



**METRO**

**Agenda**

MEETING: METRO COUNCIL  
DATE: March 13, 2008  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. CONSENT AGENDA**

3.1 Consideration of Minutes for the February 28, 2008 Metro Council Regular Meeting.

3.2 **Resolution No. 08-3925**, For the Purpose of Confirming the Appointment of The Vice Chair of the Joint Policy Advisory Committee on Transportation.

**4. ORDINANCES – FIRST READING**

4.1 **Ordinance No. 08-1169**, For the Purpose of Amending the Urban Growth Boundary in the Vicinity of the City of Cornelius Upon Application by the City of Cornelius.

4.2 **Ordinance No. 08-1180**, For the Purpose of Amending Metro Code Chapter 2.18 (Campaign Finance Regulation) and Declaring an Emergency.

**5. RESOLUTIONS**

5.1 **Resolution No. 08-3921**, For the Purpose of Endorsing Regional Priorities For State Transportation Funding Legislation. Burkholder

5.2 **Resolution No. 08-3922**, For the Purpose of Approving a Settlement Agreement With Pacific Powervac LLC Regarding Metro Notice of Violation No. NOV-186-07. Collette

**6. CHIEF OPERATING OFFICER COMMUNICATION**

**7. COUNCILOR COMMUNICATION**

**ADJOURN**

**Television schedule for March 13, 2008 Metro Council meeting**

<p><b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b>          Channel 11 -- Community Access Network  <a href="http://www.tvctv.org">www.tvctv.org</a> -- (503) 629-8534          2 p.m. Thursday, Mar. 13 (Live)</p>	<p><b>Portland</b>          Channel 30 (CityNet 30) -- Portland Community Media  <a href="http://www.pcmv.org">www.pcmv.org</a> -- (503) 288-1515          8:30 p.m. Sunday, Mar. 16          2 p.m. Monday, Mar. 17</p>
<p><b>Gresham</b>          Channel 30 -- MCTV  <a href="http://www.mctv.org">www.mctv.org</a> -- (503) 491-7636          2 p.m. Monday, Mar. 17</p>	<p><b>Washington County</b>          Channel 30 -- TVC-TV  <a href="http://www.tvctv.org">www.tvctv.org</a> -- (503) 629-8534          11 p.m. Saturday, Mar. 15          11 p.m. Sunday, Mar. 16          6 a.m. Tuesday, Mar. 18          4 p.m. Wednesday, Mar. 19</p>
<p><b>Oregon City, Gladstone</b>          Channel 28 -- Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275          Call or visit website for program times.</p>	<p><b>West Linn</b>          Channel 30 -- Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275          Call or visit website for program times.</p>

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

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

Agenda Item Number 3.1

Consideration of Minutes of February 28, 2008 Metro Council  
Regular Meeting

***Consent Agenda***

Metro Council Meeting  
Thursday, March 13, 2008  
Metro Council Chamber

## MINUTES OF THE METRO COUNCIL

Thursday, February 28, 2008  
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Robert Liberty, Carl Hosticka, Carlotta Collette

Councilors Absent: Rod Park (excused), Rex Burkholder (excused), Kathryn Harrington (excused)

Council President Bragdon convened the Regular Council Meeting at 2:02 p.m.

### 1. INTRODUCTIONS

There were none.

### 2. CITIZEN COMMUNICATIONS

There were none.

### 3. TRAVEL PORTLAND UPDATE: PRESENTATION ON OREGON CONVENTION CENTER SALES EFFORTS AND OTHER INITIATIVES

Jeff Miller, Travel Portland Director, provided an update on the Oregon Convention Center Sales Efforts and other initiatives. A power point of his presentation was included in the record. He said they were undertaking branding efforts looking at both their primary and secondary audiences. He noted brand values, tone/personality, and key messages. He shared images they had chosen to capture the region. He then spoke about the convention market. The market was about economic development and how you connect with business development in Portland. He noted return on investment, including economic impacts. He provided an overview of conventions and hotel rooms that had been booked. Lost business was carefully tracked. Mr. Miller provided a historical picture of booked business. They were working closely with Oregon Convention Center (OCC) and Metropolitan Exposition Recreation Commission (MERC) to focus on the right kind of conventions. He summarized next steps. They had created a three-city alliance, which had been very successful.

Mr. Miller provided information on the local economic impacts of travel including travel spending, Portland hotel market and room revenue. He provided information on their green/sustainable initiative including how to green your meetings. He summarized other indicators and initiatives including Shop Portland, Attractions Pass, and GoSeePortland. He noted cooperative marketing strategies.

Councilor Collette asked about getting Travel Portland's branding campaign information. She also asked about market changes for conferences. Mr. Miller responded to her request. Councilor Liberty talked about facilitating sustainability conferences at the Oregon Convention Center. Mr. Miller said they were working with their partners to encourage these types of conferences. Councilor Liberty also suggested increasing education conferences. Council President Bragdon asked about long-term and short-term trends in the market place, particularly with ever increasing energy costs and economic downturns. Mr. Miller said in the short-term they were not seeing any

negative trends. In the long-term, it was yet to be seen what the effects would be on business. As a city, Portland had tended to slow down a bit but there was no wholesale change in the market yet.

**4. CONSENT AGENDA**

- 4.1 Consideration of minutes of the February 14, 2008 Regular Council Meeting.
- 4.2 **Resolution No. 08-3918**, For the Purpose of Confirming the Reappointment of Eric Johansen to the Investment Advisory Board for 2008 to 2010 term.
- 4.3 **Resolution No. 08-3911**, For the Purpose of Approving the Air Quality Conformity Determination for the Federal Component of the 2035 Regional Transportation Plan and Reconfirming the 2008-2011 Metropolitan Transportation Improvement Program.

Motion:	Councilor Collette moved to adopt the meeting minutes of the February 14, 2008 Regular Metro Council, Resolution No. 08-3918 and Resolution No. 08-3911.
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Vote:	Councilors Liberty, Collette, Hosticka and Council President Bragdon voted in support of the motion. The vote was 4 aye, the motion passed.
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**5. RESOLUTIONS**

- 5.1 **Resolution No. 08-3901**, For the Purpose of Amending the Joint Policy Advisory Committee on Transportation (JPACT) Bylaws.

Motion:	Councilor Liberty moved to adopt Resolution No. 08-3901.
Seconded:	Councilor Collette seconded the motion

Councilor Liberty provided an overview of the resolution by summarizing the staff report (a copy of which is included in the meeting packet). Councilor Hosticka asked about the changes in the bylaws. Andy Cotugno, Planning Director, responded to his question. He said it did not change membership on the Committee but some of the character of the representation. Council President Bragdon said he felt that this was an attempt to make JPACT more representative of the region. He had been encouraged that various jurisdictions were coming to the table with the region in mind.

Vote:	Councilors Collette, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 4 aye, the motion passed.
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- 5.2 **Resolution No. 08-3909**, For the Purpose of Endorsing Formation of a Reserves Steering Committee and a Schedule With Key Milestones to Guide Metro's Participation in the Designation of Urban and Rural Reserves.

Motion:	Councilor Hosticka moved to adopt Resolution No. 08-3909.
Seconded:	Councilor Collette seconded the motion

Councilor Hosticka said this resolution provided official endorsement of the Council process for designation of urban and rural reserves. He said Metro and regional leaders successfully collaborated on a 2007 legislative agenda for the region that authorized the use of a new and innovative process for managing long-term growth in the region, while providing long-term certainty for the agricultural and forest industries and the protection of natural landscape features.

The new process authorized Metro and Multnomah, Washington and Clackamas counties to enter into agreements to designate land outside the Urban Growth Boundary (UGB) as “urban reserves” for possible addition to the Urban Growth Boundary over the next 40 to 50 years.

The legislation (SB 1011) also authorized the designation of land outside the UGB as “rural reserves” to be secure from urbanization for the same 40 to 50 years. Metro and the counties must designate reserve areas by the end of 2009.

A steering committee had been set up composed of representatives of many of the same local governments, state agencies and business, environmental, development, citizen and other organizations that participated in passage of the legislation and adoption of the Land Conservation and Development Commission (LCDC) rules. This committee would help maintain the high level of collaboration that had marked this long-range planning effort from the beginning.

Resolution 08-3909 endorsed the creation of this regional steering committee and approved Metro’s participation on the committee. In addition, Resolution 08-3909 formally endorsed the key milestones timeline that the Council had previously reviewed. This included endorsing reserve study areas later this year and recommending reserve areas in 2009, leading to a Council growth management (UGB) decision in 2010.

This resolution highlighted Metro’s support of, and participation in, this important regional process, and sent a continued message of strong support to Metro’s regional partners. The Reserves Steering Committee had already begun its work; the next meeting was March 14 from 9 am to noon in the Metro Council Chamber. Council President Bragdon felt there had been good participation to date.

Vote:

Councilors Collette, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 4 aye, the motion passed.
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## **6. PORTLAND’S WORKING RIVERS**

Carl Abbott, Portland State University Professor, summarized his report on Portland’s Working Rivers. He felt there was need to increase people’s awareness of the working river and its role in the regional economy. He noted that rivers were important to transportation such as freight movement. The lower Willamette River had also been the centerpiece for an industrial corridor. The industrial complex was comprised of more middle-sized industries such as Precision Cast Parts. He then talked about industrial lands and how Portland was proactively protecting traditional industrial areas. Portland’s river plan acknowledged Portland’s working riverfront. Both the transportation and manufacturing functions of the river remained essential for Portland’s economy.

Councilor Liberty asked about the opening of an ice-free shipment corridor. Professor Abbott responded to his comment. Councilor Liberty also talked about the carbon footprint and the use of water shipping as a way to reduce greenhouse gases. Professor Abbott talked about changes in shipping technology with a trend toward using smaller ships for secondary markets. Councilor

Collette asked if Professor Abbott had thought about the land use requirements that would be needed to accommodate the growth in shipping. Professor Abbott said he hadn't looked at land use specifically, but talked about the impacts of shipping growth and port expansion. Councilor Hosticka wondered if Professor Abbott could give advise about the industrial aspects of the river in light of future increases in shipping. Professor Abbott said it was important to keep clear distinctions between industrial land and residential land. Council President Bragdon asked if he had looked at connections between other modes of transportation and the river. Professor Abbott said they had good rail connections with port facilities. Highway connections were a perpetual problem. He talked about the freight transport study.

**7. CHIEF OPERATING OFFICER COMMUNICATION**

Michael Jordan, COO, was not present.

**8. COUNCILOR COMMUNICATION**

Councilor Collette reported on meetings she attended this week. She said Commissioner Martha Schrader and she presented on the urban and rural reserves process at the Clackamas County Business Association. She felt they still had a lot of work in talking about the urban and rural models. She also attended the Clackamas County Commission and talked about business recycling. She attended Metro Policy Advisory Committee (MPAC) and that MPAC had approved moving forward on a sustainability initiative.

Councilor Liberty talked about the polling that the Oregon Zoo Foundation had conducted. He had chaired JPACT the morning of February 28, 2008, which focused on the Metropolitan Transportation Improvement Program (MTIP) and structuring that spending. He felt people wanted to work together and be supportive of the MTIP program. The previous night he participated in a fundraiser for the Portland Public Schools.

Council President Bragdon said the Council would not meet on March 6<sup>th</sup>. He also talked about the Design Competition that occurred this week. They had looked at 107 entries and over 600 people had attended the celebration event.

**9. ADJOURN**

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:19 p.m.

Prepared by

Chris Billington  
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF  
FEBRUARY 28, 2008**

<b>Item</b>	<b>Topic</b>	<b>Doc. Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
3.0	Power Point Presentation	2/28/08	To: Metro Council From: Jeff Miller, Director of Portland Travel Re: Travel Portland	022808c-01



Agenda Item 3.2

**Resolution No. 08-3925**, For the Purpose of Confirming the  
Appointment of the Vice Chair of the Joint Policy  
Advisory Committee on Transportation.

*Consent Agenda*

Metro Council Meeting  
Thursday, March 13, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE ) RESOLUTION NO. 08-3925  
APPOINTMENT OF THE VICE-CHAIR OF THE )  
JOINT POLICY ADVISORY COMMITTEE ON ) Introduced by Council President  
TRANSPORTATION ) David Bragdon

WHEREAS, the Metro Charter directs the Metro Council to adopt an annual organizing resolution for the orderly conduct of Council business; and

WHEREAS, the Metro Charter provides that the Metro Council President appoints the Deputy Council President and all members of committees, commissions and boards; and

WHEREAS, the Metro Council adopted Resolution 08-3894A on January 10, 2008 (For the Purpose of Reorganizing the Metro Council in 2008), in order to organize the Metro Council and confirm appointments made by the Metro Council President; and

WHEREAS, the Metro Council President has made the additional appointment of Metro Councilor Robert Liberty to serve as the Vice-Chair of the Joint Policy Advisory Committee on Transportation and the Council Committee assignments attached hereto as Exhibit "A" has been updated; now therefore

BE IT RESOLVED that the Metro Council hereby confirms the appointment of Metro Councilor Robert Liberty to be the Vice-Chair of the Joint Policy Advisory Committee on Transportation.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

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

Approved as to Form:

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

**Exhibit A to Resolution No. 08-3925**

**Council Committee Assignments**

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<b>Role</b>	<b>Appointment</b>
Deputy Council President	Liberty
Metro Policy Advisory Committee Liaison	Collette (Council Spokesperson), Hosticka, Park
Ex Officio to Zoo Foundation Board	Liberty, Collette
Joint Policy Advisory Committee on Transportation	Burkholder (Chair), Liberty (Vice-Chair), Harrington
Solid Waste Advisory Committee	Bragdon
Solid Waste Rate Review Committee	Bragdon
South Corridor Transportation Study	Liberty, Collette
Metro Committee for Citizen Involvement Liaison	Collette
Metropolitan Exposition Recreation Commission Liaison	Bragdon
Transit Alternatives Analysis Steering Committee	Burkholder, Collette

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Agenda Item Number 4.1

**Ordinance No. 08-1169**, For the Purpose of Amending the Urban  
Growth Boundary in the Vicinity of the City of Cornelius upon  
Application by the City of Cornelius.

*First Reading*

Metro Council Meeting  
Thursday, March 13, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE ) Ordinance No. 08-1169  
URBAN GROWTH BOUNDARY IN THE )  
VICINITY OF THE CITY OF CORNELIUS ) Introduced by Chief Operating Officer Michael  
UPON APPLICATION BY THE CITY OF ) Jordan with the Concurrence of Council President  
CORNELIUS ) David Bragdon

WHEREAS, by Order No. 07-030 (Relating to a Waiver to Allow the City of Cornelius to Submit an Application for a Major Amendment to the UGB), entered on June 21, 2007, the Metro Council waived the deadlines in Metro Code 3.01.025 for submitting an application for a major amendment to the urban growth boundary (UGB) to allow the City of Cornelius to submit an application to amend the UGB; and

WHEREAS, the city filed an application for a major amendment to the UGB in compliance with Order No. 07-030; and

WHEREAS, the application was considered by a Metro hearings officer at a public hearing in Cornelius on February 19, 2008; and

WHEREAS, the hearings officer subsequently submitted a proposed order to the Council with a recommendation as to whether the application satisfied the requirements of the Metro Code for a major amendment; and

WHEREAS, the Council considered the proposed order and testimony at a public hearing on March 20, 2008; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. The UGB is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, to add 161 acres to the UGB for industrial uses under Title 4 of the Urban Growth Management Functional Plan.
- 2. The Findings of Fact and Conclusions of Law in Exhibit B, attached and incorporated into this ordinance, explain how this amendment to the UGB complies with the Regional Framework Plan, the Metro Code and statewide planning laws.

ADOPTED by the Metro Council this \_\_ day of \_\_\_\_\_, 2008.

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

Attest:

Approved as to form:

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

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

## **STAFF REPORT**

IN CONSIDERATION OF ORDINANCE NO. 08-1169, FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY IN THE VICINITY OF THE CITY OF CORNELIUS UPON APPLICATION BY THE CITY OF CORNELIUS

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Date: March 5, 2008

Prepared by: Tim O'Brien  
Principal Regional Planner

### **PROPOSED ACTION**

Adoption of Ordinance 08-1169, approving *UGB Case 07-02: City of Cornelius*, a major amendment to the urban growth boundary (UGB). The proposed amendment area is shown on Attachment 1.

### **SUMMARY OF PROCESS**

According to Metro Code 3.01.025(u), the Metro Council shall consider the hearings officer's report and recommendation at a meeting set by the Chief Operating Officer. The Council will allow oral and written argument by participants in the proceedings before the hearings officer. The argument must be based on the record of those proceedings before the hearings officer. Final council action shall be as provided in Section 2.05.045 of the Metro Code. The Council shall adopt the order, or ordinance if the Council decides to expand the UGB, within 15 days after the Council's consideration of the hearings officer's proposed order.

The Hearings Officer, J. Richard Forester, submitted a report recommending approval of Case 07-02 (Attachment 2). According to Metro Code 2.05.045(b), the Council shall, upon receipt of a proposed order and consideration of exceptions, adopt the proposed order or revise or replace the findings or conclusions in a proposed order, or remand the matter to the hearings officer.

When the proposed order in a contested case necessitates the adoption of an ordinance, as is the case for an amendment to the UGB, staff shall prepare an ordinance for Council adoption. The ordinance shall incorporate the rulings, findings and conclusions required by 2.05.045(a) & (b). An ordinance adopted pursuant to this subsection shall, upon adoption, be considered the final order subject to judicial review.

### **BACKGROUND AND ANALYSIS**

#### Proposal Description:

On September 28, 2007, the City of Cornelius filed a petition for a 161-acre major amendment to the UGB for industrial purposes. The site consists of 38 separate tax lots in Washington County, north of the current City Boundary and generally north of Council Creek. The site is adjacent to NW Susbauer Road and NW Cornelius Schefflin Road. The subject property is zoned AF-5 (Agriculture and Forestry) and FD-10 (Future Development) by Washington County. The subject property is outside the Metro Boundary.

#### Hearings Officer Recommendation and Proposed Findings

The hearings officer, J. Richard Forester, conducted a public hearing at the City of Cornelius on February 19, 2008. The record was closed without objection at the conclusion of the hearing. He submitted a report and

recommendation to Metro on March 3, 2008, recommending approval of the petition. The case record contains the petitioners' submittals, Metro staff report, record lists, notification lists and the hearings officer's report.

- The Hearings Officer recommends approval of *Case 07-02: City of Cornelius* based upon the findings and conclusions in his report. A hearing on the recommendation before the Metro Council has been set for March 20, 2008.

## **SUMMARY**

The Council has the following options:

- Adopt Ordinance 08-1169 to approve *Case 07-02: City of Cornelius*, based on the hearings officer's findings.
- Remand the proceeding to the Hearings Officer for further consideration.
- Adopt Resolution 08-3902 entering an order to deny *Case 07-02: City of Cornelius* based upon revised findings and conclusions.

## **INFORMATION**

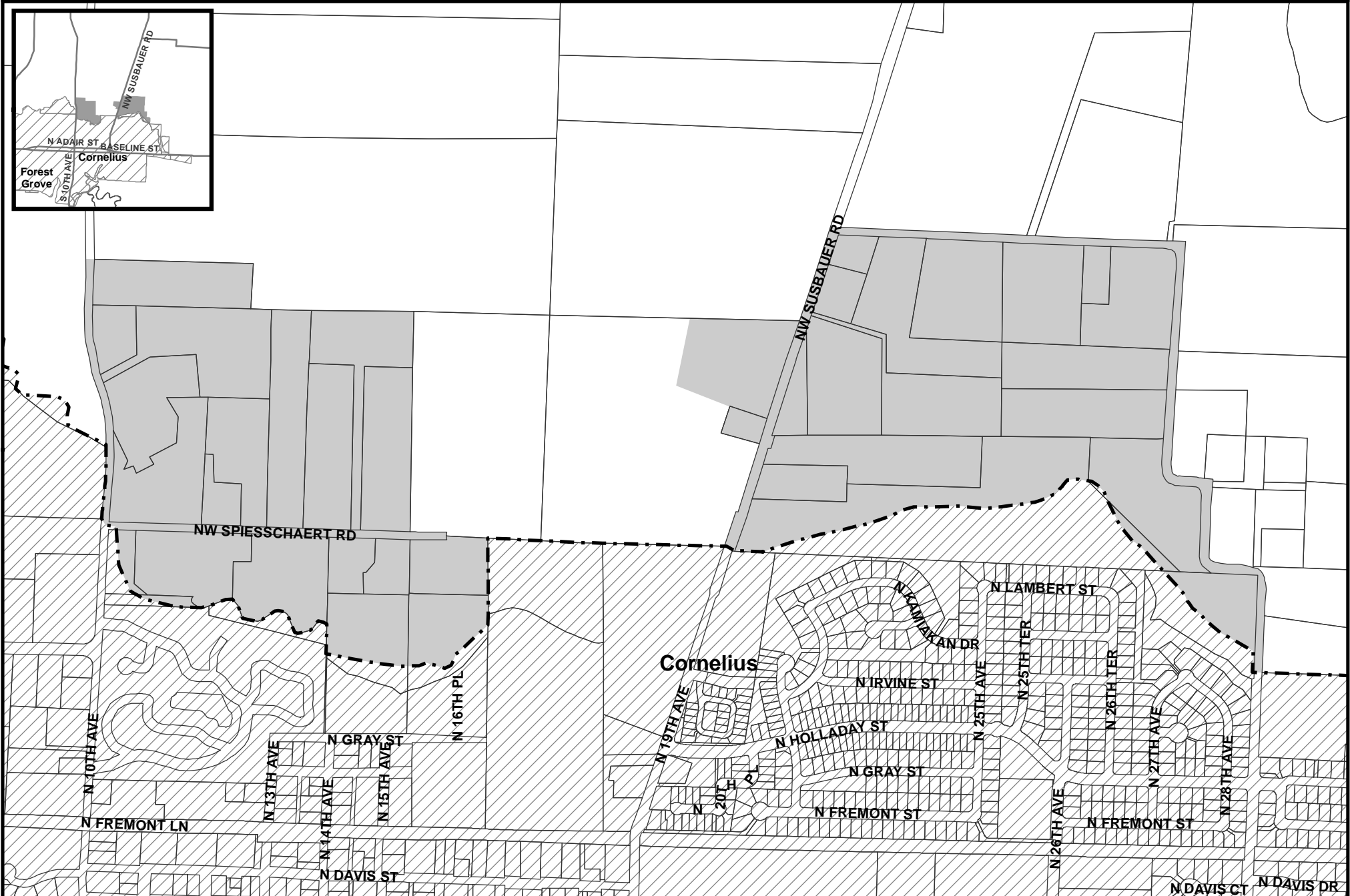
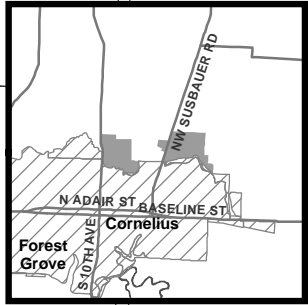
**Known Opposition:** Numerous people testified verbally and in writing in opposition to the proposed UGB amendment at the public hearing before the hearings officer.

**Legal Antecedents:** The Metro Regional Framework Plan and Metro Code Chapter 3.01 (Urban Growth Boundary and Urban Reserves Procedures) authorize amending the Urban Growth Boundary through a Major Amendment process.

**Anticipated Effects:** The adoption of Ordinance 08-1169 will add 161 acres of land to the urban growth boundary in the vicinity of the City of Cornelius for industrial uses.

**Budget Impacts:** There is no budget impact from adopting this ordinance.


# Attachment 1, Ordinance No. 08-1169



Data Resource Center  
600 NE Grand Ave  
Portland, OR 97232-2736  
(503) 797-1742

--- Current UGB

 Area currently inside the UGB

 Land to be added to the UGB

Washington Co.  
1:8,000

1n3w34  
1n3w33



**BEFORE THE METRO HEARINGS OFFICER**

**IN THE MATTER OF THE PETITION OF THE  
CITY OF CORNELIUS FOR A MAJOR URBAN  
GROWTH BOUNDARY (UGB) AMENDMENT  
IN WASHINGTON COUNTY**

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**Case # 07 - 02**

**RECOMMENDATION**

**Introduction**

Hearing officer recommends **APPROVAL** to the Metro Council of City of Cornelius petitions to amend the UGB to include the 161-acres of exception lands north of the current City Boundary and basically north of the Council Creek to be used for industrial purposes. The property consists of 38 tax lots along the northern boundary of the City of Cornelius, north of Council Creek, adjacent to NW Susbauer Road and NW Cornelius Schefflin Road. (See Attachment 1.)

**STAFF RECOMMENDATION:** Staff recommended that the Hearings Officer forward a recommendation for *denial* to the Metro Council.

**CASE HISTORY:** Following a determination by the Land Conservation and Development Commission (LCDC) that Metro had previously not added sufficient land to meet the need for industrial land identified in the Urban Growth Report, the Metro Council, on June 24, 2004, added 261 acres, including the subject site, to the regional UGB (Ordinance No. 04-1040B). LCDC remanded that addition to Metro for further consideration, after which the Metro Council decided to reduce the addition of land in the Cornelius area to 65 acres and to satisfy the remaining need in the Evergreen area north of Hillsboro (Ordinance No. 05-1070A, November 17, 2005). LCDC concluded that the addition of industrial land by Ordinance 05-1070A, in combination with Metro's two earlier additions of industrial land, satisfied the need for industrial land to the year 2022.

**LOCAL GOVERNMENT STATEMENT:** The Washington County Board of Commissioners submitted a letter supporting the proposed UGB amendment. In addition the abutting cities of Forest Grove and Hillsboro expressed support for this request.

**APPLICABLE REVIEW CRITERIA:** Metro Code sections 3.01.030(a and b) and 3.01.020(b, c, and d)

**HEARING AND RECORD**

The Public Hearing on this matter was held on February 19 2008 and the record was closed without objection at the conclusion of the hearing. Records of all testimony received are filed with METRO.

**Hearing Summary:**

Timothy O'Brien, the lead METRO Planner on this application, introduced the site, highlighted key issues in the Staff Report and the Addendum thereto and made a recommendation of denial notwithstanding additional arguments submitted since the issuance of the original Staff Report.<sup>1</sup>

Richard Meyer, Cornelius' Development Director, and Christopher Crean, the City's attorney on this application argued the need for land, based on demographic need, need for jobs, needs of locally based industry and the public investment in sewer and storm water, two new bridges, and urban standard road construction, triggered by the site's prior 15 month inclusion within the urban growth boundary. (See Footnote 1.)

They argued that the City boundaries and the pattern of adjacent development are largely unchanged since 1960's. The City has sought this area since the 1988 Periodic Review. The two exception areas subject to this request were included in Metro staff recommendations and supported by Metro Council in 2002 Periodic Review.

In 2004 Metro added industrial land to the UGB, including 261 acres north of Cornelius which included the two areas subject to this request and the intervening R-20 parcels. That approval was remand by LCDC, apparently at issue were the intervening agriculturally zoned parcels. In 2006 in response to the remand Metro staff again recommended inclusion, but based on objection to inclusion of agricultural acres, the Council only added 35 acres south of Council Creek.

This application does not include any agriculturally zoned acres. In reliance upon previous inclusion of the area capital improvements have been planned and some have been completed, with funding is available for the second bridge and road improvements. The City believes that the locational criteria approval inherent in Metro's prior inclusions of these 161<sup>2</sup> acres in the UGB supports the current application as well and is referenced in their supplemental response as the 2005 Staff Report. The City presented an argument that its request satisfies aggregate regional "need" argument based on Otak study. The short fall in the 20 year supply of industrial land starts 90 acres deficit in 2005 industrial land expansion, subsequent conversion of industrial land to non-industrial uses and actual absorption of industrial land. There is a great deal of "local" need in this request, which is now more urgent and cannot wait another two or three years necessitated by the passage of HB 2051. Mr. Crean sited and put into the record a case in Sherwood (2007-081) as an example of loss of industrially zoned land (approx 57 acres) through the PUD process.<sup>3</sup>

The urgency argument includes an opportunity to make transportation improvements which

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<sup>1</sup> Specifically, January 28, 2008 letter and attachments from Christopher Crean of Beery Elsner & Hammond.

<sup>2</sup> Of the 161 acres, 51 may be wetlands – so the usable total will be 110 acres.

<sup>3</sup> On rebuttal, Richard Benner pointed out that this Sherwood property was not part of the 2006 industrial inventory, so should not count as proof of need. Mr. Crean conceded the point, but argued that it was illustrative that in addition to absorption of land for industrial use, industrial designations are lost through rezonings and PUD arrangements.

will be facilitated by right of way dedications based on anticipated industrial rezoning. Without that rezoning the project costs may be increase by approximately \$500,000. The January 25, 2008 letter from Dan Brown, PE Washington County Project Manager (Ex 19), states the two new bridges over Council Creek (The 2007 Susbauer/19<sup>th</sup> Avenue and the 2008 Cornelius-Schefflin/10<sup>th</sup> Avenue) and their northern street extensions were designed to urban standards while the area was included within the UGB. The City argued that without extension of the UGB the urban standard extensions were in jeopardy. These improvements were valued at \$20.2 million on the Brown letter.

Finally in response to the February 15, 2008 letter from 1000 Friends of Oregon (Ex. 4) and Washington County Farm Bureau (Ex. 5), the City argues that there is nothing in the record to suggests that the Oregon Department of Agriculture opposes industrial expansion on exception lands north of Council Creek. Similarly there is no current legal designation for “Foundation Lands” designation for these parcels.

Dan Waffle, Cornelius City Manager, emphasized the fact that Washington County in partnership with the City and the State and relying on the 2004 approval is constructing and planning major urban level improvements by 2009 and they will be scaled back if this expansion is not approved. Because of ROW donation improvements funding parties will save at least \$500,000. Utilities are stubbed right to these areas (See Ex 16).

Bill Bash, the Mayor of Cornelius and four City Council members (See Ex 18)<sup>4</sup> emphasized their desire and effort, now six years in the making, to achieve a balanced, livable and sustainable urban community. That effort encompasses a local employment base, which will help reduce the long commutes for some of its residents. That line of reasoning was echoed by Sheilla Ryan of the Cornelius Chamber of Commerce (Ex. 19) and Vickie Cordell, Chair of the City Planning Commission (Ex. 29). Ms. Cordell indicated that the City has created compatible environment for industrial and agricultural on the south side and services are being coordinated on the north side. Richard Kidd, the Mayor of Forest Grove, also supported the expansion as vital to this end of Washington County.

Melissa Jacobsen was one of several people who testified against the boundary expansion because they fear it will ruin their peaceful rural lifestyle. Jacobsen submitted two petitions with about 30 signatures from residents along Susbauer and Hobbs roads. (Ex. 17). Scott Vessey and Dick Reynolds favored investing in commercial uses downtown instead. Mr. Reynolds also questioned whether some of the roads can really be improved. Ken and MaryAnn Meeuwsen also argued against expansion based on inadequate roads north of Council Creek (See Ex. 18). Linda Woodson, by email objected based on road safety and need to preserve farms (Ex. 7) as did Paulette and Gene Ray by letter (Ex. 9) and Mr. Ray in person. Joe Strasburg wrote and testified that he had rural expectations when he bought the property and wants it to stay that way (Ex. 7). Charles White testified that there is insufficient data about increased demand for public services that expansion will cause. Mike Hewitt moved from Aloha and is being confronted with more development, while there is undeveloped space in Hillsboro. Eric Smith, whose family owns five parcels (25 acres) at

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<sup>4</sup> Jeffery Dalin, Bob Ferie, Brad Coffey

first preferred that the land be used for residential purposes (Ex. 1) but subsequently indicated support for whatever decision the process should yield (Ex. 6).

At the hearing itself, preponderance of those who testified supported the UGB expansion, including Harry Jacobsmuhlen, who wants to expand his meat company but believes that he can not unless the proposed land comes inside the UGB (Ex. 20).

Catherine Sidman, project manager for Sheldon Manufacturing, said the company plans to expand and will have to leave Cornelius if new industrial land is not brought into the city. She argued that Sheldon is the city's largest employer of full-time workers, with a 140-person work force. The company would prefer to stay in Cornelius where 80% of the employees live (See Ex. 23).

Walter and Tim Duyck, testified that they worked a farm which included exception land in the area subject to this request it was not capable of supporting a living and they looked forward to industrialization. A similar sentiment was expressed by David and Alice Armstrong (Ex 21) who own two lots in the subject area and who felt trapped by the long struggle to bring this area within the UGB.<sup>5</sup> Also John Krautscheid who owns three lots and will provide access to neighbors cut of by the new bridge. Bruce Becking, argued for a need to expand the City's tax base (Ex. 13). Tom Evans, testified that there is need for more jobs with shorter commutes.

From Hillsboro Pat Ribelia, Planning Director, and Mayor Tom Hughes (Ex. 23) argued that rezoning of industrial land has diminished the 20 year supply number established in 2002 putting the region out of compliance with goal 14. They also argued that evidence from Metro's 2004 and 2005 evaluations of alternative industrial areas clearly demonstrates that these 161 acres rank higher than other alternative industrial sites. Michael Tharp, chair of CREEC, argued similar points in greater detail (See Ex. 12) as did Beverly Bookin who testified that the OTAK update was important evidence that 2230 acres are no longer available because of conversion to other uses. This short term shortfall should be addressed now to create development ready land.

Jonathan Schlueter, Westside Economic Alliance, referenced that the original 2004 industrial expansion was 90 acres short to start with, but approved as "close enough". 900 people move to Washington County each month and land need is high. One quarter of all the jobs created in Oregon will be in Washington County. LCDC wants large tracts, but there a no large tracts on the market. Some land is being land banked. Wilsonville was assigned a good deal of industrial land, but it too will be short.

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<sup>5</sup> Larry Duyck, President of Washington County Farm Bureau (Ex.. 5) submitted a letter opposing urbanization north of Council Creek because the creek and its associated wetlands provide "good edge and buffer" for the resource lands north of it and that the entire area is ranked as "Foundation" agricultural areas on the region. The bureau also questioned the need for the Expansion based on absence of demand for underutilized or vacant parcels already within the City.

## **FINDINGS of FACTS and CONCLUSIONS OF LAW**

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The following issues were either raised by the applicant, addressed by staff in its report, or by agency or public comments on the application, and the Hearing Officer adopts the following findings:

### **OVERVIEW**

Beginning in 2002, Metro, after two remands added sufficient amount of industrial land until 2022 less 90 acres. Sufficiency of that supply for 20 years is a statistical exercise which projects demand for land and rate of absorption of that land. The adequacy of those projections is revisited every five years through a periodic review, but in this case the review will be in 7 years, or in 2009 via HB 2051. In 2009 the supply will be readjusted to extend the supply of available industrial to 2029 and sites may be added and subtracted based on past performance, regional needs and future locational demands.

Metro initially included this site in its determination in 2004, but after an LCDC remand traded this land for neighboring Washington County land in 2006. There is evidence in the record that a 15 month presence of these sites within the UGB lead to a series of consequent governmental actions. These actions are a part of the City's justification for an immediate need for the re-inclusion of this previously included land within the UGB. These actions include road and bridge improvements some of which have been completed and the remainder awaits this decision. The City and its various institutional backers view this as an opportunity to have shovel ready industrial land. Based on their testimony, the six year process has also left a number of land owners unable to decipher what to do with their land. They are on hold. To summarize then, the City anticipated that its need will be affirmatively addressed in 2007 and availed itself of funding and planning for public facilities, but now it's anticipated and oft foretold need will not be addressed until 2009. That was not anticipated by them. Based on this record, aside for the opportunity to add bridges and urban level roads, the City's demographic needs do not appear to be new, although the City has stated that the delay exacerbates those social and economic needs. The unanticipated delay in addressing those needs is a new event. Metro, having just gone through a long process of additions and subtractions to the UGB persuaded the legislature to give two more years to revisit the need for industrial land.

On the other hand, to paraphrase, Metro staff appears to be essentially arguing that in 20 year inventory planning process, all needs for the 20 year plan have to be by definition anticipated, otherwise it could not be a valid 20 year plan and this one has been acknowledged and nothing out of the ordinary has happened on a regional basis to suggest an unanticipated new regional need which cannot be met in due course via periodic review. If strictly construed this logic should defeat every major UGB amendment presented, barring some exceptional circumstances which are not readily apparent. Although this is a locally based quasi-judicial request, Metro Code applies its legislative criteria to the request and

therefore requires regional need and regionally based locational analysis; however, working on the assumption that the Major Amendment procedure is meant to work, however infrequently, the hearing officer believes it should be liberally construed.

Notwithstanding Washington County Farm Bureau and 1000 Friends theoretical opposition to the UGB crossing Council Creek, on this record the owners of land north of the Council Creek who oppose this expansion appear to be residential dwellers who adjoin the proposed expansion area. Their objections are essentially lifestyle objection one may expect of residential exception lands, namely aesthetic, road safety and traffic. To a large extent these are zoning issues, to be addressed by the City when and if it rezones the proposed parcels. Notwithstanding “industrial” designation, the uses discussed in this record appear low height office campus, susceptible to landscape buffering. Neither, can one assume that the City would not address road issues in its jurisdiction, and in fact the opportunity for up to 20 million in road improvements and new bridges is part of the impetus for this application.

### **APPLICABLE REVIEW CRITERIA**

The criteria for a major amendment of the UGB are contained in Metro Code sections 3.01.030 (a and b) and 3.01.020 (b, c, and d). The criteria (**in bold**), and findings and conclusions of law follow.

**Metro Code section 3.01.030(a) - The purpose of the major amendment process is to provide a mechanism to address needs for land that were not anticipated in the last analysis of buildable land supply under ORS 197.299(1) and cannot wait until the next analysis. Land may be added to the UGB under this section only for the following purposes: public facilities and services, public schools, natural areas, land trades and other non-housing needs;**

This criterion presents a bit of a logical challenge because of its solipsistic circularity. As discussed in the overview the formula that creates a valid UGB plan that will be acknowledged and survive potential appeals, will anticipate a supply to meet a twenty year need. It also anticipates that in the intervening years the supply will be adjusted so that even some economic boom will have reduced the supply to ten years prior to first review, it will be readjusted back to 20 years when the periodic review is complete. Read that way, the section does not seem to anticipate hardly any successful amendments. To implement the Metro policy of allowing these major amendments to the UGB – the criteria has to be construed liberally to create at least an infrequent and specialized opportunity to apply and to obtain such an expansion. Fortunately, the last sentence of this code section puts a more specific emphasis on what the key unanticipated needs may be – these include public facilities, public schools, natural areas land trades and other non-housing needs.

These allowable purposes are very specific, essentially public purposes, and have historically been treated in minor amendments, for example Case 97-1 added 17 acres to the UGB for a school area and schools typically are between 20 to 30 acres. It is hard to imagine in our Oregon planning environment how needs exceeding 100 acres would not be anticipated. They could not be anticipated only because at the time the current UGB plan was adopted the

opportunity or the plans to construct or acquire these amenities were unknown to Metro and perhaps the applicant. The applicant is arguing two things. The need for “industrial” jobs is greater because the City of Cornelius is in worse straights economically and socially then five years ago and will deteriorate further because of the two year delay (not counting appeals) and also the addition of these lands will enable up to \$20,000,000 worth of public facilities that will make this industrial land more attractive not only for Cornelius but also for the region.

There are three criteria contained in Metro Code section 3.01.030(a) that are analyzed separately below:

**1) The proposal must be for a non-housing need.**

The petitioner proposes to add land to the boundary for an industrial need, which is a non-housing need. That addition will cause the County and the State to complete urban level bridge and road improvements which will make the industrial land close to shovel ready. Thus, the addition of the land will trigger completion of urban level public facilities and trigger a second criterion. (See 2 immediately below.)

The petition meets the criterion.

**2) The proposal must be intended to meet needs that were not anticipated in the last analysis of buildable land supply.**

In its application, the City asserted that the passage of HB 2051, delaying for two years the next analysis of buildable lands under ORS 197.299 (1) was an unexpected event and that the City could not wait the additional two years to pursue an expansion of the regional UGB adjacent to the City.<sup>6</sup> The City believes the passage of HB 2051 and its effect on the City’s need for industrial land is sufficient to meet this criterion. During the delay and the at the hearing the City also argued likely loss of new public facilities and services – See the January 28, 2008 letter C.Crean (Beery, Elsner and Hammond LLP), Marah Danielson of ODOT (Ex. 8), Michael Tharp of CREEC (Ex. 12) and most critically a letter from Dan Brown, Washington County Development & Operations Director (Ex.14).

In terms of unanticipated short fall of industrial land, the City argues principally from the

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<sup>6</sup> *...the land that is the subject of this application was analyzed extensively in Metro’s prior round of UGB Expansion decisions and the appeals from those decisions. What was not anticipated was the passage of HB 2051 (2007). Prior to the passage of HB 2051, Metro was required to conduct an analysis of its buildable land supply and adopt corresponding amendments to the UGB not later than December 31, 2007. The City of Cornelius anticipated participating in that effort and was prepared to submit the proposed expansion area for Metro’s consideration. . . . Cornelius reasonably believed its proposed expansion for industrial lands would be successfully included in any expansion of the UGB by Metro. However, Metro sought and obtained the passage of HB 2051, which allows Metro until December 31, 2009, to conduct the analysis of the buildable land supply and adopt any resulting UGB amendments. This two-year extension of the planning cycle was not, and could not have been, anticipated by the City of Cornelius and the City’s efforts to develop the area for industrial uses cannot wait another two years.*

OTAK Report (City's Exhibit A to the C, Crean letter)

The OTAK report, dated June 26, 2007, was commissioned by Metro for the purpose of updating the Metro Industrial Land Supply Inventory. The report analyzes lands designated for industrial use within the region and recommends removing a portion of the land from the regional inventory because it is no longer vacant or because it is constrained in some fashion. The report also describes an amount of land zoned for industrial use that has been rezoned for other uses.

The report notes (OTAK, page 5) that that the current Metro inventory contains approximately 9,437 acres of industrial land. From that amount, the report recommends removing 2,232 acres from the inventory for various reasons including that the land has been developed (in full or in part), the land has been rezoned to other uses, the land is constrained by lack of public facilities, or the land has been "banked."

If the recommended 2,232 acres are removed from the inventory, that leaves 7,205 acres available for industrial use over the next 18 years.<sup>7</sup> The report states that "the average annual industrial land absorbed (by new construction) in the Metro UGB was approximately 300+ acres per year since 2004." At a conservative rate of 300 acres per year over the next 18 years, that amounts to 5,400 acres of industrial consumed, leaving a buffer 1,800 acres.

However, the report goes on to state that "approximately 200-300 acres per year within the Metro UGB are being re-designated from industrial use to other uses." Even if the low end of this range is used, the amount of land that is rezoned to other uses, hence not available for industrial use, is 3,600 acres. If the amount of land rezoned approaches the high end of the range identified in the report (i.e. 300 acres), the region will lose 5,400 acres of land currently designated for industrial.

Based on this evidence, at least 300 acres of industrially-zoned land is consumed by industrial development each year, and an additional 200+ acres per year are rezoned to other uses.<sup>8</sup> (Both of these figures are at the most conservative end of the range cited by OTAK.) Combining these numbers results in a demonstrated need of at least 9,000 acres. This far exceeds the 7,205 acres of available industrial land. Stated differently, after accounting for land that is constrained or no longer available for industrial use, there are 7,205 acres available for industrial use for the next 18 years. However, the OTAK reports concludes that the region will need a minimum of 9,000 acres over the same period.

While it is possible to quibble with the exact numbers, the larger message is that industrial land in the Metro region is being absorbed (put to industrial use) and converted (to other uses) at rates far in excess of what was anticipated when the UGB was last expanded. If the 20-year supply of industrial land was designed to provide land for short-, medium- and long-term industrial needs, those planning horizons are now being compressed by the faster than

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<sup>7</sup> The current inventory of available land was established in 2005 to provide a 20-year supply of industrial land. There are 18 years remaining.

<sup>8</sup> For example, the City of Sherwood recently approved commercial development on 57 acres designated for light industrial use.



expected consumption and diversion of those lands. As a result, the region simply does not have the amount of land available for to meet its short-, medium- and long term needs. While the medium- and long-term needs may be able to wait until the next analysis of buildable lands under ORS 197.296, the short-term needs, by definition, cannot.

Finally, Metro began the 20-year planning period under Ordinance 05-1070A with an acknowledged 90-acre deficit in industrial lands. LCDC acknowledged Metro's UGB expansion as "close enough," but the acknowledgement did not in any way refute the conclusion that the region is 90 acres short of its projected need.

Accordingly, the region started with a deficit which has since grown. Given the initial deficit and the evidence that has been generated since then, it is reasonable to conclude that the current regional need for industrial land is greater than anticipated by the Metro Council in 2005.

The Staff responds that the petitioner addresses the criterion regarding an unanticipated need by referring to the enactment by the 2007 Legislature of a two-year extension (from 2007 to 2009) of Metro's next analysis of the capacity of the UGB to accommodate long-term population and employment growth. The unanticipated passage of HB 2051 is not relevant to addressing needs for land that were not anticipated in the last analysis of buildable land supply.

Staff also argues that in arguing shortage of in industrial sites in Cornelius for those, the city misinterprets the criterion, which calls for a demonstration of need for industrial land that was not anticipated during the last analysis of the capacity of the UGB (2002). That analysis of buildable land supply is intended to determine the overall regional need for industrial land, not the need for sites for industrial uses in particular locations in the region. Metro determined the 20-year regional need for industrial land in its "2002-2022 Urban Growth Report: An Employment Land Need Analysis" (UGR), updated in December 2002. There is no demonstration in the application, and no reason to think that a particular need for a site is not part of the overall regional need for industrial land identified in the UGR, and met with additional capacity for industrial growth by the Metro Council's UGB expansion decisions in 2002, 2004 and 2005.

As noted in the application, the Metro Council added 261 acres to the regional UGB adjoining Cornelius to the north (Ordinance No. 04-1040B, June 24, 2004) following a determination by LCDC that Metro had previously not added sufficient land to meet the need for industrial land identified in the UGR. LCDC remanded that addition to Metro for further consideration, after which the Metro Council decided to reduce the addition of land in the Cornelius area to 35 acres and to satisfy the remaining need in the Evergreen area north of Hillsboro (Ordinance No. 05-1070A, November 17, 2005). LCDC concluded that the addition of industrial land by this ordinance, in combination with Metro's two earlier additions of industrial land, satisfied the need for industrial land to the year 2022. Thus, the regional land need identified in 2002 has been met and no specific need, not anticipated in the 2002 buildable land supply analysis, is identified in the petition.

In direct response to the City's supplemental information, Staff argues in its ADDENDUM

that the OTAK memorandum notes: “It appears that the majority of these ‘re-designated land use’ issues occurred in the urbanizing Clackamas County and Gresham areas (e.g., Damascus, Beaver Creek, and Pleasant Valley) to provide mixed-use employment designations, which allow some housing and commercial and light industrial uses.” Memorandum, p. 3. Much of these areas were added to the UGB in Metro’s 2002-2005 periodic review. The Metro Annual Report refers to these lands as “new urban areas” and explains: “Based on completed plans and local zoning for new urban areas, the region has not ‘lost’ net acres since the 2002-2005 UGB expansions to designate RSIA [Regionally Significant Industrial Area] and Industrial Area land.” Annual Report, p. 2. A footnote explains ‘lost’:

“‘Lost’ refers to the amount of net acreage realized through local government planning and zoning that might be short of Metro’s original estimate for purposes of complying with LCDC acknowledgment of Metro’s Urban Growth Report. Shortages may be the result of a more refined buildable lands assessment and/or re-designation of land uses by local planning agencies.” Annual Report, p. 2.

In short, the Metro Annual Report indicates that there has been no net loss of industrial land in the transition from Metro Council designation at the time of UGB expansion to adoption of local plans and zones in those added territories for which the planning is complete. The cities of Damascus and Happy Valley, the local governments responsible for comprehensive planning of the majority of the industrial land added to the UGB in 2002 to 2005, have not yet completed the comprehensive planning for these lands. If, when the work is done, the land designated by the local governments as RSIA or Industrial Area falls below the amount estimated by the Metro Council when it added the territory to the UGB, Metro will have to account for the difference in its 2009 estimate of need and capacity.

A similar argument would defeat any and every quasi-judicial amendment to expand the UGB. Needs and uses were anticipated and if there were not we have periodic review will address them, and two years more or less can be accommodated by the region as a whole. So the question is really why does Metro permit this quasi-judicial process, when it really anticipates that needs for industrial land can be addressed through periodic review. While non-housing needs is a broad category, the remainder purposes are specific **“Land may be added to the UGB under this section only for the following purposes: public facilities and services, public schools, natural areas, land trades and other non-housing needs;”**

Notwithstanding the minimum acreage of 100, it would appear that the need has to be specific – a school, a natural area, a specific land trade, or a specific industrial use that needs to locate immediately. In this case allowable additions to the UGB are really unanticipated opportunities to add public facilities. Metro’s last inclusion of these two areas in the UGB created that opportunity. Metro has three times in this short century found this area locationally suited for industrial expansions, and it was included until remanded and has been recommended for inclusion by Metro Staff three times. That inclusion created an opportunity to commit the use of scarce Oregon public funds to make public facilities which will enhance the meeting of industrial needs which has been thrice recognized for this area. Land donations and trends have been secured for the ROW to extend the value of these improvements.

The additional urban development is consistent and connected to City projections and plans, made possible by re-entry of this area back into the UGB for industrial uses will help provide local match for federal and county funding already won for transportation improvements, including:

- Two new bridges (built to City standards) over Council Creek at 10<sup>th</sup> and 19<sup>th</sup> Avenues
- Realignment of Spieschart Road
- Reconstruction of 4<sup>th</sup> Avenue, 10<sup>th</sup> Ave. and 19<sup>th</sup>/20<sup>th</sup> Ave. Intersections with TV Highway
- Adair Main Street Reconstruction
- Baseline Main Street Reconstruction
- N 10th Avenue/Cornelius-Schefflin Road

Projects 3156, 3164, 3166, 3167, 3168 and 3171 in Metro's Regional Transportation Plan respond to the economic and infrastructure need and opportunities in Cornelius and are designed to support the additional employment encouraged by this UGB addition and the resulting traffic mix.

The petition meets the intent of this criteria.

**3) The proposal must be intended to meet needs that cannot wait until the next analysis of land supply (December 2009).**

Petitioners argue that the City of Cornelius is an economically challenged community by any standard. Metro has determined that providing communities in the region the tools they need to thrive is a matter of regional concern.

**Regional Framework Plan Policy 1.2.1.c. Built Environment**

“It is the policy of the Metro Council to ensure that development in the region occurs in a coordinated and balanced fashion as evidence by [the] continuing growth of regional economic opportunity, balanced so as to provide an equitable distribution of jobs, income, investment and tax capacity throughout the region and to support other regional goals and objectives.”

**Regional Framework Plan Policy 1.4.3 Economic Opportunity**

“Metro, with the aid of leaders in the business and development community and local governments in the region, shall designate as Regionally Significant Industrial Areas those areas with site characteristics that make them especially suitable for the particular requirements of industries that offer the best opportunities for family-wage jobs.”

**Regional Framework Plan Policy 1.5.3 Economic Vitality**

“It is the policy of the Metro Council to ensure that all neighborhoods and all people have access to opportunity and share the benefits, as well as the burdens, of economic

and population growth in the region.”

These policies reflect a judgment by Metro that the economic needs of the individual communities in the Metro region are a matter of regional concern.

The scope of the City’s needs is extensively and ably described in the application and it bears repeating:

“[The City has] the highest poverty rate, lowest taxable property per capita, highest proportion of minority population and longest average commute of the 26 jurisdictions in the Region. Our City is the only city in the metropolitan area that is determined a “Distressed City” by the Oregon Economic and Community Development Department. The “Regional Equity Atlas” published by the Coalition for a Livable Future and Portland State University ranks Cornelius as the lowest in total “regional equity” scores. Our highest need is local jobs.”<sup>9</sup>

Moreover, this statement from the City simply echoes the conclusions of Metro staff. In its report to the Metro Council on Ordinance 05-1070A, which recommended bringing this area into the UGB, staff concluded that “[t]he positive economic implications of including 261 acres of industrial land are significant for a community that ranks nearly last (23<sup>rd</sup> out of 24 cities) in the region in total taxable real market value and real property value per capita. A city’s tax base determines what resources are available for community services like police, fire, planning, libraries, social services and governance.”<sup>10</sup> A copy of the relevant portions of the staff report are attached as Exhibit C of the Beery Elsner & Hammond letter.

The anemic tax base and lack of local jobs are not small considerations. As a result of the low tax base, City residents have to struggle with substandard city services including police and fire protection, libraries and social services. While local levies are theoretically available for these services, such levies are extremely unlikely given the prevailing income levels in the community. Hence, the lack of family income is exacerbated by lack of public services and vice-versa, and it becomes very difficult for city residents to improve the community.

So many apparently commute. Even if the compelling social needs of the City are ignored, the fact that Cornelius has the longest average commute of any city in the region is a circumstance that justifies immediate attention. The region’s air-quality and carbon-footprint as a whole are degraded by the amount of commuter traffic that is generated by the lack of available jobs in the community. Facilitating industrial development in Cornelius will result in almost immediate reductions in commuter traffic across the region as local residents will be able to walk, bike or drive the short distance from home to work.

Ultimately, given the demonstrated extent of the needs of Cornelius and its residents, it would be unfortunate to ignore these needs or to conclude that the people who use these services can simply wait another two or three years. It is worth noting that the information in the November 17, 2005, Metro staff report detailing the level of community need was

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<sup>9</sup> The Regional Equity Atlas, an Excerpt of which is attached as Exhibit B.

<sup>10</sup> The current proposal Seeks to include 161gross acres (110 net acres) zoned as Exception area.

generated between 2002 and 2004, and the Council chose not to address the needs in Ordinance 05-1070A. As a result, the city argues that it has declined even further. The needs of the City and its residents are not going away, they are just getting direr.

In addition to the social needs, the State of Oregon, Washington County and the City of Cornelius are currently investing \$15 – “20 million in public improvements in, at the edge of, and connecting to this proposed expansion area. The letter from Dan Brown, Capital Projects Manager for Washington County, details these improvements. (See Ex. 14.) The improvements were designed for urban uses consistent with Metro’s UGB decision in 2004 to include this proposed area along the northern edge of Cornelius in the UGB. Mr. Brown’s letter confirms that not expanding the UGB here this year or waiting two years for further consideration will cost the County over \$500,000 in right-of-way costs alone for a road that is required to serve a nine-house subdivision within the proposed expansion area. It will also cost the City and the expansion area the cost of reduced or incomplete improvements. Accordingly, it is critical that the UGB be expanded in this area as soon as possible. Waiting two or three years carries a substantial financial penalty. Taking advantage of such an unanticipated opportunity seems to be the only plausible purpose of this amendment process.

MCC 3.01.030 (a) requires a finding that the need “cannot wait” until the next round of analysis. Perhaps “cannot wait” is in the eye of the beholder, Metro and the Region may be able to wait but Cornelius has a need and an opportunity in the cost of important public improvements, which may not be around in time for the next analysis.

Also, at several points in its application and the application, the city and Sheldon Manufacturing and Jacobsmuhler meat packing indicate immediate need for sites to respond to proposed expansion of industries in the city and to inquiries about sites.

This criterion is linked to criterion (2), above.

Staff argues that this criterion calls upon the city to demonstrate that the unanticipated need required by criterion (2) must be satisfied prior to the next (2009) analysis of UGB capacity to accommodate need for industrial land. The immediate demand for sites identified in the city’s application is part of the region’s need for industrial land identified in the “2002-2022 Urban Growth Report: An Employment Land Need Analysis”, updated December, 2002. Given that the Metro Council added capacity to accommodate industrial needs to the year 2022, it must be assumed that this capacity includes land for immediate needs.

The city’s application notes that it has a supply of sites within its city limits and its portion of the region’s UGB. The city does not adequately explain why this local capacity – a part of the 2022 capacity – cannot accommodate the city’s immediate needs - but, the City does make a case that its opportunity to acquire key public facilities can not wait.

There us substantial evidence in the record to indicate that the petitioner does meet this threshold criterion.

Conclusion:

The petition does meet the intent of the three criteria found in Metro Code section 3.01.030(a).

**Metro Code section 3.01.030(b), referring to 3.01.020(b)(1) Demonstrated need to accommodate long-range urban population, consistent with a 20-year population forecast coordinated with affected local governments;**

Under this criterion, the analysis is whether there is a 20-year supply of industrial land to accommodate the forecasted 20-year population.

As shown above, the OTAK report very clearly concludes that available industrial land in the region is being consumed or diverted at rates that far exceed the levels predicted when Metro last amended the UGB in 2005 and, as a result, the region does not have sufficient buildable industrial land.

In addition, in a recent report to the “Big Look” Committee in Salem, Fregonese Associates concludes that actual population growth in the region will exceed Metro’s 20-year forecast. In Clackamas and Multnomah County, Fregonese’s projected population growth rates are close to Metro’s projections. However, in Washington County, Fregonese forecasts a population increase of 105 percent, while Metro projects only a 50 percent increase. A summary of the comparison is attached as Exhibit E to the Berry, Elsner & Hammond letter. Accordingly, and in addition to the OTAK report showing a current shortfall of industrial land, the evidence suggests that the regional 20-year population will exceed Metro’s 20-year forecast upon which Ordinance 05-1070A was based.

Metro Staff Argues that by actions in 2002, 2004 and 2005, the Metro Council added capacity for industrial growth to the year 2022. LCDC found that this added capacity satisfied that need when it “acknowledged” Metro’s actions. Among Metro’s actions was addition of 35 acres to the region’s UGB adjacent to Cornelius. When the Metro Council added this land to the UGB, one of its considerations was regional balance and equity. The city has not explained why this land, together with industrial land in the pre-expansion UGB, are not sufficient to address the needs identified in its application.<sup>11</sup>

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<sup>11</sup> Petitioner Response

*Cornelius has an immediate demonstrated need for employment generating development for the current population. Land need for additional projected population will be analyzed and planned for during the next regional UGB legislative decision round in 2009.*

*Cornelius has a population in 2007 of approximately 11,000. We have the highest poverty rate, lowest taxable property per capita, highest proportion of minority population and longest average commute of the 26 jurisdictions in the Region. Our City is the only city in the metropolitan area that is determined a “Distressed City” by the Oregon Economic & Community Development Department. “The Regional Equity Atlas” published by the Coalition For a Livable Future and Portland State University ranks Cornelius lowest in total “region equity” scores. Our highest need is local jobs.*

*In Cornelius, the jobs / housing balance is unhealthy and unsustainable. There are an estimated 3,800 more employed Cornelius residents than there are jobs within the City and the nearby agriculture areas. That is approximately half our work force of 7,800 that does not have an opportunity to walk or bike to work and afford a livable community. All of these workers with no local jobs currently cause vehicular congestion, pollution, and wasted energy from the longest average*

Staff is correct that the City has not adequately addressed why its new 35 acres and whatever internal rezoning opportunities it has are insufficient to address the demand generated, except to argue that its needs will require more lands to restore sustainability and livability. However, the applicant has produced evidence which supports a finding that there is a demonstrated need for additional industrial land to accommodate the region's long-range urban population and that meeting that need at this site creates an anticipated opportunity to complete public facility which will make this industrial land more accessible and useful. Notwithstanding that such needs can be addressed in the next periodic review, they exist now, which is sufficient to meet this criterion. One has to keep in mind that the 3.030.030(a) premise allows additions of non-residential land to meet the unanticipated public facility opportunity that will be a greater benefit to the region and to Cornelius.

Conclusion:

The petition meets this criterion.

**Metro Code section 3.01.030(b), referring to 3.01.020(b)(2) Demonstrated need for land suitable to accommodate housing, employment opportunities, livability or uses such as public facilities and services, schools, parks, open space, or any combination of the foregoing in this paragraph;**

Again, the need for additional industrial land in the region is demonstrated by the OTAK report, describing the absorption and diversion of industrial lands at rates that far exceed Metro's projections when it adopted Ordinance 05-1070A. This conclusion is supported by the Fregonese population projections in Exhibit E. The "suitability" of the land is described in the City's application and in the sections below regarding appropriate locations to expand the UGB for industrial land.

The City's application seeks to add land adjacent to the city for employment opportunities – specifically, industrial uses. The City's application describes at least one specific proposal for industrial development on the site as well as describing additional inquiries for similar development. The petitioner has also shown the need for this industrial land, based on expectation build up over three years of prior approvals and the resulting public facilities funding that will make this land more attractive to industry.

The following immediate opportunities for industrial development exist for the 110 acres of buildable land were included in the Cornelius UGB expansion request.

- A. A 12-acre Light Industrial Park is proposed on a site off Cornelius-Schefflin Rd. within 6 – 18 months of UGB expansion. (See attached letter) The plan is to sell built

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*commute in the region.*

*Too few local jobs for resident workers is not just expensive for families who pay more for transportation, but also for the community. Public services for residential use are more expensive than for commercial and industrial uses. Yet tax revenues generated from residential uses are significantly less than from commercial and industrial uses in our property tax reliant system. With this expansion, a healthy jobs and housing balance is possible.*

- space to 15-25 small industrial businesses that will provide 50-200 jobs, the equivalent of one of Cornelius' top employers, and add approximately \$50,000 in property taxes to the City's General Fund revenues.
- B. The City has had several inquiries by employment intensive industries about the availability of 25 acres or more in the eastern exception area of this request. "Call us when Cornelius has this settled." A 25-acre industrial site might increase Cornelius General Fund revenue by \$100,000 or 6%.
  - C. The area east of Susbauer Rd. also offers a great opportunity for a 50-acre State Certified Industrial Site. The City has already begun discussions with OECDD to start the research, planning and property owner negotiations necessary for certification immediately upon UGB expansion. The goal is for the State of Oregon to be marketing this site within a year. A 50-acre industrial site might increase property taxes 12%.
  - D. These developments would help give over 1,500 low-moderate income and disabled people, who commute long distances to work now, the opportunity to walk, wheel or drive a shorter distance to work, spend less on transportation and live in a more complete affordable and accessible community.
  - E. Cornelius has little vacant industrial land within the UGB; the largest parcel is 12 ½ acres and most are constrained. New and expanding industries looking for a west side location within the next three years would have an option they do not have today in Cornelius, which has a higher than average employment rate and significant demand for more jobs.
  - F. At least two of Cornelius' top ten industrial businesses are looking for room to expand right now, and if they cannot find a site within Cornelius they will move elsewhere. Cornelius lost one of its top ten employers, Subroso - Heikes Division (berry processing), to Woodburn in 2005, because there was not even a 20-acre industrial site in which to expand.
  - G. Cornelius can deliver. Cornelius businesses and institutions directly support agriculture. Land for supportive uses, e.g., implement manufacturing & repair, product processing, storage and transport, is in high demand. Over 50% of the 16 acres brought into the Cornelius UGB in 2004 will be developed and open for business by the end of this year.

At the hearing another proposed expansion was identified for a meat packing firm. Clearly, the site has potential for immediate industrial development.

Metro Staff argues that the petitioner describes the characteristics of the 161 acres proposed for addition to the UGB as suitable for industrial use. To support its argument that the area is suitable to accommodate industrial needs, the city notes interest from developers of industrial properties and that the city has begun discussions with OECDD to obtain state industrial certification for the site upon inclusion in the UGB. Though the petitioner has mentioned



potential opportunities for economic development, they have not addressed the criterion and demonstrated a need for land.

### Conclusion

The petition does meet this criterion. This criterion requires the applicant to demonstrate the need for land suitable for industrial development. Considering the information submitted by the applicant, this criterion is met.

**Metro Code section 3.01.030(b), referring to 3.01.020(b)(3) A demonstration that any need shown under paragraphs (1) and (2) of this subsection cannot be accommodated on land already inside the UGB.**

This criterion requires a demonstration that this need cannot be accommodated on land already inside the UGB.<sup>12</sup> Industrial land is not fungible and not all industrial needs can be

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### <sup>12</sup> Petitioner Response

*First, Metro acknowledged in 2005 a 90-acre shortfall of its estimated regional industrial acreage need. See discussion of the significance of this need in the attached letters of record supporting a larger Cornelius UGB expansion from the Westside Economic Alliance, CREEC & National Association of Industrial and Office Properties, ECONorthwest, and the Regional Economic Development Partners, and the City of Forest Grove. Metro's estimate of regional industrial developable acreage deficit resulted from calculations that included all reasonable accommodation of industrial uses on land inside the regional UGB.*

*Second, additional developable land for industry is necessary specifically in Cornelius to address well know tax equity and balance issues in Cornelius. The City of Cornelius has been almost totally built out to the UGB limits for some time. This has resulted in a very limited land supply to accommodate the opportunities for growth of all kinds of development based on the population and employment allocations assigned from Metro and Washington County. The majority of land in the City of Cornelius has been zoned and developed residential to meet Metro Housing goals. Industrial zoned land comprises less than 9 percent of total land in Cornelius. This has placed a heavy burden on residents to support the necessary urban services and facilities. Residential uses tend to create urban service demands that are disproportionate to their tax revenue contribution. Commercial and industrial land uses tend to contribute a greater share of tax revenue in relation to their demand for urban services. The need for more industrially zoned property that can be developed within the City is crucial for it's financial health, development and sustainability.*

*Cornelius' Vacant Land Inventory, updated in April 2007, identifies 50.47 acres of vacant industrially zoned property in the City. These 50 acres are the total of fourteen scattered tax lots, 13 of which range from 1.4 to 4.1 acres in size. There is one 12½-acre site, our largest vacant industrial parcel. As mentioned earlier, Cornelius lost one of its top ten employers, Subroso - Heikes Division (berry processing), to Woodburn in 2005 because Cornelius did not have even a 20-acre industrial site into which they could expand. The Hazelnut Growers Association currently located in the City is also looking for a larger site to accommodate its current operation and future growth. Multiple property owners of small parcels make it difficult to successfully aggregate tax lots to meet the demand for development and expansion. With the majority of the vacant industrial land in Cornelius having been partitioned or subdivided into small parcels, the economy of scale for development often discourages investment in property improvement. Meeting demands for medium and larger industrial parcels will be easier with the proposed UGB expansion, as these parcels are larger in size and have fewer different property owners, making aggregation of land for development easier.*

*Following is a calculation of Cornelius' job shortage (2007)*

accommodated on industrial land located anywhere in the region. For example, Ordinance 05-1070A specifically included about 1,000 acres near Hillsboro to accommodate the Washington County high-tech cluster (Shute, Evergreen and Helvetia). A “planetary chart” showing the growth of the high-tech cluster is attached as Exhibit F to the Beery, Elsner & Hammond letter. Most of the companies listed on the chart are located in Washington County. The particular needs of this industry require nearby incubator sites for ancillary business development to support the industry. Cornelius is ideally located to continue to serve the industrial land needs of the high-tech cluster.

Moreover, Cornelius is located immediately adjacent to significant agricultural areas and provides a substantial portion of the industrial land needs for the agricultural business cluster. Unfortunately, Cornelius’ ability to service this cluster has been eroded in recent years by land constraints. As noted in the application, a berry-processing facility (Subroso- Heikes Division) relocated *out* of the Metro region because it could not find an industrial site that was large enough. At the time, Subroso was one of Cornelius’ largest employers and those jobs were lost to the community, exacerbating an already grim employment picture.

Agricultural industries need to be located next to agricultural areas, and high-tech industries need to be located near the high-tech centers. To the extent the regional need for industrial land includes the need for land to serve the high-tech and agricultural clusters, this land need simply cannot be located anywhere in the region. It needs to be located close to those industries. Expanding the UGB adjacent to Cornelius allows the region to provide land for both the high-tech and agriculture industrial clusters.

Finally, to the extent the RFP policies are intended to promote regional equity in employment opportunities, those policies cannot be met by locating employment-generating industrial land anywhere in the region. Those policies are best served by expanding the UGB to accommodate industrial lands in a distressed community like Cornelius.

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*Healthy Housing/Jobs Balance (Residents employed = Jobs available)*

<i>Est. Jobs Needed @2.37employees/household</i>	<i>7,800</i>
<i>Est. Jobs within City limits</i>	<i>- 2,500</i>
<i>Est. Jobs in nearby Agricultural areas</i>	<i>- 1,500</i>
<i>55 Existing Vacant Commercial Zoned acres @ 20 emp</i>	<i>- 1,100</i>
<i>50 Existing Vacant Industrial Zoned acres @ 18 emp.</i>	<i>- 900</i>
<hr/> <i>Total Cornelius Job Shortage</i>	<hr/> <i>1,800</i>

*(Met by est. 100 additional Industrial acres @ 18 emp.)*

\* Projected from 2000 Census and Business License Data, pop. 11,000.

Metro Staff analysis argues that the city offers two reasons that the needs it identifies cannot reasonably be accommodated on land inside the current UGB. First, the city notes that the last addition of land to the UGB for industrial use (Ordinance No. 05-1070A) was 90 acres short of the estimated regional need for industrial land. The city contends that this shows a need in that amount that cannot be reasonably accommodated inside the UGB.

Second, the city points to its own fiscal circumstances and the limits of its current supply of vacant industrial land. The petitioner states “Cornelius’ Vacant Land Inventory, updated in April 2007, identifies 50.47 acres of vacant industrially zoned property in the City. These 50 acres are the total of fourteen scattered tax lots, 13 of which range from 1.4 to 4.1 acres in size. There is one 12½-acre site, our largest vacant industrial parcel.” The petitioner contends that its land supply is inadequate to meet needs expressed by current businesses and by inquiries for parcels 20 acres or larger. However, this assertion is not consistent with one of the letters of support provided by petitioner. Petitioner provided a March 28, 2007 letter from Walt Duyck and David and Alice Armstrong that specifically identifies a need for small industrial sites, but makes no mention of a demand for large industrial sites: “There is a reasonably high demand for smaller lots allowing for small business owners to own their own land and building.” Petitioner does not reconcile the availability and asserted demand for small industrial sites with their actual UGB expansion request. An October 19, 2007 letter of support from the Westside Economic Alliance identifies a regional need for larger industrial sites. Other letters of support pre-date this application and are in reference to the previous analysis of UGB capacity.

In its acknowledgement order following Ordinance No. 05-1070A, LCDC concluded that Metro had met the region’s need for industrial land notwithstanding a shortfall, finding that a 90-acre shortfall was insignificant in light of the region’s overall need (9,366 acres) and the supply added to the UGB in the three additions in periodic review (9,276 acres). Again the Staff argues that given that the region now has a supply of industrial land sufficient to meet needs to the year 2022, the city has not yet demonstrated that there is a need that cannot be accommodated by this supply, particularly in the short term between the present and the next analysis of UGB capacity required by state law in 2009.

By Ordinance No. 05-1070A, Metro added 65 acres (24 net acres) to the UGB north or and adjacent to the City of Cornelius. In the three ordinances adding land to the UGB for industrial use, the Metro Council concluded that the lands it added satisfied policies in the Regional Framework Plan on jobs/housing balance and regional equity. None of the 65 acres added to the UGB in Cornelius have been planned or developed. Petitioner does not explain why its need cannot be accommodated on these lands already in the UGB.

It would require an economic boom of unrecorded proportions to absorb 100% of 20 year supply as distributed throughout the region in less that a 5 or 7 interval between periodic reviews. As section 3.01.030(a) shows this amendment process was designed to address specific opportunities such as public facilities. In the meantime 110 net acres can be added with public facility improvements. How these sites are aggregated or divided for smaller or larger uses is speculative based on this record. To show that these uses can be accommodate anywhere else in the UGB is also highly speculative for a specific petitioner to demonstrate beyond a reasonable doubt. It requires a showing that Cornelius’s needs can be met

anywhere else in the region, where its needs can only be met adjacent to the City and the petitioner has also shown substantial evidence that regional Washington County needs are well addressed at this location and Metro has agreed with that analysis three times in the recent past and removed the site apparently only because it included agriculturally zoned land which is no longer part of this proposal.

#### Conclusion

Because the demonstrated need for industrial land cannot be accommodated on land already inside the UGB, this criteria is met.

**Metro Code section 3.01.030(b), referring to 3.01.020(c)(1) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering efficient accommodation of identified land needs;**

This criterion requires Metro to determine that an area identified for expansion makes the most efficient use of the land. However, this analysis must be made consistent with ORS 197.298, which provides in relevant part:

“ORS 197.298. (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

“(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

“(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land.”

There are no urban reserves in the Metro area, so first priority lands are not available. Second priority is land that is designated as an exception area or is non-resource land. *All of the land that Cornelius proposes for expansion is designated exception area.* Accordingly, the proposed expansion area is the highest priority for inclusion under ORS 197.298. Any analysis of this criterion and subsequent criteria must conform to the statute.

In 2005, as a result of the analysis that lead to the adoption of Ordinance 05-1070A, Metro reviewed a large number of potential expansion areas to accommodate industrial land. After eliminating a number of areas for various reasons, Metro settled on the thirteen areas that best met the selection criteria. Those areas are listed on Table 4 and Table 5 from the November 17, 2005, staff report, attached as Exhibit G to the Beery, Elsner & Hammond letter. Ultimately, the UGB was amended to include the Helvetia and Evergreen areas. Of the remaining areas, Cornelius best meets the applicable criteria.

Specifically, Table 5 lists the eligible expansion areas and rates them on the degree to which they meet Metro’s policy factors. The area Cornelius currently proposes for expansion is entirely within the area listed as “Cornelius (partial).” As you can see from the table, Cornelius gets a “high” ranking for “efficient accommodation of identified land needs.” The

only other area that received a “high” ranking under this criterion was the Evergreen site, which was brought in. No other expansion area identified by Metro for industrial lands scores as high as this site.

In addition, Exhibit G includes an excerpt from the November 17, 2005, staff report in which staff discusses its alternative analysis. It is clear from the staff report and the accompanying tables that the proposed expansion area will efficiently accommodate the identified land need.<sup>13</sup>

Staff argues that the petitioner does not address the main purpose of this criterion, which is to determine which potential expansion areas would make the most efficient use of land. Elsewhere in its application, the petitioner states that approximately 110 acres of the 161-acre property is buildable. This criterion requires a comparison of the proposed UGB expansion area with other possible expansion areas in the region. The petitioner provides substantial comparative evidence in the Beery, Elsner & Hammond submittal based on prior Metro Staff findings.

#### Conclusion

The petitioner meets this criterion.

**Metro Code section 3.01.030(b), referring to 3.01.020(c)(2) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering orderly and economic provision of public facilities and services;**

As argued above this analysis must be made consistent with ORS 197.298 and as there are no urban reserves in the Metro area, so first priority lands are not available. Second priority is land that is designated as an exception area or is non-resource land. *All of the land that Cornelius proposes for expansion is designated exception area.* Accordingly, the proposed expansion area is the highest priority for inclusion under ORS 197.298. Any analysis of this criterion and subsequent criteria must conform to the statute.

In 2005, as a result of the analysis that lead to the adoption of Ordinance 05-1070A, Metro reviewed a large number of potential expansion areas to accommodate industrial land. After eliminating a number of areas for various reasons, Metro settled on the thirteen areas that best met the selection criteria. Those areas are listed on Table 4 and Table 5 from the November 17, 2005,. Ultimately, the UGB was amended to include the Helvetia and Evergreen areas. Of the remaining areas, Cornelius best meets the applicable criteria.

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<sup>13</sup> It is worth reiterating that the proposed expansion area in 2005 included 261 acres. The current proposal excludes all EFU land and two parcels zoned R-20. The proposed expansion area now includes only 161 gross acres, or 110 net buildable acres.

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In addition, Exhibit G includes an excerpt from the November 17, 2005, staff report in which staff discusses its alternative analysis. It is clear from the staff report and the accompanying tables that the proposed expansion area will efficiently accommodate the identified land need.<sup>14</sup>

To inform its consideration whether this Cornelius area can be provided with public facilities and services in an orderly and economic manner, Metro in 2005 relied upon the Industrial Land Alternative Analysis Study (Appendix A, Item (c), pages 111 and Table A-2, respectively) (Record of Ordinance No. 04-1040B, p. 890), the Addendum to the Alternatives Analysis, September, 2005, and information from the city of Cornelius. The analysis compared "serviceability" for transportation, sewer, water, and storm-water services and assigned serviceability ratings for twelve subregional areas. The proposed Cornelius area included by this ordinance rates "easy" for all those services, the only area among those considered so rated. Metro Staff Report, p. 11.

Table 4. Goal 14 Locational Factor Scores

Area	Locational Factor Scores						
	Trans.	Sewer	Water	Storm	Environ.	SEE	Agriculture
Cornelius (partial)	Easy	Easy	Easy	Easy	Moderate	Low	Moderate
Evergreen (partial)	Moderate	Difficult	Easy	Easy	Moderate	Moderate	Moderate
Farmington	Moderate	Difficult	Easy	Easy	Moderate	Moderate	High
Forest Grove East	Moderate	Easy	Moderate	Easy	Moderate	High	High
Forest Grovc West	Moderate	Easy	Moderate	Easy	Moderate	High	High
Helvetia <sup>16</sup>	Moderate	Moderate	Easy	Easy	Moderate	High	High
Hillsboro South	Moderate	Difficult	Easy	Easy	Low	Moderate	Moderate
Jackson School Rd	Moderate	Difficult	Easy	Easy	Low	High	High
Noyer Creek	Easy	Difficult	Moderate	Easy	Low	Moderate	Low
West Union	Moderate	Moderate	Moderate	Easy	High	High	High
Wilsonville East	Moderate	Difficult	Difficult	Moderate	Low	High	High
Wilsonville South	Difficult	Difficult	Difficult	Moderate	Low	High	High

15

Urban services, with the capacity to accommodate industrial development in the area, are currently located at or very close to the perimeter of the area. The city's recently updated Transportation Systems Plan and Master Water, Sanitary Sewer and Storm Water Plans show services can be extended into the areas in an orderly and economic manner. There is road access to the western sub-area from the west at 10<sup>th</sup> Avenue (Arterial) and from both the west and east from 19<sup>th</sup> Avenue and 29<sup>th</sup> Ave./Hobbs Road (Major Collectors) to the proposed

<sup>14</sup> It is worth reiterating that the proposed Expansion area in 2005 included 261 acres. The current proposal Excludes all EFU land and two parcels zoned R-20. The proposed expansion area now includes only 161 gross acres, or 110 net buildable acres.

<sup>15</sup> Table 4. Goal 14 Locational Factor Scores is from is from an October 13, 2005 Metro Staff Report for Metro Ordinance 05-1070

east sub-area. Further access will be provided by Washington County's realignment of Spieschart Road as an Industrial Collector through the proposed west area this next summer (2008).

Rural residential uses in these Exception Lands have been developed with on-site septic systems (tanks, pipes and drain fields) that provide sanitary sewer service. These systems have been in operation for many years and are approaching their failure point. On-site septic systems rely on appropriate soils and adequate 'gravity/slopes' to successfully work. If a system fails on-site it becomes extremely difficult to legally and physically replace it. The extension of City sanitary sewer lines and service to address failures on rural properties only becomes available through expansion of the UGB. Clean Water Services has a 42" sewer line along Council Creek that can provide service to both areas.

Water can also be provided from current service serving properties both inside and outside the present UGB. The City has served the residences along Spieschart Road outside the UGB for 20 years. Twelve-inch mainlines are located in North 10<sup>th</sup> and 19<sup>th</sup> Avenues at or close to the current boundary. Cornelius Master Water Plan, CIP and utility rate and SDC plans account for development in these proposed UGB expansion area. (See Exhibit, City Utility Location Maps)

The proposed areas lie less than a half a mile north of the Tualatin Valley Highway, which is also the Cornelius Main Street District. Industrial development in the Cornelius area will both increase and decrease use and congestion of the highway and county road connections to Sunset Highway and the region. More people and vehicles will be attracted to new uses. However, commuter traffic will decrease as more people have the opportunity to work in their own community. The additional urban development is consistent and connected to City projections and plans, and will help provide local match for federal and county funding already won for transportation improvements, including:

- Two new bridges (built to City standards) over Council Creek at 10<sup>th</sup> and 19<sup>th</sup> Avenues
- Realignment of Spieschart Road
- Reconstruction of 4<sup>th</sup> Avenue, 10<sup>th</sup> Ave. and 19<sup>th</sup>/20<sup>th</sup> Ave. Intersections with TV Highway
- Adair Main Street Reconstruction
- Baseline Main Street Reconstruction
- N 10th Avenue/Cornelius-Schefflin Road

Projects 3156, 3164, 3166, 3167, 3168 and 3171 in Metro's Regional Transportation Plan respond to the economic and infrastructure need and opportunities in Cornelius and are designed to support the additional employment encouraged by this UGB addition and the resulting traffic mix.

The City continues to work closely with Washington County and Metro, to fully assess the effects of development in this area during Title 11 planning. Title 11 calls for a conceptual transportation plan as part of amendment of city or county comprehensive plans and land use

regulations, to which statewide planning Goal 12 and the Transportation Planning Rule apply. This area is approximately five and a half miles from U.S. Highway 26, on which a new interchange (Glencoe Road interchange) is being constructed.

The proposed area is also currently served by the Cornelius Fire Department and by the Cornelius Police Department in cooperation with the Washington County Sheriffs Department.

This proposed area can be provided with services in an orderly and economic manner and can be served efficiently. The provision of urban services to existing development can be effectively expanded as well with the systems development funding that new development brings.

Metro Staff analysis agrees that urban services are available nearby, within the UGB, and that the area proposed for addition compares well, with respect to transportation, water, sewer and stormwater services, with other areas the Metro Council considered for addition for industrial use during periodic review (2002-2005).

The petitioner makes a good case that the proposed areas could accommodate industrial uses efficiently.

#### Conclusion

The petition meets this criterion.

**Metro Code section 3.01.030(b), referring to 3.01.020(c)(3) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering comparative environmental, energy, economic and social consequences;**

In 2002 Metro analyzed the same exception lands that are proposed for inclusion in the current application. Metro's 2002 Alternatives Analysis Study of 94 study areas included the current proposed Cornelius site (known then as Study Areas 75 & 76) and made the following findings with respect to the ESEE consequences of expansion.

“Low Energy/Social/Economic Consequence

*“There are three general categories of study areas that have low economic, social, and energy consequences from urbanization. Each group shares a number of attributes with location to the current UGB being the main difference.*

“Study Areas 1, 16, 45, 46, 61, 62, 63, 64, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81.

“Generally these areas are small in size, directly adjacent to the current UGB and are stand alone study areas. They commonly contain a number of small-developed



parcels and a relatively small degree of agricultural activities and environmental features related to area size. Urbanization of these areas will not significantly change the current use of the land or negatively impact the general activity of the residents as these small areas are currently more urban than other study areas. The relatively small amount of agricultural activity and environmental features will reduce the potential negative economic impacts of a lost farming economy and costs for natural resource protection. Accordingly, urbanization of these areas would result in a low energy/social/economic consequence.”

Again in 2005 Metro identified the best potential expansion areas for industrial use. Among the areas identified, the Evergreen and Helvetia sites were ultimately brought in. Again, by reference to Exhibit G, Table 5, the Cornelius site rated “high” for potential benefits when it was analyzed for comparative environmental, energy, economic and social consequences. None of the remaining potential expansion areas has a “high” rating. Conversely, the area received only a “moderate” ranking for adverse benefits and, according to the staff report, most of the adverse impacts were due to the inclusion of agricultural areas. These agricultural areas have been removed from the current proposal. Accordingly, the adverse impacts have been minimized.

Based on this evidence, the proposed expansion area is the most appropriate considering comparative environmental, energy, economic and social consequences.

Metro Staff analysis states that the city anticipates that the addition of the proposed areas to the UGB will have positive environmental, energy, economic and social consequences for the city, but does not explain the environmental, energy, economic and social consequences of a UGB expansion for the site itself. This criterion requires a comparison of the proposed UGB expansion area with other possible expansion areas in the region. The city also does not compare the proposed UGB expansion site with other alternative expansion areas in the region as required by the criterion; however, the record clearly shows that the ESEE analysis has been performed for these parcels even when the expansion was larger and accepted by Metro. There have not been dramatic shifts to suggests that the wheel has to be invented all over again.

#### Conclusion

The petitioner meets this criterion.

**Metro Code section 3.01.030(b), referring to 3.01.020(c)(4) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering compatibility of proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.**

The City’s application sets forth in detail the City’s current economic circumstances and the

potential benefits from expanding the UGB for additional industrial land.<sup>16</sup> The staff report noted that the application lacked an analysis of these circumstances compared to other potential expansion areas. This analysis was conducted by Metro in 2005 and included in the November 17, 2005, staff report. Again, by reference to Table 5, only the Noyer Creek, Hillsboro South and Helvetia sites received anything other than a “low” rating under this criterion. The Helvetia site was included in Ordinance 05-1070A, leaving only Hillsboro South and Noyer Creek as potential sites with a higher ranking than Cornelius in this category. However, both of these sites scored *lower* than the Cornelius site in almost every other category.

Moreover, as is clear from the 2005 staff report, the Cornelius site received lower ranking for

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<sup>16</sup> Petitioner Response

*Tualatin Valley farmland is very important to sustainable commercial agriculture in the county and state. Cities like Cornelius, Forest Grove, North Plains and Banks owe their very existence to agriculture as they were historically built around and remain supportive of farm, orchard and nursery business. Urban Cornelius houses rural workers and provides the schools, churches, banks, shops, entertainment and law enforcement services that feed commercial agriculture. Commercial agriculture in turn feeds the community. It has long been an interdependent relationship.*

*A balanced, sustainable urban community provides the most sustainable healthy agriculture/urban community relationship. The purpose of this UGB expansion is to meet expressed and proven need for space for businesses that support and grow primarily two area industry clusters – agriculture and high tech businesses. New Season Food and Subroso fruit processing plants, Hazelnut Growers of Oregon Coop, Pacific Harvest Supply Company, Wilco, Hillsboro Pump, Fisher Implements and the new Coastal Farm & Ranch store are examples of agriculture related businesses in town. Without nearby urban space for processing, supply and fueling businesses, and sustainable living areas for agricultural workers, agriculture industry costs go up and its health goes down.*

*There are two dramatic recent examples of the growing demand for industrial space in Cornelius to support agriculture. Sabroso Fruit Processing Company, one of the top ten employees in Cornelius, moved to Woodburn in 2004 because it needed 20 acres of land to expand into and could not make the one assemblage of 20 acres possible in Cornelius work. Now, some local berry producers have to truck their fruit all the way to Woodburn.*

*The Hazelnut Growers of Oregon, also one of the top ten employers in Cornelius, wants to move their processing plant from the center of Cornelius’ commercial area to twice their current 10 acres at the edge but within Cornelius, if there is space. If new space is not made available, the Hazelnut Coop may move to the Salem area, thus hurting both the local agriculture and Cornelius economies. Moreover, there is commercial demand for their current commercial zoned central location. Most agriculture supportive industries need and want the urban services of a city location. If there is not room for them, they will move further away, which increases transport costs for local growers and makes their business less sustainable.*

*Transportation improvements to county arterials and major collectors, made feasible by the traffic warrants and funding of urban development and resources, promise to improve traffic safety and reduce interference between current commuters and agricultural vehicles. Examples include the bridge replacements at 19<sup>th</sup> Avenue/Susbauer and 10<sup>th</sup> Avenue/Cornelius-Schefflin over Council Creek in anticipation of this UGB expansion. Road widening, paving and storm water facilities along Cornelius-Schefflin, Susbauer, Zion Church and Glencoe Roads and their new intersections encourage commuter traffic use and are designed to reduce short-cutting across agricultural roads like Wren and Gordon Roads. It is a common purpose of area farmers and the City of Cornelius to reduce commuting on farm roads. Cornelius needs room for local jobs to be able to do that.*

compatibility with adjacent agricultural uses because the City proposed including several parcels zoned for or in agricultural use. These areas have been removed from consideration and the City now proposed including only those areas designated as exception areas. Accordingly, conflicts with adjacent farm and forest uses have decreased from the earlier proposal and compatibility has increased.

The City's application extensively discussed the manner in industrial areas in the proposed expansion areas will be compatible with farm activities on nearby lands outside the UGB. In light of the additional fact that the City has removed all agricultural lands from consideration, it becomes clear that the proposed expansion area will be compatible with nearby agricultural activities.

#### Conclusion

The petitioner meets this criterion.

**Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(1) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering equitable and efficient distribution of housing and employment opportunities throughout the region;**

The staff report notes that the City sufficiently described “the fiscal and social problems faced by the city, which would be ameliorated by additional jobs and industry, more so than jobs added in other parts of the region.” What was missing was a comparison of the Cornelius site with other possible expansion areas.

This was subsequently addressed. As with the other criteria noted above, Metro conducted this analysis as part of its UGB effort in 2005. Again, Table 5 compares the Cornelius site to other possible sites. Only Cornelius and Forest Grove rank “high” for potential contribution to the equitable distribution of housing and employment opportunities. However, as described above under MCC 3.01.030 (a), Cornelius is the only city in the metropolitan area that is designated a “distressed city” by the Oregon Economic and Community Development Department. The City also ranks lowest in total “regional equity” scores according to both “The Regional Equity Atlas” published in 2007 by the Coalition for a Livable Future and the Affordable Housing Needs Study for the Portland Metropolitan Area published by Portland State University in 2007.

Finally, Metro's considerations under this criterion are constrained by ORS 197.298, and the Cornelius site is the only potential industrial expansion site that is comprised exclusively of exception lands. Based on ORS 197.298, Metro's comparative analysis, the distressed city designation by OECD and the equity rankings published by PSU and the Coalition for a Livable Future, the Cornelius site is the most appropriate site to accommodate the region's industrial land need, “considering [the] equitable and efficient distribution of housing and employment opportunities throughout the region.”

#### Conclusion

The petitioner meets this criterion.

**Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(2) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering contribution to the purposes of Centers;**

As with the other locational factors, the Cornelius site has the highest priority inclusion in the UGB because it consists exclusively of designated exception area. In addition, Metro's 2005 analysis of suitable sites for industrial lands concluded that the Cornelius site ranked "high" in its ability to contribute to the Cornelius "center." See, Table 5. (As noted in your staff report, the City does not have a "center." Instead, the site is analyzed for its contribution to the economic health of the City's Main Street.) Support of the City's Main Street as its business, cultural and service center is consistent with all the Regional 2040 goals and objectives, particularly those that result in "complete communities."

The only other potential expansion site that was ranked "high" for its ability to contribute to the affected center was the Evergreen site, and it was brought in. None of the other potential expansion area included in Metro's analysis contributes to the affected center to the extent that the Cornelius site would contribute to the City. Accordingly, and consistent with ORS 197.298, the Cornelius site is the most appropriate site for expansion "considering the contribution to the purposes of Centers."

#### Conclusion

The petition meets this criterion.

**Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(3) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering protection of farmland that is most important for the continuation of commercial agriculture in the region;**

This criterion is designed to compare the ability of competing sites to protect farmland. No other site included in Metro's analysis (Table 5) consists of exception area. The Cornelius (partial) area scored "low" on Table 5 because the proposed expansion area included AF-20 land that is being farmed. If this agricultural land is excluded from the analysis (it is not part of this application), the extent to which this application protects farmland and farming increases correspondingly.

As an initial matter, Metro's 2002 Alternatives Analysis Study found for both Study Areas 75 and 76 that:

1. "Urbanization of this area would increase traffic on NW Cornelius-Schefflin, NW Susbauer and NW Hobbs Roads. The majority of the daily increased traffic flow would most likely be directed into Cornelius and therefore, would have minimal affect on the normal movement of farm equipment and the movement of agricultural

- goods on NW Cornelius-Schefflin and NW Susbauer Roads” (The city would also point out that NW Hobbs Road now connects via N. Holladay Street to a signalized intersection at N. 26<sup>th</sup> Avenue and Tualatin Valley Highway in Cornelius Offering a safe and easy connection to the State Highway system.)
2. “Overall, urbanization of this area will result in a small amount of new development that could impact some of the adjacent agricultural activity to the north, east and west.”

Second, the attached letter from Washington County (Ex. 14) describes public improvements to the multi-purpose arterials Cornelius-Schefflin Road / 10<sup>th</sup> Avenue and Susbauer Road / 19<sup>th</sup> Avenue and Council Creek bridge replacements that have been or are being constructed through and connecting the proposed expansion areas. The cost of these improvements exceeds \$15million. These improvements are designed to provide improved access for urban commuting, freight traffic and farm equipment along two important west county arterials. Urban standard sidewalks, lighting and right-of-way are being constructed north from inside the current Cornelius city boundary to the new industrial collector that provides access to future industrial uses and Spieschart Road. These improvements will be safer, more efficient and will reduce commuter and freight traffic on the secondary roads used by farm equipment.

Third, it is important to note that providing sufficient land for urban services that support commercial agriculture is vital to the protection of farming. Cornelius has shown it needs room for industries like food processing, transportation, fuel and equipment manufacturing that are an integral part of the local agricultural community.

Ultimately, as noted in the City’s application<sup>17</sup>, industrial uses produce fewer conflicts with

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<sup>17</sup> Petitioner response

*This proposed UGB expansion purposely excludes all land zoned for agricultural purposes. It includes only long defined exception Land, which is partially urbanized and characterized by relatively small lots, and non-agricultural land uses and which is the highest priority land in the state defined hierarchy for UGB expansion. These 161 acres are broken into 38 parcels, the average size of which is 4.2 acres. This land has not been important farmland for decades.*

*Two dozen residences are scattered throughout the proposed area, half of which are served by the Cornelius water system. There is one existing industrial use already in this expansion area; Jacobsmuhlen Meat Packing Company lies on 4 acres off Susbauer Road and wants the urban services and ability to expand offered by the City within its city limits. Owners of property within this area, who themselves farm larger parcels north of Dairy Creek, have testified that farming within the proposed area is not profitable and have committed that upon UGB inclusion their 12 acres in this exception Area will be developed into an industrial park.*

*Industrial land uses are known to be comparatively good neighbors to farming and therefore would be a good buffer between the urban residential uses which align much of the current UGB here and agricultural uses. Industrial uses can be planned under the current Cornelius Code to responsibly buffer neighboring agriculture land from more intense urban uses that are less understanding of the noise, dust and traffic of active farming and orchard management. New industrial development also promises to reduce some of the dependence on commuting and help pay for collector road improvements that can reduce the use of secondary farm roads by urban residents.*

*Council Creek, which currently coincides roughly with the UGB along the north of Cornelius, has not served to effectively protect important farmland to the north for some time. For decades now, urban*

adjacent farm activities. With this proposal, no agricultural land will be taken out of production and any adjacent industrial development will introduce the least potential number of conflicts with and provide the best buffer for adjacent farm uses. No other proposed expansion area offers these same benefits.

For these reasons, and consistent with ORS 197.298, the Cornelius site is the best potential site, “considering [the] protection of farmland that is most important for the continuation of commercial agriculture in the region.”

#### Conclusion

The petition meets the criterion.

**Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(4) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering avoidance of conflict with regionally significant fish and wildlife habitat;**

When Metro analyzed the proposed expansion areas for Ordinance 05-1070A, the Cornelius site received a “moderate” ranking for its conflicts with regionally significant fish and wildlife habitat. That placed the Cornelius site firmly in the middle of the pack, since most of the study areas received a “moderate” ranking. The two site that were brought into the UGB, Evergreen and Helvetia, received “low” and “moderate” rankings, respectively.

Since that analysis was conducted, a number of things have occurred. First, the Council Creek corridor between NW Susbauer and NW Hobbs Road (in old study area 76, an area constituting approximately 25 acres) is now owned by Metro Parks and Greenspaces, which limits development of this land. The City has provided additional safeguards for wildlife and habitat in this area.

Second, as part of its recent periodic review, the City inventoried and adopted additional protection measures for significant natural resources. The City’s acknowledged Natural Resource Protection Plan identifies the Council Creek corridor between Jobes Ditch (east of NW Hobbs Road) west to NW Cornelius-Schefflin Road (old Study Areas 75, 76) as a Significant Natural Resource with maximum protection measures for the stream, wetlands and riparian corridor. This provides significant protection of the resource and restricts urbanization. The Significant Natural Resource designation and the Metro Parks ownership of a portion of the Council Creek corridor that is part of the proposed UGB expansion area would provide protections of wildlife habitat that were not assessed in 2002 or 2003. Therefore, the potential impact on regionally significant fish and wildlife habitat has moved closer to “low” and not “moderate.”

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*uses, including residential, industrial, and infrastructure improvements, have been developed north of Council Creek at sub-urban densities and inefficiencies. Land has been subdivided to average four-acre lots. The proposed land is long lost to agriculture. Planned development, transitions and buffers will serve to protect all neighboring uses much better.*

In 2005, the Cornelius site was comparable to the other potential expansion areas. In light of the wildlife and habitat protections that have been put into place since then, it is now clear that the Cornelius site is better than the other sites, “considering avoidance of conflict with regionally significant fish and wildlife habitat.”

Conclusion

The petition meets this criterion.

**Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(5) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering clear transition between urban and rural lands, using natural and built features to mark the transition.**

This criterion requires Metro to find that the Cornelius area is better than other potential expansion areas in providing a clear transition between urban and rural lands. This criterion was also analyzed by Metro staff in 2005 and the Cornelius (partial) site received a “moderate” ranking. Exhibit F, Table 5. The Noyer Creek site received a “high” ranking, but scored poorly in most other areas and was not brought into the UGB. The Helvetia and Evergreen areas both received “moderate” rankings and were brought in. The only remaining sites that received a “moderate ranking are the West Union and Wilsonville East sites, and, like the Noyer Creek site, both of these sites scored poorly in other areas.

After balancing all of the locational factors, it becomes clear that the proposed Cornelius site is the best site to accommodate the identified need for industrial land. As stated in the 2005 Metro staff report: “Although no one area meets all of the combined factors in Table 5, the Evergreen and the Cornelius areas satisfy a great number of the combined factors.” The Metro Council expanded the UGB to include the Evergreen site in 2005. Of the remaining sites, the Cornelius is the best meets the applicable criteria.

Finally, it is worth reiterating that the proposed expansion area adjacent to the City consists entirely of exception land. Under ORS 197.298, in the absence of urban reserve areas, exception land is the highest priority land for expanding the UGB. Only if available exception areas are insufficient to accommodate the identified need can other areas be included. All of the other potential expansion areas reviewed by Metro in 2005 include at least some resource land. Only the Cornelius area is entirely exception land. For this reason, the Cornelius site is the best and highest priority site under ORS 197.298.

Conclusion

The petition meets this criterion.

**Metro Code section 3.01.030(b)(1) The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land.**

The City argues that well planned industrial uses will provide an excellent “good neighbor” transition between urban and rural uses at the north edge to Cornelius. Conflict between current existing “sub”urban development and more rural activity to the north has

resulted in complaints and at least one Measure 37 claim just off Spieschart Road And abutting residential neighbors showed up in some numbers at the hearings (See Hearing Summary above) and signed petitions opposing the request. Industrial uses are generally more intense than agricultural uses and less intense than residential activity, so they make for good transitional uses. Also pending upgrades to the arterial 10<sup>th</sup> Ave./Cornelius-Schefflin Road right in this very area has created the opportunity to build improvements that meet standards necessary for shared urban/rural uses and enhance the transition.

Council Creek, the stream along the northern side of Cornelius has been approximately contiguous with the UGB since the Boundary's inception in 1978. That edge, expected to be the boundary for up to 20 years by the citizens who drew it, has long ago been out-grown and breached. Partially urbanized "Exception Land" covers almost the entire length of Cornelius north of Council Creek and has been planned and developed around for two decades. Two dozen homes are scattered just north of this Creek. Cornelius serves 13 properties north of the Creek with water. An important meat packing industrial business, located north of this Creek for two decades, wants urban services. And, approximately 13 acres of land north of this Creek has been inside the City limits of Cornelius for some time, yet outside the current UGB.

The City of Cornelius is partner in the region-wide study of future urban and rural reserves. The location and character of future boundaries and transition will be fruit of this four-year discussion. In the mean time, Cornelius can become a more sustainable and equitable community and manage the transition actively with its agricultural neighbors and business partners, rather than by avoidance.

Metro staff agrees that petitioner notes that industrial uses are "good neighbors" to agricultural uses. Most of the perimeter of the areas proposed for addition borders agricultural land. The petitioner does not address compatibility with areas within the UGB in the portion of its application devoted to this criterion. But elsewhere in the application, the petitioner notes the proximity of the proposed areas to areas in the city devoted to industrial use and their compatibility.

As stated in the Overview section, design of industrial area can be made sensitive through landscape and other design requirements which the City is capable of addressing through the zoning. Campus industrial uses are envisioned.

#### Conclusion

The petition meets this criterion.

**Metro Code section 3.01.030(b)(2) The amendment will not result in the creation of an island of rural land inside the UGB or an island of rural land inside the UGB;**

Addition to the UGB of the proposed land would neither create an island of land outside the UGB nor an island of rural land inside the UGB.

#### Conclusion

The petition meets this criterion.



**Metro Code section 3.01.030(b)(3) If the amendment would add land for public school facilities, a conceptual school plan as described in Section 3.07.1120(I) has been completed.**

The proposed expansion is not for school facilities.

Conclusion

The petition meets this criterion.

**SUMMARY AND RECOMMENDATION**

This petitioner seeks to amend the UGB to include 161 (110 net) acres for industrial purposes. The petitioner has provided substantial evidence to show that there is a deficiency in the long-range supply for land through rezoning and the two year or longer review delay that was not anticipated in the last analysis of buildable land supply and that the in context of allowable expansion uses under Section 3.01.030(a) cannot wait until the next analysis. The petitioner has also provide adequate comparison of the proposed UGB expansion area with other possible expansion areas in the region as required by multiple criteria based on previously adopted Metro Staff Report which ranked this site in comparison to the other in Metro area based on the same legislative criteria..

The hearing officer concludes that deferring all unanticipated needs to the next periodic review makes a nullity of allowing major amendments to be considered in a quasi-judicial setting. This is reinforced by an opportunity to complete significant public facilities which are dependent on the re-inclusion of these sites within the UGB. The need and the opportunity considered jointly meet the intent of 3.01.030(a). To give any effect to the system in which major amendments are available to individual petitioners requires a more liberal reading of the criteria and allows reliance on recent legislative Metro findings which were favorable to the inclusion of this area within the UGB. Given high credibility of 2005 Metro Staff Report of regional analysis and comparison of all potentially available expansion parcels, this area ranked high. Given its high location values, the need for jobs, public facility opportunity to create highly accessible and desirable industrial land the petition deserves approval.

For all those reasons the Hearing Officer recommends APPROVAL of the request.

Dated this \_\_\_\_\_ day of March 2008

*/s/ J. Richard Forester*

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**J. Richard Forester, OSB #74101  
Metro Hearing Officer**

Agenda Item Number 4.2

**Ordinance No. 08-1180**, For the Purpose of Amending Metro  
Code Chapter 2.18 (Campaign Finance Regulation).

***First Reading***

Metro Council Meeting  
Thursday, March 13, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) Ordinance No. 08-1180  
METRO CODE CHAPTER 2.18 )  
(CAMPAIGN FINANCE REGULATION) ) Introduced by Chief Operating Officer Michael  
AND DECLARING AN EMERGENCY ) Jordan with the Concurrence of Council President  
) David Bragdon

WHEREAS, the Metro Council enacted Metro Code Chapter 2.18 (Campaign Finance Regulation) by Ordinance No. 00-849A (For the Purpose of Amending the Metro Code Regarding Campaign Finance and Disclosure) on March 30, 2000 and effective June 28, 2000; and

WHEREAS, it is reaffirmed that in adopting Ordinance No. 00-849A the Metro Council said that fully and timely disclosure of all campaign contributions, in accordance with ORS 260, contributes to public confidence in elected officials; and

WHEREAS, the Council wishes to revise Chapter 2.18 to conform to the electronic filing requirements of current Oregon Law; and

WHEREAS, the Council held a public hearing on the proposed amendments; and

WHEREAS, the Council wishes for all campaign finance reports filed electronically to be posted on Metro’s website; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. Chapter 2.21 of the Metro Code is hereby amended as indicated in Exhibit “A,” attached and incorporated into this ordinance.
- 2. This ordinance is necessary for the immediate preservation of public health, safety and welfare because Oregon’s campaign finance report procedures changed effective January 1, 2008. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this \_\_\_ day of \_\_\_\_\_, 2008.

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

Attest:

Approved as to form:

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

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

**Exhibit "A" to Ordinance No. 08-1180**

CHAPTER 2.18

CAMPAIGN FINANCE REGULATION

SECTIONS	TITLE
2.18.010	Purpose and Intent
2.18.020	Definitions
2.18.030	Additional Campaign Finance Reporting Requirements
2.18.040	Public Dissemination of Campaign Finance Reports

2.18.010 Purpose and Intent

The purpose and intent of this chapter is to provide additional campaign finance ~~reporting~~ disclosure to the public that is consistent with the current campaign finance disclosure requirements in Oregon and federal laws. It is the intent of this chapter that it be construed as being a supplement to existing campaign finance regulations.

2.18.020 Definitions

As used in this chapter, the following terms shall have the following meanings. Any word not specifically defined herein shall have the meaning defined in ORS 260.005.

(a) "Candidate" means a candidate for a Metro elected office.

(b) "Legislative or administrative interest" has the meaning defined in ORS 244.020.

(c) "Metro Elected Official" means any person elected or appointed as a member of the Metro Council and the Metro Auditor.

(d) "Metro Elected Office" means the seven (7) Metro Council positions and the Metro Auditor.

2.18.030 Additional Campaign Finance Reporting Requirements

(a) Every Candidate and every Metro Elected Official who is a candidate for any public office shall file with the Metro Council Clerk ~~an original copy of~~ an electronic link to any campaign finance report required to be filed pursuant to ORS 260 or any applicable federal law. ~~Such campaign finance reports shall include all required reports of contributions and~~

~~expenditures. The report~~ Campaign finance report electronic links shall be ~~delivered~~ provided to the Metro Council Clerk within two (2) days after ~~it is filed with~~ they became available from the state or federal filing officer. ~~provided for under Oregon or federal law.~~

~~(b) In addition to the reports required by subsection (a) above, every Candidate and every Metro Elected Official who is a candidate for any public office shall file reports with the Metro Council Clerk disclosing all contributions required to be reported under Oregon or federal law no less frequently than every 90 days. The first report shall be filed with the Metro Council Clerk no later than 90 days after the date the Metro Elected Official declares their candidacy or first organizes a political committee.~~

(eb) Prior to taking any action or voting on any matter in which any person who has a legislative or administrative interest has made a campaign contribution of \$500 or more in the aggregate to the Metro Elected Official, the Metro Elected Official shall disclose the existence of the contribution on the public record, if the contribution has not been previously ~~reported on any~~ made available in a financial report campaign finance report electronic link required to be filed ~~with the Metro Council Clerk~~ pursuant to (a) ~~or (b)~~ above.

(dc) A Metro Councilor shall make the disclosure of such contributions on the record required by (eb) above immediately prior to voting or abstaining from voting on the matter. The Metro Auditor shall disclose such contributions by filing a written notice with the Metro Council Clerk or the Council prior to taking action on any such matter. In all cases, the disclosure shall include the name of the donor, the amount of the contribution and the nature of the donor's legislative or administrative interest in Metro.

#### 2.18.040 Public Dissemination of Campaign Finance Reports

~~The Metro Council Clerk shall maintain a file of all campaign finance reports received and shall provide public access to the file at no charge. The Metro Council Clerk shall also provide such access by including the reports on Metro's world wide web information "page."~~ The Metro Council Clerk shall cause all campaign finance report electronic links to be posted on Metro's website. Website access to the campaign finance report links shall be maintained on the Metro website until the earlier of the January 1 following the election or the Metro elected official's term ends.

## **STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 08-1180 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.18 (CAMPAIGN FINANCE REGULATION) AND DECLARING AND EMERGENCY**

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Date: February 27, 2008

Prepared by: Emma Stocker

#### **BACKGROUND**

In 2005, the Oregon Legislature passed HB 3458, directing the Secretary of State to develop an electronic filing system to be used to file campaign contribution and expenditure information. That system, ORESTAR, became operational January 1, 2007 and HB 2082 amended campaign finance reporting requirements. Changes, effective January 1, 2008 include requiring that all campaign finance information be filed electronically and continuously throughout the campaign, eliminating “scheduled” reporting deadlines. Transactions are generally required to be filed with the Secretary of State within 30 days of the date of the transaction, except during the 6 weeks prior to an election when transactions must be filed within 7 days. All federal campaign reports are also available electronically.

This Ordinance, No. 08-1180, is for the purpose of amending the Metro Code to reflect new Oregon reporting requirements. In light of the fact that campaign finance reporting will be done continuously, the proposed amendment to the Metro Code allows a candidate to provide a hyper link to those reports filed electronically to the Metro Council Clerk within the appropriate number of days. Federal campaign finance reports, if required, will be available through a link to the Federal Elections Commission website.

#### **ANALYSIS/INFORMATION**

**Known Opposition** None

**Legal Antecedents** Metro Code 2.18 (Campaign Finance Regulation) as enacted by Ordinance No. 00-849A (For the Purpose of Amending the Metro Code Regarding Campaign Finance and Disclosure)

**Anticipated Effects:** Amending the Metro Code in this way will bring Metro into accordance with ORS 260 as well as provide greater public access to information through more timely dissemination of campaign information.

**Budget Impacts** None

#### **RECOMMENDED ACTION**

Metro Staff recommends the adoption of Ordinance No. 08-1180.

**Resolution No. 08-3921**, For the Purpose of Endorsing  
Regional Priorities for State Transportation Funding Legislation

Metro Council Meeting  
Thursday, March 13, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING ) RESOLUTION NO. 08-3921  
REGIONAL PRIORITIES FOR STATE )  
TRANSPORTATION FUNDING ) Introduced by Councilor Rex Burkholder  
LEGISLATION )

WHEREAS, an efficient and adequately funded transportation system is critical to ensuring a healthy economy and livable communities throughout the state of Oregon; and

WHEREAS, the Portland metropolitan region has become a national model for how strategic transportation investments combined with regional land use planning can improve community livability and environmental quality while supporting a strong economy; and

WHEREAS, despite the important investments that have been made possible since 2001 by three Oregon Transportation Improvement Acts and two "ConnectOregon" multimodal packages, the state and the Portland region remain several billion dollars short of what is needed to adequately address essential transportation needs over the next 20 years; and

WHEREAS, investments in maintaining and expanding transportation facilities in the Portland region are especially critical in light of the fact that the region's population is expected to grow by approximately one million people by 2030; and

WHEREAS, freight volumes are expected to increase even more quickly than population over that same time period; and

WHEREAS, additional funding to address these transportation needs will create or sustain thousands of jobs and help stimulate the economy of the region and the state; and

WHEREAS, it is critical that we plan and fund the region's transportation system in such a way as to confront the challenge posed by global climate change; and

WHEREAS, it is in the interest of local governments inside Metro to jointly seek additional transportation funding from the 2009 Oregon Legislature; and

WHEREAS, Governor Kulongoski and legislative leaders have declared that passage of a transportation funding package will be a top legislative priority in 2009; now, therefore,

BE IT RESOLVED that the Metro Council and the Joint Policy Advisory Committee on Transportation (JPACT) endorse a set of principles to guide the region's participation in the development of a state legislative funding proposal to be considered by the 2009 Oregon Legislature, as described in Exhibit A of this resolution, entitled "Metropolitan Region Principles for Legislative Transportation Funding Package in 2009".

ADOPTED by the Metro Council this \_\_\_\_\_ day of March 2008.

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

Approved as to Form:

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



# **Metropolitan Region Principles For a Legislative Transportation Funding Package in 2009**

**We, the local governments of the Portland Metropolitan Region, believe:**

The mounting inadequacy of funding for modernization and maintenance of Oregon's transportation system:

- Threatens the state's economy.
- Harms the long term livability of our communities.
- Undermines public safety.
- Places the long term value of previous investments at risk.
- Contributes to global climate change and energy insecurity.

To solve this transportation funding crisis, and to guide critical decisions on transportation, we, the undersigned, support the following principles:

## **MAKE STRATEGIC INVESTMENTS**

- Adopt a significant, coordinated, comprehensive, long-term transportation funding package that addresses the needs of the entire state through investments at the state, regional, and local levels.
- Ensure that any transportation funding package is responsive to the specific needs of Oregon's metropolitan areas.
- Recognize the mutually dependent relationship between our land use and transportation systems, and between these systems and the state's economic competitiveness.
- Invest transportation revenues in a multi-modal program that provides statewide economic benefits and produces a high return on investment.
- Allocate sufficient funds to address critical safety needs in communities statewide, and to support the maintenance and preservation of new and existing transportation facilities.

## **REINFORCE OREGON'S LIVABILITY AND SUSTAINABILITY**

- Design transportation investment programs to reward practices that best enhance the State's goals with respect to public health and safety, livability, global climate change, economic prosperity and environmental stewardship.

## **INVEST IN ECONOMIC COMPETITIVENESS**

- Invest in key projects that strengthen freight movement, improve system reliability and safety, and expand access and transit to traditional downtowns and other centers of commerce.

## **MAINTAIN FLEXIBILITY AND EQUITY FOR LOCAL GOVERNMENTS**

- Allow and encourage innovative approaches and funding mechanisms to meet the differing needs of Oregon's state, regional, and local transportation systems.
- Facilitate or expand funding authorities available to local and regional governments and eschew unfunded mandates.
- Address state and local transportation needs through the distribution formula providing 50% to the state, 30% to counties, and 20% to cities, and maximize local flexibility as to how these funds may be used.

**Resolution No. 08-3922**, For the Purpose of Approving a Settlement Agreement with Pacific Powervac LLC Regarding Metro Notice of Violation No. NOV-186-07.

Metro Council Meeting  
Thursday, March 13, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A	)	RESOLUTION NO. 08-3922
SETTLEMENT AGREEMENT WITH PACIFIC	)	
POWERVAC LLC REGARDING METRO	)	
NOTICE OF VIOLATION NO. NOV-186-07	)	Introduced by Chief Operating Officer
	)	Michael J. Jordan, with the concurrence of
	)	Council President David Bragdon

WHEREAS, during 2006 and 2007, Pacific PowerVac LLC (“PPV”) delivered solid waste generated within the Metro boundary to the Coffin Butte Landfill without paying the correct regional system fee and excise tax thereby violating Metro Code Sections 5.02.045 and 7.01.020; and

WHEREAS, on November 14, 2007, the Metro Chief Operating Officer (“COO”), issued Notice of Violation No. NOV-186-07 to PPV for these violations; and

WHEREAS, PPV submitted to Metro a timely request for a contested case hearing regarding NOV-186-07 in a letter dated December 4, 2007; and

WHEREAS, PPV disputed the COO’s conclusion that it did not pay the correct excise tax and regional system fee and provided documents to support its position; and

WHEREAS, the Solid Waste and Recycling Department Director and PPV agreed the terms of a settlement under which PPV will pay the regional system fee and excise tax owed, plus interest; and

WHEREAS, Metro Code Section 2.03.090 requires the Council to approve any settlement of unpaid civil penalties executed by the Director; and

WHEREAS, the COO recommends that Metro fully settle NOV-186-07 with respect to the civil penalties imposed in NOV-186-07; now, therefore

BE IT RESOLVED that the Metro Council approves settlement with PPV regarding NOV-186-07 and authorizes the COO to enter into a settlement agreement substantially similar to the document attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

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

Approved as to Form:

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

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below ("Effective Date"), by and between Metro, a metropolitan service district and municipal corporation of the State of Oregon, organized under Oregon Revised Statutes Chapter 268 and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232 ("Metro") and PPV, Inc. ("PPV") an Oregon corporation, located at 4530 NE 138th Avenue, Portland, Oregon 97230.

### RECITALS

- A. On November 14, 2007, Michael J. Jordan, Metro Chief Operating Officer ("COO"), issued Notice of Violation No. 186-07 ("NOV-186-07") to PPV. Based on an investigation conducted by Metro, the COO found that PPV did not pay the correct Metro regional system fee and excise tax.
- B. PPV disputed the COO's conclusion that it did not pay the proper excise tax and regional system fee on the solid waste and provided documents to support its position.
- C. The Parties enter into this Agreement to fully settle and compromise this dispute. Neither party admits by this settlement that it is liable to the other party.

**NOW, THEREFORE**, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Confession of Judgment. PPV shall execute the Confession of Judgment attached as Exhibit A to this Agreement and shall provide Metro with such executed document not later than five (5) days after both Parties have signed this Agreement.

In consideration for not executing on this judgment, PPV promises to pay Metro \$78,787.05 plus six percent (6%) simple interest compounded monthly on any balance owed. This sum is to be paid in monthly installments of not less than \$2,385.00 in any one payment, except for the last payment due of \$2,382.26 as set forth in Exhibit B to this Agreement. The first payment is due on March 1, 2008, and PPV shall make a payment of \$2,385.00 on the first day of each month thereafter until PPV has paid the whole sum. PPV may make payment to Metro of all or any portion of the remaining principle and interest accrued at any time without penalty.

If PPV is overdue on the payment of two (2) of these installment payments at any time, Metro shall provide PPV with a written notice, mailed via regular U.S. mail deposited in Portland, Oregon, and addressed to Joseph Thuney, President, PPV, Inc., 4530 NE 138th Avenue, Portland, Oregon 97230. This notice shall provide PPV with not less than ten (10) days to cure such overdue payments, and shall inform PPV that it will be in default under this Agreement if PPV fails to cure such overdue payments or if PPV is overdue on three (3) such installments, as described below.

If PPV either fails to cure overdue payments within the time period provided by Metro's cure letter, as described above, or is overdue on the payment of three (3) installments, or both, then PPV shall be in default of this Agreement. In the event of such default, Metro may:

- (a) Take a judgment order based on the Confession of Judgment against PPV for:
    - (i) The entire confessed sum, \$78,787.05, less any installments paid;
    - (ii) Six percent (6%) simple interest compounded monthly on the unpaid balance of the entire confessed sum calculated from the date that the Confession of Judgment was executed by the Company;
    - (iii) Reasonable attorney fees in trial court and appellate court to take and collect the judgment; and
  - (b) Execute to collect such total sum due, including the sum due, interest, and attorney fees.
2. Metro's Release of Further Enforcement Action. Metro hereby releases, acquits, and forever discharges its authority to pursue further enforcement action against PPV for the violations alleged in NOV-186-07. The Parties do not intend that the release, acquittal, and discharge provided for in this paragraph shall release, acquit, or discharge any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement.
  3. Modification and Waiver. This Agreement shall not be modified unless such modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement.
  4. Attorney Fees. If any suit or action is brought to enforce or interpret this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorney fees and other costs incurred by the prevailing Party at trial or on appeal.
  5. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
  6. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
  7. Entire Agreement. This Agreement is the entire agreement between the Parties.
  8. Voluntary Agreement. Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own legal counsel, and that it voluntarily enters into this Agreement.

9. Authority to Enter Into This Agreement and Signatory Authority. Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.
10. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

**PPV, Inc.**

**METRO**

By: \_\_\_\_\_  
Joseph Thuney  
President

By: \_\_\_\_\_  
Michael J. Jordan  
Chief Operating Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachments:**

Exhibit A – Confession of Judgment

Exhibit B – Payment Schedule

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**Exhibit A  
Settlement Agreement**

Exhibit A to Resolution No. 08-3922

1 PPV warrants that the obligation from which this Confession of Judgment arises does not relate  
2 to any contract, obligation or liability arising from the sale of goods or furnishing of services for  
3 personal, family or household use, nor out of a loan or other extension of credit for personal, family or  
4 household purposes, or upon a promissory note that is based upon such sale or extension of credit

5 The payment on the judgment set forth above shall be paid as follows: PPV promises to pay  
6 Metro \$78,787.05 plus six percent (6%) simple interest compounded monthly on any balance owed.  
7 This sum is to be paid in monthly installments of not less than \$2,385.00 in any one payment, except for  
8 the last payment due of \$2,382.26. The first payment is due on March 1, 2008, and PPV shall make a  
9 payment of \$2,385.00 on the first day of each month thereafter until PPV has paid the whole sum.

10 If PPV is overdue on the payment of two (2) of these installment payments at any time, Metro  
11 shall provide PPV with a written notice, mailed via regular U.S. mail deposited in Portland, Oregon, and  
12 addressed to Joseph Thuney, President, PPV, Inc., 4530 NE 138<sup>th</sup> Avenue, Portland, OR 97230. This  
13 notice shall provide PPV with not less than ten (10) days to cure such overdue payments, and shall  
14 inform PPV that it will be in default of this Confession of Judgment if the Company fails to cure such  
15 overdue payments or if PPV is overdue on three (3) such installments, as described below.

16 If PPV either fails to cure overdue payments within the time period provided by Metro's cure  
17 letter, as described above, or is overdue on the payment of three (3) installments, or both, then PPV shall  
18 be in default of this Confession of Judgment. In the event of such default, Metro will have the legal  
19 right to file this Confession of Judgment with the Court and may:

20 (a) Take a judgment order based on this Confession of Judgment against PPV for:

- 21 (i) The entire confessed sum, \$78,787.05, less any installments paid;
- 22 (ii) Six percent (6%) monthly simple interest on the unpaid balance of the entire  
23 confessed sum calculated from the date that this Confession of Judgment was  
24 executed by the Company;

25 ///

**METRO**  
Office of Metro Attorney  
600 NE Grand Avenue  
Portland, Oregon 97232-2736



**Exhibit A  
Settlement Agreement**

1 (iii) Reasonable attorney fees in trial court and appellate court to take and collect the  
2 judgment; and

3 (b) Execute to collect such total sum due, including the sum due, interest, and attorney fees.

4 So long as PPV pays the amounts due as set forth above, Metro agrees to not file this Confession  
5 of Judgment with the Court.

6 I hereby declare that the above statement is true to the best of my knowledge and belief, and that  
7 I understand it is made for use as evidence in court and is subject to penalty for perjury.

8 Defendant:  
9 PPV, Inc.

10 By: \_\_\_\_\_  
11 Joseph Thuney, President

12 Date: \_\_\_\_\_

13  
14 State of Oregon )  
15 ) ss.  
16 County of \_\_\_\_\_ )

17 This instrument was acknowledged before me on \_\_\_\_\_, 2008  
18 by JOSEPH THUNEY as President of PPV, Inc.

19  
20 \_\_\_\_\_  
21 Notary Public - State of Oregon

# Pacific Power Vac - Settlement on Fees and Taxes owed Metro Fees, Taxes, and Interest Due on Sludge Material disposed as PCS

Exhibit B-1 of 2  
Settlement Agreement

	Sludge Tonnage	<sup>2</sup> Fees & Taxes Due		Paid		Balance Due		Fee&Tax Due	9%	Net Due
		System Fee	Excise Tax	System Fee	Excise Tax	System Fee	Excise Tax	Subtotal	<sup>1</sup> Interest	
May-05	<b>31.04</b>	\$ 468.39	\$ 266.32	\$ 77.60	\$ 31.04	\$ 390.79	\$ 235.28	<b>\$ 626.07</b>	\$ -	\$ 626.07
Jun-05	-	-	-	-	-	-	-	-	<b>4.70</b>	630.77
Jul-05	-	-	-	-	-	-	-	-	<b>4.73</b>	635.50
Aug-05	-	-	-	-	-	-	-	-	<b>4.77</b>	640.27
Sep-05	-	-	-	-	-	-	-	-	<b>4.80</b>	645.07
Oct-05	-	-	-	-	-	-	-	-	<b>4.84</b>	649.91
Nov-05	-	-	-	-	-	-	-	-	<b>4.87</b>	654.78
Dec-05	-	-	-	-	-	-	-	-	<b>4.91</b>	659.69
Jan-06	-	-	-	-	-	-	-	-	<b>4.95</b>	664.64
Feb-06	-	-	-	-	-	-	-	-	<b>4.98</b>	669.62
Mar-06	-	-	-	-	-	-	-	-	<b>5.02</b>	674.64
Apr-06	-	-	-	-	-	-	-	-	<b>5.06</b>	679.70
May-06	<b>270.01</b>	3,925.95	2,249.18	526.52	270.01	3,399.43	1,979.17	<b>5,378.60</b>	<b>5.10</b>	6,063.40
Jun-06	<b>260.27</b>	3,784.33	2,168.05	507.53	260.27	3,276.80	1,907.78	<b>5,184.58</b>	<b>45.48</b>	11,293.46
Jul-06	<b>454.28</b>	6,605.23	3,784.15	885.85	454.28	5,719.38	3,329.87	<b>9,049.25</b>	<b>84.70</b>	20,427.41
Aug-06	<b>351.04</b>	5,104.12	2,924.16	684.53	351.04	4,419.59	2,573.12	<b>6,992.71</b>	<b>153.21</b>	27,573.33
Sep-06	<b>237.15</b>	3,218.13	1,980.20	592.88	237.15	2,625.25	1,743.05	<b>4,368.30</b>	<b>206.80</b>	32,148.43
Oct-06	<b>377.87</b>	5,127.70	3,155.21	944.68	377.87	4,183.02	2,777.34	<b>6,960.36</b>	<b>241.11</b>	39,349.90
Nov-06	<b>446.63</b>	6,060.77	3,729.36	1,116.58	446.63	4,944.19	3,282.73	<b>8,226.92</b>	<b>295.12</b>	47,871.94
Dec-06	<b>365.32</b>	4,957.39	3,050.42	913.30	365.32	4,044.09	2,685.10	<b>6,729.19</b>	<b>359.04</b>	54,960.17
Jan-07	<b>286.54</b>	3,888.35	2,392.61	716.35	286.54	3,172.00	2,106.07	<b>5,278.07</b>	<b>412.20</b>	60,650.44
Feb-07	<b>294.95</b>	4,002.47	2,462.83	737.38	294.95	3,265.09	2,167.88	<b>5,432.97</b>	<b>454.88</b>	66,538.29
Mar-07	<b>238.16</b>	3,231.83	1,988.64	595.40	238.16	2,636.43	1,750.48	<b>4,386.91</b>	<b>499.04</b>	71,424.24
Apr-07	<b>33.14</b>	449.71	276.72	82.85	33.14	366.86	243.58	<b>610.44</b>	<b>535.68</b>	72,570.36
May-07	-	-	-	-	-	-	-	-	<b>544.28</b>	73,114.64
Jun-07	-	-	-	-	-	-	-	-	<b>548.36</b>	73,663.00
Jul-07	-	-	-	-	-	-	-	-	<b>552.47</b>	74,215.47
Aug-07	-	-	-	-	-	-	-	-	<b>556.62</b>	74,772.09
Sep-07	-	-	-	-	-	-	-	-	<b>560.79</b>	75,332.88
Oct-07	-	-	-	-	-	-	-	-	<b>565.00</b>	75,897.88
Nov-07	-	-	-	-	-	-	-	-	<b>569.23</b>	76,467.11
Dec-07	-	-	-	-	-	-	-	-	<b>573.50</b>	77,040.61
Jan-08	-	-	-	-	-	-	-	-	<b>577.80</b>	77,618.41
Feb-08	-	-	-	-	-	-	-	-	<b>582.14</b>	78,200.55
Mar-08	-	-	-	-	-	-	-	-	<b>586.50</b>	78,787.05
<b>Total</b>	<b>3,646.40</b>	<b>\$ 50,824.37</b>	<b>\$ 30,427.85</b>	<b>\$ 8,381.45</b>	<b>\$ 3,646.40</b>	<b>\$ 42,442.92</b>	<b>\$ 26,781.45</b>	<b>\$ 69,224.37</b>	<b>\$ 9,562.68</b>	
		<b>\$81,252.22</b>		<b>\$12,027.85</b>		<b>\$69,224.37</b>		<b>\$78,787.05</b>		

Notes: <sup>1</sup> Interest is assessed on the balance due on the first day of the following month. e.g. on June 1 interest is calculated on any prior balance due plus any fees & taxes owed on waste disposed in May.

<sup>2</sup> Fees & tax rates are adjusted annually in September:

period	System Fee	Excise Tax	ECM System Fee	ECM Excise Tax
04-05	\$15.09	\$8.58	\$2.50	\$1.00
05-06	\$14.54	\$8.33	\$1.95	\$1.00
06-07	\$13.57	\$8.35	\$2.50	\$1.00

Pacific Power Vac - Settlement on Fees and Taxes owed Metro

Payment Schedule

Principal Balance Due       \$ 78,787.05  
Annual Interest Rate       6%  
Monthly Payment           \$ 2,385.00  
Number of Payments       36

<u>Payment #</u>	<u>Payment Date</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
1	Mar 1, 2008	\$ 2,385.00	2,385.00	0.00	\$ 76,402.05
2	Apr 1, 2008	\$ 2,385.00	2,002.99	382.01	\$ 74,399.06
3	May 1, 2008	\$ 2,385.00	2,013.00	372.00	\$ 72,386.06
4	Jun 1, 2008	\$ 2,385.00	2,023.07	361.93	\$ 70,362.99
5	Jul 1, 2008	\$ 2,385.00	2,033.19	351.81	\$ 68,329.80
6	Aug 1, 2008	\$ 2,385.00	2,043.35	341.65	\$ 66,286.45
7	Sep 1, 2008	\$ 2,385.00	2,053.57	331.43	\$ 64,232.88
8	Oct 1, 2008	\$ 2,385.00	2,063.84	321.16	\$ 62,169.04
9	Nov 1, 2008	\$ 2,385.00	2,074.15	310.85	\$ 60,094.89
10	Dec 1, 2008	\$ 2,385.00	2,084.53	300.47	\$ 58,010.36
11	Jan 1, 2009	\$ 2,385.00	2,094.95	290.05	\$ 55,915.41
12	Feb 1, 2009	\$ 2,385.00	2,105.42	279.58	\$ 53,809.99
13	Mar 1, 2009	\$ 2,385.00	2,115.95	269.05	\$ 51,694.04
14	Apr 1, 2009	\$ 2,385.00	2,126.53	258.47	\$ 49,567.51
15	May 1, 2009	\$ 2,385.00	2,137.16	247.84	\$ 47,430.35
16	Jun 1, 2009	\$ 2,385.00	2,147.85	237.15	\$ 45,282.50
17	Jul 1, 2009	\$ 2,385.00	2,158.59	226.41	\$ 43,123.91
18	Aug 1, 2009	\$ 2,385.00	2,169.38	215.62	\$ 40,954.53
19	Sep 1, 2009	\$ 2,385.00	2,180.23	204.77	\$ 38,774.30
20	Oct 1, 2009	\$ 2,385.00	2,191.13	193.87	\$ 36,583.17
21	Nov 1, 2009	\$ 2,385.00	2,202.08	182.92	\$ 34,381.09
22	Dec 1, 2009	\$ 2,385.00	2,213.09	171.91	\$ 32,168.00
23	Jan 1, 2010	\$ 2,385.00	2,224.16	160.84	\$ 29,943.84
24	Feb 1, 2010	\$ 2,385.00	2,235.28	149.72	\$ 27,708.56
25	Mar 1, 2010	\$ 2,385.00	2,246.46	138.54	\$ 25,462.10
26	Apr 1, 2010	\$ 2,385.00	2,257.69	127.31	\$ 23,204.41
27	May 1, 2010	\$ 2,385.00	2,268.98	116.02	\$ 20,935.43
28	Jun 1, 2010	\$ 2,385.00	2,280.32	104.68	\$ 18,655.11
29	Jul 1, 2010	\$ 2,385.00	2,291.72	93.28	\$ 16,363.39
30	Aug 1, 2010	\$ 2,385.00	2,303.18	81.82	\$ 14,060.21
31	Sep 1, 2010	\$ 2,385.00	2,314.70	70.30	\$ 11,745.51
32	Oct 1, 2010	\$ 2,385.00	2,326.27	58.73	\$ 9,419.24
33	Nov 1, 2010	\$ 2,385.00	2,337.90	47.10	\$ 7,081.34
34	Dec 1, 2010	\$ 2,385.00	2,349.59	35.41	\$ 4,731.75
35	Jan 1, 2011	\$ 2,385.00	2,361.34	23.66	\$ 2,370.41
36	Feb 1, 2011	\$ 2,382.26	2,370.41	11.85	\$ 0.00
		<u>\$ 85,857.26</u>	<u>\$ 78,787.05</u>	<u>\$ 7,070.21</u>	

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 08-3922 APPROVING A SETTLEMENT AGREEMENT WITH PACIFIC POWER VAC, LLC REGARDING METRO NOTICE OF VIOLATION NO. NOV-186-08**

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February 22, 2008

Prepared by: Steve Kraten

## **BACKGROUND**

Pacific Power Vac, LLC (“PPV”) solidifies various sludges in order to make them suitable for landfilling. In July 2007, an analysis of Coffin Butte Landfill (“CBLF”) transactions revealed anomalies in records of solid waste delivered to the landfill by PPV. CBLF and PPV were asked to provide an explanation of the anomalies but neither provided an adequate explanation. Metro then conducted an investigation, which found that, over a period of nearly two years, 3,646 tons of solidified sludge delivered to CBLF by PPV was erroneously classified as petroleum contaminated soil. Because of this classification, PPV erroneously paid regional system fees and excise tax at a reduced rate established only for cleanup material contaminated by hazardous substances. As a result of these findings, Metro issued a Notice of Violation to CBLF that imposed a penalty of \$13,800 for failure to adhere to provisions of its operating plan that require it to inspect and assess the nature of each incoming load of solid waste. Adherence to the operating plan is a requirement of CBLF’s designated facility agreement. CBLF promptly paid the penalty.

Metro also issued a Notice of Violation to PPV for its failure to pay the proper amount of regional system fees and excise taxes on 5,224 tons and sought to recover \$120,638 in fees, taxes, penalties, and accrued interest. PPV disputed this amount and provided adequate documentation to support its position that it improperly paid on only 3,646 tons. The proposed resolution approves a settlement agreement by which Metro will recover \$69,224.37 in regional system fees and excise taxes that would have been paid had the waste been classified correctly plus interest on this amount accrued at nine percent for a total of \$78,787.05. No additional penalties were assessed.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There is no known opposition to the proposed settlement.

### **2. Legal Antecedents**

Metro Code Section 2.03.090 provides that, after the Chief Operating Officer (or his designee) issues a NOV assessing a civil penalty, any settlement that compromises or settles the assessed civil penalty must be approved by the Metro Council. The settlement agreement includes a confession of judgment by PPV.

### 3. Anticipated Effects

The effects of Resolution No. 08-3922 will be to approve a settlement that requires Pacific Power Vac, LLC to pay METRO the sum of \$78,787.05 in 36 monthly installments at six percent interest commencing on March 1, 2008.

### 4. Budget Impacts

This settlement will impact both the Solid Waste Fund and the General Fund. The settlement will provide future recovery of uncollected fees and taxes owed to Metro in the amount of approximately \$28,619 annually for each of the next three years. The annual revenue stream will be allocated as follows:

#### Annual Allocations from PPV Settlement Revenue

Solid Waste Fund	\$ 17,457
General Fund	\$ 11,162
<i>Total</i>	<u>\$ 28,619</u>

#### *Fiscal Impact*

The impact of this settlement on Metro's solid waste disposal charges will be small. Under Metro's normal budgeting process, the largest portion of future revenue—allocated to the Solid Waste Fund—would be used to pay for regional program costs in lieu of rate (Regional System Fee) revenue. If the total Solid Waste Fund allocation were used to pay for program costs, then the effect on the Regional System Fee would be a reduction of about one cent per ton. The portion of the repayment allocated to the General Fund will have no effect on future per-ton solid waste excise tax rates.

### RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3922, approving a Settlement Agreement with Power Vac, LLC substantially similar to the Settlement Agreement attached to the resolution as Exhibit A.