOUTH LINE OF SAID BRUMBAUGH TRACT OF LAND, S 89°52'23" W, 12.58 FEET; THENCE LEAVING SAID LINE, N 06°14'07" E, 215.93 FEET; THENCE N 58°01'40" E, 63.63 FEET; THENCE S 06°14'07" W, 262.28 FEET; THENCE S 89°52'23" W, 36.34 FEET TO THE MOST SOUTHERLY WEST LINE OF SAID BRUMBAUGH TRACT OF LAND, THENCE ALONG SAID LINE, N 00°16'14" W, 12.50 FEET TO THE POINT OF BEGINNING.

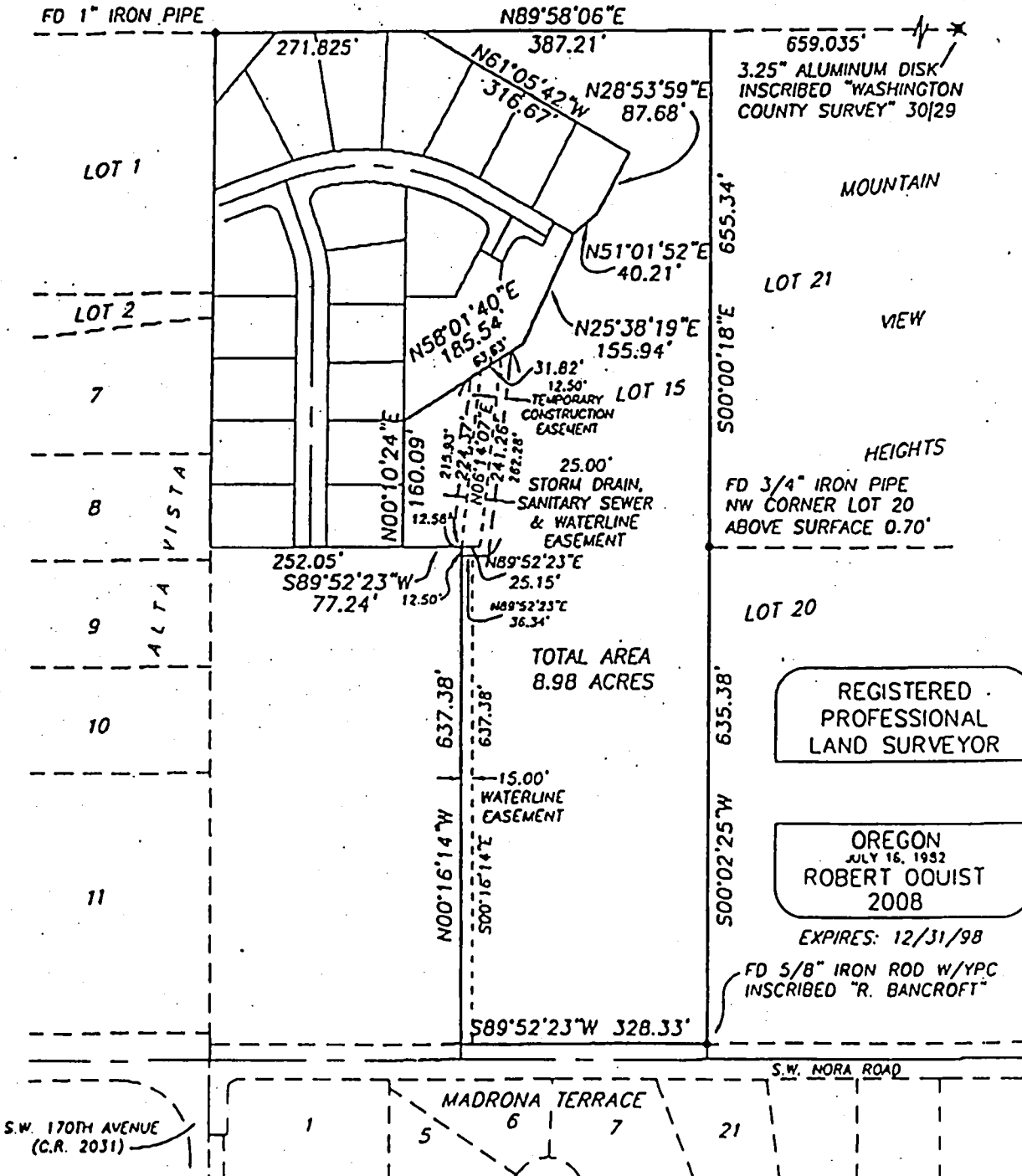
LEGAL DESCRIPTION SKETCH

A PORTION OF LOT 15, "MOUNTAIN VIEW HEIGHTS"
 SITUATED IN THE NE 1/4 OF THE SE 1/4 OF SECTION 30,
 TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,
 COUNTY OF WASHINGTON, STATE OF OREGON

FEBRUARY 27, 1998



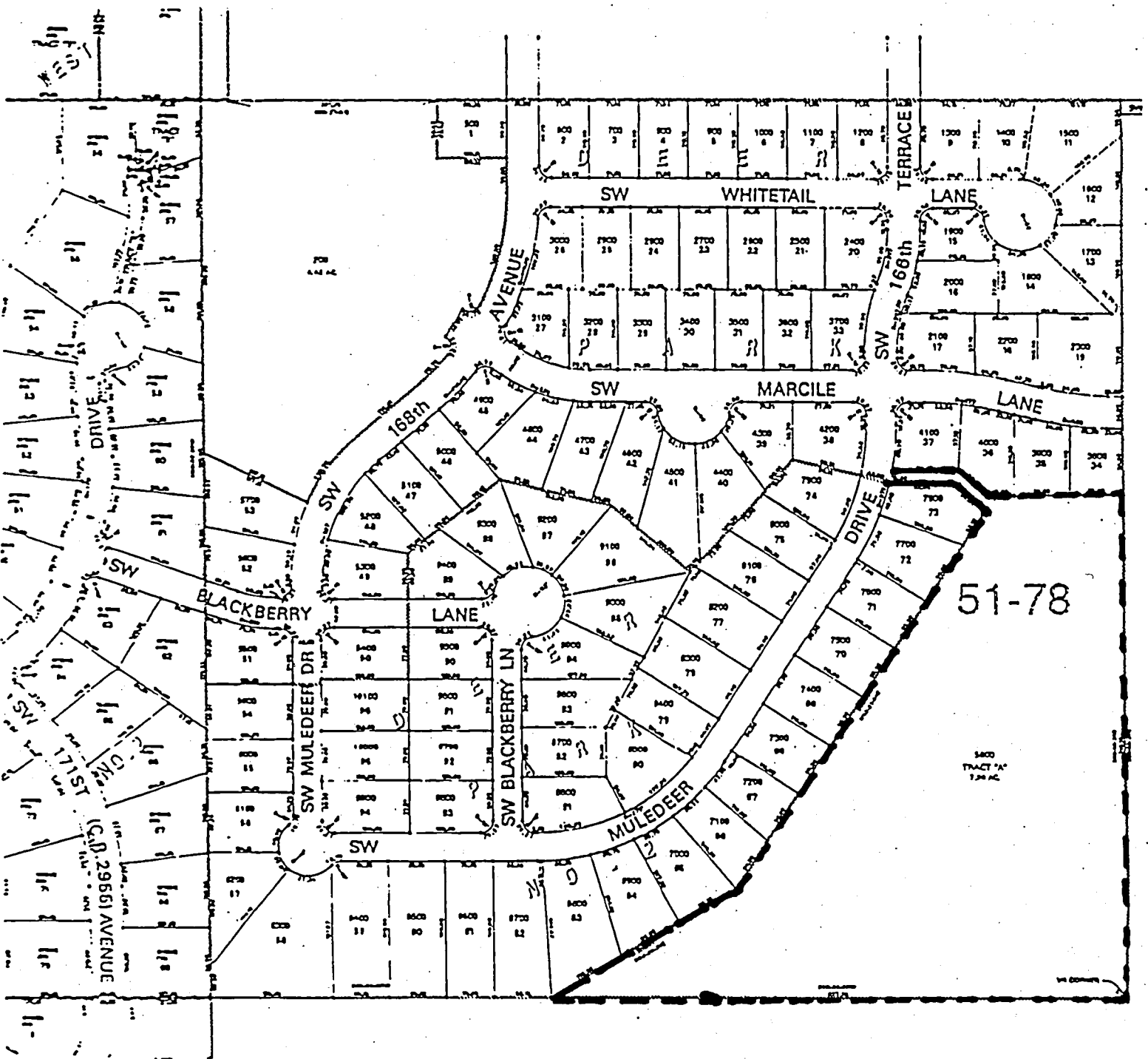
1"=200'



PREPARED BY:
LDC DESIGN GROUP
 233 SE WASHINGTON STREET (503) 648-4061
 HILLSBORO, OREGON 97123 (FAX) 681-7646

Exhibit B

Tract "A" DEER PARK, No. 2, Washington County



51-78

1400
TRACT IN
1.24 AC



WASHINGTON COUNTY
 Dept. of Land Use and Transportation
 Land Development Services
 155 N First Ave, Suite 350-13
 Hillsboro, OR 97124 (503) 648-8761

DEVELOPMENT APPLICATION

PROCEDURE/CATEGORY TYPE: I

CPO: 6 COMMUNITY PLAN:
Aloha-Reedville-Cooper Mt.

EXISTING LAND USE DISTRICTS:
R-6 (Residential 6 Units/Acre)

ASSESSOR MAP:	TAX LOT NUMBER(S):
<u>1 S 1 30DA</u>	<u>200</u>
<u>1 S 1 30AD</u>	<u>5800</u>

NOTE: Contiguous property under identical ownership will be reviewed as part of this application and may be subject to conditions of approval. List Assessor Map and Tax Lot Numbers of all contiguous property under identical ownership:

SITE ADDRESS: N/A

SITE SIZE: 22.24 Acres

Date of Pre-ap. Conference: Waiver
 Staff Member: _____
(Please attach copy of Pre-application Notes)

EXISTING USE OF SITE: Vacant

PROPOSED DEVELOPMENT ACTION: Property Line Adjustment/Modification of
Conditions of approval for Casefile 97-295 S/DHA/D(Cl)

We, the undersigned, hereby authorize the filing of this application and certify that the information contained in this application is complete and correct to the best of our knowledge. This also authorizes the designated Applicant's Representative (if applicable) to act on behalf of the Applicant for the processing of the request.

OWNER CONTRACT PURCHASER _____ DATE _____
 Print Name: _____

OWNER CONTRACT PURCHASER _____ DATE _____
 Print Name: _____

CASEFILE NO: _____

APPLICANT:

CONTACT: Tom Lodato
 ADDRESS: P.O. Box 1754
Lake Oswego, OR 97035
 PHONE: (503) 590-7556
 FAX: _____
 E-MAIL ADDRESS: _____

APPLICANT'S REPRESENTATIVE: NOTE: The Applicant's Representative will be the primary contact for the County.

CONTACT: Joc Walsh
 COMPANY: LDC Design Group
 ADDRESS: 233 SE Washington St. Hillsboro
 PHONE: (503) 648-4061 OR 971
 FAX: (503) 681-7646
 E-MAIL ADDRESS: ldch@e-z.net

OWNER(S): (attach additional sheets if needed)

NAME: Tom Lodato
 ADDRESS: P.O. Box 1754
Lake Oswego, OR 97035
 PHONE: (503) 590-7556
 FAX: _____
 E-MAIL ADDRESS: _____

ALSO NOTIFY: Owner T.L. 5800
 NAME: Tualatin Hills Park & Rec. District
 ADDRESS: 15707 SW Walker Rd.
Beaverton, OR 97006
 PHONE: (503) 645-3539
 FAX: _____

APPLICANT _____ DATE _____
 Print Name: _____

APPLICANT _____ DATE _____
 Print Name: _____

PLEASE NOTE: *This application must be signed by ALL the owners or ALL the Contract Purchasers of the subject property. *If this application is signed by the Contract Purchaser(s), the Contract Purchaser is also certifying that the Contract Vender has been notified. *The Applicant or a Representative should be present at all Public Hearings. *No approval will be effective until the appeal period has expired.



April 30, 1998

APPLICANT'S STATEMENT

CONSULTING

ENGINEERS

**LAND USE
PLANNERS**

LAND SURVEYORS

HILLSBORO

(Corporate Office)
233 S.E. Washington St.
Hillsboro, OR 97123
503.648.4061
FAX: 503.681.7646
Email: ldch@e-z.net

SALEM

3400 State Street
Suite G-710
Salem, OR 97391
503.370-8424
Fax: 503.370.8426
Email: ldcv@e-z.net

VANCOUVER

1400 Washington St.
Suite 150
Vancouver, WA 98660
360.695.1074
Toll Free: 503.241.8657
Fax: 360.695.4142
Email: ldcv@e-z.net

**KLEIN CONSULTING
ENGINEERS**

1904 Elm Street, Suite 1
Forest Grove, OR 97116
503-359-5956
Fax 503 357 5474
Email: kce_dls@trix.com

APPLICANTS

REPRESENTATIVE: LDC Design Group

APPLICANT: Tom Lodato
P.O. Box 1754
Lake Oswego, Or. 97035

REQUEST: Property Line Adjustment

LEGAL DESCRIPTION: Tax Lot 200(1S1 30DA) and
Tax Lot 5800(1S1 30AD)
Washington County, Oregon

PROPERTY OWNERS: Tax Lot 200
Tom Lodato
P.O. Box 1754
Lake Oswego, Or. 97035

Tax Lot 5800
Tualatin Hills Park and
Recreation. District
15707 SW Walker Road
Beaverton, Or. 97006

SIZE: 14.74 Acres (Tax Lot 200)
7.5 Acres (Tax Lot 5800)
22.24 Acres Total

LOCATION: North of SW Nora Road
South, South of SW Marcile
Lane and East of SW 171st
Ave.

LAND USE DISTRICT: R-6

WRITTEN STATEMENT

A property line adjustment is requested between Tax Lot 200(1S1 30DA) and Tax Lot 5800 (1S1 30AD). Tax Lot 5800 is owned by Tualatin Hills Park & Recreation District and is 7.5 Acres. Tax Lot 200 is owned by Tom Lodato and is 14.74 Acres. The common property line between the two parcels will be adjusted such that the new property line will border the proposed 20 lots of Nora Woods. The new Tax Lot 200 would contain the 20 lots and include 5.76 Acres. The new Tax Lot 5800 would contain open space and include 16.48 Acres.

The proposed new property line was the boundary line between the northern 20 lots and open space of the approved preliminary plat of Nora Woods. The approval was appealed to the Land Use Board of Appeals and a compromise has been agreed upon between the parties involved. This compromise included the purchase of the open space and the southern 13 lots of Nora Woods. That area includes 8.98 acres, which will be added to the 7.5 acres owned by the park district.

The attached preliminary property line adjustment plan includes the existing and proposed acreage of the two tax lots involved. This plan also shows the proposed 20 lots of Nora Woods and future alinement of SW Nora Road, which would be reserved for dedication to the county. Both new lots meet and exceed the minimum size and dimensional requirements of the R-6 zone.

**MODIFICATIONS OF CONDITIONS OF APPROVAL FOR NORA WOODS
SUBDIVISION (CASE FILE NO. 97-295S/DHA/DI(CI))**

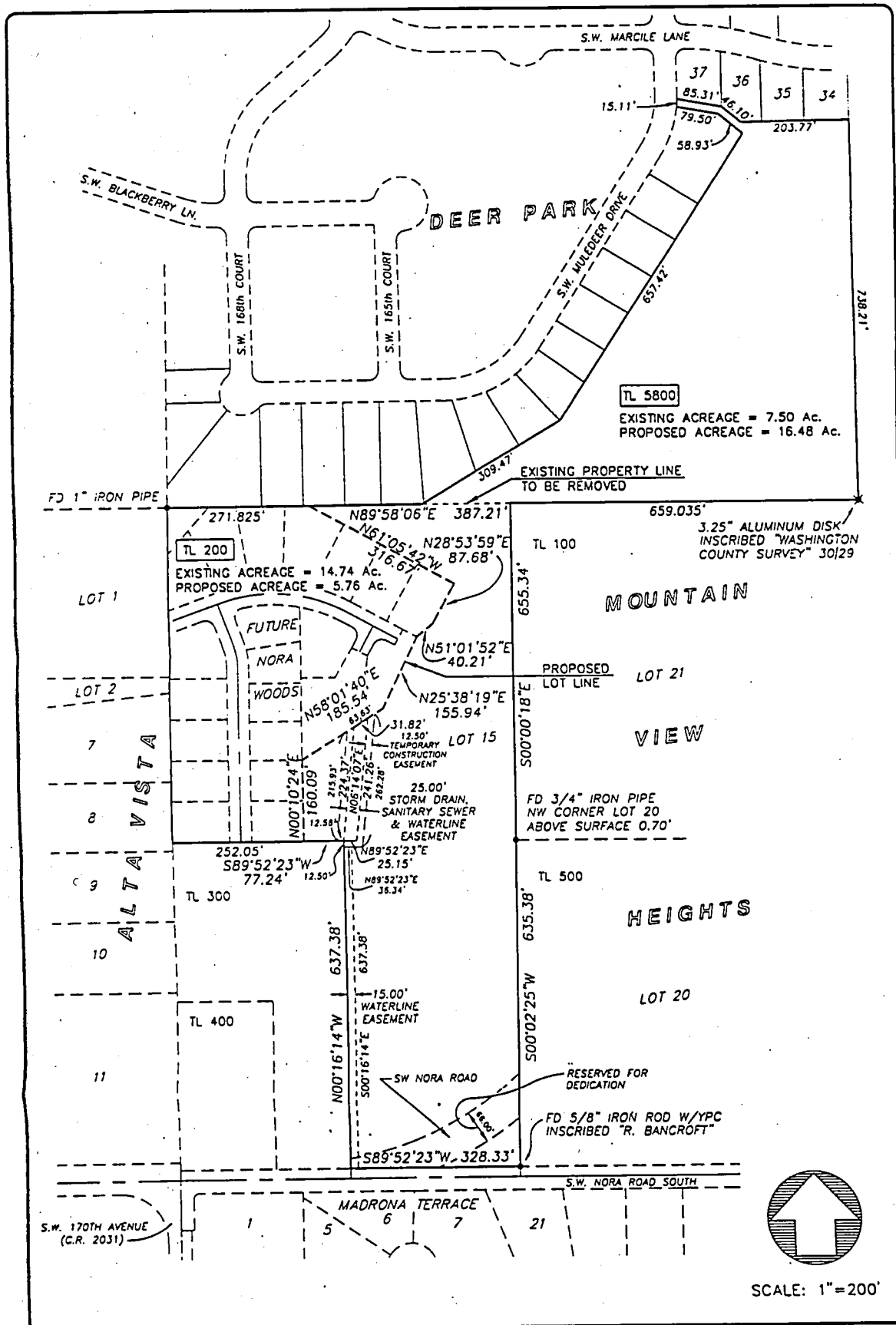
The 33-lot Nora Woods Subdivision was approved by the Washington County land use hearings officer on September 19, 1997. An appeal of that approval is currently pending before LUBA. The parties to the appeal have agreed to suspend the case while a compromise and settlement is being negotiated.

Meanwhile, on or about April 16, 1998, Metro and the owner of Nora Woods entered into a Purchase and Sale Agreement whereby Metro, with support of the City of Beaverton and Tualatin Hills Park and Recreation District ("THPRD"), is to purchase the southern 8.98 acres of the 14.74 acres that comprise the Nora Woods site. As currently approved, the Nora Woods subdivision contains 13 lots on the portion of the site that Metro is planning to purchase. As a result, the Nora Woods subdivision will be reduced to 20 lots.

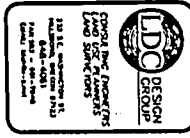
The portion of the site to be purchased by Metro is adjacent to an approximately 7.5 acre property to the north (TL 5800), which is owned by THPRD. In order to facilitate the sale of the southern portion of the Nora Woods site to Metro, an application for a property line adjustment will be submitted to Washington County to allow THPRD's property to be adjusted (enlarged) to include the 8.98 acres Metro intends to purchase. A copy of that application is attached hereto.

To accommodate the development of a 20-lot subdivision instead of the originally approved 33 lots, the original conditions of approval for Nora Woods need to be revised. Those proposed revisions are also attached hereto. It is the parties' expectation that the approval now pending before LUBA can be remanded back to Washington County, and that the revised subdivision, including the revised conditions of approval, can be approved on remand, rather than requiring the submission of a new subdivision application.

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Tom Lodato
 P.O. Box 1754
 Lake Oswego, Oregon 97035
 ph: (503) 684-3175



Preliminary Property Line Adjustment
 Tax Lots 200 & 500
 Tax Maps 151 300A & 151 30AD
 Washington County, Oregon
 CAD FILE: 2171PPLA, Plotted 4/30/98 By: CCB

2171
1

Exhibit C - D 5 of 14

**MODIFICATIONS OF CONDITIONS OF APPROVAL FOR NORA WOODS
SUBDIVISION (CASE FILE NO. 97-295S/DHA/DI(CI))**

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Proposed Revised
**CONDITIONS
OF APPROVAL
FOR
NORA WOODS**

I. PRIOR TO COMMENCING ANY ON-SITE IMPROVEMENTS, INCLUDING GRADING, EXCAVATION AND/OR FILL ACTIVITIES THE APPLICANT SHALL:

A. Submit to Building Services (640-3470) for review and approval:

1. Grading/drainage plan consistent with the standards of Sections 410 and 412 (Type I procedure).

~~NOTE: Grading plan shall include grading for SW Nora Road (realignment) east of SW Nora Road South as required by Sections 710-3 and 710-5. No grading is required for Nora Road west of SW Nora Road South.~~

NOTE: Grading plan shall be revised to limit grading to that reasonably necessary for construction of streets and placement of utilities, including water quality facilities. Grading on individual lots beyond that reasonably necessary for construction of such infrastructure is not authorized by this decision, and may be permitted only pursuant to a duly authorized grading permit or equivalent based on specific development plans for each lot.

B. Submit to the Unified Sewerage Agency (USA) (648-8621) for review and approval:

1. Applicant must acquire an Agency Site Permit. Application for the Agency Site Permit shall be in conformance with Resolution and Order 91-47 as it is amended by R&O 91-75. Submittal shall include:

- a. Detailed grading and erosion control plan. A 1200-C joint erosion control permit will be required.

- b. Detailed hydraulic and hydrological analysis of storm conveyance. If the downstream storm conveyance does not have the capacity to convey the additional volume of water generated by this site during a 25-year, 24-hour storm event, the

applicant is responsible for mitigating the flow as provided in R&O 96-44 (Unified Sewerage Agency's Design and Construction Standards, July 1996 edition).

- c. Detailed plans showing each lot within the development having access to public storm and sanitary sewer ~~and showing the extension of public storm and sanitary sewer to uphill adjacent properties. The extension of off-site sanitary sewer will be necessary.~~
 - d. Provisions for water quality in accordance with the requirements of the above named R&O. ~~Water quality will need to be addressed for the proposed off-site storm drain system on SW Nora Road and SW 166th Avenue and at the rear of lots 22 thru 28.~~
- NOTE:** ~~Drainage plans for SW Nora Road (realignment) shall be consistent with the standards of Section 710-4.~~
- e. Provisions for an all-weather access to the water quality facilities in Tracts B ~~and F.~~
 - f. Site contains "Sensitive Areas". Developer must preserve a 25-foot corridor as described in the above R&O separating the sensitive areas from the impact of development. The sensitive areas and corridors must be set aside in a separate tract and not part of any buildable lot.
 - g. Detailed plans showing the sensitive areas and corridors delineated along with restoration and enhancement of the corridor per Section 3.11.4 of the above R&O.
 - h. DSL and Corps of Engineers permit submittal.
 - i. Provisions for slope stabilization and landslide prevention in the sanitary trench crossing the stream. See geotechnical reports from Carlson Testing, Inc. dated March 6, 1997 and August 20, 1997.

NOTE: Prior to sewer connection permit issuance the above noted improvements must be completed to the Agency's satisfaction and the as-constructed drawings (as-builts), or a bond guaranteeing the as-builts, shall be submitted and accepted by the Agency.

- ~~j. Provisions shall be made for collection of stormwater runoff from the eastern stub of SW Nora Road to limit offsite stormwater runoff.~~

C. Submit to Engineering Services Division, (Jerry Kammerman, 681-7065):

A more complete geotechnical report that contains grading construction recommendations with the grading permit application.

~~D. Submit to Land Development Services, Project Planner (Albert Boesel, 681-3835)~~

~~1. For construction of SW Nora Road, submit the following:~~

- ~~a. Plan for stockpiling excavated materials, including location and duration of stockpile.~~
- ~~b. Plan for disposing of spoils, including the location of disposal and proposed haul routes.~~
- ~~c. Dust control measures, including measures to keep dust to a minimum during equipment operation; and measures to prevent wind erosion of exposed soils.~~
- ~~d. Construction schedule.~~
- ~~e. The name of the applicant's construction manager.~~
- ~~f. Intended means of protecting and removal of existing vegetation, including vegetation to be protected from damage, location, extent and manner of vegetative clearing; and procedures to protect vegetation during clearing operations and construction.~~
- ~~g. Landscape plans which provide compliance with CDC Sections 711 5.1 and 711 7 and which include the following:~~
 - ~~(1) A five foot minimum landscaped strip along both sides of the road.~~
 - ~~(2) Street trees in compliance with Section 711 3.2B(1)(a) through (e).~~
 - ~~(3) An irrigation plan in compliance with Section 711 3.2.B(2)(5).~~

II. PRIOR TO ANY ON-SITE TREE REMOVAL:

A. Submit to Land Development Services, Project Planner (Albert Boesel, 681-3835):

1. Revised grading plan indicating all grading limited to that reasonably necessary for construction of streets and placement of utilities, including water quality facilities. Grading on individual lots beyond that reasonably necessary for construction of such infrastructure is not authorized by this decision, and may be permitted only pursuant to a duly authorized grading permit or equivalent based on specific development plans for each lot.
2. Install protective fencing at the drip lines of trees or groups of trees to be retained as shown on the *revised* Tree Removal and Grading Plan. Submit written verification from a consulting arborist, biologist or ecologist that the fencing is adequate to protect the trees from damage caused by excavation, fill and construction equipment.

III. PRIOR TO FINAL APPROVAL AND SUBDIVISION PLAT RECORDATION:

A. Submit to the County Survey Division (648-8723):

Fourteen copies of the proposed final plat which shall comply with Oregon Revised Statutes, Chapter 92 and Section 605 of the Washington County Community Development Code.

The following shall be shown on the plat:

1. All easements and Tracts.
2. The use, ownership and maintenance rights for all easements and Tracts.

NOTE: Tracts A and C shall be retained as Open Space. Tracts ~~G, H~~ and ~~I~~ are ~~also~~ one foot non-access reserve strips.

3. Dedication of necessary right-of-way for the public streets within the subdivision as required by the Washington County Uniform Road Improvement Design Standards.

4. Dedication of right-of-way to provide 66 feet for SW Nora Road through the project site including adequate corner radii at its intersection with SW Nora Road North and the interim alignment of SW Nora Road South as required by the Washington County Uniform Road Improvement Design Standards. NOTE: SW Nora Road located to provide eventual future connection of SW Kemmer Road to the current terminus of SW Nora Road east of the project site.
- ~~5. A non-access restriction along the site's SW Nora Road (realignment) frontage, except at the approved access location.~~
- ~~6. Tract D (approximate 3,703 sq. ft.) to be dedicated to Washington County to accommodate the future realignment of SW Nora Road South.~~
7. Drainage easement encumbering the water quality facilities (Tracts B and F) to benefit Washington County and the Unified Sewerage Agency for maintenance purposes.

B. Submit to Land Development Services (Public Assurance Staff, Tracy Stone/ Carolyn Cook, 681-3843):

1. Completed "Design Option" form.
2. \$5, 855.00 Administrative Deposit.

NOTE: The estimated Administration Deposit for the required public improvements is \$11,711.00. ~~██████████~~

3. Two (2) sets of complete engineering plans for the construction of the following public improvements:
 - a. All interior public streets and sidewalks.
 - ~~b. SW Nora Road South from SW 166th Avenue west and north to SW Nora Road to an L-6 standard but without sidewalks.~~
 - ~~c. SW Nora Road (realignment) to a Major Collector standard through the project site; provided, the applicant shall build only that portion of SW Nora Road east of the west edge of its intersection with SW Nora Road South; provided further, the applicant shall guarantee funding of the improvement of SW Nora Road west of its intersection with SW Nora Road South consistent with CDC 501-8.6 based on an engineer's certified cost estimate for construction of this road alignment.~~

- d. ~~Landscaping and irrigation system for SW Nora Road (realignment) as it passes through the site (Section s 711 3.2.B. and 711 4 through 711 7).~~

These improvements shall be constructed in accordance with the requirements of the Washington County Uniform Road Improvement Design Standards. They shall be completed and accepted by the County within the time frame specified in the public assurance contract, or prior to final building inspection approval, whichever occurs first.

C. Obtain Engineering Division approval, provide financial assurance, and obtain a Facility Permit for:

Construction of the public improvements listed in conditions III.B.3.a. through d.

NOTE: The Public Assurance staff (Tracy Stone/Carolyn Cook, 681-3843) of Land Development Services will send the required forms to the applicant's representative after submittal and approval of the public improvement engineering plans.

D. The following documents shall be executed:

1. Waiver not to remonstrate against the formation of a local improvement district or other mechanism to improve the base facility of SW Nora Road to County standards between SW 170th Avenue/SW Weir Road and SW Beard Road.
2. Petition and waiver not to remonstrate against the formation of a road maintenance local improvement district for public streets within the subdivision.
3. ~~A non access restriction along the site's frontage of SW Nora Road (realignment) except at the approved access location.~~

E. Submit to Land Development Services, Project Planner (Albert Boesel, 681-3835):

1. Final Approval form (Type I procedure).
2. Final Approval fee.
3. ~~Irrigation plan for SW Nora Road (realignment) landscaping as it passes through the site in accordance with Section 417.~~

4. Final plan showing a fence or low permanent barrier constructed along the border of Natural Resource Tracts A and C as they abut all buildable lots.
5. A site stamped by the Fire Marshal approving the final design and hydrant locations.

F. Submit to the Unified Sewerage Agency:

1. Written verification by a registered professional engineer which states that each lot has gravity access to public sanitary sewer and storm sewer without crossing any adjacent lot.
2. Complete engineering plans showing the on-site storm water quality facility.

IV. PRIOR TO ISSUANCE OF BUILDING PERMITS FOR INDIVIDUAL LOTS:

A. Submit with the building plans to Building Services (649-3470):

1. Site plan showing:
 - a. Street trees as required by Section 407-7.
 - b. Sidewalks as required by Section 502.
 - c. Proposed tree removal as required by Section 407-3.

B. Pay Traffic Impact Fee.

V. PRIOR TO BUILDING OCCUPANCY AND/OR FINAL BUILDING INSPECTION APPROVAL:

- A. The public improvements as required by Conditions III.B.3.a ~~through d~~, as shown on the final approved plans shall be completed and accepted by the County.
- B. Street trees shall be planted as needed to provide one for every 35 feet of lineal road frontage.
- C. Sidewalks shall be constructed. **NOTE:** All sidewalks shall have a five-foot unobstructed width.
- D. All facilities and improvements required by USA shall be completed and approved by USA including tie-in to the public storm drainage.

VI. ADDITIONAL CONDITIONS:

- A. This development shall be constructed in accordance with the conditions of this decision, the approved final plans and the standards of the Community Development Code (Section 207-6.1).
- B. All conditions of approval shall be binding upon all heirs, successors and assigns (Section 207-6.1).
- C. Transferability of this Development Permit shall be in accordance with Section 201-8.
- D. The removal of any tree over 6 inches in diameter outside of the approved grading limits shall require the approval of a tree removal permit. (Trees within the limits of the revised grading plan are approved for removal through this Review).
- E. (deleted by hearings officer's order of 9-19-97)
- F. (deleted by hearings officer's order of 9-19-97)
- G. This approval shall automatically expire two years from the date of this approval, unless development has commenced, an application for an extension is filed, or this approval is revoked or invalidated. (CDC Section 201-4)

Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2659 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE TUALATIN HILLS PARKS AND RECREATION DISTRICT FOR THE MANAGEMENT OF PROPERTY IN THE COOPER MOUNTAIN TARGET AREA.

Date: June 9, 1998

**Presented By: Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 98-2659 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the Tualatin Hills Parks and Recreation District ("THPRD") for management of a property in the Cooper Mountain Target Area.

Background and Analysis

In April 1998, Metro entered into an agreement to purchase approximately 8.98 acres in the Cooper Mountain Target Area ("the Property"). The Property is located on the northeast side of Cooper Mountain, adjacent to property that THPRD already owns and manages. The joint acquisition of the Property by Metro and THPRD will allow THPRD to expand its current holdings and enhance public access on the northeast side of Cooper Mountain.

Metro negotiated the terms of the sale and contributed 94% of the acquisition price, while THPRD provided the balance of the purchase price and will assume management responsibilities. Metro and THPRD share title as tenants in common, proportionate with their contributions.

Findings

Authorization of the Executive Officer's execution of the IGA with the District is recommended based on the following:

- The northeast side of Cooper Mountain has been heavily developed and very few open space properties remain. The Property, located northeast of the intersection of Kemmer Road and SW 170th Avenue, includes frontage on Johnson Creek, and the proposed development of the site has drawn vocal opposition from neighbors. The IGA will allow THPRD to move forward with plans to manage this site in connection with an adjacent site currently owned by THPRD.
- The Cooper Mountain Target Area Refinement Plan objectives establish "Partnership Objectives" that encourage partnerships to assist in implementing the long range vision for the Cooper Mountain Refinement Plan. The Property is a Tier IB property acquired through the cooperative efforts of Metro and THPRD according to the guidelines of the Partnership Objectives. The IGA establishes management guidelines for Metro and THPRD, the Property's co-owners.

- The location of the Property on the northeast side of Cooper Mountain adjacent to other property owned and managed by THPRD, makes THPRD the appropriate manager of the site.
- Under the IGA, the Property is more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities and the property is landbanked for an indefinite period of time.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives established at the time of the Cooper Mountain Refinement Plan.
- This purchase completes Metro's commitment to partnership on acquisition of properties on the northeast side of Cooper Mountain.

Budget Impact

THPRD would become responsible for the management, maintenance and operation of the Property, in conjunction with its own adjacent park facilities. This would reduce Metro's land-banking costs and future operation and maintenance expenses.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 98-2659.

Agenda Item Number 8.3

Resolution No. 98-2660, For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Portland for the Management of Property in the East Buttes Boring Lava Domes Target Area.

**Metro Council Meeting
Thursday, June 18, 1998
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE AN)
INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF PORTLAND FOR THE)
MANAGEMENT OF PROPERTY IN THE EAST)
BUTTES/BORING LAVA DOMES TARGET AREA)

RESOLUTION NO. 98-2660

Introduced by Mike Burton
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on July 25, 1996 via resolution 96-2361, the Metro Council adopted a refinement plan for the East Buttes/Boring Lava Domes regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments; and

WHEREAS, in April 1998, Metro and the City of Portland (the "City") acquired 1.5 acres in the East Buttes/Boring Lava Domes target area between Johnson Creek and the Springwater Corridor Trail (the "Property"); and

WHEREAS, the City and Metro desire that the City should operate, manage, and maintain the Property; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City would benefit the Property, as well as the public in general by providing enhanced public access to the Springwater Corridor Trail; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for the City, requiring that the Property be managed for protection of the Property's natural resources; enhancement, restoration and protection of wildlife habitat; pedestrian and bicycle use; and public recreation consistent with these goals; with the primary goal being to manage the Property as a trailhead for the Springwater Corridor Trail; now therefore

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with the City of Portland, attached hereto as Exhibit A, wherein the City will manage the Property in the East Buttes/Boring Lava Domes target area.

ADOPTED by the Metro Council this _____ day of _____, 1998.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

INTERGOVERNMENTAL AGREEMENT**Garrison Property**

This Intergovernmental Agreement ("Agreement") dated this ____ day of _____, 1998, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Portland, located at 1120 S.W. Fifth Avenue, Portland, Oregon 97204 ("the City").

WITNESSETH:

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26, Open Spaces, Parks, and Streams, authorizing Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams ("Metro Open Spaces Bond Measure");

WHEREAS, the City is a local parks provider which has received Metro Open Spaces Bond Measure local share funding for this project through an intergovernmental agreement between Metro and the City entered into on October 24, 1995 ("Local Share IGA");

WHEREAS, The East Buttes/Boring Lava Domes Target Area, which was identified as a regionally significant natural area by the Metropolitan Greenspaces Master Plan, the Open Spaces Bond Measure, and the Refinement Plan for the East Buttes/Boring Lava Domes Target Area adopted by the Metro Council on July 17, 1996, identifies certain areas as Tier IB;

WHEREAS, the Garrison Property is located along the Springwater Corridor, between Powell and Jenne Buttes, and is identified as a Tier IB property in the Refinement Plan;

WHEREAS, pursuant to the Metro Open Spaces Bond Measure and the East Buttes/Boring Lava Domes Target Area Refinement Plan, Metro and the City purchased the Garrison Property with Open Spaces Bond Measure proceeds on March 30, 1998, which property may be more particularly described as follows:

- Approximately 1.5 acres of real property, located at 5006 SE 174th Avenue, Portland, Oregon 97236, as more particularly described in Exhibit A attached hereto ("the Property");

WHEREAS, Metro and the City acquired fee simple title to the Garrison property as tenants in common, with the City owning an undivided 75% interest subject to deed restrictions requiring that the property remain in its natural state in perpetuity, and Metro owning an undivided 25% interest, in accordance with the requirements of the East Buttes/Boring Lava Domes Tier IB Refinement Plan;

WHEREAS, Metro and the City wish to preserve the Garrison Property in accordance with the Metro Open Spaces Bond Measure, the East Buttes/Boring Lava Domes Tier 1B Refinement Plan, and with the Metro Greenspaces Master Plan;

WHEREAS, the City wishes to manage the Garrison Property as a trailhead for the Springwater Corridor Trail;

WHEREAS, the Springwater Corridor Trail was identified as a regionally significant trail in the Metropolitan Greenspaces Master Plan;

WHEREAS, on March 25, 1998, via ordinance 172087 the City Council authorized the City to enter into this Agreement and to purchase, manage, operate and maintain the Property in accordance with the terms set forth in this Agreement;

WHEREAS, on _____, 1998, the Metro Council authorized Metro to enter into this Agreement to provide for the transfer of management responsibility for the Property in accordance with the terms set forth in this Agreement, and

WHEREAS, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, maintenance and operation of this Property;

Now, therefore, the parties agree as follows:

A. Management, Maintenance, and Operation

1. The City shall be responsible for the stabilization and ongoing management, maintenance, and operation of the Property in accordance with the terms of this Agreement.
2. All permanent structures currently on the property are to be demolished and removed by the City within one year of the date of this Agreement. The City shall pay 75% of the cost of demolition. Metro shall pay the remaining 25% of the cost of demolition.
3. The Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, and the management plan for the Springwater Corridor Trail (collectively, "the Plans"). These Plans shall constitute the Resource Protection Plans for the Property, as described in the Metro Greenspaces Master Plan. In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
4. If Metro executes an agreement to purchase additional property within the East Buttes Target Area on the Springwater Corridor Trail which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement,

using the City's best efforts to make this notification prior to the closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.

5. Metro grants to the City, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property.
6. The term of the City's management, maintenance, and operation responsibilities for the Property shall be ten (10) years from the date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.

B. Limitations on Use

1. The Property shall be managed, maintained and operated in accordance with its intended use as natural area open space, with the primary goal being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
2. The Property may be used by the public, in the City's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement. Allowable public uses include all uses associated with the Property's function as a trailhead. Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the Property, and the City shall give Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Property. In any event, no improvements or trails shall be constructed on the Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement or with the Plans.
3. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the Property. Any changes in the Plans made or proposed by the City that relate to management, maintenance, or operation of the Property shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Measure. The City shall give Metro written notice as soon as possible, but in any event no fewer than 90 days in advance, of a proposal to amend the City's Plans where such amendment would alter the City's management, maintenance or operation of the Property.
4. The Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource, except as necessary for construction of trail or other improvements, for the purpose of improving resource values, or as necessary to protect public safety.

5. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to preserve and protect the Property' natural resources.

C. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the stabilization, operation and maintenance of the Property with the City's own resources. Metro's sole contribution to the stabilization, operation and maintenance of the Property shall be 25% of the cost of demolishing the existing residence. The City's management responsibility shall include responsibility for all taxes or assessments for the Property.
2. The City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any management, maintenance or operation issues that may arise with respect to the Property.

D. General Provisions

1. Indemnification. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Property, including but not limited to construction of trails or in relation to any other improvement on the Property.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of the Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

3. Funding Declaration and Signage. The City shall provide on-site signage informing the public that the City is managing the Property. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. The City shall also document in any publication, media presentation or other presentations, that funding for acquisition of the Property came from Metro Open Spaces Bond Measure proceeds. On-site signage shall be subject to prior review and approval by Metro. All signage shall be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro, subject to the mutual written agreement of the parties.
5. Termination for Cause. Either party may terminate this Agreement in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.
7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro:

Metro
Charles Ciecko
Director, Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736

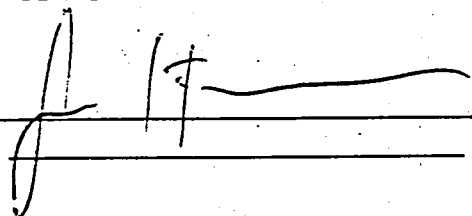
To City: City of Portland
James Sjulín
Natural Resources Supervisor
Portland Parks and Recreation
1120 S.W. Fifth Ave. #1320
Portland, OR 97204

- 8. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
- 9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
- 10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

CITY OF PORTLAND

METRO

By: 
Title: _____

By: _____
Title: _____

Exhibit A

LEGAL DESCRIPTION

Beginning at an iron pipe on the North line of the grantors land, said pipe being North 89° 30' East 384.2 feet from the Northeast corner of the Jenne D.L.C. in Section 18, Township 1, South, Range 3 East of the Willamette Meridian; thence from said point South 89° 30' West 253.1 feet to the center line of a County Road; thence following the center line of said County Road in a Southwesterly direction 180 feet more or less to the Easterly line of the Jenne D.L.C.; thence Southerly along said D.L.C. line being also the center line of the County Road to the Northerly right-of-way line of a one hundred foot right-of-way belonging to the P.R. L. & P. Co., thence along said right-of-way line Northeasterly 385 feet more or less to the Westerly line of a 10 acre tract conveyed to Peter Bryne and recorded in Book 298 of Deeds at page 80, Records of Multnomah County, Oregon; thence along said line North 0° 08' East 200 feet, more or less to the beginning, containing two acres, more or less, being in the County of Multnomah and State of Oregon.

EXHIBIT B**Notice of Acquisition**

_____, 199__

Mr. Jim Sjulín
Natural Resources Supervisor
City of Portland
Parks and Recreation Department
1120 SW Fifth Avenue, Rm. 1302
Portland, OR 97204

Re: Acquisition of Property along Springwater Corridor Trail

Dear Jim:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro and City of Portland, dated _____, 1998, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property in the East Buttes/Boring Lava Domes Target Area:

[Property Address], in the City of Portland, County of Multnomah, and State of Oregon, being more particularly described in Exhibit A attached hereto ("the Property")

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond, Manager
Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2660 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR THE MANAGEMENT OF PROPERTY IN THE EAST BUTTES/BORING LAVA DOMES TARGET AREA

Date: May 19, 1998

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 98-2660 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Portland ("the City") for management of a property in the East Buttes-Boring Lava Domes Target Area.

Background and Analysis

In March 1998, Metro and the City purchased from Anna Garrison a 1.5-acre property in the East Buttes/Boring Lava Domes Target Area ("the Property"). The Property is between the City-managed Springwater Corridor Trail and Johnson Creek. The joint acquisition of the Property by Metro and the City will allow the City to enhance public access on the Springwater Corridor Trail, at a location on the trail where such access is currently limited.

Metro negotiated the terms of the sale and contributed 25% of the acquisition price, while the City provided the balance of the purchase price and will assume management responsibilities. Metro and the City share title to the Property as tenants in common consistent with their contributions.

Findings

Authorization of the Executive Officer's execution of the IGA with the City is recommended based on the following:

- The Springwater Corridor Trail, extending from Milwaukie to East Gresham, lacks sufficient access points where the public can park, unload bikes, and enter onto the trail. The Property, located on SE 174th between Foster Road and Powell Boulevard, addresses this deficiency in an area with a growing population. The IGA will allow the City to move forward with plans to develop this public access point.
- East Buttes/Boring Lava Domes Target Area Refinement Plan objectives establish a challenge grant program for properties identified as Tier IB priorities for acquisition. The Property is a Tier IB property acquired through the cooperative efforts of Metro and the City according to the guidelines of the challenge grant program. The IGA establishes management guidelines for Metro and the City, the Property's co-owners.

- The location of the Property on the Springwater Corridor Trail makes the City the appropriate manager of the site.
- Under the IGA, the Property is more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities and the property is landbanked for an indefinite period of time.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to objectives established in the East Buttes/Boring Lava Domes Target Area

Budget Impact

The City would become responsible for the management, maintenance and operation of the Property, in conjunction with its own adjacent park facilities. This would reduce Metro's land-banking costs and future operation and maintenance expenses.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 98-2660.

Agenda Item Number 8.4

**Resolution No. 98-2664, For the Purpose of Confirming the Appointment of Judy Rice to the
Metropolitan Exposition Recreation Commission.**

**Metro Council Meeting
Thursday, June 18, 1998
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING) RESOLUTION NO. 98-2664
THE APPOINTMENT OF JUDY RICE)
TO THE METROPOLITAN EXPOSITION) Introduced by Mike Burton
RECREATION COMMISSION) Executive Officer

WHEREAS, The Metro Code, Section 6.01.030, provides that the Council confirms members to the Metropolitan Exposition Recreation Commission; and

WHEREAS, the City of Portland's appointee, Mitzi Scott term expired January, 1998; and

WHEREAS, The Portland City Council has provided notice of the nomination of Judy Rice to serve on the Metropolitan Exposition Recreation Commission in the position previously occupied by Mitzi Scott; and

WHEREAS, The Executive Officer has accordingly Judy Rice to serve the term starting July 1, 1998 which shall expire June 30, 2002; and

WHEREAS, The Council finds that Judy Rice has the experience and expertise to engender confidence in the likelihood that her membership will result in a substantial contribution to the work of the commission; now, therefore,

BE IT RESOLVED,

That Judy Rice is hereby confirmed for appointment as a member of the Metropolitan Exposition Recreation Commission for the term beginning July 1, 1998 and ending June 30, 2002.

ADOPTED by the Metro Council this _____ day of _____,
1998.

Jon Kvistad, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 98-2664 FOR THE PURPOSE OF CONFIRMING CITY OF PORTLAND NOMINEE JUDY RICE AS A MEMBER OF THE METROPOLITAN EXPOSITION-RECREATION COMMISSION

Date: May 26, 1998

Presented by: Mike Burton

BACKGROUND:

Ms. Judy Rice has been nominated by the Portland City Council to replace Ms. Mitzi Scott as a member of the Metropolitan Exposition-Recreation Commission. Ms. Scott's term expired in January, 1998.

Ms. Rice has been appointed to replace Ms. Scott on the Commission by Executive Officer Mike Burton, who accordingly advances the name to Council for confirmation.

A copy of the resolution from the City of Portland nominating Ms. Rice and the appointee's bio are attached.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends that Judy Rice be confirmed to fill the City of Portland vacancy on the Metropolitan Exposition-Recreation Commission.



CITY OF
PORTLAND, OREGON

Gretchen Miller Kafoury, Commissioner
1220 S.W. 5th Avenue
Portland, Oregon 97204
Telephone: (503) 823-4151
Fax: (503) 823-3036

May 20, 1998

Mike Burton
Executive Officer
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

RECEIVED

MAY 22 1998

EXECUTIVE OFFICER

Dear Mike,

On April 15, 1998, the Portland City Council voted unanimously to approve the appointment of Judy Rice to serve as a member of the Metropolitan Exposition-Recreation Commission. We are forwarding her nomination to you and the Metro Council as our replacement for Mitzi Scott, who previously served as one of the City's appointments to the Commission.

Ms. Rice is currently Chair of the Portland Oregon Visitor's Association and due to that commitment she will need to begin her service on MERC July 1, 1998 for a term expiring June 30, 2002.

Attached is a copy of the Resolution 35686 outlining this appointment. If you have any questions, please feel free to contact me or Melissa Litin on my staff at 823-3033.

Sincerely,

Gretchen Miller Kafoury
Commissioner
Public Affairs

cc: Mark Williams, MERC General Manager

RESOLUTION No.

35686

Nominate Judy Rice to serve as a member of the Metropolitan Exposition-Recreation Commission.

WHEREAS, the Executive Officer of the Metropolitan Service District has invited the City to nominate candidates who are residents of the City of Portland to serve as members of the Metropolitan Exposition-Recreation Commission;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Portland, Oregon nominates the following named individual to serve on the Metropolitan Exposition-Recreation Commission:

July 1, 1998, for a term expiring June 30, 2002.

BE IT FURTHER RESOLVED, that the City Council requests the Executive Officer of the District to appoint, and the Council of the District to confirm, the forenamed individual as a member of the Metropolitan Exposition-Recreation Commission.

Adopted by the Council, APR 15 1998

Prepared by: Melissa Litin
April 8, 1998

Commissioner Kafoury

BARBARA CLARK
Auditor of the City of Portland

By Britta Olson
Deputy

441

Agenda No.

RESOLUTION NO.

35686

Title

Nominate Judy Rice to serve as a member of the Metropolitan Exposition-Recreation Commission.
(Resolution)

INTRODUCED BY	Date Filed: APR 9 1998
<i>Kafoury</i>	Barbara Clark Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs <i>(MIL)</i>	By: <i>Cary Kerschner</i> Deputy
Finance and Administration	For Meeting of:
Safety	Action Taken:
Utilities	
Works	
BUREAU APPROVAL	
Bureau: <i>Public Affairs</i>	
Prepared by Date	
Melissa Litin April 8, 1998	
Budget Impact Review:	
Completed X Not Required	
Bureau Head:	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
Consent	Regular		YEAS	NAYS
X		Francesconi	}	
NOTED BY		Hales		
City Attorney		Kafoury		
City Auditor		Sten		
City Engineer		Katz		

November 5, 1997
R#97-08
Judy Rice

In her role as Director of Volunteer Services, Rice is responsible for the recruitment and training of over 10,000 volunteers to help stage the largest international multisport event in the world. Over 25,000 athletes, along with family and companions, will be participating in 25 Olympic-type sports August 9 - 22, 1998. The Games will rely very heavily on an estimated volunteer base of 10,000 individuals to stage the most successful Games in history.

In addition to her success in the professional spotlight, Rice serves on numerous civic organizations boards — most notably as Chair of the Portland Oregon Visitors Association (POVA). Additional associations include Marylhurst College (Board of Directors), Board of Medical Examiners and the Oregon Women's Forum.

The 1998 NIKE World Masters Games is a not-for-profit affiliate of the Portland Oregon Sports Authority (POSA).

For more information, please contact Susan Carpenter at the 1998 NIKE World Masters Games at 503-226-1998, ext. 331.



MEDIA RELEASE

For Immediate Release

November 5, 1997

Contact: Susan Carpenter - 503-226-1998

R#97-08

JUDY RICE JOINS 1998 NIKE WORLD MASTERS GAMES STAFF

Portland, OR — Judy Rice, former Executive Vice President and Manager of Human Resources for U.S. Bank, has joined the 1998 NIKE World Masters Games as Director of Volunteer Services. The announcement was made by Doug Single, General Manager and CEO of the Games.

"Judy brings a wealth of knowledge and resources to the 1998 NIKE World Masters Games family," stated Single. "Her proven track record will help in the immense task of recruiting, training and placing volunteers for this international event. We are delighted to have her join us."

A graduate of the Stanford Executive Program of Stanford University, Portland State University (MBA) and University of Oregon (B.A. - Political Science), Rice joins the World Masters Games after spending the last nine years with U.S. Bank in their corporate offices. Her relationship with U.S. Bank spans almost 15 years, going back to 1973. Rice also spent nine years with the Boise Cascade Corporation in their management division.

-more-



International Masters Games Association

The Global Celebration Of Sport For Life

**METRO**

Date: June 18, 1998
To: Metro Council
From: Councilor Susan McLain
Subject: Title 3 Remarks

When we passed the Regional Urban Growth Goals and Objections in December 1995, a commitment was made by this Council and its regional partners to manage watersheds to protect, restore, and ensure the integrity of streams, wetlands, and floodplains, and their multiple biological, physical, and social values. The vote today is another step in the accomplishment of that goal. Title 3 will provide a strong but flexible structure that will allow communities around the region to continue the goal of protection of water resources in a variety of ways.

The Model Ordinance and Title 3 Maps gives our partners additional tools for this significant work. Metro will continue on the *next steps* of providing standards for conserving, protecting and enhancing fish and wildlife habitat. Stormwater management and nonpoint pollution reductions must also be addressed.

I would like to thank our advisory groups for all of their assistance and their analyses of this document. The Water Resource Policy Advisory Committee (WRPAC), Metro Technical Advisory Committee (MTAC) and Metro Policy Advisory Committee (MPAC) discussions and review improved the product and created a good foundation for the next chapter of watershed planning and protection.

I would like to thank Metro staff, especially Rosemary Furfey, Ken Helm, and Larry Shaw. Their work has been professional and extensive.

The strength of this decision is that we know it is an important step, but only one of the first steps. We must continue to expand our knowledge and tools for water protection and water quality issues. Finally, public participation has been extensive and essential in this process. We must continue to encourage involvement and input from all sectors of the community in this effort to maintain and improve livable qualities in all areas.

A vote *yes* on Title 3 is a vote for a better community and higher standards for water quality and flood management and mitigation. It is my pleasure to reaffirm this crucial commitment to our wetlands.

Findings and Conclusions - Ordinance No. 98-730C

Amendments to Title 3

I. Introduction

The Metro Council adopted the Urban Growth Management Functional Plan in Ordinance No. 96-647C in November, 1996, pursuant to functional plan authority in ORS 268.390. The Functional Plan was effective February 19, 1997, and the compliance date for Titles other than Title 3 is February 19, 1999. The Functional Plan contains "requirements" for changes in city and county plans to implement the 2040 Growth Concept in Metro's regional goals and objectives. These requirements are expressed in terms of performance standards that describe the required regulatory result, not the exact words or form of the regulation to be adopted into city and county plans.

"Title 3: Water Quality and Flood Management Conservation" was adopted in 1996, but none of the requirements were immediately effective. Sections 1-4 become effective when Metro's map of regulated areas and a Model Ordinance to assist cities and counties are adopted by the Metro Council. Cities and counties may use Metro's Model Ordinance to be assured of Title 3 compliance. Fish and Wildlife Habitat Conservation was addressed in Section 5 of Title 3. Section 5 describes future Metro coordination work under Statewide Planning Goal 5 that would result in new performance standards to be added to a functional plan at a later time.

Section 1-4 performance standards, such as the 50- to 200-foot vegetated corridor were adopted in 1996. (See the definition of "Water Quality and Flood Management Area," Title 10, eec.) The optional implementation process and balanced cut and fill, erosion control, vegetated corridor, and uncontained hazardous materials regulations were all included in the original adoption of Title 3. However, these standards were discussed during development of the Model Ordinance, maps and recommendations on amending Title 3.

The amendments to Title 3 in Ordinance No. 98-730C reflect completion of Metro's map of regulated areas, clarification of the applicability of the performance standards, some additional performance standards, and interpretations for issues raised by the development of the Model Ordinance. Therefore, these findings and conclusions are a guide to the support for this legislative action in the decision record.

II. Applicable State Law

The primary applicable Statewide Planning Goals are the water quality portion of Statewide Planning Goal 6 and the flood and steep slopes hazards portions of Statewide Planning Goal 7. Interpretations of the applicability of these Goals are not well developed in Land Conservation and Development Commission (LCDC) rule-making. However, LCDC's 1996 rulemaking on Goal 5, at OAR 660-23-240 clarified the separate relationship of Goal 5 from Goals 6 and 7.

A. Goal 6

The portion of Goal 6 for water quality is as follows:

“To maintain and improve the quality of the . . . water . . . resources of the state.” (Pollutants) “from future development, when combined with (pollutants) from existing developments shall not threaten to violate or violate applicable state or federal environmental quality statutes, rules and standards . . . (For) water . . . resources of the applicable . . . river basins . . . included in the state environmental quality statutes, rules, standards and implementation plans, such (pollutants) shall not . . . degrade such resources; or . . . threaten the availability of such resources.” (Emphasis added.)

Metro’s analysis of the region’s streams for threats of violation of water quality standards was regionwide by watershed.

The Department of Environmental Quality (DEQ) map of “water quality limited water bodies” in the record identifies some degraded stream segments in every watershed in the Metro region. This map is a product of state Environmental Quality Commission rulemaking to comply with the federal Clean Water Act. It is evidence of threatened violations of water quality standards from existing development.

Planned future development will add to the threat of water quality standards violations. Regional planning requires increased densities in selected areas inside the regional urban growth boundary (UGB) to increase the efficiency of land use inside the UGB and preserve farmland outside it. (See Title 1 of the Urban Growth Management Functional Plan.) Title 3 was adopted in November, 1996, anticipating the impact of planned future development that could add to the threat of water quality standards violations, to balance the increased density of urban development in the Functional Plan.

The regulations in Title 3 are based on the scientific evaluation in the record of effective measures to reduce the impact of future development on water quality. For example, erosion protection prevents additional sediment loads in streams, and development setbacks with vegetated corridors reduce, slow, and clean runoff from additional impervious surfaces that are part of new development. Prohibitions on new uncontained areas of hazardous materials near streams and wetlands prevent new sources of water pollution from new commercial and industrial development.

Consistent with the scientific evaluation, Title 3 has included 50-foot to 200-foot vegetated corridor requirements since its November, 1996, adoption. The map of regulated areas adopted in Ordinance No. 98-730C includes the protected water features (streams, wetlands) and these vegetated corridors as Water Quality Resource Areas. Cities and counties have the flexibility to adopt their own field verified, site-specific maps of these areas which substantially comply with Metro’s map.

The extent of Title 3 regulation is directly related to the identified Goal 6 "threat of violations of water quality standards" and the identified flood hazard areas in the 1995-96 flood events. The application of the existing requirement for 50- to 200-foot vegetated corridors, for example, is related to the existence of 25% slope hazards and consistent with Metro's Water Quality and Floodplain Management Conservation White Paper in the record. Metro's research demonstrates that 50-foot stream buffers are a minimum to provide for runoff filtration for water quality improvement. Goals 6 and 7 also apply to piped stormwater discharges into streams and wetlands. Stormwater regulation is a next step in Metro's efforts to improve regional water quality. See Regional Framework Plan, Chapter 4. Because Title 3 is part of a "growth management" functional plan, Metro has focused its current efforts on improving local Land Use Planning regulations, rather than stormwater regulations.

Therefore, Title 3 land use regulations are one method for implementing the water quality portion of Goal 6 as suggested in Goal 6 Guideline B.1.(2).

B. Goal 7

Goal 7 seeks "To protect life and property from natural disasters and hazards" by prohibiting developments in "areas of natural disasters and hazards without appropriate safeguards." The Goal defines "areas of natural disaster and hazards" to include "areas that are subject to . . . stream flooding . . . erosion . . . landslides . . . weak foundation soils. . . ."

There are three main data sources identifying flood hazard areas in the record: the Federal Emergency Management Agency (FEMA) 100-year floodplain maps and analysis, Metro's mapping of 25% slopes in the region, and digitized delineation of the 1996 flood event. The Flood Management Conservation Areas are based on these sources with review for areas committed to development. See Title 3, Section 3 .D.

The primary regulations in Title 3 to protect flood areas is to maintain the flood capacity of the floodplain by requiring new development to balance fill with an equal or greater amount of excavation. See Title 3, Section 4. These regulations apply to Flood Management Areas identified on Metro's map of regulated area adopted in Ordinance 98-730C. These areas include lands from Metro's 25% slope map, floodplain areas, but not all flood prone soils.

The flood management area boundaries are directly related to the data on location of flood hazard, not Goal 5 resource boundaries. The regulation to preserve flood capacity in each watershed is clearly necessitated by the aerial photographs of actual 1996-96 inundation. The regulations to control erosion for new development have clear basis in both Goal 6: preventing discharges of sediment into streams that degrade water quality; and Goal 7 because: areas subject to erosion are defined as hazard areas. The 50- to 200-foot vegetated buffers will stabilize stream banks which will reduce flood hazards.

C. Goal 5 Consistency

Title 3 regulations based on Goals 6 and 7 are consistent with Goal 5, generally and specifically regarding the definition of regionally regulated wetlands.

1. Goal 5 Relationship to Goals 6 and 7

OAR 660-23-240(1) provides that:

“The requirements of Goal 5 do not apply to the adoption of measures required by Goals 6 and 7. However, to the extent that such measures exceed the requirements of Goals 6 or 7 and affect a Goal 5 resource site, the local government shall follow all applicable steps of the Goal 5 process.” (Emphasis added.)

This provision of LCDC's 1996 Goal 5 Rule explicitly recognizes that Goal 6 and 7 regulation may “affect a Goal 5 resource site” without violating Goal 5. The Rule recognizes that a “riparian corridor,” including areas adjacent to a river or stream, “is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas and wetlands within the riparian area boundary.” OAR 660-23-090. Wetlands are resources regulated by Goal 5, OAR 660-23-100, and by Goals 6 and 7 because wetlands improve water quality and provide flood storage capacity.

Some portions of “riparian corridor” and “wetlands” which are “Goal 5 resource sites” clearly will be “affected” by regulations in Title 3 “Water Quality and Flood Management Areas.” However, the historic method used by cities and counties of subsuming Goal 6 and Goal 7 in the Goal 5 inventory work is not required by the statewide goals. If, as here, regional analysis of water quality and floods by watersheds indicates that land use regulations for Goal 6 and 7 purposes are needed in areas that include Goal 5 resource sites, “The requirements of Goal 5 do not apply to the adoption of measures required by Goals 6 and 7.” (Emphasis added.) This is the authority for adoption of regulations which implement Goals 6 and 7 without completing the Goal 5 process.

Not all Goal 5 resources, or even all aspects of riparian corridors and wetlands, are affected by regional regulation in Title 3, Sections 1-4. As indicated above, Section 5 of Title 3, identifies fish and wildlife habitat coordination work under Goal 5 to be accomplished at a later time. See Ordinance No. 98-730C, Exhibit B. Only “Title 3 Wetlands,” those wetlands of metropolitan concern that are within Metro's jurisdiction, are identified by map, and regulated by Title 3. See Ordinance No. 98-730C, Exhibit E.

Title 3 wetlands are defined in an amendment to Title 10 definitions in Ordinance No. 98-830C. The Division of State Lands' definition of “wetlands” has been retained to describe all wetlands. “Title 3 wetlands” are wetlands of metropolitan concern regulated by Title 3. The Metro Water Quality and Flood Management Areas Map identifies wetlands of metropolitan concern based on

Metro's analysis together with cities and counties. Title 3 wetlands, also, include wetlands that are added to Metro or local maps consistent with Ordinance No. 978-730C, including the regional wetlands map amendment criteria in Section 4.

Goal 5 consistency is maintained for this partial regulation of wetlands without going beyond Goal 6 water quality and Goal 7 flood control. Goal 5 consistency is based on the use of the relevant portions of the Division of State Lands' (DSL) 1997 definition of "locally significant wetlands" at OAR 141-86-350(2)(a), (b), and the 1996 Oregon Freshwater Wetland Assessment Methodology. DSL's definition was developed for use with the new Goal 5 Rule provisions on wetlands. The regional wetlands map amendment criteria do not "exceed the requirements of Goals 6 and 7" because they include only the portion of DSL's definition relating to the water quality and flood control (hydrologic) functions of a wetland.

Further, evidence that Title 3 performance standards do not exceed the requirements of Goals 6 and 7 is the Council's decision not to make substantive amendments to Section 5 of Title 3 which addresses Goal 5 - Fish and Wildlife Habitat Conservation. Although the Metro Council adopted some very minor grammatical changes to Section 5 of Title 3, the amendments are merely clarification of the fact that Metro will complete work related to Goal 5 in the future. The amendments do not substantively change Section 5. It remains a recommendation to local governments until Metro completes its Fish and Wildlife Habitat Conservation work.

D. Location of Buildings on Farmland

Title 3 performance standards will affect the location of buildings and structures on farmland. The Oregon Department of Agriculture has authority under ORS 561.191 to regulate water quality programs on farmland. As a result, the Metro Council specifically excluded "farming practices" as defined in ORS 30.930 and "farm uses" as defined in ORS 215.203 from Title 3 regulation. However, buildings associated with farm practices and farm uses can be subject to Title 3 regulations without conflicting with the Oregon Department of Agriculture's statutory authority because the Title 3 regulations will affect only the location of those uses. Title 3 regulations do not prohibit farming practices uses that are otherwise allowed on active farmland.

III. Consistency With Regional Goals and Objectives

Metro's regional goals and objectives are now stated in both acknowledged 1995 Regional Urban Growth Goals and Objectives (RUGGO) and the 1997 Regional Framework Plan that is subject to LCDC acknowledgment. The Urban Growth Management Functional Plan, including Title 3, is intended to implement the 2040 Growth Concept that is included in both plans.

Goal 11.1. of acknowledged RUGGO includes in Urban Form, the goal to "maintain and enhance environmental quality." Objective 12, "Watershed Management and Regional Water Quality," includes the objectives in 12.1.1 to "manage watershed to protect, restore and ensure to the maximum extent practicable, the integrity of streams, wetlands and floodplains . . .," and 1.2 "comply with state and federal water requirements," and 12.1.5 "Encourage the use of techniques relying on natural processes to address flood control . . ."

The 2040 Growth Concept at Goal 11.4 of RUGGO, p. 28, integrates these Objectives with the need for open spaces to balance selected areas of increased jobs and housing density:

“Designating these areas as open spaces would have several effects. First, it would remove these land (sic) from the category of urban land that is available for development. The capacity of the UGB would have to be calculated without these, and plans to accommodate housing and employment would have to be made without them. Secondly, these natural areas, along with key rural reserve areas, would receive a high priority for purchase as parks and open space, such as Metro’s Greenspaces program. Finally, regulations could be developed to protect these critical natural areas that would not conflict with housing and economic goals, thereby having the benefit of regulatory protection of critical creek areas, compatible low-density development and transfer of development rights to other lands better suited for development.”

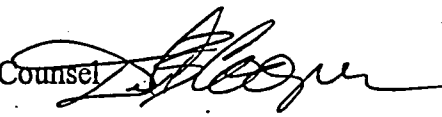
Title 3 regulation is a subset of “regulations to protect natural areas” based on Goals 6 and 7 and RUGGO Objective 12. The original estimates of “unbuildable lands” in the 1994-95 feasibility analyses of the 2040 Growth Concept included rough estimates of land ultimately to be regulated by Title 3. Adoption of the Title 3 map of regulated areas in this ordinance will enable a more precise estimate of “unbuildable lands” to be made in the analysis of “vacant lands” inside the urban growth boundary. Flood prone soils were included in the feasibility analyses estimates of Title 3 regulated lands and in the 1997 Urban Growth Report. The more accurate removal of Title 3 regulated lands from urban land will be done in the ongoing review of the urban growth boundary consistent with this RUGGO provision.

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METRO

061898c-03

DATE: June 17, 1998
TO: Metro Council
FROM: Dan Cooper - General Counsel 
SUBJECT: Ordinance 98-730C - Section 5 of Title 3

Ordinance 98-730C, Exhibit B, contains some very minor modifications to the language in Title 3, Section 5 of the Urban Growth Management Functional Plan. The amendments were presented to the Metro Council through the Growth Management Committee as a recommendation from the Water Resources Policy Advisory Committee with approval from the Metro Policy Advisory Committee.

During the development of the Title 3 Model Ordinance, maps and amendments to Title 3 itself, it has been the policy recommendation of WRPAC, the Metro Technical Advisory Committee, MPAC, and the Council Growth Management Committee to the Metro Council that no Statewide Planning Goal 5 work be done at this time. The amendments to Section 5 of Title 3 are consistent with that policy recommendation.

The minor changes shown in Exhibit B do not represent a substantive amendment to Section 5 of Title 3. The changes are purely grammatical and merely reflect a clear statement of the fact that Metro will be considering Fish and Wildlife Habitat Conservation measures in the future. Therefore, Section 5 continues to operate as a recommendation to local governments until such time as Metro establishes Fish and Wildlife Habitat Protection performance standards.

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METRO

061898c-04

DATE: June 17, 1998
TO: Dan Cooper - General Counsel
FROM: Ken Helm - Assistant Counsel *KH*
SUBJECT: Ordinance 98-730C - Errata

The final version of Ordinance 98-730C is now pending before the Metro Council and is scheduled for adoption on June 18, 1998. There are cross-references in the ordinance which should be corrected when the ordinance exhibits are incorporated into the Urban Growth Management Functional Plan and distributed to local jurisdictions and the public.

Exhibit A

Section 3.A.

- b. Adopt a city or county field verified map of Water Quality and Flood Management Areas based on the Metro Water Quality and Flood Management map, updated according to Section 7.4.E., implementing this Title which prevails over adopted code language.

Field verification is a process of identifying or delineating Protected Water Features, Water Quality Resource Areas and Flood Management Areas shown on the Metro Water Quality and Flood Management Areas map. This process includes examination of information such as site visit reports, wetlands inventory maps, aerial photographs, and public input and review. The field verification process shall result in a locally adopted Water Quality and Flood Management Areas map which:

1. Applies the Title 10 definitions of Protected Water Feature, Water Quality Resource Areas and Flood Management Areas to all those protected areas on the Metro Water Quality and Flood Management Areas map to show the specific boundaries of those protected areas on the locally adopted Water Quality and Flood Management Areas map; and
2. Is subject to amendment by applying adopted code language to add Protected Water Features, Water Quality Resource

Areas and Flood Management Areas and to correct errors in the local Water Quality and Flood Management Areas map as required by Section 7.4.E. and consistent with Section 3.D.

2. Demonstrate that existing city and county comprehensive plans and implementing ordinances substantially comply with the performance standards in Section 4 and the intent of this Title.
3. Any combination of 1. and 2. above that substantially complies with all performance standards in Section 4.

B. Cities and counties shall hold at least one public hearing prior to adopting comprehensive plan amendments, ordinances and maps implementing the performance standards in Section 4 of this Title or demonstrating that existing city or county comprehensive plans and implementing ordinances substantially comply with Section 4, to add Protected Water Features, and wetlands which meet the criteria in Section 7.C.4.E., to their Water Quality and Flood Management Area map. The proposed comprehensive plan amendments, implementing ordinances and maps shall be available for public review at least 45 days prior to the public hearing.

Exhibit C and E

Title 3 Wetlands - wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C.4.E. Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

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