

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RECOMMENDING A)	RESOLUTION NO. 80-188
CONTINUANCE OF CLACKAMAS COUNTY'S)	
REQUEST FOR ACKNOWLEDGMENT OF)	Introduced by the Regional
COMPLIANCE WITH THE LCDC GOALS)	Planning Committee

WHEREAS, Metro is the designated planning coordination body under ORS 197.765; and

WHEREAS, Under ORS 197.255 the Council is required to advise LCDC and local jurisdictions preparing comprehensive plans whether or not such plans are in conformity with the Statewide Planning Goals; and

WHEREAS, Clackamas County is now requesting that LCDC acknowledge its Comprehensive Plan as complying with the Statewide Planning Goals; and

WHEREAS, LCDC Goal #2 requires that local land use plans be consistent with regional plans; and

WHEREAS, Clackamas County's Comprehensive Plan has been evaluated for compliance with LCDC goals and regional plans adopted by CRAG or Metro prior to June, 1980, in accordance with the criteria and procedures contained in the "Metro Plan Review Manual" as summarized in the staff reports attached as Exhibit "A" and "B"; and

WHEREAS, Metro finds that Clackamas County's Comprehensive Plan does not comply with the LCDC Goals #2, #3, #10 and #14; now, therefore,

BE IT RESOLVED,

1. That the Metro Council recommends to LCDC that Clackamas County's request for compliance acknowledgment be continued to correct deficiencies under Goals #2, #3, #10 and #14, as identified in Exhibit "A."
2. That the Executive Officer forward copies of this Resolution and Staff Report attached hereto as Exhibits "A" and "B" to LCDC, Clackamas County and to the appropriate agencies.
3. That, subsequent to adoption by the Council of any goals and objectives or functional plans after June, 1980, the Council will again review Clackamas County's plan for consistency with regional plans and notify the County of any changes that may be needed at that time.

ADOPTED by the Council of the Metropolitan Service District
this 23rd day of October, 1980.



Presiding Officer

MB:ss
496B/135

A G E N D A M A N A G E M E N T S U M M A R Y

TO: Metro Council
FROM: Executive Officer
SUBJECT: In the Matter of Clackamas County's Request for an Urban Growth Boundary Change West of Marylhurst

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Adoption of Order No. 80-1, accepting the Findings and Recommendations of the Hearings Officer to deny the petition of Clackamas County for amendment of the Urban Growth Boundary (UGB) west of Marylhurst.
- B. POLICY IMPACT: Acceptance of the Hearings Officer's report means that the UGB will remain unchanged. Clackamas County will have to amend its comprehensive plan to reflect this, but the current difference relative to the location of the UGB should not affect its acknowledgment request. Since Metro will act on the County's request after the County has submitted its plan for acknowledgment, the correction is appropriately undertaken as a "re-opening" of the plan to achieve consistency with regional plans. The County's plan contains a policy to "coordinate with Metro in designating urban areas..."; should this policy not be implemented by means of a voluntary plan change, Metro has the authority to order the County to change its plan to be consistent with the regional UGB.
- C. BUDGET IMPACT: None.

II. ANALYSIS:

- A. BACKGROUND: When Clackamas County petitioned Metro for a comprehensive UGB amendment last March, their petition included the requested addition of approximately 28 acres of land in the area described as the southern subarea west of Marylhurst.

The staff recommendation to the Regional Planning Committee was that this portion of the petition be denied. The Regional Planning Committee overturned the staff recommendations and recommended to the Council that an urban designation for the southern lots in this portion of the petition be approved. The full Council split six-six in the final vote on this matter, then voted to accept the Executive Officer's recommendation that the requested amendment in this area be separated from the rest of Clackamas County's petition to be heard by a Hearings Officer as a contested case.

The Hearings Officer heard the case on August 11. His Findings and Recommendations, copies of suggested Findings and Recommendations proposed by each of the parties, written testimony received and exhibits submitted are available upon request.

Section 5.02.035(6) of the Metro Code provides that parties to a contested case proceeding be given the opportunity to file exceptions to the Hearings Officer's report and to present argument to the Council on any exceptions filed. Exceptions filed by the parties are attached. Staff recommends that oral testimony be limited to arguments on the exceptions. Metro Counsel will comment on the exceptions at that time, and the Hearings Officer will be available for questions. After considering the arguments, the Council can: 1) adopt the order as written; or 2) direct staff or the Hearings Officer to modify the order in a manner specified, and, if needed, to prepare an ordinance to amend a UGB in the manner specified.

- B. ALTERNATIVES CONSIDERED: The alternatives of granting all or part of the County's petition are discussed in the Hearings Officer's report.
- C. CONCLUSION: The Council should adopt the attached Order accepting the Hearings Officer's Findings and Recommendations.

JH:ss
530/170

*Contested
Case Order
#80-1*

HEARING BEFORE THE HEARINGS OFFICER
OF THE METROPOLITAN SERVICE DISTRICT

CLACKAMAS COUNTY - Request for)
Urban Growth Boundary Change West) FINDINGS, CONCLUSIONS AND
of Marylhurst in the Southern) RECOMMENDATIONS OF HEARINGS
Subarea.) OFFICER

INTRODUCTION

This matter involves a proposed expansion of the Urban Growth Boundary and came before the Hearings Officer on the order of the Metropolitan Service District (Metro) Council pursuant to Section 1.a.6 of Rule 79-3. Clackamas County, on March 13, 1980, petitioned Metro to make eight major amendments and ten minor adjustments to Metro's acknowledged Urban Growth Boundary. Included in this petition was a proposal to bring approximately 28 acres referred to as the "West of Marylhurst Southern Subarea" (Southern Subarea) into the Urban Growth Boundary. On April 24, 1980, Metro enacted Ordinance No. 80-89 implementing the majority of Clackamas County's request, but with respect to the subject property, after considerable debate on the matter, Metro elected to separate this portion of Clackamas County's request from the rest of the County's petition and to schedule a quasi-judicial hearing before a Hearings Officer.

The quasi-judicial hearing was held on August 11, 1980, in Metro's office. Clackamas County, by and through its planning staff and legal counsel, Scott Parker, presented written and oral argument as to why the Southern Subarea of the West of Marylhurst area should be added to Metro's Urban Growth Boundary. Mr. Dennis O'Neel, who owns property in the Southern Subarea, also appeared in

Page

5. Memorandum to Jill Hinckley from Gary Bradshaw - Metro.
6. Summary of Public Comments - Monday, April 7, 1980 - Metro.
7. Letter to Metro from Ted Achilles - Metro.
8. Letter of April 14, 1980 to Metro from Dennis O'Neel - Metro.
9. Minutes of Metro Hearing on April 10, 1980 - Metro.
10. Excerpts from report to Regional Planning Committee of April 21, 1980 - Metro.
11. Meeting Report of April 21, 1980 - Metro.
12. Excerpts from report to Council of April 24, 1980 - Metro.
13. Minutes of Metro Hearing of April 24, 1980 - Metro.
14. Ordinance No. 80-89 dated April 24, 1980 - Metro.
15. Notice of Contested Case Hearing - Metro.
16. Clackamas County Urban Growth Boundary Amendment - with attached Exhibits No. 1 - 7 - Clackamas County.
17. West of Marylhurst Area Map - Clackamas County.
18. Map of Land Inside UGB Outside Natural Drainage Basin - Clackamas County.
19. Area Map - Clackamas County.

Opponents' Exhibits

1. Memorandum in Opposition with attached Exhibits A - F.
2. Comprehensive Plan, Clackamas County, Oregon, with pocket parts.

FINDINGS OF FACT

1. The Southern Subarea, which is the subject of this

1 4. The land immediately to the west of the Southern Subarea
2 consists of two farms -- one owned by Mr. Achilles and one rented
3 by the Wynn family. Dairy cows, goats, horses and sheep are now
4 cared for and raised on these farms. Within the last few years,
5 Mr. Achilles has lost a number of sheep and goats to pet dogs
6 belonging to homeowners in the subdivision located to the east of
7 the Southern Subarea. Part of the farm area is used for growing
8 hay, and another part contains a small vineyard.

9 5. The easterly 200 feet of Tax Lot 300 (O'Neel's property)
10 could be served by gravity sewers existing in Marylhurst Drive and
11 Marylhurst Circle, except for the fact that the City of West Linn
12 has imposed a moratorium on hookups until the treatment plant of
13 the Bolton sewer system is expanded. There is no indication in the
14 records as to when, if ever, the expansion will take place.
15 Exhibit No. 17 demonstrates that a portion of the Southern Subarea
16 could be served by a new proposed trunk line if this Southern
17 Subarea is included within the Urban Growth Boundary and
18 subsequently annexed to West Linn and added to the Tri-Cities
19 Service District. As of this date, the Tri-Cities Service District
20 is formed but not yet funded. Because of a ridge which runs in a
21 north-south direction across the Southern Subarea, approximately 35
22 percent of the Southern Subarea could not be served by gravity
23 sewers and a pumping station will be necessary if this portion of
24 the Southern Subarea is to be developed.

25 6. Water is available to the site.

26 7. Public roads exist to serve the southern portion of the

1 and to the Urban Growth Boundary planning process does not
2 permit a conclusive finding of need or lack thereof for
3 additional residential land in increments of 28 acres or less.
4 Twenty-eight acres, if fully-developed with 6.32 units per acre
5 and 2.5 people per unit, would accommodate 436 people, which is
6 one-sixth of the 3,000 people that a reasonable 0.2 error
7 factor, applied to the total projected year 2000 population,
8 produces. In other words, it is impossible to document a need
9 with any statistical reliability for 28 acres of additional
10 residential land. In the instant case, this criteria cannot be
11 dispositive in and of itself, but must be considered in
12 relation to the other six criteria of Goal No. 14.

13 (2) Need for housing, employment opportunities and
14 livability.

15 Again, for the reasons stated above, there is insufficient
16 data to state conclusively that either this requirement has
17 been met or not met. However, to the extent that this
18 requirement requires a showing that the particular property is
19 needed, the Proponents have not made a showing as to why this
20 particular property is needed as compared to other property
21 within the Urban Growth Boundary or even within Clackamas
22 County.

23 (3) Orderly and economic provision for public facilities
24 and services.

25 If the property is to be developed to urban densities,
26 streets and water facilities will have to be provided by the

1 has already built a home on the western edge of Tax Lot 300.
2 Clackamas County concedes that approximately five acres should
3 not be developed because of slopes. Of the portion of the
4 Southern Subarea that remains undeveloped, only approximately
5 65 percent of that can be served by gravity sewer. In short,
6 because of the existing pattern of rural development and the
7 terrain, this property does not provide the "maximum
8 efficiency" required by this factor.

9 (5) Environmental, energy, economic and social
10 consequences.

11 Because of the relatively small parcel of land under
12 consideration, it is difficult to evaluate these consequences.
13 The elimination of forest land and destruction of the natural
14 urban buffer would have some negative environmental
15 consequences. The adverse effect which urbanization would have
16 on the adjacent farming practices could also create a negative
17 economic consequence. If a sewerage pumping station or
18 stations will be necessary to serve the western part of the
19 Subarea, then an adverse energy consequence will result.

20 (6) Retention of agricultural land as defined, with Class
21 I being the highest priority for retention and Class VI the
22 lowest priority.

23 The soil suitability for agricultural use is shown as 82
24 percent. The fact that the property is currently wooded and
25 has never been in agricultural production is not determinative.
26 As noted by Opponents, some of the agricultural land to the

1 person and through his legal counsel, Larry Derr, and argued in
2 favor of adding this area to the Boundary. Clackamas County and
3 Mr. O'Neel are referred to as "Proponents." Messrs. Ted Achilles,
4 Stephen Kearney, Erik Eselius and John Lee appeared by and through
5 their legal counsel, Joe Voboril, and presented both written and
6 oral argument as to why the Southern Subarea should not be added to
7 Metro's Urban Growth Boundary. All of these gentlemen own property
8 in the Southern Subarea. These property owners are referred to as
9 "Opponents" in the Findings of Fact and Conclusions below.

~~Proponents~~
Opponents

+ 10 On August 20, 1980, the ~~Proponents~~ presented to the Hearings
11 Officer Proposed Findings of Fact and Conclusions of Law, and
12 Order. On September 12, 1980, the Proponents submitted to the
13 Hearings Officer Proposed Findings, Conclusions and Recommendations
14 of Hearings Officer.

EXHIBITS

15
16 The following Exhibits were offered and admitted into evidence
17 without objection, except as to the ultimate conclusions contained
18 therein.

Metro and Clackamas County Exhibits

- 20 1. Letter of March 24, 1980 to Rick Gustafson from Ardis
21 Stevenson - Metro.
- 22 2. Clackamas County Goal 14 "Urbanization" Report
23 Comprehensive Plan, March 13, 1980 - Metro.
- 24 3. Additional Comments on UGB Additions - Metro.
- 25 4. Letter of April 7, 1980 to Rick Gustafson from David
26 Abraham - Metro.

1 proceeding, is comprised of three parcels approximately 2.66 acres
2 each, a parcel less than one acre, and two parcels approximately 10
3 acres each. Stephen Kearney, Erik Eselius and John Lee each own
4 2.66 acre parcels in the northern portion and each parcel supports
5 a single family residence. Ted Achilles owns a vacant strip south
6 of the three parcels of less than one acre. These owners oppose
7 the inclusion of the Southern Subarea in the UGB. Sophie Skoko and
8 Dennis O'Neel each own parcels of slightly less than ten acres in
9 the southern portion. The Skoko parcel is north of O'Neel's and is
10 undeveloped. It adjoins Marylhurst Drive on the south and has no
11 other access. The O'Neel property has one single family residence
12 and similarly adjoins Marylhurst Drive on the east without other
13 access. Mr. O'Neel testified in favor of the proposal as did the
14 owner of a large parcel to the south of the Southern Subarea.

15 2. The Southern Subarea has predominantly Class III soils.
16 The soil suitability for agricultural use is indicated as 82
17 percent Class III and 18 percent Class IV and V. The soil
18 suitability for Douglas fir forest use is 19 percent Class II and
19 81 percent Class III. The southern two-thirds of the Southern
20 Subarea consists of forested land.

21 3. The land to the north and east of the Southern Subarea
22 consists of medium to low density residential subdivisions. The
23 land to the west and south is currently devoted to agricultural
24 use, most of which is zoned EFU-20 and is in farm deferral. The
25 recently adopted Clackamas County Comprehensive Plan designates
26 the land to the west and the south for agriculture use.

1 Southern Subarea. Development of the adjoining land within the UGB
2 will bring additional roads so that the northern portion can be
3 served both by extension of Marylhurst Drive and by these new
4 roads. There are no road connections to the west.

5 CONCLUSIONS

6 1. The Opponents and Proponents agree that the substantive
7 criteria for a change in the Urban Growth Boundary are set forth as
8 seven factors in LCDC Goal No. 14 - Urbanization. They also agree
9 that the procedure for changing the Urban Growth Boundary is set
10 forth in Goal No. 2. However, they disagree as to whether a change
11 in the Urban Growth Boundary, which includes agricultural or forest
12 land, requires a Goal No. 2 exception to LCDC Goal No. 3 -
13 Agricultural Lands, or Goal No. 4 - Forest Lands. The Goals
14 themselves are unclear as to whether a Goal 2 exception to Goal No.
15 3 and 4 is required in addition to a Goal 14 analysis. It is also
16 unclear whether the "Compelling Reasons and Facts" required for a
17 Goal No. 2 exception imposes a higher burden of proof on a
18 proponent of change than the burden of proof required under Goal
19 No. 14.

20 2. The Proponents and Opponents agree that any change in the
21 Urban Growth Boundary must be based upon considerations of the
22 seven factors set forth in LCDC Goal No. 14. An analysis of these
23 factors follows:

24 (1) Demonstrated need to accommodate long-range urban
25 population growth requirements consistent with LCDC Goals.

26 The methodology and data available to the Hearings Officer

1 City of West Linn. Sewer service will become available only if
2 the treatment plant which serves the Bolton sewer system is
3 expanded or if the property is added to the Tri-Cities Service
4 District and this District is funded. At the present time,
5 however, no local jurisdiction or service district is in a
6 position to provide sewer service to the Southern Subarea.
7 Furthermore, the fact that the Southern Subarea possibly could
8 at some point in the near future be serviced does not in itself
9 prove it is "orderly and economic" to do so.

10 It is possible that an extension of sewer service to the
11 Southern Subarea will more fully utilize the new proposed trunk
12 line or the existing sewer facilities and reduce the cost per
13 dwelling to users already within the Urban Growth Boundary, and
14 perhaps reduce it to such a level that providing sewers to
15 areas already within the Urban Growth Boundary becomes
16 feasible; however, there is no evidence in the record to
17 indicate that this is the case. Furthermore, the fact that
18 services could be provided to areas outside the Urban Growth
19 Boundary by merely connecting to existing services inside the
20 Boundary does not prove that it is orderly and economical to do
21 so.

22 (4) Maximum efficiency of land uses within and on the
23 fringe of the existing urban area.

24 A good part of the Southern Subarea is already developed
25 at rural densities. Messrs. Eselius, Kearney and Lee have
26 already built homes on lots larger than 2-1/2 acres; Mr. O'Neel

1 west is still being cleared for conversion to agricultural use
2 (Opponents' Exhibit 1, p. 4, and Exhibit B, picture No. 8).

3 (7) Compatibility of the proposed urban uses with nearby
4 agricultural activities.

5 The Opponents have argued vigorously that development of
6 the Southern Subarea at urban densities will be incompatible
7 with the nearby agricultural activities. The Opponents
8 presented specific examples of prior conflict (Opponents'
9 Exhibit 1, pp. 2, 3). The Opponents also emphasized the
10 importance of the "natural buffer" which this property provides
11 between the agricultural uses to the west and south, and the
12 urban uses to the north and east.

13 The Opponents' arguments are well taken and the
14 Proponents' responses do not address the question of
15 compatibility of proposed urban uses with nearby agricultural
16 uses. The Proponents offered two responses: first, they noted
17 that there will be no access through the agricultural land;
18 second, they suggest that the land would likely be designated
19 as rural if it is not included within the Boundary.

20 It is not only access ways -- or lack thereof -- which
21 creates the incompatibility, it is also the location of people
22 at urban densities in close proximity to farming practices
23 which causes the problems. As for the second response, i.e.,
24 that the Southern Subarea may be designated rural, the County
25 may well be correct. Such a designation, however, would only
26 provide the kind of buffer Opponents seek to retain.

1 Not only have the Proponents failed to produce any
2 evidence to show the proposed urban use would be compatible
3 with the adjacent agricultural use, the facts clearly indicate
4 that urban uses would conflict with the agricultural
5 activities.


6 3. On balance, an analysis of the above Goal No. 14 factors
7 leads to the conclusion that the proposed change in the Urban
8 Growth Boundary should not be granted.

9 4. Based on the above analysis, it is not necessary to
10 consider whether a Goal 2 exception is necessary.

11 RECOMMENDATION

12 It is recommended the Urban Growth Boundary not be changed to
13 include the land designated as the Southern Subarea West of
14 Marylhurst, based upon the fact that the Petitioner has not
15 demonstrated compliance with LCDC Goal No. 14.

16 DATED: September 21, 1980.

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18 
19 DALE M. HERMANN - HEARINGS OFFICER
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CONTESTED CASE NO. 80-1

EXCEPTIONS FROM PROPONENTS

1 CLACKAMAS COUNTY EXCEPTIONS TO HEARINGS OFFICER RECOMMENDATION

2 on

3 WEST OF MARYLHURST UGB AMENDMENT REQUEST
4

5 Clackamas County takes exception to the Hearings Officer's
6 findings, conclusions and recommendations because, since the time
7 of the evidentiary hearing, important new events have made new evi-
8 dence available which invalidate his recommendation. Clackamas
9 County also excepts to the conclusion and recommendation of the
10 Hearings Officer because he misinterpreted and misemphasized the
11 evidence in reaching his conclusion.

12 A series of actions by Clackamas County, the City of West
13 Linn, the Department of Environmental Quality, and the voters alter
14 the facts on which the Hearings Officer opinion is based. This new
15 evidence, together with a more careful assessment of some of the
16 facts presented at the August hearing, dictate that the West of
17 Marylhurst area be added to the regional urban growth boundary.

18 Crucial new evidence since the August 11 hearing includes:

19 1. On August 14, the City of West Linn notified Metro of
20 the city council's formal action declaring both the need for inclusion
21 of this area within the UGB and the city's commitment to provide
22 urban services. This city action substantiates the Dual Interest
23 Area Agreement signed by both the city and the County in June which
24 identified the West of Marylhurst site as within the City of West
25 Linn urban service area. A copy of this letter is attached.

26 / / / / /

1 County's exceptions

2 The following facts show these conclusions to be wrong:

3 1. Clackamas County testimony and map exhibit 17 show
4 this area to be included in the Metro 208 planning area and also
5 show the location of the proposed sewer trunk designed to serve this
6 area;

7 2. Orderly and economic provision of public facilities
8 does not mean providing services "at the present time." The UGB
9 is a "20-year need" boundary. Literally thousands of acres of
10 land are included inside Metro's UGB that do not meet the criteria
11 of "services at the present time."

12 3. The West Linn City Council letter, the voter approval
13 of Tri-City Sewer District funding, the DEQ commitment of state funds
14 to purchase bonds, and the County Order declaring bond issue approval
15 demonstrate not only jurisdictional responsibility and commitment to
16 provide urban services to the subject area, but also that implementa-
17 tion of that commitment can occur quickly!

18 II. Demonstration of need

19 Hearings Officer's conclusions

20 The Hearings Officer's report states on pages 6 and 7,
21 conclusion 1, that it is impossible, given the magnitude of the UGB,
22 to determine whether or not this 28 acres is needed to meet long-
23 range growth needs. On page 7, conclusion 2, the Hearings Officer's
24 report states "the proponents have not made a showing as to why this
25 particular property is needed as compared to other property within
26 the UGB or even within Clackamas County."

1 full 25% of the developable area which can be served by the proposed
2 sewer trunks inside the UGB to the east.

3 2. The property line specific UGB for the region of
4 necessity includes within it some small amount of undevelopable land.
5 To insure that 100% of the proposed site could be served by gravity
6 sewers would require deviation from present Metro and LCDC policies
7 for property line specific boundaries.

8 IV. Environmental and Energy Consequences

9 Hearings Officer's conclusion

10 In conclusion 5 on page 9, the report states "if a sewerage
11 pumping station will be necessary: . . ., then an adverse energy
12 consequence will result."

13 County's exception

14 This is clearly irrelevant. Evidence in the record shows
15 that the steep sloped area facing west that cannot be served by
16 gravity sewers would not be developed but would serve as part of the
17 open space requirements under a Planned Unit Development approval
18 by the County.

19 V. Compatibility with nearby agricultural activities

20 Hearings Officer's conclusions

21 The Hearings Officer conclusion 7 on page 10 discusses two
22 issues -- compatibility of urban densities near agricultural
23 activities and opponents' argument for a "natural buffer."

24 The Hearings Officer's report makes several references to
25 compatibility with nearby agriculture and the need for a buffer
26 between urban and agricultural uses:

1 2. The Department of Environmental Quality Director,
2 William H. Young, notified elected officials of Clackamas County and
3 West Linn on August 29 of his department's commitment to use state
4 pollution control bond funds to purchase approximately \$10 million
5 in bonds for the Tri-City Sewer District. This commitment insured
6 that funds would be available for implementing public service pro-
7 vision to the tri-city area in accord with engineering studies which
8 include the West of Marylhurst area. A copy of this letter is
9 attached.

10 3. Voters on September 16 approved the sale of \$25 million
11 in bonds for sewers in the Tri-City Sewer District.

12 4. The Board of County Commissioners on October 2 adopted
13 Order No. 80-2050 declaring bond issue approval, copy attached.

14 These new actions, together with a review of the record,
15 negate basic Hearings Officer's findings and conclusions.

16 I. Provision of urban services

17 Hearings Officer's conclusions

18 On page 5, finding 5, he states "there is no indication in
19 the records as to when, if ever, the expansion (of the sewer system)
20 will take place.", and "the Tri-City's Sewer District is formed but
21 not yet funded."

22 On page 8, conclusion 3, the opinion states "at the present
23 time, however, no local jurisdiction or service district is in a
24 position to provide sewer service to the southern subarea."

25 / / / / /

26 / / / / /

1 County's exceptions

2 1. These two statements are contradictory. The first
3 states that need at this scale is impossible to demonstrate; the
4 second states that we must demonstrate why this particular piece of
5 property is needed. The record shows that Metro's process for the
6 Clackamas County petition for UGB amendment was legislative. This
7 28 acres was considered in a large, statistically-justifiable
8 amendment request.

9 2. To justify that this 28 acres "is needed as compared to
10 other property within the UGB is an impossible burden for Clackamas
11 County or Metro. Clackamas County and Metro should not be placed in
12 a position of having to justify that this 28 acres is more acceptable
13 than all other land on the fringe of the UGB. If this test were to
14 be applied by Metro, then Clackamas County would be compelled to
15 request that Metro demonstrate why this 28 acres is less suitable for
16 inclusion inside the UGB than all of the "agricultural soft areas"
17 included inside the UGB in Washington County.

18 III. Maximum efficiency

19 Hearings Officer's conclusions

20 The Hearings Officer concludes on pages 8 and 9 that "this
21 property does not provide the maximum efficiency required" because
22 four homes exist within the area, and "only approximately 65% of
23 (the undeveloped land) can be served by gravity sewer."

24 County's exceptions

25 This conclusion ignores significant facts. Clackamas County
26 Exhibit 17 and oral testimony show that the subarea represents a

1 "The elimination of forest land and destruction of
2 the natural urban buffer would have some negative environ-
3 mental consequences." Page 9, conclusion 5.

4 "The fact that the property is currently wooded and
5 has never been in agricultural production is not deter-
6 minative. As noted by opponents, some agricultural land
7 to the west is still being cleared for conversion to
8 agricultural use." Page 9, conclusion 6.

9 "The opponents presented specific examples of prior
10 conflict (between urban and agricultural uses). . . the
11 opponents' arguments are well taken and the proponents'
12 responses do not address the question of compatibility. . .".
13 Page 10, conclusion 7.

14 ". . .it is also the location of people at urban
15 densities in close proximity to farming practices which
16 causes problems." Page 10, conclusion 7.

17 "such a designation (rural), however, would only
18 provide the kinds of buffer opponents seek to retain."
19 Page 10, conclusion 7.

20 "The facts clearly indicate that urban uses would
21 conflict with the agricultural activities." Page 11,
22 conclusion 7.

23 County's exceptions

- 24 1. Examination of the record provides no proof that the
25 incompatibility problems experienced by the opponents were a result
26 of urban uses. No connection between dogs killing sheep and the

1 residences of the dogs being urban was established. Casual observa-
2 tion of sheep killings would associate the problem with "rural" or
3 "agricultural" dogs as well as "urban" dogs.

4 2. The fact that clearing is taking place on adjacent
5 land is irrelevant. The fact remains that the subarea has not been
6 used for agriculture for years.

7 3. The record makes clear, that if a buffer is desirable,
8 the steep sloped forested area on the west half of the property would
9 provide it.

10 Conclusion

11 The Hearings Officer did not have the advantage of knowing
12 of voter approval of the Tri-City Sewer District funding proposal
13 and the other recent events discussed above. These new facts are
14 absolutely crucial to this case, and to disregard such important new
15 evidence would thwart justice and good planning. The requested
16 boundary for the West of Marylhurst subarea should no longer be
17 singled out but rather should be approved as was the rest of the
18 Urban Growth Boundary in Clackamas County, a boundary on which the
19 County labored hard and long. We respectfully request that the
20 application be approved.

21 Respectfully submitted,

22
23 
24 Scott H. Parker
 County Counsel

25 OF ATTORNEYS FOR CLACKAMAS COUNTY
26

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR CLACKAMAS COUNTY, OREGON

In the Matter of an Election Held)
in Tri-City Service District,)
Clackamas County, Oregon, on the)
Subject of the Issuance of General)
Obligation Bonds.)

No. 80-2055
ORDER DECLARING BOND
ISSUE APPROVED

It appearing to the Board of County Commissioners as the governing body for Tri-City Service District, Clackamas County, Oregon, that on July 31, 1980, pursuant to its order number 80-1609 and an amending order of August 7, 1980, number 80-1667 the Board of County Commissioners called a special election to be held September 16, 1980, for the purpose of submitting to the qualified voters of the Tri-City Service District the question of whether or not there would be contracted an indebtedness of not to exceed \$25,000,000 in general obligation bonds as in said order specified and that on said September 16, 1980, the election was held at which the qualified legal voters of said service district cast 1,667 votes in favor of the issuance of said bonds and 1,206 votes against the issuance of said bonds and it appearing therefore that the voters have, at said election, affirmatively approved the issuance of said bonds and being fully advised, it is

ORDERED AND HEREBY DECLARED that at the special election of September 16, 1980, called for the foregoing purpose the qualified voters within Tri-City Service District have

affirmatively approved the issuance of \$25,000,000 general obligation bonds to mature in not to exceed 30 years with a maximum net effective interest rate of ten percent (10%) per annum payable semi-annually to be sold at not less than 98% of par value for the purpose of providing sewage works for collecting, pumping, treating and disposing of sanitary and/or storm sewage and installing drainage works for disposing of storm and surface water within Tri-City Service District, Clackamas County, Oregon, and it is so declared.

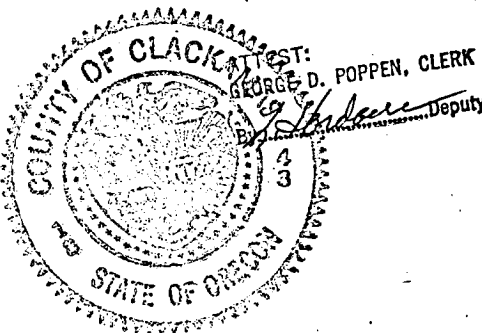
DATED this 2nd day of October, 1980.

BOARD OF COUNTY COMMISSIONERS

by

by

by





Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5300

May 21, 1980

RECEIVED
OCT 13 1980
COUNTY COUNSEL

TO: Elected Officials of Gladstone, Oregon City,
West Linn and Clackamas County

Dear Friends:

Your constituencies will soon be voting on the formation of the Tri-City Service District, a district that could eventually result in improved sewerage service for the three communities. I'd like to express my support for the project.

The cities of Gladstone, Oregon City and West Linn were early leaders in providing needed treatment of domestic sewage. Now these treatment plants are antiquated, nearing or at capacity and unable to provide the degree of treatment needed to preserve and improve water quality of the Willamette River. In addition, the problem of raw sewage entering the Clackamas and Willamette Rivers from the 27 outfalls in the Tri-City area, during periods of rainfall, is still of serious concern. The seriousness of these problems has required that the Department establish a moratorium on sewer connections in Oregon City and Gladstone. These problems will have to be solved as soon as possible in one manner or the other.

The regional plan you are proposing is the least expensive, the most cost effective and beneficial approach for collection, treatment and disposal of sanitary wastes in your area. Because of this, such a district, if formed, could receive 75% of the eligible costs as a grant from the Environmental Protection Agency. It appears that no other alternative would qualify for federal funding.

The citizens and industries of the Willamette Valley have expended a vast amount of effort and resources returning the Willamette River to one of quality in which we can again swim and fish. The maintenance of the present quality, however, is dependent upon the upgrading of the treatment systems and the Tri-City service district approach here seems best.

It is my hope that the people of your area will support the formation of this much needed district.

Sincerely,

Bill
WILLIAM H. YOUNG
Director

WHY/mb



Contains
Recycled
Materials



City of West Linn

DOMINIC

CITY HALL
WEST LINN OREGON
97068

August 14, 1980

Metro Council
527 S.W. Hall Street
Portland, Oregon 97201

Ladies and Gentlemen,

On August 13, 1980, the West Linn City Council considered the issue of the amount of land contained within the West Linn Urban Growth Boundary in the vicinity of Marylhurst Heights. The Council recognized the need for cities to accommodate urban residential growth and passed a formal motion made by Councilman Koellermeier and seconded by Councilman Druback stating that they supported the Urban Growth Boundary proposal containing the larger land area.

We hope that this action will assist you in resolving the issue of the U.G.B. location.

Sincerely,
City of West Linn

DAVID M. RICHEY
City Planner

/kj

cc. ✓ Clackamas County Planning Division

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P:

1 reliability a need for 28 acres of additional residential
2 land in the Metropolitan Urban Growth Boundary. He fails to
3 express the fact, however, that the MSD Council, in reviewing
4 the total Clackamas County Urban Growth Boundary submission,
5 found a need for additional property and separated this portion
6 of the application for a closer review of the locational
7 criteria. The record supports an affirmative finding that a
8 demonstrated need exists for at least an additional 28 acres
9 of land to be included within the Urban Growth Boundary. The
10 Hearings Officer incorrectly concludes that it is necessary
11 to compare the proposed property to property already within
12 the Urban Growth Boundary to demonstrate a need for the par-
13 ticular proposed additional property. Once a need is established
14 for additional property, it becomes irrelevant to compare the
15 proposed additional property with property already within the
16 Urban Growth Boundary. The proper comparison is with other
17 property outside of the Urban Growth Boundary that might be
18 a candidate for inclusion. The evidence shows that there is
19 no other property in the area between West Linn and Lake Oswego
20 on the fringe of the existing Urban Growth Boundary that is
21 better suited for inclusion than the subject property. This
22 is so because of its contiguity to the City of West Linn, the
23 availability of all necessary public services, the partially
24 developed nature of the property and those other matters set
25 forth in Mr. O'Neel's and the County's submissions to the
26 Hearings Officer and the Council.

1 only that portion of the Southern Subarea which is developable
2 and readily serviceable.

3 5. CONCLUSIONS 2.(5). Development of the Southern
4 Subarea can and will be done in a manner to preserve the exist-
5 ing forest uses. Thus, the buffer to agricultural uses provided
6 by the forest would remain. However, the Hearings Officer's
7 conclusions imply that large-lot rural development should exist
8 on the fringe of the Urban Growth area as a buffer to agri-
9 cultural uses. For rational reasons, MSD has taken a contrary
10 position in the petition involving Carmel Estates, Inc. noted
11 above. The Urban Growth Boundary is only intended to provide
12 an adequate supply of urban land for 20 years. The structures
13 and land uses associated with large-lot rural development on
14 the fringe of the Urban Growth Boundary will have a useful life
15 much longer than that and would preclude the expansion of the
16 Urban Growth Boundary in the future. Such expansion may become
17 necessary in less than 20 years, but by definition will be
18 necessary at the end of the 20 years unless the region exper-
19 iences a zero growth rate.

20 6. CONCLUSIONS 2.(6). The Hearings Officer fails to
21 note that Criterion 6 under Goal 14 does not prohibit the
22 conversion of agricultural land, but establishes a prioritization
23 based upon soil class. The subject property contains Class 3,
24 4 and 5 soils, which are at the least productive end of the
25 Class 1-4 range identified as agricultural land in western
26 Oregon.

1 bonds of the Tri-City Service District.

2 3. On September 16, 1980, voters approved funding for
3 the Tri-City Service District in the form of a \$25,000,000 bond
4 authorization. Construction pursuant to the bond sale will
5 provide sewerage for the Southern Subarea through the adjoining
6 unsewered portion of the present Urban Growth Boundary.

7 4. On October 2, 1980, the Clackamas County Board of
8 Commissioners issued an order declaring approval of the bond
9 sale.

10 5. MSD has filed a petition for review to LUBA which
11 expressed an MSD policy against small acreage, rural develop-
12 ment on the fringe of the Urban Growth Boundary.

13 EXCEPTIONS

14 1. FINDINGS OF FACT 5. The Hearings Officer found that
15 if the property is annexed to the City of West Linn and if
16 the Tri-City Service District is funded, that sewer service
17 could be provided by a new trunkline which will be necessary
18 to serve property already within the Urban Growth Boundary.
19 At the time of the evidentiary hearing before the Hearings
20 Officer, the Service District was not yet funded. It has now
21 received voter approval for funding, and an initial \$10,000,000
22 bond purchase commitment from DEQ. The City of West Linn has
23 formally agreed to annex the property.

24 2. CONCLUSIONS 2.(1), (2). The Hearings Officer
25 correctly concludes that the statistical data and methodology
26 available is not adequate to establish with any statistical

1 3. CONCLUSIONS 2.(3). The new evidence noted above
2 requires a conclusion that the Southern Subarea has sewer service
3 available to it. It would be unreasonable not to conclude that
4 servicing all of an available drainage basin is more economical
5 than providing a trunkline for only a portion of it. Now that
6 the Service District is funded, Clackamas County can provide
7 specific financial information to show that this conclusion
8 is accurate. It is clearly economical to utilize the other
9 necessary public services because those are in existence to the
10 subject property and would require no further public expenditures.

11 4. CONCLUSIONS 2.(4). The Hearings Officer concludes
12 that the Southern Subarea does not provide an opportunity for
13 maximum efficiency of development because 35% of the property
14 would not be serviced by gravity sewer and would remain un-
15 developed. There are several errors in this conclusion. The
16 the assumption
17 first is/that maximum efficiency requires that all of the
18 ground surface be covered by houses, streets and driveways.
19 If such a conclusion were justified, there would be no open
20 space within the Urban Areas. Second, the conclusion overlooks
21 the testimony of the County that a planned development would
22 be permitted and encouraged on the property that would cluster
23 urban-level density on the developable portion, leaving the
24 35% in its present forested state, and produce the same net
25 density as if the entire property were developed in a grid
26 pattern subdivision. Finally, the conclusion ignores the option
27 proposed by Mr. O'Neel to include within the Urban Growth Boundary

1 7. CONCLUSIONS 2.(7). The Hearings Officer is incorrect
2 in concluding both that the conversion of the Southern Subarea
3 to urban use would have a negative effect upon the adjacent
4 agricultural uses, and that a buffer of large-lot residential
5 development is appropriate to prevent imagined negative impacts.
6 The northern portion of the Southern Subarea is already developed
7 with three residences so that a change in use, if any, would
8 be minor. The southern portion of the Southern Subarea is
9 uniquely suited to providing separation from the agricultural
10 uses while maintaining the requisite urban densities because
11 of the forested area which is also within an area not readily
12 serviceable by gravity sewer. The only negative impact of
13 nearby urban use cited by the Hearings Officer upon the agri-
14 cultural uses is the problem of dogs killing farm animals.
15 The existing Urban Growth Boundary, and at one point the
16 boundary of the City of West Linn, is 700 feet or less from
17 the property alleged to be in agricultural use. If the presence
18 of dogs within an urban developed area is indeed a problem, it
19 is inconceivable that moving the Boundary 700 feet would have
20 any substantial effect upon the scope of the problem.

21 Urban development in the Southern Subarea would have either
22 no negative impacts or negligible negative impact upon agri-
23 cultural use of the surrounding property. The Hearings Officer
24 failed to take into account the MSD policy, which is, in effect,
25 a balancing of those negligible negative impacts, if any,
26 against the need to facilitate future orderly expansion of the

1 Urban Growth Boundary. That is, the Hearings Officer improperly
2 based his decision upon a desire to provide a rural buffer
3 area of acreage residential lots on the fringe of the Urban
4 Growth Boundary.

5 8. CONCLUSIONS 4. Based upon the evidence in the record
6 and the additional evidence occurring subsequent to the
7 evidentiary hearing, the MSD Council should conclude that the
8 seven factors of Goal 14 for change in an Urban Growth Boundary
9 are satisfied. Having fully reviewed the seven factors in a
10 public hearing for which adequate notice was given, a Goal 2
11 exception is neither necessary nor required by the LCDC Goals.

12 CONCLUSION

13 The applicant has more than adequately demonstrated
14 through a review of the locational criteria of Goal 14 and the
15 previously established need for additional land in the Urban
16 Growth Boundary that the Southern Subarea should be included
17 within the Regional Urban Growth Boundary. If the Council
18 believes that only a portion of the Southern Subarea is appro-
19 priate for inclusion, it should adopt one of the three alterna-
20 tives expressed in Mr. O'Neel's letter to the Hearings Officer
21 dated September 12, 1980, each of which has a rational basis
22 in fact and policy.

23
24 
25 Lawrence R. Derr, of Attorneys
26 for Dennis O'Neel

CONTESTED CASE NO. 80-1

EXCEPTIONS FROM OPPONENTS

1 BEFORE THE COUNCIL OF THE
2 METROPOLITAN SERVICE DISTRICT

3 IN THE MATTER OF) Contested Case No. 80-1
4)
5 CLACKAMAS COUNTY'S REQUEST) EXCEPTIONS FILED ON BEHALF OF
6 FOR AN URBAN GROWTH BOUNDARY) TED C. ACHILLES, JR., DR. ERIK
7 CHANGE WEST OF MARYLHURST) ESELIOUS, STEPHEN E. KEARNEY AND
8) JOHN A. LEE

9 Messrs. Achilles, Kearney, Eselius and Lee ("The
10 Opponents") agree with the Recommendation of the Hearings
11 Officer as stated in the Findings, Conclusions and Recommendations
12 of the Hearings Officer dated September 21, 1980 ("the H.O.
13 Report"). The Opponents are also in agreement with the
14 Hearings Officer's Findings of Fact found on pages 3 through 6
15 of the H.O. Report. The Opponents agree with the Conclusions
16 found on pages 6 through 11 of the H.O. Report except for
17 the following:

18 Exception No. 1. In analyzing Factor (1) of LCDC Goal
19 No. 14, the Hearings Officer concludes (at the bottom of
20 page 6, top of page 7, H.O. Report) that the methodology and
21 data available do not permit a conclusive finding of need or
22 lack thereof. The Opponents disagree. As explained in
23 Opponents' Exhibit 1, pp. 9-11, Metro has already granted
24 amendments to the Urban Growth Boundary which will accommodate
25 more than the demonstrated need as established by Clackamas
26 County's Urbanization Report.

1 In any event, the burden is not on the Opponents
2 to demonstrate a lack of need. Factor (1) of LCDC Goal
3 No. 14 places the burden on the Proponents of the change to
4 show a "demonstrated need." Also, Metro Rule No. 79-3
5 places this burden squarely on the Proponents. See §5.02.030(e),
6 Procedure For Contested Cases. In recognizing, as he does,
7 that the methodology and data do not permit a finding of
8 need, we submit that the Hearings Officer should have
9 concluded that the Proponents have not met the burden of
10 Factor (1).

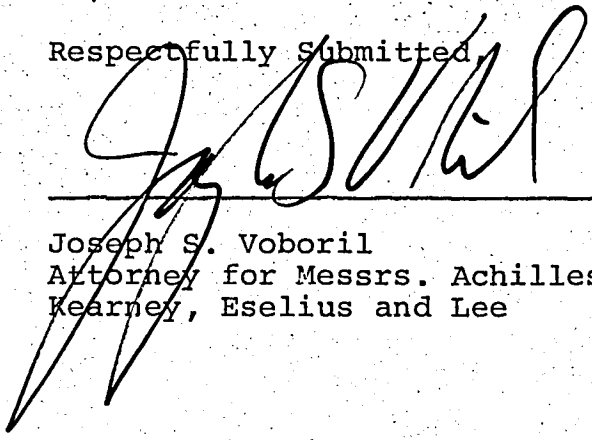
11 Exception No. 2. The Hearings Officer concludes (on
12 lines 9 and 10, page 11, H.O. Report), that it is not necessary
13 to consider whether a Goal 2 exception is necessary. He
14 reaches this conclusion by concluding that an analysis of
15 the seven factors of Goal No. 14 indicates that the proposed
16 change should not be granted. While we agree with the
17 Hearings Officer that it was not necessary for him to make a
18 conclusion of law on this point, the Opponents wish to
19 continue their contention that this change can be granted
20 only if exceptions to LCDC Goals 3 and 4 are taken and the
21 "compelling reasons and facts" as required by LCDC Goal 2
22 are set forth. Accordingly, even if the Council disagrees
23 with the Hearings Officer's analysis of the seven factors
24 of Goal 14, the change can not be granted because the exceptions
25 to LCDC Goals 3 and 4 have not been properly taken; nor have
26 any "compelling reasons and facts" been set forth.

1 CONCLUSION

2 The Hearings Officer has presented the Council
3 with a straightforward analysis of LCDC Goal 14 and recommends
4 that the request should be denied. We encourage the Council
5 to accept and adopt the Recommendation of the Hearings
6 Officer.

7 Dated , October 6, 1980.

8 Respectfully Submitted

9 
10 _____
11 Joseph S. Voboril
12 Attorney for Messrs. Achilles,
13 Kearney, Eselius and Lee
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A G E N D A M A N A G E M E N T S U M M A R Y

TO: Metro Council
 FROM: Executive Officer
 SUBJECT: Recommending a Continuance of Clackamas County's Request for Acknowledgment of Compliance with LCDC Goals

I. RECOMMENDATIONS:

- A. **ACTION REQUESTED:** Amendment and adoption of the attached Resolution No. 80-188 recommending that LCDC grant a continuance of Clackamas County's request for compliance. The Council should act on this item at its October 23 meeting in order to ensure that its recommendation is considered by LCDC (see background).
- B. **POLICY IMPACT:** This acknowledgment recommendation was developed under the "Metro Plan Acknowledgment Review Schedule," June 20, 1980. This process provides jurisdictions an opportunity to work with Metro staff and interested parties to discuss and clarify acknowledgment issues prior to Regional Planning Committee action.
- C. **BUDGET IMPACT:** None

II. ANALYSIS:

- A. **BACKGROUND:** Clackamas County submitted its plan to LCDC for acknowledgment in June, 1980. LCDC's hearing on the County's request for acknowledgment is scheduled for December 4-5, 1980, with a comment deadline set for October 24, 1980.

Metro conducted a draft review of the County's plan in October, 1980, and a review of their implementing ordinances in June, 1980. Most of the deficiencies identified in these reviews have been corrected through subsequent amendments.

Clackamas County's present population is 220,000. The northwest unincorporated urban area, which is of primary concern to Metro, has a population of 67,000 with an expected population of 142,000 by the year 2000.

Overall, the County's plan is one of the best in the region. The deficiencies which remain center on rural area policies and implementing measures (Goals #2, #3, #10, #14 and, depending on Council action, on the staff recommended Amendment, #11).

On October 6, the Regional Planning Committee reviewed the "Acknowledgment Issues Summary" prepared by staff in

accordance with current plan review procedures. Based on discussion with County and Metro staff, the Committee recommended the following changes to the issues list:

1. An issue relative to the County's Urban Planning Area Agreement (UPAA) with Lake Oswego was eliminated upon evidence that the UPAA had in fact been signed.
2. An issue relating to the use of urban commercial and industrial zones in rural areas was determined to be adequately addressed through amendments of plan policy alone, rather than through requiring the actual adoption and application of rural commercial and industrial zones prior to acknowledgment, as originally recommended by staff.
3. An issue relating to the use of PUDs in rural areas was determined not to entail any goal violations. Development of special provisions for rural PUDs is, however, encouraged as part of the County's plan update process.
4. An issue relating to sewers in rural areas was eliminated based on an understanding that the County had statutory authority to require sewers to alleviate a health hazard.

The Resolution and Exhibit "A" incorporate each of these recommendations. However, further investigation leads staff to recommend that these materials be amended to include the fourth issue as a goal violation, since the County does not in fact have the authority the Committee believed it had at the time it made its recommendation. An explanation of this issue and the staff recommended amendments are included as Attachment 2.

- B. ALTERNATIVES CONSIDERED: Metro staff did not find any issues which warranted serious consideration of an alternative recommendation (i.e., for denial).
- C. CONCLUSION: Metro's recommendation for a continuance will support local planning efforts while protecting regional interests. The items to be addressed in the continuance should include the amendment of plan policy on sewers in rural areas, as recommended by staff in Attachment 2.

Attachment 2: Staff recommended amendments to Resolution NO.80-188 and Exhibit "A."

The issues presented to the Regional Planning Committee included concern about County plan policies on sewers in rural areas which allow sewers where needed to alleviate a health hazard identified by the State or Clackamas County. Staff recommended that in order to be consistent with the Land Use Framework Element and with LCDC Goals #11 and #14, this policy should be amended prior to acknowledgment to read "the State and Clackamas County."

County Counsel commented at the meeting that the change recommended by staff was inappropriate, since ORS 431.530 assigns the County authority to declare a health hazard. Metro staff concurred that if the County had such authority, the recommended change was unnecessary and inappropriate, and the Committee voted to remove this issue from the list of goal violations. Exhibit "A," the acknowledgment review, accordingly deleted mention of this matter, and the violation of Goal #11, of which this was the only alleged instance, was deleted from the resolution.

Subsequently, however, staff reviewed the statute cited and discovered that it did not properly give the County authority to declare a health hazard for the purpose of requiring sewers in an area of failing septic tanks.

The statutes do not assign the County a general grant of authority related to health hazards. The section cited provides only an extraordinary grant of authority to the County Health Officer to act for the State in an emergency when the State itself cannot act in the time required.

A health hazard resulting from failing septic tanks, to be remedied over the course of months or years through the provision of sewers, is not an emergency of this type and the County does not, therefore, have the authority to declare a health hazard for the purpose of requiring sewers. Other sections of the statutes (ORS 431.705 - 431.760) make it expressly clear that the County has only the authority to recommend, and the State the only authority to require, that sewers be provided to alleviate a health hazard.

Staff believes that the Committee acted on the understanding that the County properly did have this authority, and recommends, therefore, that the Resolution and Exhibit "A" be amended to be consistent with both the intent of the Committee and with State and regional requirements.

Although the wording change in the policy in question is minor in nature, the consequences of a failure to amend could be major. Since the County must undergo a plan amendment process to remedy other identified deficiencies, this correction can be easily made.

Staff recommends that the Council vote to approve the following amendments to Attachment 1: