



# A G E N D A

REGULAR COUNCIL MEETING

Date: August 6, 1981  
Day: Thursday  
Time: 5:30 PM  
Place: Council Chamber

## ROLL CALL

## CALL TO ORDER

1. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS
2. CONSENT AGENDA (Items 2.1 through 2.4)

2.1 A-95 Review

2.2 Minutes of Meeting of July 2, 1981

### Coordinating Committee Recommendations:

- 2.3 Resolution No. 81-267, For the Purpose of Confirming the Appointment of the Public Affairs Director Candidate
- 2.4 Resolution No. 81-268, For the Purpose of Making Appropriations by Fund and Organization for the FY 82 General Fund

## 3. ORDINANCES

- 3.1 PUBLIC HEARING on Ordinance No. 81-111, An Ordinance Relating to Solid Waste Disposal; Providing for Disposal Franchising; Amending Code Section 4.03.020; and Repealing Code Chapters 4.02 and 4.04 (First Reading) (5:35)\*
- 3.2 PUBLIC HEARING on Ordinance No. 81-112, An Ordinance Establishing Solid Waste Disposal Franchise Fees (First Reading)

COUNCIL DINNER BREAK (7:00)

\*Times listed are approximate.

4. CONTESTED CASES

4.1 Contested Case No. 81-2, In the Matter of Clackamas  
County's Request for an Urban Growth Boundary (UGB)  
Amendment for Waldow Estates (7:30)

5. GENERAL DISCUSSION (10:00)

ADJOURN



METROPOLITAN SERVICE DISTRICT  
527 S.W. HALL ST., PORTLAND OR. 97201, 503/221-1646

## A G E N D A

Date: August 6, 1981

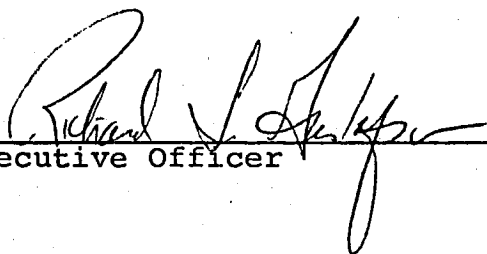
Day: Thursday

Time: 5:30 PM

Place: Council Chamber

### C O N S E N T   A G E N D A

The following business items have been reviewed by the staff and an officer of the Council. In my opinion, these items meet the Consent List Criteria established by the Rules and Procedures of the Council. The Council is requested to approve the recommendations presented on these items.

  
\_\_\_\_\_  
Executive Officer

- 2.1 A-95 Review
- 2.2 Minutes of Meeting of July 2, 1981
- 2.3 Resolution No. 81-267, For the Purpose of Confirming the Appointment of the Public Affairs Director Candidate
- 2.4 Resolution No. 81-268, For the Purpose of Making Appropriations by Fund and Organization for the FY 82 General Fund

# DIRECTLY RELATED A-95 PROJECT APPLICATIONS UNDER REVIEW

PROJECT DESCRIPTION	FEDERAL \$	STATE \$	LOCAL \$	OTHER \$	TOTAL \$
<p>1. <u>Project Title:</u> Washington County Nonurbanized Area Public Transportation (#8106-6)</p> <p><u>Applicant:</u> Tri-Met</p> <p><u>Summary:</u> The grant will provide reimbursement funds to Tri-Met for transportation services (18,000 one- way rides) provided to rural residents of Washington County during fiscal year 1980-81.</p> <p><u>Staff Recommendation:</u> Favorable Action</p>	\$30,450 (DOT-UMTA)		\$34,550		\$65,000

Agenda Item 2.1



MINUTES OF THE COUNCIL  
OF THE METROPOLITAN SERVICE DISTRICT

July 2, 1981

Councilors in Attendance

Presiding Officer Jack Deines  
Vice Presiding Officer Betty Schedeen  
Coun. Bob Oleson  
Coun. Charles Williamson  
Coun. Craig Bergman  
Coun. Corky Kirkpatrick  
Coun. Jane Rhodes  
Coun. Ernie Bonner  
Coun. Cindy Banzer  
Coun. Bruce Etlinger

In Attendance

Executive Officer Rick Gustafson

Staff in Attendance

Denton Kent  
Andy Jordan  
Mike Holstun  
John LaRiviere  
Cary Jackson  
Jennifer Sims  
Caryl Waters

Metro Council  
Minutes of July 2, 1981

CALL TO ORDER

After declaration of a quorum, the meeting was called to order by Presiding Officer Deines at 7:40 p.m. in the Council Chamber, 527 S.W. Hall Street, Portland, Oregon 97201.

1. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

There were no written communications to Council on non-agenda items at this meeting.

2. GENERAL DISCUSSION

Presiding Officer Deines announced that as there aren't any formal items on the Agenda this evening, Councilors will be updated in the areas of current legislative bills, the Resource Recovery facility and Metro staffing.

1. Legislative Update

Isaac Regenstreif, Legislative Liaison, reported that all members of the House Intergovernmental Affairs Committee except Drew Davis signed the letter, pertaining to SB 852, recommending that Metro find independent funding sources in 4 years hence. The Bill was concurred in the Senate and will go to the Governor for signature.

SB 422, the Elections Bill, has passed the House, has not been concurred in the Senate but no problems are expected.

The Tax Credit for the Resource Recovery plant came out of Committee on Monday, June 29 with a 7-0 vote and will be on the Senate floor tomorrow, it has a favorable look for passage.

Pollution Control Bond Fund has passed - which includes DEQ's budget for \$10.5 million (Metro's Solid Waste's projects).

Boundary Commissions Bill has passed both houses and signed by the Governor therefore Boundary Commissions for both the Eugene and Portland metropolitan areas will continue and will cost Metro a small assessment of \$7,000-10,000 per year. The funding will be local money instead of State.

SB 2864 - LID Bill has passed the House with provision for a mail back ballot. It will be heard in the Senate local government committee next Wednesday. Metro takes no position on this bill and has no problem with the technical way it was drafted in the House.

Backyard Burning Bill which prohibits backyard burning comes up tomorrow and Metro will probably be called to report on its "Clean Up" Week.

Mr. Regenstreif then answered Councilors questions. He thanked them for their support by lobbying and writing to the legislators.

Presiding Officer Deines noted that Mr. Regenstreif is well respected by the legislators and has done an outstanding job for Metro. Other Councilors applauded in agreement.

## 2. 'Solid Waste - Resource Recovery Facility

Executive Officer Gustafson announced that the Oregon City Commission has granted Metro a conditional use permit for the construction of the Resource Recovery facility. We have just received the transcript of conditions that need to be met and can give Councilors a brief analysis at this time. The conditions are tough, have addressed major portions of citizens' concerns in Oregon City and have made requirements that are significant in terms of mitigating the impact on the community. It is our opinion that these conditions can be satisfied and a formal analysis will be given to the Councilors. Councilors will need to evaluate such factors as the air quality permit requirements (Metro has filed an application), the land use requirements before the Council, and the completed negotiations with the successful vendor for the Resource Recovery facility. Councilors will then have to make a judgment as to whether this meets Metro's overall policy of solving the solid waste problem and whether it can proceed with financing construction of the project - about 6 months away. He then introduced Cary Jackson, Resource Recovery Project Manager, to answer questions. Mr. Jackson will be heading the negotiating team that will be meetings with vendors, air quality permit process and establishing better communication with Oregon City residents.

Coun. Rhodes stressed the importance of Metro doing the very best job in letting Oregon City residents know whats going on and work with them promptly to alleviate those matters that can be alleviated.

Mr. Gustafson said that a Solid Waste public information strategy containing a resource community involvement proposal will be presented to the Regional Services Committee at their July 7 meeting. He then distributed a proposed budget for the Resource Recovery project for \$50,000 and requested Council's approval for staffing. A field manager is needed along with a part-time office coordinator. The field manager will report to the project manager and work in liaison with the solid waste public informational specialist, newly hired, Nancy Carter. Both she, and Judy Roumpf- solid waste public involvement coordinator will spend 50% of their time on the Resource Recovery project. They, along with the field manager, will emphasize community involvement.

Councilors supported the proposal and felt it is most important that staff be sensitive to the concerns of residents in the Resource Recovery area. They discussed the need for a good two-way communication process, and perhaps hiring another staff person for this project.

Metro Council  
Minutes of July 2, 1981

Mr. Gustafson stated that he preferred to come to the Council with a full community involvement and educational program before hiring additional staff.

Coun. Berkman suggested that the Council go on record as encouraging the Executive Officer and the staff to develop a program and provide whatever resources are necessary to do an adequate job in supporting the project. The Executive Officer could thus proceed with the confidence that the Council is supportive of his efforts.

Councilors concurred.

Coun. Bonner recommended that the Executive Officer touch base with Ardis Stevenson, Citizen Involvement Coordinator in Clackamas County, before finalizing the Resource Recovery community involvement program.

Mr. Gustafson passed out two reports regarding issues that the staff is working on: 1) General Concept Paper: Technical Assistance Needs for Resource Recovery and 2) Resource Recovery Facility - General Work Tasks for METRO Commencing July 1, 1981. These reports will be helpful in dealing with the magnitude of the project.

### 3. Metro Staffing

Mr. Gustafson handed out the revised Metro Organizational Chart which he stated is a result of a series of changes, i.e., reduction in the staff, revisions of positions, vacancies and departures. June 30 was the last day for some of Metro's staff.

He explained that the new organizational structure divides the responsibilities of central management into three principal positions: 1) Deputy Executive Officer: has responsibility to work with the departments, 2) Management Services: has responsibility of controlling the budget, 3) Public Affairs: external contacts and public involvement strategy.

These three individuals will be the principal management team who will be serving the Executive Officer as well as the Council. He then detailed the departments, who would be responsible to whom, individual tasks to be done by which staff member and the salaries for each position. He felt that the lines of communication will be improved in this new organizational structure and that the division of labor will be clearer to Councilors.

Coun. Rhodes wondered how Councilors decide which staff person to approach for assistance - what is the Executive Officer's preference? He replied that he preferred Councilors to go through his office, not as a filter but rather that the task or assistance get immediate attention. Councilors may always go to department heads, if need be.

### 4. Other Items of Concern

Coun. Banzer asked the Executive Officer if there will be a newsletter this fall? He replied that it will probably be closer to January 1.

Metro Council  
Minutes of July 2, 1981

There will be a mailing of the Metro Forum newsletter soon and Councilors are encouraged to submit 200-300 names and addresses of members in their community who would like to hear from them.

There being no further business, the meeting was adjourned at 8:05 p.m.

Respectfully submitted,



Toby Janus  
Acting Clerk of the Council

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

TO: Metro Council  
FROM: Coordinating Committee  
SUBJECT: Confirming the Appointment of the Public Affairs Director  
Candidate

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Recommend approval of the attached Resolution for the purpose of confirming the appointment of Dan LaGrande, a candidate for the position of Public Affairs Director.
- B. POLICY IMPACT: The recommendation is consistent with the personnel rules.
- C. BUDGET IMPACT: The adopted Metro budget includes funds to support this position.

II. ANALYSIS:

- A. BACKGROUND: The Metro Personnel Rules do not require confirmation by the Council of a candidate considered for the position of Public Affairs Director since it is a newly established position. However, staff will propose an amendment to those rules to require such confirmation, and it is recommended that this appointment be subject to the confirmation process in anticipation of adoption of such amendment.
- B. ALTERNATIVES CONSIDERED: Several candidates were interviewed for the position by a Committee consisting of the Executive Officer, Councilor Schedeen and Don Barney. Mr. LaGrande was the unanimous choice of the Committee. The alternative of not submitting the appointment for Council confirmation was not considered due to the sensitive nature of the position and the fact that the Public Affairs Director fulfills a role that directly reflects on the Council.
- C. CONCLUSION: Approve the appointment of Dan LaGrande as Director of Public Affairs.

KC/srb  
3819B/252  
07/27/81

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF CONFIRMING  
THE APPOINTMENT OF THE PUBLIC  
AFFAIRS DIRECTOR CANDIDATE

)  
)  
)  
)

RESOLUTION NO. 81-267

Introduced by the Council  
Coordinating Committee

WHEREAS, The Coordinating Committee recommends that the appointment of Dan LaGrande to the position of Director of Public Affairs be subject to the confirmation process of the Metro Personnel Rules even though those rules do not, at this time, require such confirmation; now, therefore,

BE IT RESOLVED,

That the apointment of Dan La Grande is confirmed by a majority of the Metro Council.

ADOPTED by the Council of the Metropolitan Service District  
this 6th day of August, 1981.

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Presiding Officer

KC/srb  
3829B/252  
07/27/81



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

TO: Coordinating Committee  
FROM: Executive Officer  
SUBJECT: Making Appropriations by Fund and Organization for the  
FY 82 General Fund

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Adopt Resolution No. 81-268, making appropriations by fund and organization for the FY 82 General Fund.
- B. POLICY IMPACT: This action does not change the policies approved as part of the FY 82 Budget process.
- C. BUDGET IMPACT: This action does not change the level of appropriation initially adopted by the Council.

II. ANALYSIS:

- A. BACKGROUND: State Budget law requires that appropriations be made by fund and organization. In reviewing the Budget Ordinance, the Tax Supervising and Conservation Commission has requested that the Council provide more detail for the FY 82 General Fund Budget reflecting the appropriations by organization. While this requirement has been in effect in the past, the TSCC is now requesting Metro's compliance.

The total appropriation in the 'Exhibit "B"' portion of the Resolution is the same as originally adopted by the Council and reflects the organizational structure as it existed when the budget was adopted on June 25, 1981. Budget changes are being prepared to reflect the reorganization recently presented to the Council.

- B. ALTERNATIVES CONSIDERED: This action is required to bring the FY 82 Budget Ordinance in compliance with State Budget law.
- C. CONCLUSION: Adopt Resolution No. 81-268.

CS/srb  
3826B/252  
07/27/81

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF MAKING  
APPROPRIATIONS BY FUND AND  
ORGANIZATION FOR THE FY 82  
GENERAL FUND

) RESOLUTION NO. 81-268  
)  
) Introduced by the Council  
) Coordinating Committee

WHEREAS, The Council adopted Ordinance No. 81-109,  
approving the FY 82 Budget, on June 25, 1981; and

WHEREAS, State Budget law requires that appropriations be  
made by both fund and organization; and

WHEREAS, The Tax Supervising and Conservation Commission  
has requested that the General Fund Section of Exhibit "A," Schedule  
of Appropriations, of Ordinance No. 81-109 be clarified to detail  
the appropriation by organization; and

WHEREAS, The amendment requested by the TSCC does not alter  
the level of any budget appropriation; now, therefore,

BE IT RESOLVED,

Section 1. That the General Fund section of Exhibit "A" of  
Ordinance No. 81-109 is hereby clarified and detailed to read as  
indicated in the "Exhibit B" which is attached hereto and  
incorporated herein.

ADOPTED by the Council of the Metropolitan Service District  
this 6th day of August , 1981.

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Presiding Officer

CS/srb  
3827B/252  
07/27/81

## EXHIBIT "A"

## METROPOLITAN SERVICE DISTRICT

BUDGET FY 1982  
SCHEDULE OF APPROPRIATIONSGeneral Fund

Personnel Services	\$ 1,945,840
Materials and Services	1,608,076
Capital Outlay	5,400
Contingency	383,626
Total General Fund Appropriation	\$ 3,942,942
Unappropriated Balance	100,000
Total Requirements	\$ 4,042,942

Zoo Operating Fund

Personnel Services	\$ 2,118,615
Materials and Services	1,399,597
Capital Outlay	277,290
Transfers	968,043
Contingency	628,894
Total Zoo Operating Fund Appropriation	\$ 5,392,439
Unappropriated Balance	500,000
Total Requirement	\$ 5,892,439

Zoo Capital Fund

Capital Projects	\$ 2,831,116
Contingency	138,000
Total Zoo Capital Fund Requirement	2,969,116

Solid Waste Operations Fund

Personnel Services	\$ 612,047
Materials and Services	5,083,326
Capital Outlay	14,500
Transfers to Other Funds	1,074,720
Contingency	285,362
Total Solid Waste Operations Appropriation	\$ 7,069,955
Unappropriated Balance	150,000
Total Requirement	\$ 7,219,955

Solid Waste Debt Service Fund

Materials and Service	\$ 720,734
Total Solid Waste Debt Service Fund Requirement	\$ 720,734

Solid Waste Capital Improvement Fund

Capital Projects	\$13,571,000
Transfers	1,351,685
Contingency	737,315
Total Solid Waste Capital Improvement Fund Requirement	\$15,660,000

Criminal Justice Assistance Fund

Materials and Services	\$ 1,100,000
Transfers	<u>27,958</u>
Total Criminal Justice Assistance	
Fund Requirement	\$ 1,127,958

TOTAL ALL FUNDS

\$37,633,144

CS:srb  
3275B/236A

METROPOLITAN SERVICE DISTRICT  
BUDGET FY 1982

## Amendment to Schedule of Appropriations

General Fund  
Council

Personnel	\$29,137
Materials and Services	53,920
Capital Outlay	<u>1,000</u>
Total Department	\$84,057

## Executive Management

Personnel	\$263,447
Materials and Services	36,308
Capital Outlay	<u>1,000</u>
Total Department	\$300,755

## Public Affairs

Personnel Services	\$293,381
Materials and Services	<u>51,800</u>
Total Department	\$345,181

## Management Services

Personnel Services	\$352,399
Materials and Services	635,232
Capital Outlay	<u>1,400</u>
Total Department	\$989,031

## Development Services

Personnel Services	\$316,150
Materials and Services	<u>259,003</u>
Total Department	\$575,153

## Criminal Justice

Personnel Services	\$88,034
Materials and Services	<u>1,500</u>
Total Department	\$89,534

## Transportation

Personnel Services	\$603,292
Materials and Services	484,313
Capital Outlay	<u>2,000</u>
Total Department	\$1,089,605

## General Expense

Contingency	\$383,626
Materials and Services	<u>86,000</u>
Total Expenditure	\$469,626
Unappropriated Balance	<u>100,000</u>
Total Department	\$569,626

Total Fund Requirements

\$4,042,942

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

TO: Metro Council  
FROM: Regional Services Committee  
SUBJECT: Disposal Franchise Ordinance

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Recommend that the Council repeal chapters 4.02 and 4.04 of Metro's Solid Waste Code and adopt the Disposal Franchise Ordinance.
- B. POLICY IMPACT: The Disposal Franchise Ordinance gives Metro the authority to franchise disposal sites, transfer stations, resource recovery facilities and processing centers within the District. Franchise authority enables the District to:
- Set rates at all franchised facilities;
  - Establish geographical service zones for franchised facilities; and
  - Establish exclusive franchises thereby limiting the number of solid waste facilities.

The Ordinance also strengthens Metro's flow control authority by enabling the District to direct wastes away from franchised facilities and eliminates current operational and environmental requirements which duplicate those of the Department of Environmental Quality.

Facilities which could be franchised upon the adoption of the Ordinance currently include two limited use disposal sites: H. G. LaVelle, Inc., and Nash Pit; as well as three processing centers: Forest Grove Disposal, Marine Drop Box and Metropolitan Disposal Corporation. St. Johns Landfill and Rossman's Landfill are excluded from Metro's franchise authority by State law.

- C. BUDGET IMPACT: The total projected budget increase for administration of the disposal franchise program in lieu of administration of Metro's current certificate program is approximately \$10,000 to \$15,000.
- D. Adoption of the Disposal Franchise Ordinance is consistent with Metro's Five Year Operational Plan.

II. ANALYSIS:

- A. BACKGROUND: The Regional Services Committee reviewed the Disposal Franchise Ordinance on April 7, 1981, held a public hearing on that Ordinance on May 13, 1981, again reviewed the Ordinance on June 10, 1981 and recommended that it be forwarded to Council on July 7, 1981.



As a result of discussions on the ordinance by the Regional Services Committee two issues of special interest emerged. Although the Regional Services Committee took specific stands on these two issues, the Committee directed that they be discussed before the full Council for a final resolution.

The first issue involves Subsection 13(12). Some segments of the solid waste industry fear that franchisees with a vested interest in a hauling business may give reduced rates to their own collection business. To answer this concern the Regional Services Committee in Section 13(12) prohibited any person with vested interest in a solid waste collection business from operating a franchised solid waste disposal site or resource recovery facility; or any transfer station or processing center which accepts waste from companies other than their own. An alternative solution to this problem is proposed by Counselor Jane Rhodes in her attached minority report.

The second issue concerns who should grant, issue, modify, revoke, suspend or transfer franchises and grant variances to the Ordinance--the Council or the Executive Officer. The draft of the franchise ordinance originally reviewed by the Regional Services Committee gave the Executive Officer this authority. The Regional Services Committee directed staff to revise the ordinance so that the Council has the authority to perform these functions. The main argument in favor of the Executive Officer granting franchises is that this act can be considered an administrative function. The argument in favor of the Council granting franchises is that it gives the public, franchisees and applicants for a franchise the opportunity to directly influence the decision-making body responsible for issuing franchises.

- B. ALTERNATIVES CONSIDERED: Adopt the Disposal Franchise Ordinance or retain present Code language. Adoption of the Disposal Franchise Ordinance is preferable to retaining the current Solid Waste Code since it strengthens Metro's flow control, eliminates certificate application requirements which duplicate DEQ, establishes geographical zones for disposal facilities and allows Metro to establish disposal rates which are fair and equitable to the public.
- C. CONCLUSION: Metro staff recommends adoption of the Disposal Franchise Ordinance which amends the Solid Waste Code.



Revised July 10, 1981

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE RELATING TO SOLID	)	ORDINANCE NO. 81-111
WASTE DISPOSAL; PROVIDING FOR	)	
DISPOSAL FRANCHISING; AMENDING	)	Introduced by the
CODE SECTION 4.03.020; AND	)	Regional Services
REPEALING CODE CHAPTERS 4.02	)	Committee
AND 4.04.	)	

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1.      Short Title

This Ordinance shall be known as the "Metro Solid Waste Disposal Franchise Ordinance" and may be so pleaded; it shall be cited herein as "this Ordinance."

Section 2.      Definitions

As used in this Ordinance, unless the context requires otherwise:

- (1) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this Ordinance.
- (2) "Code" means the Code of the Metropolitan Service District.
- (3) "Council" has the same meaning as in Code Section 1.01.040.
- (4) "DEQ" means the Department of Environmental Quality of the state of Oregon.
- (5) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.
- (6) "District" has the same meaning as in Code Section 1.01.040.
- (7) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.
- (8) "Executive Officer" has the same meaning as in Code Section 1.01.040.
- (9) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

- (10) "Franchisee" means the person to whom a franchise is granted by the District under this Ordinance.
- (11) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.
- (12) "Person" has the same meaning as in Code Section 1.01.040.
- (13) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.
- (14) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.
- (15) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.
- (16) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.
- (17) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.
- (18) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.
- (19) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; provided that this definition does not include:
  - (a) Hazardous wastes as defined in ORS 459.410, and
  - (b) Radioactive wastes as defined in ORS 469.300, and

- (c) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, and
  - (d) Explosives.
- (20) "Solid Waste Management Plan" means the Metro Solid Waste Management Plan.
  - (21) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.
  - (22) "User Fee" means a user fee established by the District under ORS 268.515.
  - (23) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

### Section 3. Findings and Purpose

- (1) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities.
- (2) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this Ordinance to establish an exclusive franchise system for the disposal of solid waste in the District under the authority granted to the Council by ORS chapter 268 in order to:
  - (a) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
  - (b) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
  - (c) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.

- (d) Prohibit rate preferences and other discriminatory practices.
- (e) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (f) Maximize the efficiency of the District's Solid Waste Management Plan.
- (g) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.
- (h) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery.

#### Section 4. Prohibited Activities

Except as provided in this Ordinance, it shall be unlawful:

- (1) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee or exempted by Section 5 of this Ordinance.
- (2) For a franchisee to receive, process or dispose of any solid waste not specified in the franchise agreement.
- (3) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee or exempted by Section 5 of this Ordinance except by written authority of the Executive Officer.
- (4) For a franchisee to charge any rate not established by the Council or Executive Officer under this Ordinance.

#### Section 5. Exemptions

- (1) The following are exempt from the provisions of this Ordinance governing franchisees:
  - (a) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
  - (b) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
  - (c) Recycling drop centers.

- (d) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivatives at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.
  - (e) Existing disposal sites located within the District authorized by DEQ to accept food wastes and which, on March 1, 1979, were franchised by a county or owned by a city.
  - (f) Persons who process, transfer or dispose of solid wastes which:
    - (i) are not putrescible;
    - (ii) have been source separated;
    - (iii) are not and will not be mixed by type with other solid wastes; and
    - (iv) will be reused or recycled.
- For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.
- (g) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
  - (h) Temporary transfer stations or processing centers established and operated by a local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.
- (2) Notwithstanding Section 5(1) (b) of this Ordinance, the District shall comply with Section 16 (User Fees), Section 19 (Determination of Rates) and Section 14, (Administrative Procedures of Franchisees) and shall require contract operators of District owned facilities to provide a performance bond pursuant to Section 7(2) (a).

## Section 6.      Administration

The Executive Officer shall be responsible for the administration and enforcement of this Ordinance.

## Section 7.      Applications

- (1) Applications for a franchise or for transfer of any interest in, modification, expansion, or renewal of an existing franchise shall be filed on forms provided by the Executive Officer.
- (2) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:
  - (a) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
  - (b) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
  - (c) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amount of not less than \$300,000 for each occurrence, \$500,000 for bodily injury or death for each person, and property damage insurance in the amount of not less than \$300,000 per occurrence, or such other amounts as may be required by state law for public contracts.
  - (d) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
  - (e) A duplicate copy of the information required by or submitted to DEQ pursuant to chapter 459, Oregon Revised Statutes.
  - (f) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the

provisions of Section 20(5) of this ordinance if the franchise is revoked or franchise renewal is refused.

- (g) Proof that the applicant has received proper land use approval.
  - (h) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.
- (3) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this Ordinance under a District Certificate or agreement and which have filed an abbreviated application form provided by the Executive Officer within thirty (30) days after receipt of such application, may continue service until the final decision of the Council once the application is made. Applications filed pursuant to this section shall not be unreasonably denied.
- (4) An incomplete or insufficient application shall not be accepted for filing.

#### Section 8.      Issuance of Franchise

- (1) Application filed in accordance with Section 7 shall be reviewed by the Executive Officer. The Executive Officer or his designated representative may make such investigation as the Executive Officer deems appropriate, and shall have the right of entry onto the applicant's proposed franchise site with or without notice before or after the franchise is granted to assure compliance with this Ordinance, the Code, DEQ permit and franchise agreement.
- (2) Upon the basis of the application, evidence submitted and results of any investigation, the Executive Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed franchise complies with the District's Solid Waste Management Plan, whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.
- (3) The Executive Officer shall recommend to the Council whether the application should be granted, denied, or modified. If the Executive Officer recommends that the application be granted the Executive Officer shall recommend to the Council specific conditions of the Franchise Agreement and whether or not the franchise should be exclusive. Following the recommendation of the Executive Officer, the Council shall issue an order granting, denying or modifying the application. The Council may attach conditions to the order, limit the number of franchises granted, and grant exclusive franchises. If the



Council issues an order to deny the franchise, such order shall be effective immediately. An exclusive franchise may be granted if the Council determines that an exclusive franchise is necessary to further the objectives of the Solid Waste Management Plan. In determining whether an exclusive franchise should be granted, the Council shall consider the following:

- (a) The proximity of existing and planned solid waste disposal facilities to the proposed site.
  - (b) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.
  - (c) The capacity of existing and planned solid waste disposal facilities.
  - (d) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
  - (e) The hauling time to the proposed facility from waste generation zones established by the District.
- (4) If the Council does not act to grant, or deny, a franchise application within one hundred twenty (120) days after the filing of a complete application, a Temporary Franchise shall be deemed granted for the site requested in the application unless the Executive Officer notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The one hundred twenty (120) days will not begin until the Executive Officer has accepted the application as complete and ready for processing.
- (5) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:
- (a) Enter into a written franchise agreement with the District,
  - (b) Obtain a corporate surety bond guaranteeing full and faithful performance during the term of the franchise of the duties and obligations of the franchisee under the franchise agreement, and
  - (c) Submit proof that the applicant has public liability insurance, including automotive coverage, in the amount of not less than \$300,000 for each occurrence, \$500,000 for bodily injury or death for each person, and property damage insurance in the amount of not less than \$300,000 per occurrence, or such other amounts as may be required by state law for public contracts.
  - (d) Name the District as an additional insured in the insurance policy required by Section 7(2) (c).

- (6) The granting of a franchise shall not vest any right or privilege in the franchisee to receive specific types or quantities of solid waste during the term of the franchise.
- (a) To ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council may, upon thirty (30) days prior written notice, without hearing at any time during the term of the franchise, direct solid waste away from the franchisee. In such case, the Council shall make every reasonable effort to provide notice of such direction to affected haulers of solid waste.
- (b) In emergency situations, to ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council or the Executive Officer may, without hearing, issue a sixty (60) day temporary order directing solid wastes away from the franchisee. In such situations, the Council or Executive Officer shall give the franchisee as much advance notice as is reasonably possible under the circumstances, and shall make a reasonable effort to provide notice of such direction to affected haulers of solid waste. A temporary order issued by the Executive Officer under this subsection shall be subject to modification or revocation by the Council.
- (7) In addition to the authority contained in Section 8(6) (a), for the purposes of this ordinance, the Council may, upon sixty (60) days prior written notice, direct solid waste away from the franchisee, direct additional solid waste to the franchisee, or limit the type of solid wastes which the franchisee may receive. Sixty (60) days prior notice shall not be required if the Council finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.

The direction of the solid waste away from a franchisee or limitation of the types of solid wastes a franchisee may receive under this subsection shall not be considered a modification of the franchise, but a franchisee shall have the right to request a contested case hearing pursuant to Section 12. However, a request for a contested case hearing shall not stay action under this subsection.

#### Section 9.      Term of Franchise

- (1) The term for a new or renewed franchise shall be the site longevity or five (5) years, whichever is less. In recommending site longevity, the Executive Officer shall consider the population to be served, the location of existing franchises, probable use and any other information relevant to the franchise term. The Executive Officer shall recommend the term of the franchise to the Council. The Council shall establish the term of the franchise.

- (2) Franchises shall be renewed unless the Council determines that the proposed renewal does not meet the criteria of Section 8(2), provided that the franchisee files an application for renewal not less than one hundred twenty (120) days prior to the expiration of the franchise term, together with a statement of material changes in its initial application for the franchise and any other information required by the Executive Officer. The Council, upon recommendation from the Executive Officer, may attach conditions or limitations to the renewed franchise.

#### Section 10.      Transfer of Franchises

- (1) A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with Section 7 and has been granted. The proposed transferee must meet the requirements of this Ordinance.
- (2) The Council shall not unreasonably deny an application for transfer of a franchise. If the Council does not act on the application for transfer within ninety (90) days after filing of a complete application, the application shall be deemed granted.
- (3) The term for any transferred franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.

#### Section 11.      Appeals

Any applicant or franchisee is entitled to a contested case hearing pursuant to Code Chapter 5.02 upon the Council's suspension modification or revocation or refusal to issue, renew or transfer a franchise or to grant a variance, as follows:

- (1) Except as provided in subsection (3) of this Section, the Council's refusal to renew a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.
- (2) The Council's refusal to grant a variance, or to issue or transfer a franchise shall be effective immediately. The franchisee or applicant may request a hearing on such refusal within sixty (60) days of notice of such refusal.
- (3) Upon a finding of serious danger to the public health or safety, the Executive Officer may suspend a franchise or the Council may refuse to renew a franchise and such action shall be effective immediately. If a franchise renewal is refused effective immediately, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing.

## Section 12. Variances

- (1) The Council, upon recommendation of the Executive Officer, may grant specific variances from particular requirements of this Ordinance to such specific persons or class of persons upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:
  - (a) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or
  - (b) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or
  - (c) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.
- (2) A variance must be requested in writing and state in a concise manner facts to show cause why such variance should be granted. The Executive Officer may make such investigation as he/she deems necessary and shall make a recommendation to the Council within sixty (60) days after receipt of the variance request.
- (3) If the Council denies a variance request, the Executive Officer shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 5.02.
- (4) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six (6) months from the date of denial.

## Section 13. Responsibilities of Franchisees

A franchisee:

- (1) Shall provide adequate and reliable service to the citizens of the District.
- (2) May discontinue service only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. This section shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.
- (3) May contract with another person to operate the disposal site, processing or resource recovery facility or transfer station only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. If approved, the franchisee shall remain responsible for

compliance with this Ordinance and the terms and conditions of the franchise.

- (4) Shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three (3) years by each franchisee for possible review by the Executive Officer.
- (5) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 8 (5) or such other amounts as may be required by State law for public contracts and shall give thirty (30) days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage or performance bond.
- (6) Shall file an annual operating report on forms provided by the Executive Officer on or before March 1 of each year for the preceding year.
- (7) Shall comply with all provisions of this Ordinance, the Code, ORS chapter 459, DEQ permit and franchise agreement.
- (8) Shall submit duplicate copies to the Executive Officer of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or disposal franchise during the term of the franchise. Such correspondence, exhibits or documents shall be forwarded to the District within two working days of their submission to DEQ.
- (9) Shall indemnify the District, the Council, the Executive Officer, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the franchisee's performance of or failure to perform any of its obligations under the franchise or this Ordinance.
- (10) Shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.
- (11) Shall if the franchisee accepts solid waste from the general public and from commercial haulers other than the franchisee, implement a program based on District guidelines approved by the Council for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.
- (12) Shall not, either in whole or in part, own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of the site to any individual,

partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection.

Section 14. Administrative Procedures for Franchisees.

- (1) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:
  - (a) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards and State of Oregon may be used for weighing waste.
  - (b) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee shall reconcile the bank account each month.
  - (c) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
  - (d) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.
- (2) Each month at the time of payment, the franchisee must file with the Executive Officer, a statement including without limitation the following information:
  - (a) Name and address of the franchisee.
  - (b) District registration number.
  - (c) Month and year of each report.
  - (d) Number of truckloads received daily.
  - (e) Daily number of cars, pickups, trailers, and other small hauling vehicles.

- (f) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompact, minimum loads and special loads.
  - (g) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 16 (5).
  - (h) Signature and title of the franchisee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a franchise or penalties as provided in Section 22.
- (3) Every franchisee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, or his authorized agent in writing, may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or if no return is made by the franchisee, to ascertain and determine the amount required to be paid.
  - (4) Fees and charges owing to the District from the franchisee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid.

Section 15. Franchise Fee

- (1) The Council shall establish an annual franchise fee which it may revise at any time upon thirty (30) days written notice to each franchisee and an opportunity to be heard.
- (2) The franchise fee shall be in addition to any other fee, tax or charge imposed upon a franchisee.
- (3) The franchisee shall pay the franchise fee in the manner and at the time required by the District.

Section 16. User Fees

- (1) Notwithstanding Section 5(1) (b) of this Ordinance, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District.
- (2) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.



- (3) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.
- (4) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.
- (5) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectable provided that an affidavit is filed with the District stating the name and amount of each uncollectable charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account thereafter, in whole or in part, is collected, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.
- (6) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan.

Section 17. Reports from Collection Services

Upon request of the Executive Officer, a solid waste collection service shall file periodic reports with the District, containing information required by the Executive Officer.

Section 18. Rate Review Committee

- (1) The Council shall appoint a five-member Rate Review Committee to gather information and provide recommendations for the establishment of rates.
- (2) Initially, three members shall serve two-year terms and two members shall serve one-year terms, in order to provide continuity in Rate Review Committee membership. Thereafter, Rate Review Committee members shall serve two-year staggered terms.
- (3) The members of the Rate Review Committee shall be as follows:
  - (a) One Certified Public Accountant with expertise in cost accounting and program auditing.
  - (b) One Certified Public Accountant with expertise in the solid waste industry.
  - (c) One local government administrator with expertise in governmental financing, agency budgeting and/or rate regulation.

- (d) Two members of the public.
- (4) No representative or affiliate of the solid waste industry and no employee of the District shall serve on the Rate Review Committee.

Section 19.      Determination of Rates

- (1) No franchisee shall charge a rate which is not established by the Council or, pending establishment of a rate by the Council, an interim rate established by the Executive Officer.
- (2) When the Council grants a franchise, it shall establish the rate(s) to be charged by the franchisee. The Council may establish uniform rates for all franchisees or varying rates based on the factors specified in this Section.
- (3) Before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendation to the Executive Officer. The Executive Officer shall forward the Committee's recommendation along with his/her recommendation to the Council, after which the Council shall hold a public hearing. The Council shall then set forth its findings and decision.
- (4) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:
  - (a) Operating and nonoperating revenues.
  - (b) Direct and indirect operating and nonoperating expenses including franchise fees.
  - (c) Nonfranchise profits.
  - (d) Reasonable return on investment exclusive of any capital investment in the franchise or any sum paid for the value of the franchise or any other intangible value.
  - (e) Any other factors deemed relevant by the Council.
- (5) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 19, paragraph (3):
  - (a) At any time by the Council after giving ten (10) days written notice to the franchisee of the intent to review; or
  - (b) Upon written request by the franchisee on forms provided by the Executive Officer, which request may be made not more than once every six months; or

- (c) In the event the District exercises its right to control the flow of solid waste as provided in Section 8(6) or 8(7).

Section 20. Enforcement of Franchise Provisions; Appeal

- (1) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise as provided in this Section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise, the Executive Officer shall notify the franchisee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Executive Officer may make a recommendation to the Council that the franchise be suspended, modified or revoked.
- (2) The Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. The notice authorized by this subsection shall be based upon the Council's finding that the franchisee has:
- (a) Violated this Ordinance, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
  - (b) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the District;
  - (c) Refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so.
  - (d) Misrepresented the gross receipts from the operation of the franchised site, facility or station; or
  - (e) Failed to pay when due the fees required to be paid under this Ordinance.
- (3) Except as provided in subsection (4) of this section, the Council's revocation, modification or suspension of a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.
- (4) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee under this ordinance, the Executive Officer may in accordance with Code Section 5.02 immediately suspend the franchise and may

take whatever steps may be necessary to abate the danger. In addition, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Section 5.02.

(5) Upon revocation or refusal to renew the franchise:

- (a) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.
- (b) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 7(2)(f) of this ordinance.

Section 21. Right to Purchase

The District may purchase or condemn any real or personal property or any interest therein of the franchisee. If such purchase or condemnation occurs upon revocation or termination of the franchise, valuation of the real and personal property purchased or condemned shall not include any sum for the value of the franchise or any other intangible value.

Section 22. Penalties

- (1) Each violation of this Ordinance shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00). Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

- (2) In addition to subsection (1) of this Section, any violation of this Ordinance may be enjoined by the District upon suit in a court of competent jurisdiction and shall also be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) per day for each day of violation.

Section 23. Repealer

- (1) The provisions of Chapters 4.02 and 4.04 of the Code shall apply to disposal sites, processing facilities or transfer stations operating under a District Certificate or agreement on the effective date of this Ordinance until the final decision of the Council on the application for a franchise.
- (2) Except as provided in this section, Chapters 4.02 and 4.04 of the Code are repealed.

Section 24. Amendment

- (1) Code Section 4.03.020 (User Fees) is hereby amended to read:

"The following user fees shall be collected and paid to the District by the operator of each solid waste disposal site:

- |  |  |
|--|--|
| (a) Noncompacted solid waste:  | 20¢ per cubic yard delivered or \$1.33 per ton           |
| (b) Compacted solid waste:   | 34¢ per cubic yard delivered or \$1.33 per ton           |
| (c) All material delivered in private cars, stationwagons, vans, single and two-wheel trailers, trucks with rated capacities of less than one (1) ton:   | 20¢ per cubic yard with a minimum charge of 45¢ per load |
| (d) User fees for solid waste delivered in units of less than a whole cubic yard shall be determined and collected on a basis proportional to the fractional yardage delivered. (For example, 4-1/2 cubic yards of noncompacted solid waste would require a user fee of 90¢.)" |  |
- (2) Inert material, including but not limited to earth, sand, stone, crushed stone, crushed concrete and broken asphaltic concrete used at a landfill for cover, diking or road base and for which no dumping charge is made shall be exempt from the user fees.

Section 25. Acceptance of Tires at a Disposal Site:

- (a) No Disposal Site may accept whole tires for burial, except that whole tires greater than 48 inches in diameter may be accepted

if the Disposal Site's Franchise Agreement allows such acceptance.

(b) Processed scrap tires accepted for burial at a Disposal Site must be capable of meeting the following criteria: the volume of 100 unprocessed, randomly selected tires shall have been reduced in volume to less than 35 percent of the original volume with no single void space greater than 125 cubic inches remaining in the processed tires.

(c) The test shall be as follows:

- (1) Unprocessed tire volume shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test volume shall be the sum of the individual, unprocessed tire volumes; and
- (2) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container. (Ordinance No. 58, Sec. 5)

Section 26: This Ordinance shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 1981.

ADOPTED by the Council of the Metropolitan Service District  
this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of the Council

TA/srb  
2417B/209



METROPOLITAN SERVICE DISTRICT  
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

METRO

## MEMORANDUM

Date: July 21, 1981  
To: Metro Council  
From: Councilor Jane Rhodes  
Regarding: Minority Report to the Regional Services  
Committee Position on Subsection 13(12) of  
the Disposal Franchise Ordinance

### BACKGROUND

During early discussions of the draft Disposal Franchise Ordinance some members of the solid waste industry who serve on the Solid Waste Policy Alternatives Committee (SWPAC), brought up an issue the industry is concerned about regarding preferential rates at solid waste facilities. Some segments of the industry fear that the operator of a solid waste facility, with a vested interest in a collection business, could achieve an unfair competitive advantage by charging reduced rates to their own company. SWPAC responded to the industry's concern by adding language to the the Disposal Franchise Ordinance which would require the District to operate the gatehouse of franchised sites whose operator has an interest in collection. Since Metro employees would be stationed at the gatehouse and handle all cash transactions and billings, the opportunity for the franchisee to charge reduced rates to their own or any other company is eliminated.

After reviewing the Disposal Franchise Ordinance including the gatehouse language proposed by SWPAC, the Council directed staff to delete the gatehouse clause and replace it with language prohibiting any franchisee from having a vested interest in a collection business. SWPAC reviewed the Council's language on June 8, 1981, and approved it with an amendment which exempts transfer stations and processing centers who receive waste collected only by the franchisee's own hauling business. This amended prohibition was approved by the Regional Services Committee on July 7, 1981, and is contained in subsection 13(12) of the Disposal Franchise Ordinance.

### MINORITY REPORT

I am opposed to the prohibition endorsed by the Regional Services Committee on July 7, 1981. The concern of the solid waste industry, as expressed by the SWPAC committee, is

Memorandum  
July 21, 1981  
Page 2

eliminating the possibility of a franchisee from charging their own collection company preferred rates. The gatehouse alternative adequately addresses their concern. Prohibiting horizontal integration between the hauling and collection industry constitutes unnecessary government intervention in private enterprise. The gatehouse alternative is the fairest solution of the problem, would be acceptable to the greatest number of concerned parties, and minimizes government involvement in private enterprise.

I urge you to eliminate the prohibition in Section 13(12) of the Disposal Franchise Ordinance and adopt the attached amendment which requires the District, at the expense of the franchisee, to operate the gatehouse of franchised sites whose operator has a vested interest in collection.

TA/srb  
3710B/D3



JANE RHODES' MINORITY REPORT AMENDMENT  
TO SECTION 13(12)  
OF THE DISPOSAL FRANCHISE ORDINANCE

Delete the language in Section 13(12) and insert the following:

- Section 13(12) (a) In the event that any franchisee or applicant for a franchise shall, in whole or in part, own, operate, maintain, have a proprietary interest or financial association with any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District, the District shall at the expense of the franchisee or applicant for a franchise, assume operational control of the entrance gate of any disposal site or resource recovery facility of the franchisee, or applicant for a franchise or any transfer station or processing center which receives waste from any source other than the collection business with which the franchisee or applicant for a franchise is associated as indicated above.
- (b) If the District assumes operational control under this subsection, it shall comply with Section 19(1) of this ordinance.
- (c) For the purposes of this subsection, "operational control" shall mean that District employees shall be stationed at the gatehouse of the franchised site and shall allow facility users to enter and use the premises and facilities and shall determine and collect any or all fees, charges and payments from such users. Such operational control by the District may be waived by the Council upon a showing by the franchisee or franchise applicant that the volume of waste received is insufficient to justify the expense of such control. The decision of the Council on waiver requests shall be final.

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

TO: Metro Council  
FROM: Regional Services Committee  
SUBJECT: Franchise Fee Ordinance

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Adopt the attached franchise fee ordinance.
- B. POLICY IMPACT: This ordinance would establish an application fee and franchise fee schedule for solid waste disposal sites, transfer stations, resource recovery facilities and processing centers pursuant to Section 15 of the disposal franchise ordinance. The disposal franchise ordinance was reviewed by Regional Services Committee on April 7, 1981. The proposed fee schedule is:
- Application fee for solid waste facilities operating under a District Certificate or agreement upon adoption of the Disposal Franchise Ordinance--\$0.
  - Application fee for all other sites--\$200 (nonrefundable).
  - Annual franchise fee for franchised sites receiving wastes only from the franchisee or a company, partnership or corporation which the franchisee owns, or owns a majority interest of--\$100.
- Annual franchise fee for all other sites--\$300.
- C. BUDGET IMPACT: The District expects to receive approximately \$1,600 in annual franchise fees and application fees in FY82.

II. ANALYSIS:

- A. BACKGROUND: Section 15 of Metro's disposal franchise ordinance requires that the Council establish an annual franchise fee for franchised solid waste facilities. This franchise fee authority is based on ORS 268.317(5). On April 27, 1981, Metro's Solid Waste Advisory Committee unanimously moved to recommend the application and franchise fee schedule in the attached ordinance. Staff concurs with this recommendation. The purpose of the franchise application fee is to defray the cost of processing franchise applications. The purpose of the annual franchise fee is to defray the cost of administering franchises once they are granted.
- B. ALTERNATIVES CONSIDERED: The District could opt not to impose a franchise fee on sites franchised by the

District. In doing so, however, the District would lose a degree of flexibility in the financial administration of the program. Elimination of the franchise application fee could encourage frivolous franchise applications and encumber staff time in receiving and processing them. The franchise application fee and annual franchise fee are needed to defray the costs of processing applications, deter applicants who are not seriously seeking a franchise and help to defray the cost of administering franchises once they are granted.

- C. CONCLUSION: Adoption of the attached franchise fee schedule is recommended to defray the cost of processing franchise applications and administering the disposal franchise program.

TA:ga  
3010B:236A  
07/13/81

Revised June 25, 1981

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ESTABLISHING SOLID ) ORDINANCE NO. 81-112  
WASTE DISPOSAL FRANCHISE FEES )

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Purpose and Authority

It is the purpose of this ordinance to establish solid waste disposal franchise fees pursuant to Section 15 of Ordinance No. 81-111.

Section 2. Franchise Application Fees

Each application for issuance of a solid waste disposal franchise shall include and be accompanied by a franchise application fee in the amount of Two Hundred (\$200.00) Dollars. Such fee shall defray the District's costs of processing each application and shall be nonrefundable. No application for issuance of a solid waste disposal franchise shall be considered without payment of said application fee. Facilities operating pursuant to Section 7(3) of the Disposal Franchise Ordinance are exempt from this section.

Section 3. Annual Franchise Fees

(a) Franchisees, issued a solid waste disposal franchise, shall pay to the District an annual franchise fee. Such fee shall be paid on or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise fees shall be THREE HUNDRED AND NO/100THS (\$300) DOLLARS per site; provided, however, that said fee shall be One Hundred (\$100) Dollars per site for each franchised site that only receives waste from the franchisee or a

company, partnership or corporation in which the franchisee has a financial interest.

(c) Franchisees who are issued franchises during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter of the annual fee shall be charged for any quarter or portion of a quarter that the franchise is in effect. The franchisee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise fees shall not for any reason be refundable in whole or in part. Annual franchise fees shall be in addition to franchise application fees.

#### Section 4. Non-Payment of Franchise Fee

(a) The issuance of any franchise shall not be effective unless and until the annual franchise fee has been paid for the calendar year for which the franchise is issued.

(b) Annual franchise fees are due and payable on January 1 of each year. Failure to remit said fee by said date shall constitute a violation of the Metro Code and of the franchise and shall subject the franchisee to enforcement pursuant to Section 20 of Ordinance No. \_\_\_\_\_ in addition to any other civil or criminal remedies the District may have.

#### Section 5. Transfer and Renewal

For purposes of this ordinance, issuance of a franchise shall include renewal and transfer of a franchise; provided, however, that no additional annual franchise fee shall be paid upon transfer or renewal when the annual franchise fee for the franchise being

renewed or transfered has been paid for the calendar year in which  
the transfer or renewal becomes effective. /

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of the Council

AJ/gl  
2767B/214



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

TO: Metro Council  
FROM: Executive Officer  
SUBJECT: Contested Case No. 81-2, In The Matter of Clackamas  
County's Request for an Urban Growth Boundary (UGB)  
Amendment for Waldo Estates

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Action on Contested Case No. 81-2, In the Matter of Clackamas County's Request for an Urban Growth Boundary Amendment for Waldo Estates (see Background section).
- B. POLICY IMPACT: This is the first major UGB amendment Metro has heard in a "post-acknowledgement" context, since Metro's action to amend the UGB in Clackamas County last year was a fulfillment of an agreement made with LCDC and the County at the time the UGB was acknowledged. Adoption of the Majority Recommendation of the Regional Development Committee would express support for maintaining a relatively fixed supply of urban land by requiring that land be added to the UGB only as part of a trade except in extraordinary circumstances, which the majority did not find present in this case. Adoption of the Minority Recommendation would express a willingness to add to the urban land supply when doing so would confer a benefit to the region sufficient to overcome the cost of including more land within the UGB than is generally needed to accommodate expected urban growth.
- C. BUDGET IMPACT: None.

II. ANALYSIS:

- A. BACKGROUND: In March of this year, Clackamas County petitioned Metro for a UGB amendment to allow construction of a large scale mobile home subdivision for senior citizens on the site known as Waldo Estates. In April, the Council directed that the Regional Development Committee act as the hearing body for the case, following Committee identification of the appropriate standards for review. On May 27, the Committee endorsed a set of standards for review of major amendments based on State Goal requirements, and began the public hearings on Clackamas County's request on June 11. The majority position of the Committee was adopted on July 9 by a 3 to 2 vote.

The following materials are attached for Council consideration:

1. Procedure for consideration of Waldo Estate proposal;
2. Standards for Review of Major Amendments to the UGB endorsed by the Regional Development Committee - May 27, 1981 (yellow pages);
3. Designation of the record before the Regional Development Committee;
4. Majority Report of the Regional Development Committee: Proposed Interlocutory Order, Resolution of Intent and Findings in support of approval of Clackamas County's request if and when submitted as a petition for a trade consistent with Ordinance No. 81-105, Establishing Procedures for Locational Adjustments to Metro's UGB (salmon pages);
5. Exceptions filed by the parties to the Committee's Majority Report (white and buff);
6. Memo from General Counsel on the legal status and effect of the proposed orders.

A minority report will be issued separately.

Because the policy implications and practical consequences of Council action in this matter are of major significance, and because the matter comes to the Council with two different recommendations from the Regional Development Committee, the Council may wish to set over its decision until a subsequent meeting in order to allow for more extended Council deliberations.

- B. ALTERNATIVES CONSIDERED: The Regional Development Committee has presented two alternatives for Council consideration.
- C. CONCLUSIONS: The Council should carefully weigh the two reports submitted, along with the exceptions by the parties, and select the approach which it feels best serves regional interests. The Council may wish to set its final decision over to a subsequent meeting in order to allow adequate time for full consideration and deliberation.

JH/srb  
3796B/252  
07/27/81



PROCEDURE FOR CONSIDERATION OF WALDOW ESTATES PROPOSAL  
August 6, 1981

1. Committee report
  - a. Legal Counsel review of procedures
  - b. Staff review
  - c. Report by Chairman
2. Minority report (if any)
3. Argument in support of applicant's exceptions (if any)
4. Rebuttal argument and argument in support of opponent's exceptions (if any)
5. Applicant's rebuttal argument to opponent's exceptions (if any)
6. Council questions of applicant and opponent (with rebuttal to each response, if desired)
7. Council consideration:
  - a. Adopt preliminary majority position (approval, denial or approval with conditions)
  - b. Consideration/adoption of findings and conclusions in support of majority position
  - c. Consideration/adoption of order
    - If approval, order should direct preparation of an ordinance to amend the UGB
    - If denial, order is final
    - If approval subject to stated development conditions, order should direct preparation of ordinance to amend the UGB
    - If approval subject to resubmittal as a trade, order is interlocutory
  - d. First reading of ordinance, if needed

NOTE: Under Metro's Contested Case Rules the Council's deliberations are based on the record. New evidence and public testimony should not be taken. If it is decided that new evidence or public testimony is needed, the matter must be referred back to the Committee.

STANDARDS FOR URBAN GROWTH BOUNDARY AMENDMENT  
ENDORSED BY THE REGIONAL DEVELOPMENT COMMITTEE

May 27, 1981

- A. Any major amendment to the Urban Growth Boundary (UGB) shall be consistent with the following factors:

(1) Demonstrated need to accommodate long-range urban population growth required, and (2) Need for housing, employment opportunities and livability. This standard may be met by:

(a) findings that there is insufficient land inside the UGB to meet projected needs for housing, employment opportunities, and public and semi-public land requirements, consistent with anticipated population growth, based upon consideration of at least the following: population projections, household size, housing vacancy rates, housing mix, housing density, the amount of existing vacant land inside the boundary, infill and redevelopment potential and a determination of anticipated growth in rural populations. Local plan designations shall be relied upon to estimate the capacity of existing urban lands in areas where the plan has been acknowledged by Land Conservation and Development Commission (LCDC). In other areas, estimates of capacity shall be based on assumptions about current or expected future plan designations that are consistent with relevant Statewide Planning Goals, including Goal No. 9, Economy of the State, and Goal No. 10, Housing; or

(b) findings that the particular use proposed is needed in light of the types of considerations listed in (a) above. When such a finding is made, the proposal shall be evaluated according to its basic characteristics and each characteristic or combination of characteristics found to be needed shall be specifically defined and justified in terms of the public policy objectives served and how the proposed use meets these objectives.

In making findings addressing factors (1) and (2), the Council shall also take into consideration LCDC's findings acknowledging the existing UGB, including its finding that "Metro has drawn a boundary with 28,000 acres of surplus land with the understanding that this boundary would not be substantially enlarged for twenty years."

(3) Orderly and economic provision for public facilities and services: The area to be added must be capable of being served



by public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, fire protection and schools, in an orderly and economical fashion. The Council shall consider whether urban public facilities and services are presently available or can readily be made available at that location, and what impact the expansion of the UGB at that location would have on transportation and other public facility systems of nearby jurisdictions within the UGB\*.

\*Note: Councilor Kirkpatrick did not endorse the language for Standard A(1)(3) and recommended instead the following second sentence:

"Findings must show that urban public facilities and services are presently available or can be made available within the planning period for development at that location, and what impact the expansion of the UGB at that location would have on transportation and other public facility systems of nearby jurisdictions within the UGB."

(4) Maximum efficiency of land use within and on the fringe of the existing urban area. There must be findings that the land to be included can be efficiently developed for urban use, at an appropriate urban density or intensity and that urbanization of the area is compatible with orderly and efficient use of adjacent urban lands.

(5) Environmental, energy, economic and social consequences. Consideration shall include, but need not be limited to, impact on regional transit corridor development and on any identified resources or hazards. Any negative environmental, energy, economic and social consequences shall be identified and considered and overcome by other positive considerations.

(6) Retention of agricultural land. Agricultural land shall not be included in the UGB in the absence of a clear need for such lands. Where the land to be added includes land with Class I-IV Soils that is not irrevocably committed to nonfarm use, the land shall not be added if other committed lands or lands with lower agricultural soil classes are available and can satisfy the requirements of this subsection, absent justification to the contrary. Class I Soils shall be given the highest priority for retention, and Class IV the lowest priority.

(7) Compatibility of the proposed urban uses with nearby agricultural activities. Where the land to be added would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (3) through (6) of this subsection must clearly outweigh the adverse impact of any incompatibility. Locations that are not adjacent to areas planned for agricultural use shall be favored over sites that are for UGB amendment.



(8) No suitable alternative location exists within the UGB where a use with the characteristics identified as needed can be provided, considering the following:

- (a) A suitable location need not be identical to the one proposed in every respect, but need only be able to accommodate needed characteristics. Alternative sites within the UGB shall not be deemed unsuitable solely based on size unless there are findings demonstrating why each need identified above must be satisfied in a single project at a single location of the size proposed. In such case, the findings must demonstrate why the construction of one or more projects on existing urban lands with some, but not all, of the identified characteristics would be an unsatisfactory alternative and would leave an unmet need which justifies an amendment to the UGB.
  - (b) The need for plan or zone changes or for service extensions does not make a site within the UGB unsuitable for the proposed use absent justification to the contrary.
  - (c) Land cost shall be considered in the suitability of the proposed site only to the extent that a given site within the UGB may be valued for a substantially more intensive use.
  - (d) The level of parcelization of a particular site shall not alone be considered to make an alternative site unavailable unless there are findings demonstrating why the level of parcelization makes land assembly unfeasible.
  - (e) Market availability of a particular site shall not be deemed relevant, unless there are findings showing why the use identified as needed must be provided now rather than when such suitable sites as may exist in the UGB would become available.
  - (f) Why land currently outside the boundary should be added prior to any finding of need for any development upon "specially regulated areas" already within the boundary.
- (9) The proposed location is the most suitable alternative outside the UGB to accommodate the needed use, considering factors (3) through (7) of this section. Any special site characteristics needed to accommodate the specific project characteristics identified as needed for the proposed use shall be evaluated for the proposed site relative to other possible locations on the periphery of the UGB.

B. Based upon consideration of the above factors, any major amendment to the UGB shall be supported by findings that demonstrate with compelling reasons and facts:

- (1) Why the proposed use should be provided for;
- (2) What alternative locations within the region could be used for the proposed land use;
- (3) What are the long-term environmental, economic, social and energy consequences to the locality, the region and the State from allowing the amendment as opposed to other alternatives; and
- (4) The compatibility of the proposed use with other adjacent uses.

The Council shall not approve the amendment unless the weight of the evidence compels it to conclude that the standards of this subsection are met.

C. Before approving any UGB amendment, the Council shall consider and accommodate as much as possible relevant comprehensive plan provisions and applicable intergovernmental agreements, including but not limited to planning area agreements and local agreements with cities, counties, special districts, State agencies and the Metropolitan Service District.

JH/srb  
3308B/234

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

IN THE MATTER OF A PETITION	)	UGB AMENDMENT REQUEST
FOR AN URBAN GROWTH BOUNDARY	)	NO. 81-2
AMENDMENT BY CLACKAMAS COUNTY	)	
	)	RECORD BEFORE THE REGIONAL
	)	DEVELOPMENT COMMITTEE

The Regional Development Committee of the Metropolitan Service District herewith forwards the entire record of the proceeding before the Regional Development Committee in the above described matter. The record includes the following:

- A. The minutes of all hearings before the Regional Development Committee.
- B. The tape recorded record of all hearings before the Regional Development Committee (attached separately).
- C. Notice of hearings.
- D. Exhibits as follows:

WRITTEN EXHIBITS

- 1. Explanatory materials and correspondence received prior to June 11, 1981 hearing.
- 2. Record before Clackamas County.
- 3. Applicant's submittal (bound black volume) (see also Exhibit 32).
- 4. Letter from Oregon City dated June 10, 1981.
- 5. Sewer Study (Waldo View Estates) June 1981.
- 6. Written testimony submitted by Melba O. Seable.
- 7. Written testimony submitted by Paul L. Seable.
- 8. Written testimony submitted by Robert I. Blair.
- 9. Written testimony submitted by Milton Schofield.
- 10. Written testimony submitted by Jean Baker.
- 11. Material submitted by Jim Johnson (map, Conference on the Aging proceedings, computer printout).
- 12. 1000 Friends submittal (1000 Friends Exhibits #1 thru #54).
- 13. 1000 Friends Exhibit #50 (added to earlier submittal Exhibit #12).
- 14. June 9 letter from William Green.
- 15. Winston Kurth (1980 accidents).

16. Legislator's petition (supplement to endorsements in Exhibit #3).
17. Multnomah County Mobile Home Ordinance.
18. Memo to File (Ramis/Hildner conversation, June 19, 1981).
19. Engineering Report, Oregon City, signed by William C. Parrish, March 12, 1981.
20. Mobile Home Study.
21. Water Study.
22. 1000 Friends' Brief, Stout v. Multnomah County.
23. Ed Sullivan memo to Multnomah County dated June 11, 1979.
24. Housing market and submarket discussion (by Tim Holder dated June 19, 1981).
25. Letter from Clayton Wills to Jimmy Johnson, August 2, 1979.
26. Letter from Oregon City to DEQ dated April 16, 1981.
27. Letter from DEQ to Oregon City dated May 15, 1981.
28. Letter from Oregon City to Metro, June 10, 1981.
29. Letter to Clackamas County Commissioners from Virginia Dagg dated 4/28/81.
- 30.
31. June 23 memo from Andrew Cotugno to Jill Hinckley.
32. Applicant's June 30, 1981 submittal including:
  - a. Cover letter from Tim Ramis.
  - b. Waldo View Estates, Table of Contents.
  - c. List of additional exhibits.
  - d. Video tape of Representative Lindquist (attached separately).
  - e. June 15, 1981 letter from CH<sub>2</sub>M HILL, re: improvements to Claremont Water District system.
  - f. Analysis of water service for Waldo Estates, Compass Corporation, June 1981.
  - g. June 19 letter from Tom Tye, re: water feasibility.
  - h. June 26 letter from Tom Tye, re: estimates of sewer costs.
  - i. June 24, 1981 McKenzie Saito memo, re: alternative sites.
  - j. Slides presented by McKenzie Saito and Jim Johnson (attached separately).
  - k. June 4 letter from Home Builders Association of Portland to Metro.
33. June 4, 1981 letter from Home Builders Association of Portland to Metro.
34. June 25, 1981 letter from Shirley Lyons to Craig Berkman.
35. June 25, 1981 letter from Michael Cliburn to Jill Hinckley.

36. June 29, 1981 letter from Ed Seibert to Craig Berkman.
37. Letter from Ed Seibert to Corky Kirkpatrick.
38. July 6 1981 letter from Tim Ramis to Jill Hinckley.
39. Signatures of Legislators supporting senior community.
40. Petition in support of UGB amendments to provide sufficient land for mobile sites and communities.
41. Memo from McKenzie Saito summarizing oral presentation of June 22, 1981.
42. July 1, 1981 letter from Milton Schofield to Metro.
43. July 2, 1981 letter from R. C. Smelser to Bob Oleson.
44. July 6, 1981 memo from McKenzie Saito, re: additional information on Jenny Land Acres.
45. Metro Ordinance No. 79-77 (adopting UGB).
46. Staff comments on proposed findings.
47. Discussion findings submitted by Councilor Kafoury.
48. Proposed Findings submitted by applicant.
49. Proposed Findings submitted by 1000 Friends of Oregon.

#### MAP EXHIBITS

- M1. Area Within 300-Feet of Water Lines
- M2. Oregon City Sewer Service
- M3. Clackamas County Northwest Urban Land Use Plan Map
- M4. Clackamas County Resource and Rural Contested Designation Map
- M5. Road Access
- M6. Impact of Waldo View Estates Without Oregon City Bypass
- M7. Impact of Waldo View Estates With Oregon City Bypass - 1982 Daily Traffic
- M8. Impact of Waldo View Estates With Oregon City Bypass - 1997 Daily Traffic
- M9. 1980 Vacant Lands and Generalized Zoning Map
- M10. Urban Growth Boundary - Mobile Home Parks - (1970 - 1976), (1976 - Present).
- M11. Map of Oregon City Showing Proposed Site and UGB
- M12. Waldo View Estates/Sketch
- M13. Waldo View Estates/Site Plan
- M14. Aerial Photograph
- M15. Waldo View Estates Vicinity - Parcels, Five Acres or Less, Slopes Over 20 Percent.



- M16. Residential Development Opportunities Map
- M17. Service District Map
- M18. Topographic Map - 1000 Friends Exhibits 31A,  
31B, 31C
- M19. Alternative Sites Agricultural Deferred Property  
Map - 1000 Friends Exhibit #43

MAH/gl  
3734B/244

## MEETING REPORT

DATE OF MEETING: June 11, 1981

GROUP/SUBJECT: Regional Development Committee Public Hearing  
re Clackamas County Request for UGB Amendment

PERSONS ATTENDING: Couns. Bonner, Kafoury, Williamson, Oleson,  
Banzer

Staff: Mike Holstun, Andy Jordan, Denton Kent,  
Sonnie Russill, Steve Burdick, Paula Godwin,  
Marilyn Holstrom, Joe Cortright, Jeff Chew, Jill  
Hinckley, Cynthia Wichmann

Others: See attached.

### SUMMARY:

The meeting was called to order at 5:40 PM.

Coun. Bonner introduced members of the Committee and asked that they reveal any ex parte contacts they might have had concerning this matter.

Coun. Williamson noted that prior to Clackamas County filing this request he had talked with Mr. Johnson, the developer, concerning how he might best proceed with the project. At that time Coun. Williamson referred Mr. Johnson to staff. He stated that there had not been enough contact to influence a decision on the request. Coun. Williamson also reported that members of the Committee had accompanied staff on a tour of the site immediately preceding this hearing.

Coun. Kafoury stated that she had had similar conversations with Mr. Johnson at about the same time as Coun. Williamson.

Ms. Hinckley briefly summarized the standards for review adopted by the Committee for hearing this case and called attention to written testimony which had been received on this matter. She reported that earlier in the day an additional letter had been received from Oregon City endorsing the application.

Coun. Bonner welcomed Clackamas County Commissioner Ralph Groener, who distributed copies of the Clackamas County Findings regarding the proposed development.

Mr. Groener reported that the Clackamas County Board of Commissioners had passed a motion to recommend inclusion of the site within the UGB, with the understanding that an appropriate zone change would be applied for when services become available to the area. He called attention to the improving availability of services to the property, and pointed out that in responding to regional housing

goals the Clackamas County comprehensive plan had assumed development of the property as proposed. Mr. Groener felt that most future development in Oregon City would take place in the vicinity of the proposed project, and urged approval of the request for a UGB amendment. He then responded to questions from the Committee, asserting that previous traffic concerns related to the area had been satisfied. He was not aware of efforts to explore a trade of land with Washington County.

Ardis Stevenson, Assistant Director of Clackamas County Department of Environmental Services, was asked how the County could assure itself that the project would indeed provide low income elderly housing. She explained that mechanisms for protecting the proposed use were available through zone change, the PUD process, and the Tri City Sewer District contract. She then described the background of the property in relation to the UGB.

Tim Ramis, 1727 NW Hoyt, representing Mr. Johnson, introduced as evidence the record of proceedings before the county and asked that the record remain open for further submission of written testimony. Mr. Jordan reminded him that new evidence would raise the right of rebuttal for other parties.

Mr. Ramis described the history of consideration of the project and discussed the process by which Clackamas County arrived at their decision. He urged the Committee to pay close attention to the Clackamas County Findings, and to look carefully at testimony from certain sources which might have a bias. Mr. Ramis felt that given the arguments on both sides of the question, weight should be given to the testimony of those who were prospective purchasers of units in the proposed development. He cited statistics supporting a need for the housing that would be provided. He then addressed the question of sewers, distributing copies of the letter from Oregon City which stated their concerns had been met. Finally, he urged that the Committee approve the requested boundary adjustment, thereby permitting the County to take their case to LCDC.

Mr. Jono Hildner, Director of Human Resources for Clackamas County, discussed present and anticipated future problems with regard to housing for the elderly. He described an agreement between Clackamas County and Mr. Johnson whereby 10% of the lots in the proposed development would be donated to Clackamas County for sale to persons age 62 or over, with a no-interest loan and guaranteed repurchase by the County. He agreed to leave a copy of the agreement for the Committee's examination. Responding to questions, Mr. Hildner clarified that the County-controlled units were aimed at the middle range of elderly income who would not qualify for HUD-assisted low income housing. Age requirement for the rest of the development would be 50, with no dependents under 18.

Mr. Lans Stout, Planning Project Manager with MacKenzie/Saito & Associates, discussed advantages of the property in question over some of the land in Washington County. Citing relevant material

from Clackamas County evidence and findings, he addressed need as a major issue in this case, in particular the need for senior-oriented housing and mobile homes. He called attention to evidence that "density bonus" plans were not being utilized because they are not cost-effective to the developer. Asserting that the package in its totality was essential, he described its elements and the necessity of a large site to accommodate the project.

Dave Larson, civil engineer with MSA, provided a brief overview of services in the area, and whether they were available to and/or would be impacted by the project. MSA's conclusion was that all services could be made available without impacting service levels to existing residents. He added that the MSA traffic report dated March 1981 had been distributed for comment. Response indicated that estimated trips may have been somewhat low and weighted too heavily to shopping centers, but that the general consensus of reviewers was that traffic impact of the project should be minimal since senior citizens tend to travel less during peak hour traffic periods. Responding to questions, Mr. Larson clarified that traffic figures did not take into consideration secondary residents of units.

Mr. Tom Tye, Compass Engineering, 6564 SE Lake Road, Milwaukie, discussed alternatives for sewerage and providing water to the proposed project. He then responded to questions, estimating that the connection fee for sewers would be something under \$1,000 per unit.

Mr. Chris Farley, Box 102, Marylhurst, spoke in support of the request, calling attention to the critical need for affordable housing for the elderly.

Mr. J. J. Hill, 516 Thirteenth Ave., Oregon City, also supported the request, pointing out that as elderly persons moved into the project they would be vacating homes that would then become available to fill other types of housing needs. He considered the UGB an arbitrary situation which should not be permitted to stand in the way of this development.

Mr. Robert Blair, assistant director of the Oregon State Tenants Association in Clackamas County, described himself as a prospective owner of a unit in the proposed development. He read a statement in support of the project, presenting copies to the Committee.

Mr. Leonard Anderson, 16711 SE McKinley Road, agreed that the need for such a project was very real but asserted that the proposed site was not the only property available in the region. He reminded the Committee of his own efforts to include 176 acres, by means of a trade, within the UGB for a similar project.

Mr. Bill Anton, 13443 S. Spangler Road, Oregon City, referred to the project as a unique opportunity to serve an entire population group that cannot be served in any other location in the tri-county area, from the standpoint of nearness to Clackamas Community College and other services. He pointed out that one benefit of ownership was that it would assure fixed payments, as opposed to renting. He also expressed support for Mr. Groener's statements.

Mr. Ed Parker, a resident of Royal Mobile Village, Tigard, felt that the issue transcended the regional implications in the sense that the same condition exists throughout the state. He considered that mobile home residents are captive in that there are no places to move to. He urged that the UGB be amended for this project, thereby setting an example for other areas in the state to provide for mobile home usage. He then responded to questions concerning his living situation.

There was a brief recess.

Mr. Lans Stout called attention to some points which had not been made by the County:

- 1) Newell Canyon to the west and public school property to the east form natural barriers.
- 2) There has been new commercial development in the vicinity, within a mile of the site.
- 3) There are virtually no commercial agricultural activities in the area.

Responding to questions, Mr. Stout said that there were hobby farms in the area, but that in his opinion parcelization, configuration and surrounding use made the land unfit for commercial agricultural or forest uses.

Mr. Tom Wright, planner with MSA, described how potential environmental impacts would be avoided. He felt that development of the property would be beneficial so far as energy conservation was concerned, as well as providing additional funds for school support and creating employment opportunities. He also saw positive social consequences through providing affordable housing and a desirable lifestyle for senior citizens. He then provided a brief overview of the criteria used for the technical evaluation of alternative sites and summarized factors relevant to the standard concerning need.

Responding to questions, Mr. Wright elaborated that all alternative sites which were evaluated were within the UGB. Review of alternative fringe sites outside the UGB was confined to East Multnomah and East Clackamas Counties. The Leonard Anderson site was excluded because of the 42-person ownership and its location near Johnson Creek. He emphasized that although certain alternative sites outside the UGB could support the project, none of them had all the advantages of the Waldow site. Exploration of alternative sites took place after the Waldow property had been identified by Mr. Johnson.

Responding to questioning concerning Clackamas County's previous position that their priority area for further development was in the vicinity of the Clackamas Town Center, Mr. Groener explained that that area is being developed as an urban renewal district under special high density zoning.

Diane Quick, 10100 SE Walnut Dr., Happy Valley, addressed the need for the proposed project, and suggested that Happy Valley would be willing to be traded out of the UGB.

Mr. Mark Greenfield, representing 1000 Friends of Oregon, then questioned representatives of Clackamas County and Mr. Johnson, eliciting the following responses:

- 1) Mr. Wright explained that Wilsonville had not been considered in evaluating alternative sites because it was considered to be in a different market area. Evaluation was based on criteria which included a golf course within the development; therefore, locations adjacent to golf courses were not considered.
- 2) Mr. Tye estimated that total sewerage costs would be \$80-100,000 if the line went down Redland Road, versus perhaps \$200,000 for an on-site treatment system. Water problems in the area were a function of pipe deficiencies rather than inadequate supply. Irrigation required for a golf course would depend on a number of factors, including design of retention ponds, possible availability of effluent from an on-site sewerage treatment facility, and the availability of well vs. domestic water. He could not provide information regarding possible costs of irrigation.

Mr. Larry Epstein, 2345 SE Salmon, testified that a favorable decision in this case would set a highly undesirable precedent which would lead to additional such requests. Though he agreed there was an unquestionable need for housing for the elderly, he cited a number of other methods for filling that need. Urban infill, rental/multi-family, zero lot line developments, and condominiums, he felt, were all good alternatives. He pointed out that there is also presently a lot of mobile home activity, and gave examples. He made the point that the UGB was a flexible tool, the balance of which could best be maintained through trade, as suggested in the case of the Anderson site.

Mr. Wes Ramsey, 18490 S. Holly Lane, opposed the project, citing water problems that had been experienced in the area as being a major concern. He called attention to existing and potentially increased traffic problems on Holly Lane, pointing out that most persons 50 years of age are not retired and thus would be driving during peak traffic hours. Mr. Ramsey said he is farming his property for personal use and considered the area to be agricultural. He then responded to questions.

Mr. Pat Cameron, 17575 S. Holly Lane, felt certain that there could be 200 acres capable of supporting the project within the present UGB, and asked how much of a search was conducted for other property. He felt that more concrete figures should be available before a request is made for an amendment to the UGB. He then responded to questions.

Faith Latta, 17575 S. Holly Lane, expressed deep opposition to the project and discussed traffic problems on Holly Lane.

Mr. Larry Schlabach, 17565 S. Holly Lane, also opposed the project, citing traffic and water problems as his major reasons for doing so.

Marianne McGee, 2615 SE Courtney, Sp. 12A, Milwaukie, speaking from the perspective of her activities in senior citizen affairs in Clackamas County, urged approval of the request in a written statement, copies of which were distributed to the Committee. She felt that many senior citizens could afford such housing, and that the project would make available housing that in turn was within reach of younger families. She felt that Mr. Johnson's willingness to donate 100 sites to the County for low income housing should receive major consideration. She added that the Gray Panthers had endorsed the project.

Mr. Mark Greenfield asked that the exhibits prepared on behalf of 1000 Friends of Oregon be placed in the record.

Mr. Jimmie Johnson, 43 Backett, Lake Oswego, discussed the present state of mobile home housing in Oregon and presented statistics on housing starts and economics. He then read excerpts from the Proceedings of the Oregon Conference on Aging which supported his contention concerning the need for alternative housing for the elderly and the necessity that this need be addressed by private developers. He remarked that he had at least 5000 signatures on a petition in support of the proposed UGB amendment and asserted that the bottom line is the need for housing. In response to Committee questioning, he described his efforts over the past 1½ years to address the concerns of neighbors to the project, and his investigations of the availability of alternative sites within the area.

Mr. Lee Graham, 8 Apollo Dr., Gladstone, identified himself as a mobile home resident and immediate past president of Oregon State Tenants Association. He urged support of the request, feeling that it was more desirable to provide for the needs of people than to perpetuate an agricultural use of questionable value. Mr. Graham responded to questions from the Committee concerning his living situation.

Mr. Milton Schofield, 4748 Deepwood Loop NE, Salem, presented the Committee with written testimony which he read into the record. He urged approval of the request, citing a need for such housing and the desirability of providing amenities such as the golf course in conjunction with it. He then described the mobile home subdivision in which he resided, and responded to questions.

Dick Smelser, 701 John Adams, asserted that moving to Washington or Multnomah County was not a palatable solution for housing problems affecting residents of Clackamas County, and urged approval of the proposal.

Mr. Groener suggested that a major cause of the traffic problem on Holly Lane was due to students at Clackamas Community College who commute from the northern part of the county and would be using the by;ass once it is in place, and suggested that Transportation staff be asked to provide statistics on that. He also suggested that Claremont Water District be contacted for information concerning the water situation.

Mr. Ramis submitted exhibits for the record which were referred to in Mr. Johnson's testimony.

Because of the late hour, the meeting was continued to 4:00 PM on June 12 in the Council Chamber, at which time Mr. Greenfield would present testimony on behalf of 1000 Friends of Oregon, followed by rebuttal and additional opportunity for individual testimony.

Written by Cynthia Wichmann



ATTENDANCE LIST  
REGIONAL DEVELOPMENT COMMITTEE  
JUNE 11, 1981

Mr. and Mrs. John Earl  
Orvill M. Beard  
Mr. and Mrs. Milton Schofield  
Mr. Jono Hildner  
Tim Ramis  
Gayle Compton  
Wesley A. Ramsey  
Robert W. Compton  
Alwina E. and T. F. Casey  
David Larson  
Pat Blue  
JoAnne Walden  
Bill Anton  
Barbara Dontje  
Mildred Wilson  
Doris Bakum  
Edna and Lee Graham  
Frank and Helen Miller  
Dewane C. Walden  
Ed Parker  
F. Hirte  
Art Lindholm  
Melba O. and Paul L. Seable  
Neal E. Miller  
Mr. Hoder  
Deloris G. Dietz  
Doug Hagen  
Chris Farley  
Tom Tye  
Diane E. Quick  
Bob Duncomb  
Millie Duncomb  
Faith and Laurie Latta  
Pat Cameron  
J. J. Hill  
Howard L. Hays  
Jimmie Johnson  
Mark Greenfield  
Lans Stout  
Tom Wright  
Dick Smelser  
Leonard R. Anderson  
Ken Stewart  
Robert Blair  
Vi Stewart  
Bill Fouch  
Larry Epstein

Nedra Peterson  
Vincent Kohler  
Opal Houghton  
Cliff Houghton  
Mr. and Mrs. Pat Smith  
Marianne McGee  
Roxanne Nelson  
Ken Swan  
Reed Ritchey  
William Diker  
Lyle Wiese  
Mr. and Mrs. Art Muscovich  
Shirley Lyons  
Sumner Sharpe  
Mark R. Walter  
Dave Boymeier  
Larry Schlabach  
Sandra Schlabach

## MEETING REPORT

DATE OF MEETING: June 12, 1981

GROUP/SUBJECT: Regional Development Committee Public Hearing  
re Clackamas County Request for UGB Amendment

PERSONS ATTENDING: Couns. Bonner, Williamson, Kafoury

Staff: Jill Hinckley, Mike Holstun, Cynthia  
Wichmann

Others: Pat Cameron, Mark Greenfield, Tim Ramis,  
Winston Kirth, interested citizens

### SUMMARY:

This meeting was scheduled as a continuation of the June 11 public hearing on Clackamas County's request for an amendment of Metro's Urban Growth Boundary.

At 4:15 Coun. Bonner announced that public testimony would be taken for the record even though a quorum of the Committee might not be present.

Mr. Pat Cameron, 17575 S. Holly Lane, Oregon City, testified that during the hour between 7:35 and 8:35 this morning 608 vehicles passed his house heading north. He had not attempted to count traffic moving south. He had also driven two routes that could be used by vehicles going between the Waldow property and the site of the proposed bypass. The Maple Lane route contained seven stop lights and three stop signs, versus one stop light and two stop signs via Holly Lane. Holly Lane also took significantly less time, making it the more attractive alternative.

Mr. Cameron then posed questions as to possible sources of water for irrigating the golf course, calling particular attention to pp. 209-210 of the Clackamas County material.

Due to the lack of a quorum, the Committee agreed to continue the hearing to Monday, June 22, at 5:30 PM. Proposed findings would be due on June 29th, with Committee discussion and decision scheduled for 5:30 PM on July 8, with continuance if necessary to the same time on July 9 and 10. The deadline for filing written exceptions to the Committee decision would then be July 24, with the matter scheduled to go before the full Council on August 6.

Members of the Committee asked staff to provide the following information:

- 1) By county, information on mobile home parks and subdivisions, including: number of new spaces over the past two or three years; total number of units and their condition, size, rental or purchase price; and special conditions or requirements which must be met for development of mobile home facilities.
- 2) Detailed information from Claremont Water District concerning the water situation in general, what if any problems are being experienced, and what plans exist for solving those problems.
- 3) Traffic maps for Clackamas County containing the following information: present traffic volumes on Holly and Maple Lanes; effect of the bypass without the Waldow project; effect of the bypass with the Waldow project; and effect of the Waldow project without the bypass.
- 4) By county, the net addition or deletion of mobile home spaces over the past 3-5 years.
- 5) The kinds and sizes of mobile home parks being proposed in Washington and Multnomah Counties at the present time.
- 6) More detailed information about the analysis of alternative sites by subdistrict and the definition of those subdistricts.

The meeting was then continued to 5:30 PM on Monday, June 22, in the Council Chamber.

Written by Cynthia Wichmann

## MEETING REPORT

DATE OF MEETING: June 22, 1981

GROUP/SUBJECT: Regional Development Committee Public Hearing  
re Clackamas County Request for UGB Amendment

PERSONS ATTENDING: Couns. Bonner, Schedeen, Oleson, Kirkpatrick,  
Kafoury

Staff: Jill Hinckley, Mike Holstun, Cynthia  
Wichmann

Others: Mike Greenfield, Tim Ramis, Tom Wright,  
Tom Tye, Winston Kurth, Jimmie Johnson, Lans  
Stout

### SUMMARY:

The meeting, which was continued from June 12, 1981, was called to order at 5:30 PM.

Mark Greenfield, staff attorney for 1000 Friends of Oregon, 519 SW Third, introduced their Exhibit #50 into the record. He felt that the issue involved more than the question of whether to expand the UGB to allow this development. Approval would be the politically expedient decision, he said, but would set a dangerous precedent that would open the doors to speculation on land outside the UGB. He urged the Committee to stand by their commitment that the UGB would remain static for years to come, and reminded them that only a year ago the UGB in Clackamas County had been amended by adding 1000 acres, at which time Clackamas County had asserted that it was sufficient to provide residential housing for many years.

Claiming that it would be impossible to reconcile the facts of this case with the legal standards governing amendment of the boundary, Mr. Greenfield addressed the legal standards in detail. Citing figures on land availability within the UGB, he pointed out that the request was based mainly on the idea of a special need, i.e. for mobile home senior subdivisions with recreational amenities. While 1000 Friends agreed that there was not sufficient land available for mobile homes and had regularly supported mobile home housing, LCDC had deemed that demand was not equivalent to need under Goal 10. Further, Mr. Greenfield asserted, the burden of providing for mobile housing clearly rested with local jurisdictions through their comprehensive plans. He outlined existing provisions for mobile homes in the three counties and listed recently approved applications for mobile housing as evidence that local governments are responding to the demand for mobile homes within the UGB.

Mr. Greenfield then addressed the issue of affordable elderly housing, first making the point that in all likelihood anyone who could afford a unit in the proposed development would not qualify as needy under the AHOP definition developed by HUD (1000 Friends Exhibit #49). Elderly housing is presently encouraged through such devices as a density bonus for senior housing, and secondary dwelling units. Furthermore, senior citizens are not restricted from taking advantage of other programs to provide affordable housing.

With regard to amenities, Mr. Greenfield likened the proposed development to a resort and questioned whether all of the planned amenities were necessary to provide an adequate lifestyle. Referring to his Exhibit #15, he called attention to a number of mobile home parks and subdivisions which provide sufficient amenities on parcels 10-50 acres in size.

Mr. Greenfield then questioned the accuracy of the applicant's cost estimates, charging that inadequate information was provided.

Turning his attention to alternative locations for the project, Mr. Greenfield pointed out that the applicant had not considered parcels for development without the golf course, and that the characteristics of the Waldow site were based primarily on requirements of the golf course. The applicant also did not consider land in certain areas (such as Wilsonville), land for trade (as in the Leonard Anderson proposal), land in specially regulated areas, or a number of sites currently within the UGB. Mr. Greenfield reported that 1000 Friends had found 19 areas in Washington County and 6 in Multnomah County, all within or adjacent to the UGB, which they saw as possible alternatives. Similar information for Clackamas County was not available to 1000 Friends, though there are 138 acres adjacent to the Oregon City golf course and a sizable parcel next to the Mt. Scott golf course. Mr. Greenfield discussed details of each area, locating them on a map and presenting their development opportunity ratings according to a rating system developed by Metro staff. While a rating was not available for the Waldow property, land adjacent to it had a rating of 27, one of the lowest.

Mr. Greenfield then asserted that sewerage the property would violate the land use framework element dealing with agricultural areas and would put development pressure on other undeveloped land. In addition, he saw problems with traffic and water supply. Referring to a map, Mr. Greenfield pointed out that the parcel was almost entirely surrounded by rural land and stated that permitting development of a community of 2000 population surrounded on 3½ sides by rural property was not a good approach to development.

In conclusion, Mr. Greenfield charged that the applicant had gone to great lengths to gain political support for the amendment because he could not meet the legal standards. Reporting that 1000 Friends was currently involved in a challenge before LUBA of the Clackamas County findings in this case, he urged denial of the request.

Responding to questions from the Committee, Mr. Greenfield made the following comments:

- 1) While a trade would be preferable to expansion of the boundary, it was felt that even a trade could not be justified because of locational factors and the impact of the development on surrounding rural lands.
- 2) There was testimony before Clackamas County from a nearby property owner who expressed a desire to develop his property also if the request were approved.
- 3) 1000 Friends did not contact property owners during their analysis of land availability in Washington County, feeling that it was the applicant's obligation to make that effort.

The applicant was asked to provide more detail concerning his activities in investigating alternative sites.

Mr. Winston Kurth, Deputy Director of Environmental Services for Clackamas County, presented and discussed traffic volume and impact maps for the Waldow proposal as requested by the Committee. Data contained in his presentation came from the environmental impact and traffic analysis for the Oregon City bypass and other documents. In compiling the data, it was assumed that the project would involve 1000 units, each generating four trips per day including visitor trips, deliveries, etc. Mr. Kurth's analysis indicated that a significant reduction in traffic on Holly and Maple Lanes would occur with the opening of the bypass. He considered the accident rate of 3.6 accidents per year per 1 million miles travelled on Holly Lane to be normal for an area in a transition zone between urban and rural uses. Mr. Kurth was not aware of requests from other property owners to hook into the sewer extension, stating that at present the County was looking only at this particular property.

Dave Larson, MSA, reported on a conversation he had with Mr. Dick Fleer, manager of King City, about ages of residents. King City operates under a deed covenant restricting age of residents similar to that in Mr. Johnson's proposal. Mr. Fleer estimated that approximately 5% of the households in King City have residents between the ages of 18-25; that the average age is not less than 60; and that 75% of the residents are retired. He pointed out that these figures were not based on any survey but were estimates made by a single individual.

Mr. Larson also reported that Mr. Hildner had indicated that his organization had access to buses and that they would be willing to schedule shuttle buses to the facility.

Mr. Ramis, representing Mr. Johnson, explained the covenant restriction that would be attached to the deeds. He then showed a videotape of Rep. Ed Lindquist, who spoke in support of the proposal and exhibited a petition signed by a majority of the state legislators

in support of the UGB amendment. Copies of the petition were distributed to the Committee. Mr. Ramis also reminded the Committee of the petition from neighboring property owners, calling it an indicator of the degree of agreement in the county generally that the project should be supported.

Mr. Ramis then introduced additional materials relating to sewerage the property: 1) an engineering report from Oregon City's city engineer; 2) a letter from Oregon City's general manager to DEQ requesting sewer permits and DEQ's response indicating the permits would be granted; and 3) the letter from the Mayor and three city commissioners of Oregon City supporting the project, which had been previously introduced.

Responding to Mr. Greenfield's presentation, Mr. Ramis then discussed what the various counties are doing to address the need for mobile homes and reminded the Committee of Mr. Groener's testimony regarding his efforts to find locations for mobile housing. He held that alternatives suggested by 1000 Friends were inadequate and asserted that the bonus system was not a successful incentive. Finally, he contended that pressure for additional development would not arise because of sewer availability and that the area was presently in rural parcels of 2-5 acres which do not tend to redevelop.

Mr. Lans Stout of MSA distributed copies of a letter from Tim Holdner, a consultant, in which he discussed the workings of the housing market, particularly in Clackamas County. Mr. Stout addressed the difficulty of getting owners of small parcels together for a project of this type and of getting local governments to amend their comprehensive plans to accommodate this kind of need. He then pointed out that removal of the golf course from the request would result in fewer units because of Clackamas County zoning regulations. Mr. Stout presented a letter from Clayton Willis, Clackamas County extension agent, in which he concluded that geographic location precluded use of the property for farming because of the conflicts produced by adjacent residential development. Finally, Mr. Stout discussed some of the alternative sites proposed by 1000 Friends, calling attention to their shortcomings and/or non-availability. He then responded to questions from Mr. Greenfield.

Tom Wright, responding to questions previously raised by the Committee, presented slides of various mobile home parks, giving details of lot size and other statistics of each, including amenities, total spaces, space rental, etc. He also discussed the problem of existing mobile home parks which are currently zoned for more intensive uses and thus are under pressure for redevelopment.

Mr. Tom Tye, Compass Engineering, described the existing water system in the area, existing problems, and water availability. He responded to questions from the Committee and concurred with Mr. Ramis' remarks on the sewer situation.

Jimmie Johnson reviewed his efforts in developing the proposal for

this project, addressed the condition and economics of the housing market, and showed slides of mobile home subdivisions in various areas, speaking further about the need for affordable housing for senior citizens.

Mr. Dave Borgner, S. Holly Lane, informed the Committee that he would like to develop his property also if the project were approved.

It was announced that Committee deliberations would begin on Wednesday, July 8, at 5:30 PM in the Council Chamber. Proposed findings should be submitted by Monday.

There being no further testimony on this matter, the hearing was adjourned.

Written by Cynthia Wichmann



## MEETING REPORT

DATE OF MEETING: July 8, 1981

GROUP/SUBJECT: Regional Development Committee

PERSONS ATTENDING: Couns. Bonner, Schedeen, Kafoury, Oleson

In attendance: Rick Gustafson, Executive Officer

Metro staff: Jill Hinckley, Andy Jordan, Mike Holstun, Priscilla Ditewig

Others: Paul Seable, Melba Seable, Doris Clark, P.D. Clark, Tim Ramis, Lans Stout, Steven Johnson, Bob Root, R.A. Motley, Norman Worthley, Harry Clifton, Doris Clifton, Robert Blair, Francis Powell, Marie Donaldson, Horace Donaldson, Dorothy Hunt, Fran Sahli, Gus Sahli, Ruth Olson, W.A. Olson, Helene Beard, Orville Beard, F.L. Graham, Edna Graham, Shirley Lyons, Bill Anton, Ardis Stevenson, Jim Johnson, H.L. Hays, Jeanne Worthley, Arnold Cogan, Dave Larson, Wayne Maio, Sheila Maio, Lowell Taylor, Corinne Sherton, Mark Greenfield

### SUMMARY:

The meeting was called to order at 5:40 p.m. by Chairman Bonner.

#### Recommended Findings and Proposed Order on Clackamas County's Request for Amendment of Metro's Urban Growth Boundary (UGB)

Chairman Bonner indicated to the audience present that the Committee would be discussing the recommended findings and would accept no formal testimony at the meeting.

Coun. Kafoury presented her proposal (attached) and briefly explained it to the Committee. Chairman Bonner suggested, and it was agreed, that the Committee discuss each of the proposed findings and approve, disapprove, or amend them as needed.

In the first general category, Mobile Homes, the Committee agreed with all five findings. Regarding the first finding in this category, Mr. Tim Ramis, attorney for the applicant, stated that a 1000 square foot fully assembled mobile home was available for \$15,950. Chairman Bonner asked that this fact be noted in the findings. He also asked the staff to provide in the findings figures on the average cost of an average size mobile home in Oregon compared to the average cost of an average size conventional home.

In the second category, Mobile Home Subdivisions, the last three findings were approved by the Committee. The first finding was revised by Chairman Bonner and accepted by the Committee to read: When lots are purchased rather than rented, monthly payments will increase at a lower rate. The second finding was revised by Chairman Bonner and accepted by the Committee to read: Lot ownership also allows residents to build equity in the land and provides security against arbitrary eviction and also would tend to improve the condition of the unit.

Discussion of the third category centered at first around the distinction between amenities and support services and whether seniors might require a different set of amenities and support services on site or nearby than would otherwise be provided. The Committee made no decision regarding the first finding in this category. The Committee approved the second and fourth findings in this category, although Chairman Bonner asked the staff to add to the findings a range of sizes of other mobile home communities throughout the region. The third finding was amended by Coun. Oleson and accepted by the Committee to read: While all amenities included in the project are desirable, it may not be essential that they all be included on site in order to provide a livable, affordable housing environment for seniors.

In the fourth category, Scale, the first finding was amended by Chairman Bonner and accepted by the Committee to read: Although there is no numerical estimate of need in the record, the Committee finds that the breadth of support for a project of this type combined with the dearth of other similar projects existing now is adequate to justify a need for at least 1000 mobile home subdivision lots. The second finding, part a, was amended by Chairman Bonner and accepted by the Committee to read: Residents of this region 50 and over desire a variety of different housing opportunities. Some want to live in a large community of their peers. Coun. Schedeen, seconded by Coun. Oleson, moved to delete finding 2 b and finding 3. Couns. Schedeen, Oleson, Bonner voting aye, Coun. Kafoury voting no, the motion carried.

Regarding alternatives within the UGB, the Committee approved the first and fourth findings. The second finding was first amended to substitute the words threatened use for the phrase "less feasible alternative economically." Mr. Ramis stated that the applicant had never made the assertion alluded to in the third finding; Mr. Mark Greenfield, 1000 Friends of Oregon, suggested that the intent of the second finding was to indicate that where other uses are allowed at more units per acre than mobile homes, mobile homes are not competitive, but that there was no evidence in the record that mobile homes could not compete with other uses allowed at the same density. The Committee asked Mr. Greenfield to draft a finding to this effect, and agreed to delete the third finding.

Regional Development Committee Meeting  
July 8, 1981  
Page 3

Chairman Bonner asked the staff to clarify the fifth finding, adding more detail regarding the specific sites which have been identified in the three counties.

Chairman Bonner moved, and it was seconded, to add a sixth finding to read: Owners of property can make sites unavailable for development arbitrarily without any reason. Couns. Schedeen, Oleson, Bonner voting aye, Coun. Kafoury voting no, the motion carried.

Although the Committee had not completed their discussion of Coun. Kafoury's proposal, it was decided that, in order to allow time for preparation of alternative proposals, they adjourn for the evening and reconvene the next day at 5:30 p.m.

Report written by Priscilla Ditewig

In general: The central policy issue facing the Committee is how to evaluate "special need" -- how such a need is defined and how alternatives for meeting that need are addressed. The Committee should focus on the specific issues involved in this policy question and seek to reach consensus on general conclusions before moving to the specific factual findings for each standard.

Defining the special need

The Committee should consider each element of the proposed project for which a need is asserted and find negatively or affirmatively for each of those needs. The project can be broken down into the following "needed" elements:

- o the need for mobile homes as affordable housing;
  - o the need for mobile home spaces that can be purchased rather than rented (subdivision vs. park);
  - o the need for a particular set of amenities and support services on site (golf course, recreation center, community center, etc.); and
  - o the need for a project of the scale proposed (800 to 1000 units).
- The special needs of senior citizens may be considered as they relate to each of these elements, e.g. for affordable housing, or for certain on-site amenities and services.

**MOBILE HOMES:**

- On the average, mobile homes cost less than stick-built homes and are thus are one means of providing for affordable housing;
- Each jurisdiction may select from among a variety of affordable housing options the ones which it feels most appropriate to meet its housing needs.
- Clackamas County's plan policies support the provision of mobile homes to meet its needs for affordable housing.
- Vacancy rates and move-in charges indicate that there is shortage of mobile home spaces in the region generally and in Clackamas County in particular.
- The Committee finds there is a need to provide an opportunity for the provision of mobile homes to meet affordable housing needs.

#### MOBILE HOME SUBDIVISIONS:

- When lots are purchased rather than rented, monthly payments are fixed (exclusive of taxes) and so keep total housing costs from increasing as rapidly with inflation as they would in parks where space rental keeps increasing.
- Lot ownership also allows residents to build equity in the land and provides security against arbitrary eviction.
- Clackamas County's plan supports the concept of providing for mobile homes in subdivisions where the lots may be purchased.
- There are no mobile home subdivisions in the region and only a few proposed or approved.
- The Committee finds there is a need to provide opportunities for mobile home subdivisions.

#### AMENITIES AND SUPPORT SERVICES:

- Whether or not the proposed project is limited to households over a certain age affects its land use needs only to the extent that a project designed as a mobile home subdivision for seniors might require a different set of amenities and support services on site or nearby than would otherwise be provided. •If the Committee finds a need for mobile home subdivisions generally (i.e. to meet the need for affordable housing for the population as a whole), it need not further address the question of whether this need is unique to or greater for seniors except to the extent that the needs of seniors in particular may affect land use needs and impacts.
- The range of support services to be provided would benefit seniors who resided in such a community.
- While all amenities included in the project are desirable, it is not essential that they all be included on site in order to provide a livable, affordable housing environment for seniors.
- There are a number of other mobile home communities throughout the region that provide amenities for seniors on a smaller scale and these communities appear to be attractive to seniors.

#### SCALE:

- Although there is no numerical estimate of need in the record, the Committee finds that the breadth of support for a project of this type combined with the dearth of other similar projects existing now is adequate to justify a need for up to 1000 lots for mobile homes.

- The proposal to locate 1000 units in one project is based upon
  - (a) the desires of potential residents to live in a large community of their peers; and
  - (b) the reduction in the per-lot cost of the amenities to be provided achieved by increasing the total number of units sharing in the costs of those amenities.
- The per-lot cost of amenities could also be reduced by reducing the scale of the amenities to be provided on site.

#### Alternatives within the UGB

- There are ample opportunities within the UGB, including within the cities and unincorporated areas of Clackamas Counties, for the construction of <sup>affordable</sup> small-scale mobile home subdivisions with limited amenities.
- In some of the jurisdictions in which mobile home subdivisions are allowed, more intensive uses may be allowed in the same zone, thus making a mobile home subdivision a less feasible alternative economically. The record does not include information on other uses allowed in many of the zones in which mobile home subdivisions are allowed, but in Clackamas County, other uses (stick-built homes) are subject to the same density limitations as mobile homes.
- The applicant has argued that even where the other uses allowed are subject to the same density limitations, the developer's return on a stick-built subdivision is sufficiently greater than the the return on a mobile home subdivision to make it difficult for mobile homes subdivisions to compete economically, but there is no evidence in the record to substantiate this. In fact, the developer of the subject site has suggested that in a time when the market for stick-built homes is sluggish, a subdivision meeting a special need for mobile homes may be more marketable.
- Even if mobile homes are unable to compete economically with stick-built subdivisions subject to the same density limitations, there are alternatives available to local jurisdictions to insure that the need for mobile home subdivisions is met within the UGB, e.g. to provide a density bonus for mobile home subdivisions sufficient to overcome any economic disadvantage relative to stick-built homes.
- In addition, two sites in Clackamas County and several sites in Washington and Multnomah County have been identified which appear suitable for a project of the scale proposed.

Exception standards (is there a compelling case showing why the proposed use must be provided for by amending the UGB, considering alternatives available for meeting identified needs within the UGB?)

- The project proposed would meet an identified need for affordable housing, in a community providing a life style desired by many seniors.
- Although there are alternatives available within the UGB where such a project could be built, it is unlikely that such a project would be built within the same time frame as the proposed project since only the subject site is owned by a willing developer.
- Although approval of UGB amendment to allow construction of the proposed project would help meet an identified need, it may not be the best long-term solution for meeting affordable housing needs generally and the needs of seniors in particular because solving the immediate need through UGB amendment rather than encouraging local jurisdictions and the development community to work together to find ways to develop lands within the UGB for mobile home subdivisions *will not solve the long term problem.*
- The approval of one project to meet a broader need rather than finding ways to meet the need within the UGB will create a project so unique as to place the cost of the units at resale at such a level as to be outside the range of affordability.
- Land is available within the UGB for mobile home subdivisions of a variety of sizes and with a variety of amenities, although local jurisdictions may need to revise their zoning ordinances to insure that such projects get built.
- Land within the UGB will be used efficiently for this and other needed uses only if local jurisdictions and developers understand that urban needs should be met within the UGB when possible, rather than through UGB amendment.
- In consequence, the Committee is not compelled to conclude that the proposed use could not be provided within the UGB, nor that the need cannot be met in other ways, through smaller scale developments.
- The Committee therefore recommends that the County's request for UGB amendment be denied. Because, however, the Committee recognizes the need for this type of project but cannot find that land within the UGB is unsuitable for its provision, the Committee would look favorably on a request for a trade to remove demonstrably less suitable land from the UGB in trade for this addition in the future.

## MEETING REPORT

DATE OF MEETING: July 9, 1981

GROUP/SUBJECT: Regional Development Committee

PERSONS ATTENDING: Couns. Bonner, Williamson, Schedeen, Oleson,  
Kafoury

In attendance: Rick Gustafson

Metro staff: Andy Jordan, Jill Hinckley,  
Priscilla Ditewig

Others: F.L. Graham, Edna Graham, Jim Johnson,  
Tim Ramis, Mark Greenfield, Lans Stout

### SUMMARY:

The meeting was called to order at 5:40 p.m. by Chairman Bonner.

Recommended Findings and Proposed Order on Clackamas County's Request for Amendment of Metro's Urban Growth Boundary (UGB) (continuation of discussion from previous evening)

Chairman Bonner opened the meeting by reading for the record a statement reflecting his views regarding the proposed UGB amendment. In summary, the statement stressed the following points:

- There is no general need--either in Clackamas County or in the region as a whole--to add land for residential use to the urban service area.
- There is a "special need" for low or moderate cost senior housing in communities with the appropriate support services and amenities and populated primarily by people 50 years and older.
- However, the proposed project does not strictly meet that "special need."
- Even though the applicant has spent considerable time and effort reviewing alternative sites, he has not provided sufficient testimony that alternative locations for his project do not exist either inside or outside the UGB.
- The project is a worthy one and if the application for an amendment had been a minor one, in which a relatively small piece of property had been added to the urban service area and a similar size piece of property removed, Coun. Bonner would have approved it and if such a proposal comes before the Council, he will vote to approve it.



Based upon the preceding assertions, Coun. Bonner moved to encourage Clackamas County and the developer on the project, to deny the County's application for a major amendment to the UGB, and to recommend approval of the Proposed Order for Denial. The motion was seconded by Coun. Kafoury.

Coun. Oleson stated that he had prepared an alternative to Coun. Bonner's Order, proposing conditional approval, and that he and Coun. Schedeen would possibly be presenting a minority report for outright approval.

Coun. Bonner proposed, and the Committee agreed, that in both proposed orders for conditional approval and for denial, the fourth paragraph needed revision, deleting the word need in the first line and substituting for it the phrase "demand, but not a 'special need'." He also amended the second paragraph of the resolution, deleting the phrase "need to provide affordable" and inserting the words "demand for."

Discussion followed about how to proceed, with Chairman Bonner stressing that the Committee must come to a conclusion and then adopt findings based upon that conclusion.

Regarding the differences between denial and conditional approval, Mr. Andy Jordan stated that denial would constitute a final action in which the UGB would not be amended and which could go into litigation immediately. Conditional approval would not be a final action and would leave open the possibility of an amendment to the UGB.

Mr. Tim Ramis, attorney for the applicant, indicated that, given a choice between the two, the applicant would prefer conditional approval which would enable him to make a trade, rather than going into litigation.

Coun. Oleson, seconded by Coun. Schedeen, moved to substitute the Proposed Order for Conditional Approval and the corresponding resolution, in place of the Proposed Order for Denial.

Coun. Kafoury asserted that the project does not constitute affordable housing for the elderly; therefore, she can support neither the findings that will justify the project nor the conclusions drawn in order to support Coun. Oleson's proposal.

Chairman Bonner stated that his main objection to Coun. Oleson's proposal is the lack of a definite time limit (e.g. a year) in the Order itself.

A vote was taken on Coun. Oleson's motion, with Couns. Oleson, Schedeen, Bonner, Williamson voting aye, Coun. Kafoury voting no. The motion carried.

Minutes of the Regional Development Committee  
July 9, 1981  
Page 3

Chairman Bonner proposed an amendment to the Order, adding a provision that the petition be resubmitted within 12 months. He also asked the staff to add a similar provision to the resolution. The Committee agreed with this.

There being no further discussion, a vote was taken on the motion to recommend to the Council the Proposed Order for Conditional Approval and the corresponding resolution. Couns. Bonner, Oleson, Williamson voted aye, Couns. Kafoury and Schedeen voted no. The motion carried.

Coun. Oleson reminded the Committee that he and Coun. Schedeen would probably be preparing a minority report recommending outright approval. Coun. Kafoury stated that, according to Roberts Rules of Order, since Coun. Oleson voted on the prevailing side, he would not be able to present a minority report. Chairman Bonner said that decision would be up to Coun. Deines, Presiding Officer. He instructed Coun. Oleson to check with Coun. Deines regarding this matter.

Chairman Bonner directed the staff to prepare a set of findings supporting the Proposed Order for Conditional Approval.

It was agreed that final findings as approved by the Committee would be completed by July 20 and that the parties would be allowed until July 27 to enter exceptions to those findings.

The meeting was adjourned.

Report written by Priscilla Ditewig



**METRO**

**METROPOLITAN  
SERVICE DISTRICT**

527 SW HALL, PORTLAND, OREGON  
503 221-1646

## **METRO COUNCIL MEETING**

### **NOTICE**

A public hearing in the matter of a request by Clackamas County for an Urban Growth Boundary (UGB) Amendment shall be held at the Metro Office, 527 S.W. Hall Street, on June 11, 1981, at 5:30 P.M. before the Regional Development Committee of the Metropolitan Service District (Metro). The property included in the proposed amendment is located approximately 1 mile southeast of Oregon City on the north side of Maple Lane immediately east of the Maple Lane-Holly Lane Intersection.

The petitioner asserts a need to amend the Metro UGB to add approximately 188 acres of land to the existing UGB that was adopted by Metro in November 1979, and acknowledged by LCDC in January 1980. The property contains predominantly agricultural class soils and is currently undeveloped.

The property owner proposes to construct a 1000-unit senior citizen mobile home development with a golf course and other recreational improvements. The petitioner will be required to show that this proposed UGB amendment is needed to allow development of the proposed project and that the amendment would be consistent with the Statewide Goal No. 14 (Urbanization) standards for changing a UGB, the LCDC UGB acknowledgement order, other applicable Statewide Goals and local plans and land use ordinances.

Parties and other interested persons may appear personally or through an attorney at the public hearing. Written comments or testimony may be submitted before or at the hearing. The hearing in this matter may be continued without further notice. For further information, call Jill Hinckley at Metro, 221-1646.

The Regional Services Committee of the Metro Council will meet Tuesday, June 9, 1981 at 7 p.m. at the Metro Council Chamber, 527 S.W. Hall Street, Portland, to discuss the final Wildwood Potential Landfill Feasibility Study. The Committee will hear three recommendations - from the citizens Regional Landfill Siting Advisory Committee, West Hills and Island Neighbors and Metro staff. The Committee will recommend to the full Metro Council whether to direct staff to apply to Multnomah County for a land use permit for a landfill at the Wildwood site.

For more information, call Judy Roupf, 221-1646.

6-4-81 OR

NOTICE

*mailed to adjoining property  
owners and parties*

1. A public hearing in the matter of a request by Clackamas County for an Urban Growth Boundary (UGB) Amendment shall be held at the Metro office, 527 S. W. Hall Street, on June 11, 1981, at 5:30 p.m. before the Regional Development Committee of the Metropolitan Service District (Metro). The location of the proposed amendment is shown on the attached map.
2. The petitioner asserts a need to amend the Metro UGB to add approximately 188 acres of land to the existing UGB that was adopted by Metro in November 1979, and acknowledged by LCDC in January 1980. The property contains predominately agricultural class soils and is currently undeveloped.

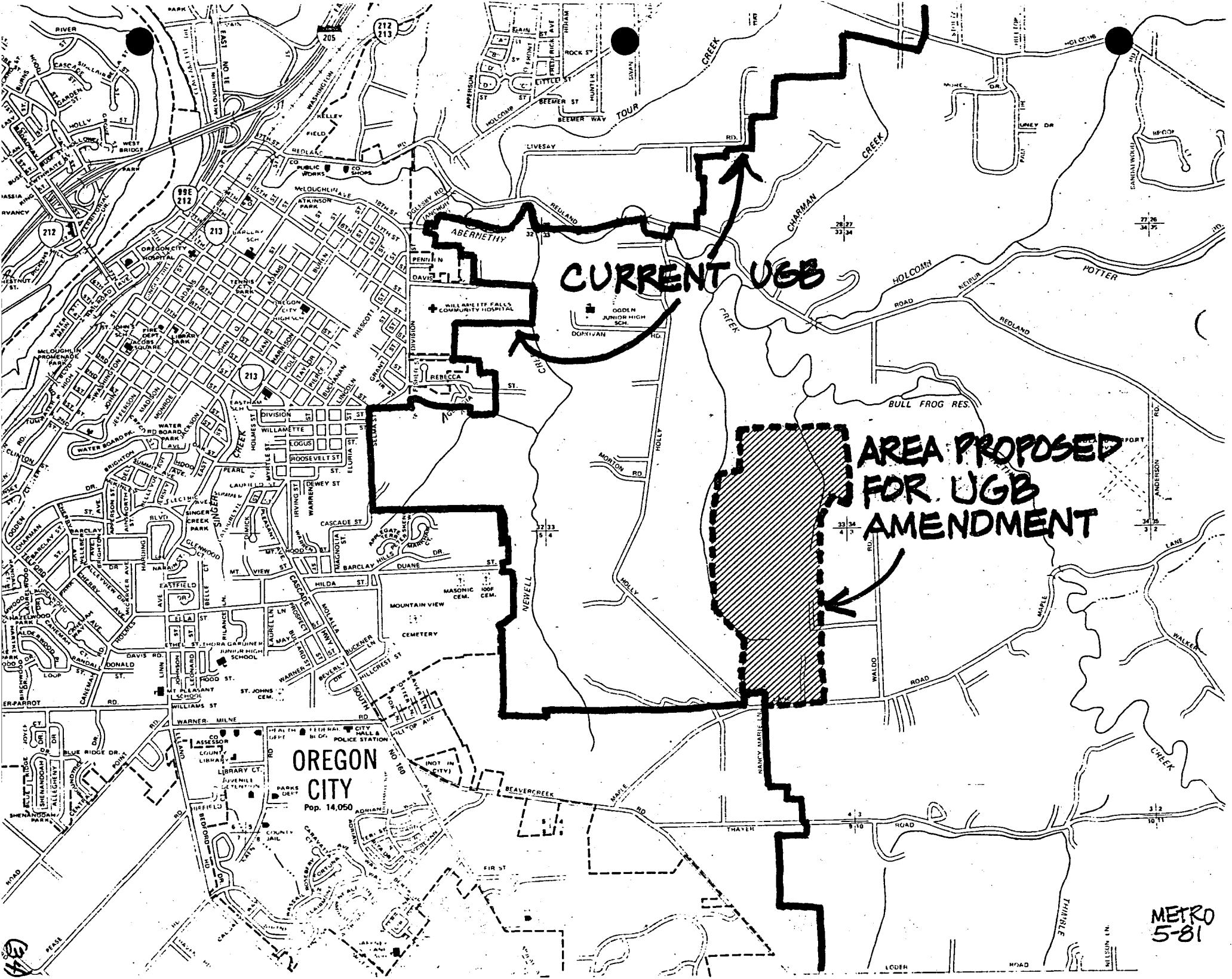
The property owner proposes to construct a 1000-unit senior citizen mobile home development with a golf course and other recreational improvements. The petitioner will be required to show that this proposed UGB amendment is needed to allow development of the proposed project and that the amendment would be consistent with the Statewide Goal No. 14 (Urbanization) standards for changing a UGB, the LCDC UGB acknowledgement order, other applicable Statewide Goals and local plans and land use ordinances.

3. It is anticipated that the following statutes, ordinances, and orders shall be involved in arriving at a decision in this matter:
  - a. ORS 268.380 and ORS 268.390 (Metro authority to adopt a UGB)
  - b. Metro Ordinance No. 79-77 (adopting the UGB);
  - c. LCDC Acknowledgment Order (for the Metro UGB) dated January, 1980;
  - d. Clackamas County Order dated March, 1981 (directing that UGB amendment request be submitted to Metro);
  - e. OAR 660-16-000 (Statewide Planning Goals and Guidelines);
  - f. Clackamas County Comprehensive Plan.
4. Parties and other interested persons may appear personally or through an attorney at the public hearing in support of, or in opposition to, the petition. Written comments or testimony may be submitted before or at the hearing.
5. The public hearing in this matter will be conducted under the authority granted in ORS 268.380 and ORS 268.390 and shall be conducted according to ORS 183.413 to 183.470 and Metro contested case procedures, as revised April 1981.

6. Copies of the notice of rights of parties in contested cases which summarize the hearing procedure are available upon request. Additional copies of this attachment will be available at the hearing.
7. The hearing in this matter may be continued without further notice.
8. If you have further questions, please call Jill Hinckley at Metro (221-1646).

#### ADDENDUM

The Regional Development Committee will be considering the specific standards to be used to evaluate the requested UGB amendment at a special meeting Wednesday, May 27, 1981, at 5:30 p.m. The meeting is not a public hearing, but the Committee will take testimony from any parties that wish to request specific changes in the standards proposed. For more information or for a copy of the standards endorsed by the Committee at that meeting, call Jill Hinckley at 221-1646.



## RIGHTS OF PARTIES IN CONTESTED CASES

[ORS 183.413(2)]

### General Hearing Procedures

Contested cases before Metro Hearings Officers, the Council, or Council Committees shall be conducted generally in the following order:

1. Introduction and explanation of staff report.
2. Statement and evidence by the petitioner in support of the petition.
3. Statement and evidence by persons, other than petitioner, in support of, or in opposition to, the petition.
4. Rebuttal testimony by the petitioner.

Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. All offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter. Evidence objected to may be received by the hearings officer, with rulings on its admissibility or exclusion to be made at the time a final order is issued.

It shall be the burden of the petitioner to present evidence sufficient to support findings of fact needed to grant the required amendment. It shall be the burden of each party to present evidence sufficient to support an asserted fact or position.

Any party may object to the introduction of evidence by directing the objection and the grounds for the objection to the hearings officer. If objections are unfounded, or if the number of objections interferes with conduct of the hearing, the presiding officer may determine that all objections shall be heard at the end of the hearing.

### Parties

The petitioner and the following persons who appear at the hearing, orally or in writing, shall be considered parties:

1. Persons who appeared at the County hearing on the same matter;
2. Persons who receive or have a right to receive mailed notice from Metro of the June 11, 1981 hearing; and
3. Other persons who will be aggrieved or adversely affected by the decision in this action.



## Record

A tape-recorded record of the hearing will be made. The tape-recorded record shall not be transcribed unless necessary for Council or judicial review. Persons wishing to listen to, or copy, the taped record may do so at the Metro offices.

The taped record of the proceeding, any minutes or transcription and all evidence offered and accepted at the hearing shall be forwarded with a proposed order for the Council's final determination. This hearing record, together with any written exceptions and oral argument on the exceptions shall constitute the basis for the Council's final decision and any appeal from that decision. New evidence shall not be accepted after the hearing except as provided in Code Section 5.02.035.

## Role of Counsel

Metro is not initiating this action and thus the Metro General Counsel will not formally participate in the hearing as either a proponent or an opponent. The Metro General Counsel does serve as legal advisor to staff, the Metro Council and the Executive Officer.

Parties and other persons are free to appear and express their position or opinion personally or through an attorney. While it is not necessary that a party or person appear through an attorney, Metro does advise the parties that parties in land use hearings are sometimes represented by attorneys.

## Procedure Before the Committee

The public hearing on this matter shall be conducted by the Metro Regional Development Committee and the Chairperson shall serve as the hearings officer. The hearings officer shall conduct the hearing and shall rule on the admissibility of offered testimony or evidence and shall rule on any motions offered at or before the hearing. As to evidentiary rulings and motions, the decision of the hearings officer shall be final.

The Metro Regional Development Committee shall not make the final determination on this petition, but shall prepare a proposed order for submittal to the Metro Council for final review and decision. The Metro Council shall make the final determination, and in making that determination the Council may accept or reject the Development Committee's proposed order in whole or in part.

## Rights of Parties During and After the Hearing

The parties shall have the following rights during and after the public hearing:

1. A party may be represented by counsel but shall have no right, once the hearing has begun, to request a recess or delay in order to secure representation by an attorney.

2. A party may, at the end of the hearing, request that the hearing be adjourned for a reasonable period of time to submit additional evidence and allow the other parties to respond to that evidence.
3. Parties shall have a right to submit written exceptions to any proposed order, finding of fact, conclusion of law, summary of evidence or recommendations of the Regional Development Committee. Only parties submitting written exceptions shall be given an opportunity to orally argue their exceptions before the Metro Council. Oral argument before the Metro Council shall be limited to the written exceptions and new testimony or evidence shall not be accepted.
4. Decisions to approve or deny a UGB amendment are land use actions, and may be appealed to the Land Use Board of Appeals (pursuant to 1979 Oregon laws, Chapter 772) by filing a notice of intent to appeal with the Land Use Board of Appeals within 30 days after the date the final Order is adopted by the Council.

MH/ga  
3032B/212

MAJORITY REPORT OF THE  
REGIONAL DEVELOPMENT COMMITTEE

1                   BEFORE THE COUNCIL OF THE  
2                   METROPOLITAN SERVICE DISTRICT

3 IN THE MATTER OF CLACKAMAS                   )     CONTESTED CASE NO. 81-2  
4 COUNTY'S REQUEST FOR AN URBAN                )     INTERLOCUTORY ORDER  
5 GROWTH BOUNDARY AMENDMENT FOR                )  
6 WALDO ESTATES                                 )

7                   WHEREAS, Clackamas County has requested an Urban Growth  
8 Boundary (UGB) change to include the property known as Waldo Estates  
9 land within the UGB; and

10                  WHEREAS, Such request has been reviewed by the Regional  
11 Development Committee pursuant to Metro Code Chapter 5.02 (Procedure  
12 for Contested Cases); and

13                  WHEREAS, The Committee has submitted Findings, Conclusions  
14 and Recommendations; and

15                  WHEREAS, The Committee finds a demand, but not a "special  
16 need" for a large scale mobile home subdivision as proposed by the  
17 applicant and supports construction of the development as proposed  
18 provided it can be achieved without a negative impact on the UGB as  
19 a whole; and

20                  WHEREAS, Exceptions thereto have been filed by certain  
21 parties and have been reviewed by the Council; now, therefore,

22                  IT IS HEREBY ORDERED:

23                  1.     That the Council accepts and adopts the Findings,  
24 Conclusions And Recommendations of the Regional Development  
25 Committee dated July 20, 1981.

26                  2.     That, for the reasons specified in the Committee's  
report, the petition herein shall be approved if and when it is

1 modified so as to meet the standards for trades provided in  
2 Section 8(c) of Ordinance No. 81-105, establishing procedures for  
3 locational adjustments to the UGB.

4           3. That a Resolution of Intent to amend the UGB shall be  
5 adopted as approved in this Order.

6           SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

7

8

\_\_\_\_\_  
Jack Deines, Presiding Officer

9

10 ATTEST:

11 \_\_\_\_\_  
Clerk of the Council

12

AJ/os  
13 3646B/173

14

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26

1                   BEFORE THE COUNCIL OF THE  
2                   METROPOLITAN SERVICE DISTRICT

3 FOR THE PURPOSE OF APPROVING                   )           RESOLUTION NO.  
4 CLACKAMAS COUNTY'S REQUEST FOR AN           )  
5 AMENDMENT OF THE URBAN GROWTH               )           Introduced by the Regional  
6 BOUNDARY FOR WALDO ESTATES                 )           Development Committee  
7 CONTINGENT UPON RE-SUBMISSION               )  
8 AS A TRADE                                    )

9           WHEREAS, Clackamas County has requested an Urban Growth  
10 Boundary (UGB) amendment to allow the owner of the property known as  
11 Waldo Estates to develop a large-scale mobile home subdivision with  
12 amenities and support services for senior citizens 50 years of age  
13 or older; and

14           WHEREAS, The development proposed would meet an identified  
15 demand for housing for senior citizens in a community of their  
16 peers, with the amenities and support services desired by many  
17 seniors; and

18           WHEREAS, Metro supports the development as proposed but  
19 finds it is not compelled to conclude that all applicable standards  
20 which must be met for a major amendment of the UGB have been met; and

21           WHEREAS, It appears that an amendment of the UGB could and  
22 should be approved to allow the proposed use if requested in  
23 conjunction with a request for a trade which is consistent with the  
24 standards and procedures for trades in Ordinance No. 81-105; and

25           WHEREAS, Approval of an amendment of the UGB for the  
26 subject site cannot become effective in any case until the property  
has been annexed to Metro; now, therefore,

27 /////



1 BE IT RESOLVED,

- 2 1. That the Council declares its intent to amend the UGB  
3 to include the property known as Waldo Estates in  
4 order to allow development of large-scale mobile home  
5 subdivision with a full range of amenities and  
6 support services for senior citizens 50 years of age  
7 and older.
- 8 2. That the Council intends such amendment to occur  
9 following annexation of the subject property to Metro  
10 and in conjunction with Council approval of the  
11 removal of a comparable amount of land from elsewhere  
12 within the UGB at a location to be requested by the  
13 applicant consistent with the standards and  
14 procedures for trades in Ordinance No. 81-105.
- 15 3. That this Resolution shall be effective for twelve  
16 (12) months following the date on which it is adopted.

17 ADOPTED by the Council of the Metropolitan Service District  
18 this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

19 \_\_\_\_\_  
20 Presiding Officer

21 EB/JH/srb  
22 3760B/252  
23 07/17/81



1 REGIONAL DEVELOPMENT COMMITTEE PROPOSED

2 FINDINGS FOR CLACKAMAS COUNTY'S

3 REQUEST FOR UGB AMENDMENT

4 July 20, 1981

5 SUMMARY AND CONCLUSIONS

6  
7 The Council recognizes that mobile home subdivisions provide an  
8 attractive lower cost housing alternative to both traditional  
9 subdivisions and mobile home parks. The Council also recognizes  
10 that a mobile home subdivision of 800 to 1,000 units with the array  
11 of amenities and support services proposed for the subject property  
12 would provide a unique and desired living environment for the  
13 region's senior citizens. Accordingly, the Council resolves to  
14 approve an Urban Growth Boundary (UGB) to accommodate the proposed  
15 development.

16  
17 However, the Council does not find that the evident demand for--and  
18 desirability of--a project of this type constitutes a special public  
19 need sufficient to meet State Goal requirements and Metro's own  
20 commitment to effective and responsible urban growth management, nor  
21 is the Council compelled to conclude that a development of the type  
22 proposed could not be constructed within the existing UGB. In  
23 particular, the Council finds that the costs of the project are such  
24 that it will not be affordable for low and moderate income senior  
25 citizens and that approval of the requested amendment on the basis  
26 of a special need for affordable housing has not, therefore, been

1 justified. Accordingly, the Council finds it can approve a UGB  
2 amendment to accommodate the proposed project only if and when it is  
3 proposed as part of a trade consistent with Metro Ordinance  
4 No. 81-105, Establishing Procedures for Locational Adjustments.

5  
6  
7 FINDINGS

8  
9 The following findings are based on the standards for Urban Growth  
10 Boundary (UGB) amendment endorsed by the Regional Development  
11 Committee on May 27, 1981. At that time, the Committee found these  
12 standards an adequate and appropriate application of all applicable  
13 State Goals, in particular, LCDC Goals Nos. 2, 3 and 14.

14  
15 Standard A.1 and 2(A): Findings that there is insufficient land  
16 inside the UGB to meet projected needs for housing, employment  
17 opportunities and semi-public land requirement...

- 18  
19 1. The UGB Findings adopted in November, 1979, found the UGB  
20 adequate to meet anticipated growth needs through the year 2000.  
21  
22 2. These Findings estimated that 26,068 acres of land for  
23 residential use are needed in the region for housing needs  
24 through the year 2000. Over 41,000 acres of vacant,  
25 residentially zoned, land in tracks 10 acres or larger are now  
26 included within the UGB--some 14,000 acres more than are likely

1 to be needed.

2  
3 3. When acknowledging Metro's UGB as adopted, LCDC found that  
4 Metro had, in fact, included more land within the UGB than was  
5 justified to meet regional growth needs and found that this  
6 "surplus" land was justified instead on the basis of locational  
7 factors that committed the the land to urban development.  
8

9 4. Notwithstanding the Findings of Metro and LCDC that the UGB  
10 contained at least enough land to accommodate urban development  
11 through the year 2000, both Metro and LCDC committed to allow  
12 Clackamas County to seek a UGB amendment from Metro to equalize  
13 the disproportionate distribution of urban land among the three  
14 counties and to ensure that Clackamas County had enough urban  
15 land to meet its own projected growth needs through the year  
16 2000.  
17

18 5. As a result, in April, 1980, Metro added almost 1,000 acres to  
19 the UGB in response to the County's request. Metro found this  
20 addition adequate to meet the County's projected growth needs  
21 through the year 2000.  
22

23 6. The record includes an analysis of County growth needs by the  
24 Home Builders Association of Metropolitan Portland that was  
25 considered and rejected by Metro and by Clackamas County at the  
26 time the UGB was amended. No additional factual evidence has



1        been submitted to question any of the assumptions and  
2        calculations in Metro's UGB Findings and findings and support  
3        of Clackamas County's amendment to the UGB relating to  
4        population projection, household size, housing vacancy rates,  
5        housing mix, housing density, the amount of existing vacant  
6        land and size of boundary, in-fill and redevelopment potential  
7        and a determination of anticipated growth in rural population  
8        to or to otherwise substantiate a finding that there is  
9        insufficient land to meet general urban needs within the UGB.

10  
11    7. Metro finds, therefore, that there is no general need for more  
12        urban land in the region as a whole or in Clackamas County and  
13        that Standard A.1 and 2(a) has not been met.

14  
15 A.1 and 2(b): Findings that the particular use proposed is needed...

16  
17    8. The applicant has argued that the development proposed would  
18        provide 10 percent low cost and 90 percent moderate cost  
19        housing for senior citizens 50 and older in a mobile home  
20        subdivision of 800 to 1,000 units with certain specified  
21        support services and amenities.

22  
23    9. "Low income" is defined in the applicant's record as 50 percent  
24        of median income; "moderate income" as 80 percent of median.

25  
26 10. In 1978, median income in the Standard Metropolitan Statistical  
Page 4 - CLACKAMAS COUNTY UGB AMENDMENT

1 Area was \$16,900.00; moderate income for a one-person household  
2 was defined as \$9,450.00; for a two-person household as  
3 \$10,800.00.

4  
5 11. The applicant assumes a 2.5 income to value ratio. Using this  
6 ratio, a moderate income, two-person household could afford a  
7 housing unit costing \$26,000.00.

8  
9 12. In 1978, the average cost of a mobile home, including land  
10 costs, was \$39,300.00.<sup>a</sup>

11  
12 13. The average mobile home, therefore, does not meet the needs for  
13 moderate income housing as defined by the applicant and would  
14 have been affordable only to households with a higher than  
15 median income.

16  
17 14. There may, nonetheless, be a public policy objective in  
18 providing housing outside the moderate income range in order to  
19 make home ownership possible for those who have a higher than  
20 median income or who choose to spend more than 25 percent of  
21 their income on housing but who would otherwise not be able to  
22 have this option.

23  
24 15. Although detailed housing statistics countywide are not  
25 available in the record, a 1978 outreach survey for the city of  
26 Milwaukie provides some general indication of the housing needs

1 of the elderly population in Clackamas County. 87 percent of  
2 those interviewed for this survey owned or were buying their  
3 own homes.

4  
5 16. Seventy percent of the elderly surveyed paid no rent or  
6 mortgage payment at all, a figure that presumably reflects  
7 mostly those who have retired the mortgages on their property.  
8 96 percent paid \$250.00 a month or less for rent or mortgage  
9 payment.

10  
11 17. Average monthly cost for the proposed project would be at least  
12 \$600.00 a month.<sup>b</sup> In other words, the housing in a proposed  
13 project would cost more than twice as much as 96 percent of the  
14 elderly community were paying for housing in 1978. A household  
15 paying 25 percent of its income for rent would require an  
16 income of \$29,000 to afford \$600 a month.

17  
18 18. The ammenities proposed for the project would add about \$2,000  
19 to the housing costs of the project.<sup>c</sup>

20  
21 19. 62 percent of the elderly surveyed by the city of Milwaukie  
22 said they did not plan on moving; only five percent expressed  
23 an interest in moving to a retirement community or a facility,  
24 the remaining 33 percent planned on moving to another house,  
25 moving to an apartment, moving in with family or relatives or  
26 had no definite plans.



1 20. Many seniors may, nonetheless, desire to live in a community of  
2 the type proposed. Indeed, there was compelling public  
3 testimony to this effect.  
4

5 21. Metro is eager to accommodate these desires in order to provide  
6 everyone with an opportunity to live in the housing environment  
7 they would prefer, and for this reason Metro is committed to  
8 approve a UGB amendment to accommodate the project if it can be  
9 done without a net cost to the region's public policy  
10 objectives.  
11

12 22. In considering whether to approve a UGB amendment based on  
13 findings that the proposed use is a needed one, the Committee's  
14 standards provide that the Council should take into  
15 consideration LCDC's findings acknowledging the existing UGB,  
16 including its findings that "Metro has drawn a boundary with  
17 28,000 acres of surplus land with the understanding that this  
18 boundary would not be substantially enlarged for 20 years." In  
19 other words, the need for the proposed amendment must be so  
20 compelling as to justify adding more land to an UGB already  
21 found to be more than adequate to meet projected needs for the  
22 next 20 years.  
23

24 23. Metro does not find that the desires of many elderly to live in  
25 a project of this type constitutes a special need which alone  
26 compels the UGB amendment. The proposed project would not meet

1 the clear and compelling need for low and moderate income  
2 housing for elderly, and so does not serve a public policy  
3 objective strong enough to outweigh the costs to the public  
4 policy objectives served by maintaining a fixed or constrained  
5 supply of urban land, in particular, the objectives of  
6 discouraging speculation on and conversion of more resource  
7 lands and of promoting more compact development that increases  
8 service, land-use and energy efficiencies.

9  
10 24. Metro finds, therefore, that the proposed project does not  
11 serve public policy objectives to provide low and moderate cost  
12 housing for seniors and that the housing demands and  
13 preferences served by the proposed project do not constitute a  
14 need adequate to justify amendments under these standards.

15  
16 25. Metro does, nonetheless, find the project to be one of merit  
17 which will provide a desirable housing alternative which may  
18 not otherwise be available to seniors in the County and the  
19 region. Accordingly, Metro finds the project of sufficient  
20 importance to commit to amend the UGB to accommodate it if and  
21 when such an amendment can be made in conjunction with a trade  
22 removing a comparable amount of land elsewhere in the UGB,  
23 pursuant to the standards and procedures adopted in Metro  
24 Ordinance No. 81-105.

25  
26 /////



1 A.3: Orderly and economic provision for public facilities and  
2 services.

3

4 26. The Council has reviewed the applicant's proposed findings  
5 addressing this standard (3.A through I pages 19 to 23) and  
6 concurs with the findings of fact contained therein, with the  
7 exception that the sentence under schools beginning "as the  
8 proposed project will not have any residents under 18,..."  
9 should be modified to read "will have few residents under  
10 18,..." as some households with heads 50 and over may have  
11 school-aged children.

12

13 27. Accordingly, the Council finds that the area added is capable  
14 of being provided with water, sewerage, storm drainage, traffic  
15 circulation, fire protection, and schools, in an orderly and  
16 economical fashion and that those public facilities and  
17 services can be made available at that location; and that the  
18 traffic circulation and other public facility systems of nearby  
19 jurisdictions within the UGB can accommodate the proposed  
20 expansion.

21

22 28. Since, however, these findings are based upon the provision of  
23 services to be provided by the Oregon City Bypass and the  
24 Tri-Cities sewerage treatment plant, future approval of a UGB  
25 amendment to accomodate the proposed project should include  
26 requirements that the land be annexed to Tri-Cities and that,

1 until the Bypass is completed, the project should be phased in  
2 such a way that no more than 200 units are available for  
3 occupancy each year.  
4

5 29. Tri-Met has testified that transit service cannot be  
6 efficiently provided to the site. The applicants propose to  
7 provide transit by means of a shuttle service. This approach  
8 and/or an agreement to subsidize a portion of Tri-Met service  
9 to the site, would be adequate to provide adequate transit  
10 service if there is a written agreement with Tri-Met relative  
11 to the service to be provided signed prior to Metro adoption of  
12 an ordinance approving the amendment as part of a trade.  
13

14 B.4: Maximum efficiency of land use within and on the fringe of the  
15 existing area.  
16

17 30. The Council has reviewed and concurs with this following  
18 findings of the applicant addressing this standard:  
19

- 20 - "There are 160 buildable acres on the project site.  
21 Assuming 20 percent of the growth's buildable acres are  
22 used for streets, easements, etc., that leaves 128 net  
23 buildable acres. Thus the density of development of the  
24 site under the proposed project is between 6.25 to 7.8  
25 units per net buildable acre (for 800 and 1,000 unit  
26 developments, respectively). This exceeds the base

1 density Clackamas County has planned for its low density  
2 designated areas (4.87 units/acres) by 28 to 60 percent.  
3 It is also very close to Metro's overall standard for  
4 Clackamas County of 8 units per acres."

5  
6 - "The efficiency of land use is supported by the proximity  
7 of the development to commercial activity and the  
8 Community College. The design of the project also  
9 contributes to its efficient use of land by including many  
10 leisure activities and other services on site."

11  
12 - "North of the site...parcelization and development of  
13 usable land fronting on Holly Lane has isolated the bulk  
14 of this land from the Holly Lane/Maple Lane area. Natural  
15 features effectively preclude any intensive use of this  
16 area. The steep topography north of the site effectively  
17 isolates it from the Redland Road area. Similarly, a  
18 ravine between the site and the aforementioned rural  
19 residential area on Holly Lane separates the area from the  
20 site. East of the site, the substation and power line act  
21 as a physical barrier for areas further east. Therefore,  
22 the only adjacent area not physically separated from the  
23 site is the existing rural residential area fronting on  
24 Maple Lane to the south."

25  
26 31. Accordingly, the Council finds that the land to be included can



1 be efficiently developed for urban use, at an appropriate urban  
2 intensity, and that urbanization of the area is compatible with  
3 orderly and efficient use of adjacent urban lands and lands on  
4 the urban fringe.

5  
6 A.5: Environmental, energy, economic and social consequences.  
7

8 32. The Council has reviewed and concurs with the applicant's  
9 findings on environmental consequences (5.A, page 27).  
10

11 33. The Council finds no significant positive or negative energy  
12 consequences of the proposal.  
13

14 34. The property is committed to non-farm use (see Finding #38) and  
15 the applicant has submitted the report of a timber appraiser  
16 finding that the property is not well suited for timber  
17 management (Applicant's Record, pp. 226-228).  
18

19 35. Testimony from the local chapter of the AFL-CIO suggests that  
20 there are positive economic consequences of approving the  
21 amendment, as it would provide substantial construction  
22 activity during a period when activity in the housing market  
23 has been sluggish.  
24

25 36. The project would have the positive social consequences of  
26 allowing seniors an opportunity to live in the type of

1 integrated retirement community many seniors desire.

2  
3 37. Metro finds, therefore, that there are no significant negative  
4 environmental, energy, economic, or social consequences and  
5 that the project would have positive economic and social  
6 consequences.

7  
8 A.6: Retention of agricultural land.

9  
10 38. The Council has reviewed the applicant's finding on this  
11 standard (pages 28 to 30) and the report by the agricultural  
12 consultant on which these findings are based (applicant's  
13 record, pages 200 to 225) and concurs with the applicant  
14 finding that the site is irrevocably committed to non-farm use.

15  
16 A.7: Compatibility of the proposed urban uses with nearby  
17 agricultural activity.

18  
19 39. There are no existing nearby agricultural activities.

20  
21 A.8: No suitable alternative exists within the UGB where use with  
22 the characteristics identified as needed can be provided...

23  
24 40. There are ample opportunities within the UGB, including within  
25 the cities and unincorporated areas of Clackamas County, for  
26 the construction of affordable small-scale mobile home

subdivision with limited on-site amenities.

41. Mobile homes cannot compete with other residential uses in zones where other uses are allowed more units per acre than mobile homes. In zones where mobile homes are allowed the same number of units per acre as other residential uses, there is no evidence in the record that mobile homes cannot compete with other residential uses. In Clackamas County, mobile home subdivisions are allowed the same number of units per acre as other residential uses allowed in the same zone.

42. There are alternatives available to local jurisdictions to ensure that the need for a mobile home subdivisions is met within the UGB, e.g., to provide a density bonus for mobile home subdivision suspensions to overcome any economic disadvantage relative to stick built homes.

43. At a minimum, the following alternatives appear both suitable and available for a project of the type proposed:

#### CLACKAMAS COUNTY

Site A: Although this site is noted as "not available" by the applicant, no owner contact is listed. There are no findings by the applicant "demonstrating why level of parcelization makes land assembly unfeasible," as required by Committee standard A.8.(d).



1           MULTNOMAH COUNTY

2           Site MC.1: In the applicant's record, page 109, this site  
3           is identified as the County Farm, in Troutdale. It is  
4           rejected by the applicant "because of potential for  
5           intensive use and unknown intent for the site by the  
6           County." Public sewer and water are available, it is  
7           located proximate to adequate support activities and has  
8           no major topographic constraints. Although Committee  
9           standards A.8.(c) provides that a site may be rejected if  
10          "valued for a substantially more intensive use," the  
11          applicant's data do not demonstrate this to be the case.  
12

13          WASHINGTON COUNTY

14          Site C: Rejected by applicant because "annexation  
15          required but not feasible in near future; owned by  
16          prospective developer." Where annexation is required  
17          because of a City/County agreement not to extend sewers  
18          without annexation, there should be findings to show why  
19          this agreement could not be amended, as it has been for  
20          the subject site, in order to meet standard A.8.(b). The  
21          fact the current owner would like to develop the property  
22          himself does not make the site either unsuitable or  
23          unavailable for the proposed use.  
24

25          Site M: Rejected by the applicant on the grounds that  
26          "annexation is required for development, which is not

feasible in foreseeable future" and that it is "partially zoned industrial." See findings on Site C, above, regarding annexation requirements. See comments on MC-1 regarding zoning.

Site N and O: There are no findings as to why the fact that these sites are planned and zoned for industrial use make them unsuitable.

Site P: When comparing a site within the UGB that is "difficult to sewer" with one now outside the UGB that requires a major sewer extension, there should, at a minimum, be findings showing that extending sewers to the subject site would nonetheless promote more efficient sewer provisions than development of the alternative site.

There are no facts or reasons in the record adequate to support such a finding.

44. The Council finds, therefore, the evidence that suitable locations within UGB are not available where the proposed use could be accommodated is not compelling. Including additional land within the UGB when alternatives for the proposed use are available creates an unneeded surplus of urban land inconsistent with State Goal requirements, LCDC's acknowledgment order, and with Metro's commitment to accommodate the region's growth in an orderly, efficient and



1 economic manner.

2  
3 45. If a comparable amount of land were removed from the UGB, no  
4 such surplus would be created and an UGB amendment could be  
5 approved without further consideration of alternative sites  
6 within the UGB.

7  
8 A.9: The proposed location is the most suitable alternative outside  
9 the UGB to accommodate the needed use...

10  
11 46. Since the need for a UGB amendment to accommodate the proposed  
12 use has not been substantiated under standards A.1 and 2 and  
13 A.8 alternative locations for a UGB amendment need not and have  
14 not been evaluated.

15  
16 E. Based upon consideration of the above factors, any major  
17 amendments of the UGB shall be supported by findings that  
18 demonstrate with compelling reasons and facts: (1) why the proposed  
19 use should be provided for; (2) what alternative locations within  
20 the region could be used for the proposed land use..

21  
22 47. Although the project would be a desirable addition to the  
23 region's range of housing choices, the Council is not compelled  
24 to conclude that a mobile home subdivision of the scale  
25 proposed with all the amenities proposed must be provided for.

26 Nor is the Council compelled to conclude that there are no

1 suitable alternatives within the UGB that could accommodate the  
2 use as proposed.

3  
4 C. Before approving any UGB amendment, the Council shall consider  
5 and accommodate as much as possible relevant comprehensive plan  
6 provisions and applicable intergovernmental agreements...

7  
8 48. Both Clackamas County and Oregon City have supported the  
9 proposed project and the UGB amendment necessary to accommodate  
10 it.

11  
12 49. An amendment to accommodate the proposed use would be  
13 consistent with relevant comprehensive plan provisions and  
14 applicable intergovernmental agreements as discussed in the  
15 Applicant's Findings on this standard (p. 36).

16  
17 CONCLUSION AND RECOMMENDATION

18  
19 The requested UGB amendment at issue in this case is one that would  
20 permit a desirable development with obvious merit. The Committee  
21 approves of developments such as the one proposed. However, the  
22 Committee concludes that under the applicable standards for  
23 approving an amendment to an acknowledged UGB, the requested  
24 amendment could only be approved as a trade under the standards and  
25 procedures adopted in Metro Ordinance No. 81-105.

FOOTNOTES

1

2

3 a. -An average mobile home in 1978 cost: \$22,000

4 -Delivery and set up charges equal

5 approximately 15 percent of sale price, or: 3,300

6 -An average improved lot in 1979 was \$21,000,

7 up 400 percent from 1973. Assuming an

8 average increase of 67 percent a year, a

9 lot in 1978 would cost: 14,000

10 Total Cost: \$39,300

11

12 b. The Applicant estimates that an installed double wide mobile  
13 home unit would cost \$25,900 and that each lot in the proposed  
14 project would cost approximately \$21,000, totaling  
15 approximately \$47,000. In a letter to Mark Greenfield from  
16 Jonathan Moore, monthly payments for a 90 percent or \$45,000  
17 sale at 13 percent would be \$526. A \$47,000 sales price would  
18 add approximately \$25 a month to monthly payments. As an  
19 estimate of monthly costs, this figure is likely to be an  
20 underestimate since: (1) mobile home costs cited are not  
21 current 1981 figures and so do not reflect inflation; (2) lot  
22 costs cited do not appear to include developer profit; and (3)  
23 13 percent loans may not be available in the near future. The  
24 Applicant estimates monthly homeowner association fees at \$15 a  
25 month, although 1000 Friends has submitted evidence that  
26 average fees in Eugene run \$70 a month.

1 c.	-Applicant estimates the golf course	\$ 450,000
2	-The recreation center	1,100,000
3	-The community center	<u>600,000</u>
4		\$2,150,000
5	-Divided among 800 to 1,000 units	

6  
7  
8 JH/gl

9 3729B/255



**O'DONNELL, SULLIVAN & RAMIS**

ATTORNEYS AT LAW

BALLOW & WRIGHT BUILDING

1727 N.W. HOYT STREET

PORTLAND, OREGON 97209

(503) 222-4402

MARK P. O'DONNELL  
EDWARD J. SULLIVAN  
TIMOTHY RAMIS  
KENNETH M. ELLIOTT  
CORINNE C. SHERTON

CANBY OFFICE

181 N. GRANT, SUITE 202

CANBY, OREGON 97013

(503) 266-1149

PLEASE REPLY TO  
PORTLAND OFFICE

July 27, 1981

Ms. Jill Hinckley  
Metropolitan Service District  
527 S. W. Hall  
Portland, Oregon 97201

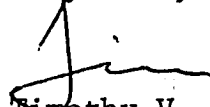
Re: Clackamas County UGB Amendment

Dear Jill:

Enclosed please find our suggested minority report.

I am submitting this for two purposes. First, I believe it more accurately portrays the minority report position than the draft prepared by the staff. Second, it identifies the differences between the applicant's position and the majority report and therefore serves as an exception to that document.

Very truly yours,



Timothy V. Ramis

TVR:sw

Enclosure

cc: Betty Schedeen  
Bob Oleson

1 REGIONAL DEVELOPMENT COMMITTEE MINORITY REPORT IN SUPPORT  
2 OF APPROVAL OF CLACKAMAS COUNTY'S REQUEST FOR UGB AMENDMENT  
3

4 SUMMARY AND CONCLUSIONS  
5

6 The Council recognizes that mobile home subdivisions provide an  
7 attractive lower cost housing alternative to both traditional sub-  
8 divisions and mobile home parks. The Council also recognizes that a  
9 mobile home subdivision of 800 to 1,000 units with the array of  
10 amenities and support services proposed for the subject property would  
11 provide a unique and desired living environment for the region's  
12 senior citizens. Accordingly, the Council resolves to approve an Urban  
13 Growth Boundary (UGB) to accommodate the proposed development.

14 The Council concludes that the proposed project cannot be con-  
15 structed within the existing UGB. The data base for designing the  
16 UGB did not analyze vacant parcels in terms of their size and avail-  
17 ability for various potential uses. While the present UGB does allow  
18 for smaller five to 20 acre mobile home projects, full-scale senior  
19 communities of the type proposed are excluded because sites are not  
20 available.

21 The applicant has demonstrated a compelling case based upon the  
22 need for affordable senior housing. The proposal meets that need of  
23 providing opportunity for moderate income seniors to own their own  
24 home within the type of community which they desire and deserve.

25 FINDINGS

26 A.1 and 2(b): Findings that the particular use proposed is

1 needed...

2 A. The Council has reviewed and concurs with the findings of  
3 the applicant in addressing this standard.

4 B. Low and moderate cost housing.

5 1. There is a clear need for up to 800 low and moderate  
6 cost units to provide housing for seniors in Clackamas County who  
7 have household incomes of no more than 80% of the median income  
8 region-wide and who currently own homes that have been identified as  
9 substandard.

10 2. The 100 units the developer has committed to subsidize  
11 will help meet this need.

12 3. These units will supplement whatever limited subsidies  
13 may be available from the federal government. The private market  
14 cannot build housing in this price range without subsidy and under  
15 no other circumstance is a private developer likely to provide his  
16 own subsidy.

17 4. In order to provide this subsidy, the developer must  
18 spread the cost over enough additional units to still be able to  
19 market and make a profit on the total project, while still keeping  
20 the cost of the remaining units in an affordable range.

21 5. Approval of the Urban Growth Boundary (UGB) amendment  
22 requested, in order to allow the project as proposed, is thus the  
23 only way to meet a clear and compelling need for more subsidized  
24 housing to accommodate low and moderate income seniors than can be  
25 provided through federal subsidy.

26 ///

1 C. Affordable Housing

2 1. Mobile homes cost substantially less than conventional  
3 housing: In 1979, approximately \$29,500 as compared with approxi-  
4 mately \$52,500, exclusive of land cost.

5 2. The size of the project will allow the developer to  
6 obtain a discount on the price of mobile homes that would not be  
7 available for projects of a smaller scale.

8 3. Assuming an average cost for the units installed on  
9 the site to be \$30,000 and the average lot cost \$21,000, the total  
10 cost for each unit, at \$51,000 would still be significantly less than  
11 the cost of an average new or used home (\$73,600 and \$60,900  
12 respectively in 1979).

13 4. The proposed project would not only provide housing at  
14 a lower cost than would normally be available otherwise, but includes  
15 in that cost a unique set of community and recreational facilities  
16 that provide an attractive retirement environment for seniors.

17 5. Although these units may not be affordable for low and  
18 moderate income households in need of public assistance, they none-  
19 the less provide a lower cost housing alternative for seniors with  
20 average incomes and above who might not otherwise be able to purchase  
21 a retirement home.

22 6. Even moderate (below average) income seniors who have  
23 equity in a larger home may be able to use that equity to purchase a  
24 home in the proposed project and thereby obtain housing of a more  
25 manageable size in a more attractive and supportive environment than  
26 would otherwise be possible. Data from Milwaukee indicates that 87%



1 of seniors owned or were buying their own home and that 70% paid no  
2 rent or mortgage payment at all. These figures presumably reflect  
3 the fact that most have retired the mortgages on their property.  
4 96% paid \$250 a month or less for rent or mortgage payment. 33% in  
5 the study planned to move, but the overwhelming testimony presented  
6 at the hearings is that there is no suitable location. Many want to  
7 use their equity to purchase a mobile home within a retirement  
8 community so as to lessen maintenance costs and lead a desirable  
9 lifestyle. With the current one percent vacancy rate in mobile  
10 home parks, this has become impossible.

11 7. The oral and written testimony of senior citizens and  
12 the signatures of 24,000 individuals endorsing the proposed project  
13 make a compelling case that a housing option of this kind is a  
14 needed one.

15 D. Alternative Sites.

16 1. The applicant has presented compelling evidence that  
17 there are no available alternative sites in the UGB.

18 2. The applicant's proposed findings identify the reasons  
19 that each site is unavailable and the record supports these reasons.

20 3. The subject case need not set a precedent for others  
21 if the Council makes it clear that it is the unique compelling  
22 character of the particular needs to be served by this particular  
23 development proposal that compels it to conclude that there are no  
24 other practical alternatives that will actually result in construc-  
25 tion of the project as proposed and that there is a compelling need  
26 for the project that can, therefore, only be met through a UGB

1 amendment to allow construction at the site requested.

2 A.3: Orderly and economic provision for public facilities and  
3 services.

4 1. The minority report concurs with the applicant's  
5 proposed findings and the majority report finding that this standard  
6 is met.

7 2. We find further that there is no need for phasing the  
8 project at 200 units each year because the traffic data submitted by  
9 the County and by Metro staff indicates sufficient capacity. More-  
10 over, the issue of phasing and the adequacy of local streets is one  
11 that should be dealt with by the County in a zone change hearing  
12 rather than by Metro as a condition to the UGB amendment.

13 B.4: Maximum efficiency of land use within and on the fringe  
14 of the existing area.

15 1. The minority report concurs with the majority and with  
16 the applicant in finding that this standard is met.

17 A.6: Retention of agricultural land.

18 1. The minority report concurs with the applicant and with  
19 the majority in finding that this standard is met.

20 A.7: Compatibility of the proposed urban uses with nearby  
21 agricultural activity.

22 1. We concur with the applicant and the majority that there  
23 are no existing nearby agricultural activities.

24 A.8: No suitable alternative exists within the UGB where use  
25 with the characteristics identified as needed can be provided...

26 1. The proposed alternative sites for construction of

1 small-scale mobile home subdivisions are inadequate to meet the  
2 established need for a large-scale full service community.

3 2. Washington County and Multnomah County are not likely  
4 to meet the identified need based upon their past record of providing  
5 only limited opportunities for establishing mobile homes. From  
6 4/1/70 to 12/31/78, Clackamas County provided 4,435 new mobile home  
7 spaces while Washington County provided only 2,150 spaces and  
8 Multnomah County, with the largest population in the region, provided  
9 a mere 895 spaces.

10 3. Both the applicant and the opponents have identified  
11 the potential alternative locations for a project of the size needed.  
12 All of these have been demonstrated to be unavailable or unsuitable  
13 for the following reasons:

14 WASHINGTON COUNTY

15 1. Windolf Industrial Park: zoned for and committed to indus-  
16 trial uses.

17 2. St. Mary's, Beaverton: planned for much more intense uses.

18 3. West Union Road: "special protected area" (10 year moratorium  
19 on residential development).

20 4. West Union industrial area: zoned for industrial use.

21 5. B-N Orenco industrial area: also zoned for industrial uses  
22 and committed to more intense plans; the primary owners of this site  
23 and number 4 are Burlington Northern, Seaport, Riviera Motors and  
24 have indicated that the property is not for sale.

25 6. 281st Avenue, South of Evergreen: already committed to a  
26 specific development project in the planning process in the City of  
Hillsboro.

27 7. 219th Avenue, Farmington Road: specifically excluded from  
28 the UGB after great study; history of development rejected by county.

29 8. Highway 99N - Tualatin Road: mobile home subdivision develop-  
30 ment unfeasible due to the fact that the project would be disrupted  
31 by a portion which is zoned industrial; the City of Tualatin opposes  
32 development prior to annexation.

33 9. WCl owned by Peterkort family: subject of pending application;  
34 plan for a mixture of office and retail commercial, and medium to high  
35 density residential; excessively intensive uses allowed by existing  
36 plan designation.

1 10. WC2 185th study area: owned predominantly by Standard  
2 Insurance Company, planned for intensive uses; contacted and refused  
3 to sell.

4 11. WC3 185th study area: site committed to industrial develop-  
5 ment; owned by Trammell-Crow Company, among others and not available  
6 for sale.

7 12. WC4 Skei-Meissner: recently annexed to Beaverton as part  
8 of a specific development plan for a mixture of intensive uses;  
9 developer is committed to a specific plan and provision of services;  
10 not for sale as indicated by owner Tom Welch.

11 13. B: Outside of UGB; dependent upon annexation which is not  
12 feasible because the land is not contiguous to the City of Hillsboro  
13 and cannot be made contiguous because of an intervening SRA;  
14 outside of UGB.

15 14. C: owned by a developer who wishes to retain the property  
16 for his own use when it is annexed to Hillsboro; SRA.

17 15. D: Owned by Bank Trust and cannot be purchased.

18 16. E: Outside of UGB and history of county intent to leave  
19 outside of UGB; owned by Catholic Church and not for sale; provision  
20 of sewer difficult

21 17. F: Predominantly outside of UGB; located mostly in the  
22 annual floodplain of the Tualatin River.

23 18. G: Outside of UGB; entirely within annual floodplain of  
24 Tualatin River and, therefore, covered by water every year.

25 19. I: Presently committed to a use; two large horseriding/  
26 boarding facilities which represent significant capital investment;  
difficult to sewer as indicated by memorandum from USA.

20 20. J: About one-half outside of UGB; within Tualatin River  
21 floodplain.

22 21. K & L: Entirely in 100 year floodplain; outside of, and not  
23 contiguous with, UGB.

24 22. M: Bisected by Tualatin-Sherwood Road; annexation required  
25 in partially zoned industrial.

26 23. N: Bisected by Herman Road & railroad tracks; planned and  
zoned for industrial use; partially in Tualatin Wetlands.

27 24. O: Sipole Road/Tualatin-Sherwood Road; partially planned  
and zoned industrial; partially outside UGB.

28 25. P: Difficult to sewer according to Washington County  
29 memorandum; NS RA.

30 26. Q: In trust and cannot be purchased.

31 27. R: Owner of major tract indicates not for sale at any price.

#### 32 CLACKAMAS COUNTY

33 A: Lots 1-4 have been subdivided and are not available; lot 7  
34 has been partitioned for sale.

35 B: Major tract with 70 acres is in the City of Happy Valley, and  
36 approximately one-half of it is in slopes of 20-35% and is not avail-  
able for sale according to owner.

1 CC-1- Highway 224, West of Carver: designated for more intense  
2 use, medium density residential and aggregate extraction; steep  
breaks crisscrossing site and designated as hazard.

3 CC-2 - Sunnyside Road - Highway 212: Portions designated for  
4 higher density residential use; 21 parcels, many of which already  
developed.

5 CC-3- South End Road: At least 5 years before public sewer avail-  
6 able and, therefore, cannot be used to meet an immediate need;  
portions of the 15 parcels are already developed or committed to  
7 development.

8 CC-4- Kruse Way/I-5: Committed to approved residential project  
which is currently in development; owner unwilling to sell.

9 MULTNOMAH COUNTY

10 MC-1: Owner indicates property not for sale at any price.

11 MC-2: Property owners are Reynolds Aluminum, Crown Zellerbach,  
12 Port of Portland and Union Pacific Railroad; committed to industrial  
uses.

13 MC-3: Owners indicate not for sale at any price.

14 MC-4: Owned by Lloyd Corporation and not for sale.

15 MC-5: Primary owner indicates property not for sale at any price.

16 MC-6: Total area not sufficient.

17 MC-7: 8 parcels bisected by major arterial and railroad tracks;  
18 not feasible to develop as a unit; owner refused to respond to  
inquiry.

19 MC-8: Primary owner indicates not for sale at any price.

20 Anderson site: 42 property owners; extremely parcelized and  
21 including a wide range of existing development including 30 homes  
fronting on Jenne Road, as well as a service station and an auto repair  
22 garage. Many other homes in the area; railroad tracks bisect the area  
to the north; a major collector also bisects the area; history of  
23 septic tank failure and questionable service extension; many owners  
indicate unwillingness to develop for mobile home purposes.

24 4. It is unlikely that mobile homes will be constructed, even on  
25 smaller sites where there is a medium density or higher designation  
because a developer can obtain a greater return through development  
26 of apartments or other more intense uses.

1           A.9: The proposed location is the most suitable alternative  
2 outside the UGB to accommodate the needed use.

3           1. The County has reviewed alternative sites outside the  
4 UGB and has included this information in the record. We are  
5 satisfied that Clackamas County has demonstrated that there are no  
6 alternative sites inside the UGB and that the proposed site is the  
7 best site contiguous with or outside the UGB for the proposed  
8 development.

9           E. Based upon consideration of the above factors, any major  
10 amendments of the UGB shall be supported by findings that demonstrate  
11 with compelling reasons and facts:

12           1. Why the proposed use should be provided for;

13           2. What alternative locations within the region could be  
14 used for the proposed use.

15           1. The minority report concurs with the applicant's proposed  
16 findings on this standard. The prior findings relating to need state  
17 a compelling case demonstrating why the use should be provided for.  
18 The alternative site analysis indicates that there are no alternatives  
19 that could be used for the proposed land use.

20           2. We find that a compelling case has been made that the use  
21 should be provided for and that there is no alternative location for  
22 it within the present UGB.

23           C. Before approving any UGB amendment, the Council shall consi-  
24 der and accommodate as much as possible relevant comprehensive plan  
25 provisions and applicable governmental agreements...

26           1. Both Clackamas County and Oregon City have supported the

1 proposed project and the UGB amendment necessary to accommodate it.

2 2. An amendment to accommodate the proposed use would be  
3 consistent with the relevant comprehensive plan provisions and appli-  
4 cable intergovernmental agreements as discussed in the Appliant's  
5 Findings on this standard (p. 36).

#### 6 CONCLUSION AND RECOMMENDATION

7 The special needs that would be met by the project warrant an  
8 immediate amendment of the UGB to accommodate the project's construc-  
9 tion. Certain conditions are appropriate in order to limit the  
10 project to that which is proposed:

11 1. The property shall be zoned for an average minimum lot size  
12 no larger than 7,000 square feet;

13 2. The property shall be planned as a mobile home subdivision  
14 containing at least 800 units;

15 3. A homeowners' association agreement, deed restriction or  
16 other binding covenant shall provide assurance that 75% of all units  
17 will be occupied by the owners of the lots and that no owner shall  
18 be less than 50 years of age;

19 4. The developer shall sign an agreement with Tri-Met adequate  
20 to ensure appropriate transit service, either in the form of a private  
21 shuttle service or an operating subsidy for public transit service  
22 to the site; and

23 5. The property shall be annexed to the Tri Cities Service  
24 District.

25 Final plat approval shall be contingent upon certification by  
26 the Executive Officer of Metro, subject to appeal to the Metro Council,

1 that all of the conditions listed above have been satisfactorily  
2 addressed and that the County has imposed sufficient conditions to  
3 ensure that the project developed will be consistent with meeting  
4 the need which has been established. Without certification, the  
5 final plat approval shall be denied.

6 The UGB would accordingly be amended subject to all conditions  
7 listed being met by September 1, 1983. If the final plat for at least  
8 the first phase of the project has not been approved consistent with  
9 these conditions by that date, the UGB amendment and all subsequent  
10 local land use action based upon the amendment shall be void.



# 1000 FRIENDS OF OREGON

400 DEKUM BUILDING, 519 S.W. THIRD AVENUE, PORTLAND, OREGON 97204 (503) 223-4396

July 22, 1981

Jack Deines, Presiding Officer  
Metro Council  
Metropolitan Service District  
527 SW Hall  
Portland, OR 97201

Subject: Clackamas County Request to Amend UGB: Exceptions  
to Proposed Findings of Regional Development Committee

Dear Councillor Deines:

1000 Friends of Oregon has reviewed the proposed findings in this proceeding. We offer the following exceptions:

1. Page 1, line 13 (beginning "Accordingly, the Council resolves") through line 15. This sentence is ambiguous. Whatever is intended should be stated more clearly.
2. Page 7, finding 21. Language should be added to the effect that the amendment must comply with all applicable requirements in Ordinance No. 81-105.
3. Page 8, finding 25, lines 23-24. This finding implies that the standards in Ordinance No. 81-105 are met. We disagree. The finding should clarify that the amendment would be approved only if the trade requirements of the ordinance are met and all other applicable standards are satisfied.
4. Page 9, finding 26. We recommend the adoption of 1000 Friends' findings C.1 through 13.
5. Page 9, finding 27. Remove. We disagree that the extension of sewer and water to this area at this time would be timely and orderly. Until construction of the Bypass and Tri-Cities facilities are completed, this project is premature.
6. Pages 11-12, finding 31. We disagree with the conclusion on page 12, lines 2-4, that urbanization of the area is compatible with orderly and efficient use of adjacent lands. We concur that it would be an efficient use of the subject property.

7. Page 12, finding 32. The applicant's findings that (1) the site lacks valuable natural resources and (2) there will be no impact on the Newell Creek area are not supported by substantial evidence in the record. The development will have a major impact on persons residing along Holly Lane.
8. Page 12, finding 34. The property is not committed to nonfarm use. Goal 3 requires that agricultural lands be preserved and maintained for farm use. This property is comprised of classes II and III agricultural soils and is therefore agricultural land. To find commitment, Metro must demonstrate that it is impossible to apply Goal 3 to this land. Any finding to this effect would not be supported by substantial evidence in the record.

In Flury v. Land Use Board, 50 Or App 263 (1981), the Court of Appeals held that land that is capable of "current employment for agricultural production for the purpose of earning [gross] money receipts" must be zoned EFU. The Court found it irrelevant that the farm could not be a commercial farm unit, so long as it could yield a profit in money. It is clear from the applicant's agricultural assessment that this property can produce a profit in money. Consequently it must be protected for farm use.

The finding that the property is not suited for timber use is also not supported by substantial evidence in the record. The factual basis for that finding is inconsistent with finding 30, page 11, lines 12-14.

9. Page 12, finding 35. This is not compelling justification. If it is, it justifies construction of nuclear plants, dams, or anything else anybody might possibly want.
10. Page 13, finding 37. This finding is not supported by substantial evidence. Many negative impacts were expressed in testimony and exhibits before Metro. Metro has a duty to address them. We urge Metro to adopt 1000 Friends' proposed findings E.1 through E.9.
11. Page 13, finding 38. We disagree for the reasons stated in paragraph 8 above.
12. Page 13, finding 39. This standard (A.7) is inconsistent with Goal 2, Part II(d), which requires findings "that the proposed uses will be compatible with other adjacent uses." Adjacent uses are not limited to "agricultural" uses. We urge the adoption of 1000 Friends' proposed findings G.1 through G.3.



Jack Deines, Presiding Officer  
July 22, 1981  
Page Three

13. Page 17, finding 45, line 4. Change beginning of line 4 to read "such additional surplus". The boundary already contains a 28,000-acre surplus.
14. Page 18, finding 49. This finding is not supported by substantial evidence in the record. See 1000 Friends' proposed findings J.1 through J.3.
15. We also take exception to the absence in the findings of any reference to Metro's authority under ORS chapter 268 to require local governments to amend their plans and ordinances to encourage this type of development. And, while we agree that the development may be "desirable," we do not believe that even a trade is necessary. Land already within the UGB is capable of providing this type of development, as the findings indicate.

Very truly yours,



Mark J. Greenfield  
Staff Attorney

MJG:c



**METROPOLITAN SERVICE DISTRICT**  
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

## MEMORANDUM

Date: July 21, 1981  
To: Rick Gustafson, Executive Officer  
From: Andy Jordan, General Counsel  
Regarding: Conditional Approval of Clackamas County UGB  
Amendment Proposal (Waldo Acres)

This is in response to your request for an analysis of the effect of a conditional approval by the Council of the Waldo Acres proposal for amendment to the UGB. There are currently two types of conditional approvals being proposed; the first type is an approval conditioned upon a trade; the second type is approval conditioned upon the development complying with stated development criteria. Each type of conditional approval is discussed separately below.

The Council has previously adopted an ordinance governing trades of land to and from the UGB. That ordinance regulates the procedure and prescribes the conditions of such a trade. Since the Waldo Acres proposal was not submitted and has not been processed pursuant to that ordinance, any trade proposal may have to be refiled and would have to go through the procedures prescribed by that ordinance. Although the standards for a trade pursuant to that ordinance are somewhat less restrictive than the standards adopted by the Regional Development Committee for approval of major UGB amendments, it would be procedurally correct to begin the process anew with a new application for a trade rather than approve of a trade pursuant to major amendment standards.

The effect of approval of the Waldo Acres petition conditioned upon a trade would be twofold; first, there would be no alteration in the boundary until a trade is approved; second, it is probable that a conditional approval would not constitute a final act. Without a final act there can be no appeal or litigation on the proposal. That is not to say with certainty that LUBA would not take such a case, but it is much more likely that LUBA would refuse to hear the case until the boundary is changed. Assuming the correctness of that argument, there would be no litigation on the merits of the issue until the trade had been accomplished and approved and the boundary had actually been altered by the adoption of an ordinance by the Council. If it is the intent of the Council that a final decision be made now, the Council should either

Memorandum  
July 21, 1981  
Page 2

deny the petition with leave to the applicants to refile when and if they are able to obtain a satisfactory trade of land or approve the petition outright with no trade requirement. Either of these two acts would presumably constitute a final decision subject to judiciary review.

The second type of conditional approval would be approval of the application conditioned upon compliance by the developer or the county with certain development criteria which might be devised by the Council. Such criteria might include conditions upon unit purchase prices, lot sizes, amenities or limitations on total land area. Certainly other conditions could be devised. Although such a conditional approval would constitute a final action and be subject to judicial review by LUBA, it would also raise some questions about the degree to which Metro can require and enforce such conditions.

Metro has the authority in its enabling legislation to adopt and amend a UGB. Although local jurisdictions have generally been found to have the authority to condition land use approvals and land use changes, the cases which approve the extent of that local jurisdiction authority are cases involving cities and counties. Cities and counties have statutory authority to zone and subdivide land. Arguably, Metro's statutory authority to adopt and amend a UGB may not include the authority otherwise granted to cities and counties to actually regulate or condition the nature of a particular development.

On the other hand, since UGB amendments are largely discretionary in nature, I see no reason why Metro could not adopt a boundary amendment conditioned upon the occurrence of station conditions, including a condition that if the other conditions or development criteria are not met by the local jurisdiction involved, the UGB amendment would be void or could be vacated by Metro. Using that approach, Metro would not be directly enforcing any local type land use regulations and could maintain a minimum of local interference. Procedurally, Metro could simply monitor and review the local rezone or subdivision plat approval to determine whether the UGB amendment conditions had been met; and if they are not, the UGB amendment could become void automatically or upon Council reconsideration. In addition, any subdivision or rezone for the land approved at the local level not in compliance with the conditions could perhaps be appealed to LUBA by an aggrieved party if Metro took no action to repeal the UGB amendment.

Amending the UGB subject to stated development criteria, with a possible repeal of the UGB amendment upon noncompliance with

those criteria, would in my judgment constitute a final act and would be appealable by an aggrieved party to LUBA. This is in contrast to the conditional approval based upon a trade. Approval based upon a trade should clearly indicate that the nature of the action is interlocutory or interim in nature and that no final action will be taken, which could be subject to appeal, until the required trade is identified, processed and finally approved.

One final note on the use of the word "approval." The Council should be careful in using that word to describe exactly what is being approved. In the case of a conditional approval based upon compliance with development criteria, the "approval" is of a UGB amendment which may later be appealed. In the case of a conditional approval based upon a trade, however, the "approval" is not of a UGB amendment but rather is simply a statement of support for the project; the actual UGB amendment approval may or may not occur at a later date.

Finally, with respect to implementing documents, a conditional approval based upon compliance of development criteria should take the form of findings, an order approving the petition and stating the conditions, and an ordinance amending the UGB with a clause indicating the potential of vacation of the ordinance for noncompliance of the conditions. An approval based upon a trade, however, should take the form of findings and an interlocutory order indicating the Council's intent to approve a UGB amendment if an appropriate trade is identified, processed and approved pursuant to Metro regulations on locational adjustments; no resolution of intent or ordinance is necessary in such a case.

As a final note, it may be useful to outline the basic choices available to the applicant in responding to an "approval" conditioned on a trade. The applicant may:

1. Accept the decision and proceed to put together a trade.
2. Accept the decision but press the Council to actively assist in, or even assume responsibility for, locating appropriate property to remove.
3. Appeal to LUBA and attack the trade condition.
4. Demand that the Council take a final action to approve or deny the UGB amendment as requested without conditioning approval on a trade.