



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

A G E N D A -- R E G U L A R C O U N C I L M E E T I N G

Date: MAY 27, 1982
Day: THURSDAY
Time: 7:00 PM - Contract Review Board
7:30 PM - Regular Council Meeting
Place: Metro Offices

CALL TO ORDER (7:30)*

ROLL CALL

1. Introductions.
2. Written Communications to Council.
3. Citizen Communications to Council on Non-Agenda Items.
4. Councilor Communications. (7:40)*
5. Consent Agenda (Items 5.1 thru 5.6) (7:55)*

Development Committee Recommendations:

- 5.1 Recommendation on Resolution No. 82-331, For the Purpose of Approval of the 1983 unified Work Program.
- 5.2 Recommendation on Resolution No. 82-332, Extending the October Deadline for Petitions for Locational Adjustments to Metro's Urban Growth Boundary.

Coordinating Committee Recommendations:

- 5.3 Recommendation on Award of Contract to Fairbanks Weighing Division of Colt Industries for Furnishing and Installing Scale Equipment for the Clackamas Transfer and Recycling Center. (Section I)
- 5.4 Recommendation on Council Review of Contract Amendments.
- 5.5 Recommendation on Contract for Design of Alaskan Tundra Exhibit.
- 5.6 Recommendation of Waiver of Personnel Rules (Solid Waste Senior Accountant)

May 27, 1982

6. Other Actions:

From the Development Committee:

- 6.1 Recommendation on Execution of Metro/Tri-Met/ODOT Agreement Re: Funding for Special Needs Transportation. (8:00)*

From the Services Committee:

- 6.2 Recommendation on Resolution No. 82-329, For the Purpose of Granting a Franchise to Sunflower Recycling for the Purpose of Operating a Processing Facility. (8:10)*

From the Coordinating Committee:

- 6.3 Recommendation on Black and Veatch Contract Amendment for Phase III, Construction Contract Administration and Engineering Services during Construction of CTRC. (8:30)*
- 6.4 Recommendation on Black and Veatch Contract Amendment for Construction Inspection Services of the CTRC. (8:40)*

7. Ordinances:

- 7.1 Public Hearing on Ordinance No. 82-134, Exempting Purchases of the Zoo Gift Shop Inventory from Competitive Bidding. (First Reading) (8:50)*

8. Reports:

- 8.1 Executive Officer's Report. (9:00)*
- 8.2 Committee Reports. (9:15)*

ADJOURN (9:30)*



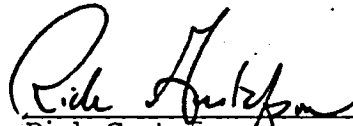
METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND OR. 97201, 503/221-1646

A G E N D A -- REGULAR COUNCIL MEETING

Date: MAY 27, 1982
Day: THURSDAY
Time: 7:30 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 with 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.


Rick Gustafson
Executive Officer

5. Consent Agenda (Items 5.1 thru 5.6)

Development Committee Recommendations:

- 5.1 Recommendation on Resolution No. 82-331, For the Purpose of Approval of the 1983 Unified Work Program.
- 5.2 Recommendation on Resolution No. 82-332, Extending the October Deadline for Petitions for Locational Adjustments to Metro's Urban Growth Boundary.

Coordinating Committee Recommendations:

- 5.3 Recommendation on Award of Contract to Fairbanks Weighing Division of Colt Industries for Furnishing and Installing Scale Equipment for the Clackamas Transfer and Recycling Center. (Section I)
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- 5.6 Recommendation on Waiver of Personnel Rules (Solid Waste Senior Accountant)

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: Approving the FY 1983 Unified Work Program (UWP)

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Approve the UWP containing the transportation planning work program for FY 1983. Authorize the submittal of grant applications to the appropriate funding agencies.
- B. POLICY IMPACT: Approval will mean that grants can be submitted and contracts executed so work can commence on July 1, 1982 in accordance with established Metro priorities.
- C. BUDGET IMPACT: The UWP matches the projects and studies reflected in the proposed Metro budget to be submitted to the Tax Supervisory and Conservation Commission.

II. ANALYSIS:

- A. BACKGROUND: The FY 1983 UWP describes the transportation/air quality planning activities to be carried out in the Portland/Vancouver metropolitan region during the fiscal year beginning July 1, 1982. Included in the document are federally funded studies to be conducted by Metro, Regional Planning Council of Clark County (RPC), Tri-Met, the Oregon Department of Transportation (ODOT) and local jurisdictions.

The Oregon portion of the FY 83 UWP major emphasis areas include:

- RTP Refinement
- Southwest Corridor Study
- Elderly and Handicapped Plan
- Energy Contingency Plan
- Regionwide Transitway Plan--Phase I

- B. ALTERNATIVES CONSIDERED: The alternative of not conducting the various studies was considered and rejected because of critical nature of issues to be addressed in solving the region's transportation problems.
- C. CONCLUSION: Adoption of the resolution will ensure application for federal funds will be made in a timely manner so as to continue transportation projects in FY 83.

KT:gl/2842B/214
5/6/82

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING THE) RESOLUTION NO. 82-331
FY 1983 UNIFIED WORK PROGRAM (UWP))
) Introduced by the Joint
) Policy Advisory Committee on
) Transportation

WHEREAS, The Unified Work Program (UWP) describes all federally-funded transportation/air quality planning activities for the Portland/Vancouver metropolitan area to be conducted in FY 1983; and

WHEREAS, The FY 83 UWP indicates federal funding sources for transportation/air quality planning activities carried out by Metro, Regional Planning Council of Clark County (RPC), the Oregon Department of Transportation (ODOT), Tri-Met and the local jurisdictions; and

WHEREAS, The FY 83 UWP contains an agreement on interagency responsibilities between ODOT, Tri-Met and Metro, and RPC and Metro; and

WHEREAS, Approval of the FY 83 UWP is required to receive federal transportation planning funds; and

WHEREAS, The FY 83 UWP is consistent with the proposed Metro budget submitted to the Tax Supervisory and Conservation Commission; and

WHEREAS, The FY 82 UWP includes a work element for a Bi-State Transit Assessment and that any reprogramming in the FY 83 UWP towards a Regional Transportation Plan--Phase I would require the prior approval of the Bi-State Policy Advisory Committee; and

WHEREAS, The FY 83 UWP has been reviewed and agreed to by the Transportation Policy Alternatives Committee (TPAC) the Joint Policy Advisory Committee on Transportation (JPACT) and the RPC; now, therefore,

BE IT RESOLVED,

1. That the FY 83 UWP is hereby approved and the FY 82 UWP amended.
2. That the Bi-State Policy Advisory Committee must approve any modification to the Bi-State Transit Assessment work element.
3. That the FY 83 UWP is consistent with the continuing, cooperative and comprehensive planning process and is hereby given positive A-95 Review action.
4. That the Metro Executive Officer is authorized to apply for, accept and execute grants and agreements specified in the UWP.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1982.

Presiding Officer

KT:gl
2841B/214
5/6/82

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: Further Extending the Deadline for Petitions for
Locational Adjustment of the Urban Growth Boundary (UGB)
to November 1, 1982

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Council adoption of the Resolution extending the deadline for petitions for locational adjustments to the UGB from October 1, 1982 to November 1, 1982.
- B. POLICY IMPACT: None. The July 1 deadline remains in effect for future years.
- C. BUDGET IMPACT: None.

II. ANALYSIS:

- A. BACKGROUND: On April 1, 1982, the Council adopted Resolution No. 82-314 postponing the July 1 petition deadline to October 1, 1982. The postponement was approved to give prospective petitioners sufficient advance notice of the new UGB locational adjustment standards, procedures and fees, then proposed for adoption by the end of May. Because of the LCDC 45-day "post-acknowledgement" notice requirements, the proposed revisions to the UGB standards cannot be adopted before the Council's June 24, 1982 meeting. Accordingly, the October 1, 1982 deadline should be moved to November 1, 1982, to assure sufficient notice to prospective petitioners.
- B. ALTERNATIVES CONSIDERED: The October 1, 1982 deadline could be retained. This would shorten the effective notice to prospective petitioners by one month. The shorter notice would make it more difficult for applicants to prepare complete, accurate petitions, would shorten the review time available to local governments and would likely increase the Metro's cost of reviewing petitions.
- C. CONCLUSION: Extending the deadline to November 1, 1982 is consistent with Council's original intent to provide adequate advance notice of any changes in locational adjustment standards and procedures.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF FURTHER EX-)
TENDING THE DEADLINE FOR PETITIONS)
FOR LOCATIONAL ADJUSTMENTS OF)
METRO'S URBAN GROWTH BOUNDARY TO)
NOVEMBER 1, 1982

RESOLUTION NO. 82-332

Introduced by the Regional
Services Committee

WHEREAS, The Council adopted Ordinance No. 81-105 for the purpose of establishing procedures for locational adjustments to Metro's Urban Growth Boundary; and

WHEREAS, Section 4(a) of Ordinance No. 81-105 states that: "Except as provided in subsection (b) of this section, petitions for locational adjustment shall be considered by the District at one time each year beginning July 1 and petitions filed after July 1 of each year shall not be considered until July of the next calendar year."; and

WHEREAS, Section 4(b) of Ordinance No. 81-105 states that: "Upon request by a Councilor or the Executive Officer, the Council may, by majority vote, waive the July 1 filing deadline for a particular petition or petitions and hear such petition or petitions at any time."; and

WHEREAS, The Council will be reviewing the standards, procedures and fees for hearing petitions for locational adjustment and amending Ordinance No. 81-105, Rule No. 79-3 and Resolution No. 81-260; and

WHEREAS, Needed amendments to the standards, procedures and fees for hearing petitions for locational adjustments to the UGB will not be adopted before June 24, 1982, rather than the May 27, 1982 date anticipated in Resolution No. 82-314; and

WHEREAS, The Council adopted Resolution No. 82-314 to postpone the deadline for filing locational adjustment petitions to give interested parties advance notice of proposed changes in locational adjustment standards, procedures and fees; and

WHEREAS, Section 9 of Ordinance No. 81-105 requires at least 90 days notice of the filing deadline and a period of at least 90 days is generally needed to prepare a petition for locational adjustment; now, therefore,

BE IT RESOLVED,

1. That for the calendar year 1982, petitions for locational adjustment will be accepted for hearing through November 1, 1982.

2. That the Executive Officer may, at his/her discretion, schedule hearings prior to November 1, 1982, for petitions received prior to that date but following action on amendment of Ordinance No. 81-105.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1982.

Presiding Officer

JC/gl
5928B/107
5/13/82

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

TO: Council Coordinating Committee/Regional Services Committee
FROM: Executive Officer
SUBJECT: Award of Contract to Fairbanks Weighing Division of Colt Industries for Furnishing and Installing Scale Equipment for the Clackamas Transfer & Recycling Center (CTRC) (Section I)

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Approval of Award of Contract to Fairbanks Weighing Division of Colt Industries for furnishing and installing scale equipment (Section I) for the CTRC in the amount of \$59,797.00.
- B. POLICY IMPACT: This action is consistent with Metro policy. On January 13, 1981, the Regional Services Committee recommended approval of the Summary and Recommendations of the Solid Waste Transfer Plan. One of the recommendations was to implement Phase I of the Energy Recovery Project which included filling the site and construction of the CTRC.
- C. BUDGET IMPACT: This project is funded by a \$6.4 million grant/loan from the State of Oregon Pollution Control Bond Fund. Under the terms of this Agreement, 70 percent of the funds are a loan secured by Metro user fees. The remaining 30 percent is a grant. This project was approved in the FY 82 Solid Waste Capital Improvement Fund budget. The cost for Section I is \$59,797.00.

II. ANALYSIS:

- A. BACKGROUND: On March 28, Metro advertised an Invitation to Bid to Furnish and Install Scale Equipment for the CTRC. The work is divided into two sections as follows:
- Section I - Pit-Type Motor Truck Scales. Furnish and install as working units two 80-ton pit-type motor truck scales located in scale plaza. Scales will be used for the CTRC and the Energy Recovery Facility when constructed.
- Section II - Reflective Displays. Furnish and install two reflective displays located in the transfer trailer tunnel. Displays will be used in conjunction with a truck-mounted weighing system furnished by others.
- B. ALTERNATIVES CONSIDERED: Two bids were opened on April 30, 1982; one for Section I and one for Section II.

C. CONCLUSION: Recommend approval of Award of Contract with Fairbanks Weighing Division of Colt Industries for furnishing and installing scale equipment (Section I) for the CTRC.

WC/gl
5853B/107-1
05/10/82

CONTRACT

This Contract, made and entered into this day of, 19..., by and between the Metropolitan Service District of Portland, Oregon, hereinafter called the "Owner," and

.....
.....
of, hereinafter called the "Contractor";

WITNESSETH:

The Contractor, in consideration of the sum to be paid him/her by the Owner and of the covenants and agreements herein contained, hereby agrees at his/her own cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances necessary for completion of the subject work to the extent of the Proposal made by the Contractor,

dated the day of, 19..., all in full compliance with the Contract Documents referred to herein.

The BIDDING REQUIREMENTS, including the signed copy of the Proposal, the CONTRACT FORMS, the CONDITIONS OF THE CONTRACT, the SPECIFICATIONS, and the DRAWINGS, which consist of 33 sheets entitled "Drawings for Clackamas Transfer and Recycling Center," are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein and are mutually cooperative therewith.

In consideration of the performance of the work as set forth in these Contract Documents, the Owner agrees to pay to the Contractor the amount bid in the Proposal as adjusted in accordance with the Contract Documents, or as otherwise herein provided, and to make such payments in the manner and at the times provided in the Contract Documents.

The Contractor agrees to complete the work within the time specified herein and to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on the said Proposal.

The Contractor agrees all claims, disputes and other matters in question arising out of, or relating to this Agreement or the breach thereof, shall be decided by arbitration before an arbitrator to be mutually selected by both parties. The determination of the arbitrator shall be final and binding and there shall be no appeal from such determination.

The Contractor agrees in the event of any litigation or arbitration concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to an appellate court.

The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract for a period of one (1) year after the date of acceptance of the work by the Owner, and further agrees to indemnify and save the Owner harmless from any costs encountered in remedying such defects.

The Contractor agrees to be guided in his/her subcontracting efforts by Metro's Minority Business Enterprise (MBE) program which is hereby made part of these Contract Documents.

The Contractor agrees to the Minimum Wage Rules in the Oregon Revised Statute 279.350 or as amended to.

It is agreed the time limit for completion of the Contract, based upon the Proposal shall be as follows:

Substantial completion first day of November, 1982

Final completion first day of December, 1982

IN WITNESS WHEREOF, we, the parties hereto, each herewith subscribe
the same this day of, A.D., 19....

METROPOLITAN SERVICE DISTRICT

By

Title

.....
Contractor

.....
Title.....

APPROVED AS TO FORM

.....
Attorney

* * * * *



METRO

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

MEMORANDUM

Date: May 7, 1982
To: Metro Council
From: Council Coordinating Committee
Regarding: Council Review of Contract Amendments

On April 12, 1982, the Council Coordinating Committee voted to recommend that Metro contract amendments of \$50,000 or more should be submitted to and approved by the entire Council. Metro's contract procedures now require that all amendments are approved by the Contract Review Committee. The Coordinating Committee decided that, rather than amend the contract procedures now, a policy statement would suffice.

Therefore, it should be the policy of the Council that the Contract Review Committee submit contract amendments of \$50,000 or more to the Council for approval. Exceptions to this policy may be made by the Committee in the event that submission to the Council would cause undue or detrimental delay in the project which is the subject of the amendment.

The Council Coordinating Committee recommends that the Council adopt the above policy.

AJ/gl
5800B/D3

cc: Don Carlson
Jennifer Sims
Cary Jackson
Sue Klobertanz
Department Heads

WASHINGTON PARK ZOO

To: Metro Council

Date: April 30, 1982

From: Executive Officer

Subject: Approval of Contract for Design of Alaskan Tundra Exhibit

I. Recommendation:

A. Action Requested:

Approval of Contract with Teamworks: Architectural Urban Design Planning whose address is 320 S.W. Sixth Avenue, Portland, Oregon for the design of the Alaskan Tundra Exhibit for the sum of \$250,000.

B. Policy Impact:

The Alaskan Tundra Exhibit is one of the major projects included in the Zoo Development Plan adopted by the Council. It is one of the projects named in the ordinance setting out the purposes of the current capital construction serial levy. Selection procedures adopted by the Council have been followed. Nine firms submitted proposals. Three firms were selected for interviews. The selection committee consisted of Cindy Banzer, Presiding Officer of the Metro Council, Cheri Williams, President, Friends of the Washington Park Zoo, James Riccio, RIC Consulting, McKay Rich, Assistant Director of the Washington Park Zoo, and Warren Iliff, Director of the Washington Park Zoo.

C. Budget Impact:

Funds for this project will be provided by the capital construction serial levy and have been budgeted primarily in the 1982-83 budget. The project is scheduled for completion in May, 1984.

II. Analysis:

A. Background:

The Zoo has planned to provide enlarged natural habitat enclosures for its wolves and musk oxen so that they can be better managed, allowed to have natural substrate yards, pools, shaded areas, etc., and be seen by the visitors in the context of their native tundra. Currently the wolves have only a concrete enclosure which does not allow them to dig, to move around trees, or rest under shade. The present musk oxen yard is very small and does not have adequate animal handling and holding facilities. Both exhibits are very unattractive and provide very little interpretive information.

The proposed exhibit will be sited in a natural wooded area including the current site of the otter, raccoon, eagle, and prairie dog exhibits. The exhibit will probably include additional tundra animals like the grizzly bear, snowy owl, etc., and there will be a major interpretive treatment of the animals and their habitat.

B. Alternatives Considered:
Not to proceed.

C. Conclusion:
After careful review of all nine written proposals and interviews with the principals of the three firms selected for interviews, it was concluded that the Zoo has budgeted a viable project and should proceed with the design of the exhibit.

lan



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

MEMORANDUM

Date: May 17, 1982
To: Jack Deines, Chairman
Council Coordinating Committee
From: Rick Gustafson *RG*
Regarding: Waiver of Personnel Rules

Metro personnel rules require posting of vacant positions in-house five working days before outside recruitment (14 days) commences. In cases of difficulties or unnecessary hardships, I can approve variances on these rules subject to Council ratification.

In order to fill the position of Senior Accountant (Solid Waste) so that preparatory work for the next audit could begin as soon as possible, consideration was given to accelerating the recruitment process. Chum Chitty, Manager of Accounting, reviewed the qualifications of his current employees and advised the personnel office that no employee in-house had the minimum qualifications required to fill the position. However, any employee who wanted to apply would be considered along with outside applicants.

Therefore, I approved the request for waiver of the personnel rules pursuant to section 5, Variances, (see attached) to allow for immediate advertisement outside to fill the position of Senior Accountant.

I am now requesting your approval to place this matter on the Consent Agenda of the May 27, 1982, meeting for Council ratification. If you or any members of your Committee have questions, please do not hesitate to contact me.

For your information, this position has already been filled and the new Senior Accountant for Solid Waste, Donald Cox, began work today. We were successful in our effort to expedite the process in this situation, but in all except the most extraordinary circumstances, I am a strong supporter of allowing employees the opportunity for advancement within the organization and I will continue this policy.

RG:SR

cc: Council Coordinating Committee members

Section 5 Variances: The Executive Officer shall have the power to vary or to modify the strict application of the provisions of this ordinance in any case in which the strict application of said provisions would result in practical difficulties or unnecessary hardships on either the agency or employee or both. All approved variances shall be subject to Council ratification, and shall be reported to the Council in written summary form at the next regular meeting following the date of approval. The chairperson of the Employees' Advisory Committee shall receive a written summary of the variance prior to this meeting.

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: Endorsing Definitions of Roles, Responsibilities and
Funding for Special Needs Transportation

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Approve execution of Metro/ODOT/Tri-Met agreement establishing roles, responsibilities and funding for Special Needs Transportation.
- B. POLICY IMPACT: The primary change resulting from this agreement will be to prohibit the use of vehicles owned by private non-profit corporations acquired with UMTA 16(b)(2) funding from using the vehicles to provide special handi-capped service under contract to Tri-Met. This will allow private (for profit) firms to compete for these contractual services.

With this change, Tri-Met will acquire needed vehicles under the Section 3 program and provide them to operators under a competitive bidding process. 16(b)(2) funding will still be available to private, non-profit corporations in the Portland area but only for use to serve specific client groups not served by Tri-Met.

- C. BUDGET IMPACT: None.

II. ANALYSIS:

- A. BACKGROUND: In the past, UMTA has funded vehicle acquisitions by private, non-profit corporations which have subsequently been used to provide service under contract to Tri-Met. Since these funds can only be granted to private, non-profit corporations, these vehicles can neither be owned by Tri-Met nor a private, for-profit operator. This results in an unfair financial advantage for non-profit corporations, thereby closing out for-profit corporations.

The agreement also reaffirms several other roles, responsibilities and funding agreements currently in operation, including:

- . Section 18 eligibility and local match responsibility; and
- . Special Needs Planning and Programming responsibilities.

- B. ALTERNATIVES CONSIDERED: Continuation of current practices resulting in discrimination against private, for-profit operators.
- C. CONCLUSION: Motion recommending execution of Metro/Tri-Met/ODOT agreement.

Intergovernmental Agreement

This Agreement dated _____, 1982, between the Tri-County Metropolitan Transportation District of Oregon (hereinafter "Tri-Met") and the Oregon Department of Transportation, Public Transit Division (hereinafter "Division") and the Portland Metropolitan Service District (hereinafter "MSD"), provides as follows:

RECITALS

IN ORDER TO comply with the provisions of Section 504 of the Rehabilitation Act of 1973 (49 CFR, Part 27) which require that where public transit is available that it be accessible to the handicapped; and

IN ORDER TO clarify responsibilities for special needs transportation among the parties to this Agreement; and

IN ORDER TO ensure coordination and cooperation in the delivery of local, State and federal funds; and

IN ORDER TO better serve the transportation disadvantaged of the Tri-Counties,

AGREEMENTS

IT IS AGREED:

1. Term

The term of this Agreement shall be from _____, 1982, to and including June 30, 1984 unless sooner terminated under the provisions hereof.

2. Services

A. Special Needs Transportation Within Tri-Met Boundaries

1. Operations

- a. Tri-Met agrees to provide special needs transportation service, alone or through subcontractors, within Tri-Met boundaries.
- b. Tri-Met may apply for operating funds, not to exceed \$70,400 per year, under the State's Small City and Rural Area Transit Assistance Program which includes State General Funds and funds from the Federal Highway Administration (FHWA) Formula Program for Nonurbanized Areas, Section 18, (hereinafter "Section 18"). Where Tri-Met is a recipient of such funds,

Tri-Met shall provide special needs transportation in rural areas within Tri-Met boundaries in any county where another local government agency does not provide the local match.

2. Capital

- a. It is the intent of the parties to phase-out vehicles funded under the Urban Mass Transportation Administration Elderly and Handicapped Capital Grant Program, Section 16(b)(2), (hereinafter, "Section 16(b)(2)"), which are in use for special needs transportation service under contract to Tri-Met within District boundaries by July 1, 1983.
- b. To this end, Tri-Met shall provide some special needs transportation vehicles which can be transferred or leased to subcontracting agencies, including public, private-nonprofit, and private-for-profit. The number of vehicles to be provided by Tri-Met will depend upon availability.

These vehicles shall not be funded through the Section 16(b)(2) program.

B. Special Needs Transportation Outside Tri-Met Boundaries

1. Operations

- a. Tri-Met shall apply for operating funds under Section 18 in any county where another local government agency provides the matching funds.
- b. In counties where Tri-Met is a recipient of Section 18 operating funds, and where the local match is provided by another local government agency, Tri-Met agrees to provide special needs transportation service, alone or through subcontractors, in rural areas outside Tri-Met boundaries.

2. Capital

In those counties where Tri-Met is a recipient of Section 18 operating funds, Tri-Met shall be the applicant for Section 18 capital grants.

C. Urban Mass Transportation Administration Elderly and Handicapped Capital Grant Program, Section 16(b)(2), Within Tri-Met Boundaries

The Division shall review Section 16(b)(2) grants within Tri-Met boundaries and approve grants only for client-specific transportation which the Division finds Tri-Met cannot adequately provide.

D. Elderly and Capital Grant Program, Section 16(b)(2), Outside Tri-Met Boundaries

1. The Division shall review and approve 16(b)(2) grants outside Tri-Met boundaries.
2. The Division shall coordinate Section 16(b)(2) operations in the area outside Tri-Met boundaries in order to insure the best service coverage and avoid duplication of services.

E. Planning

1. MSD and Tri-Met will work together to conduct planning for special needs transportation inside their respective boundaries.
2. In any area outside Tri-Met boundaries where Tri-Met is a recipient of Section 18 operating funds, Tri-Met shall conduct special needs transportation planning.
3. MSD shall review and endorse, as appropriate, all locally-adopted special needs transportation plans and programs within the tri-counties.

4. MSD shall apply for an Urban Mass Transportation Administration Planning and Technical Studies grant, Section 8, to fund its participation in planning for special needs transportation.

3. Termination

A. For Convenience

Any party to this Agreement may terminate this Agreement in whole or in part at any time by fifteen days written notice to both other parties.

B. With Cause

Any expenditure beyond June 30, 1983 is subject to legislative approval of Division's budget and the availability of funds.

If funds are not included in the 1983-85 budget then this Agreement shall terminate June 30, 1983.

TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON
BY _____

General Manager

METROPOLITAN SERVICE DISTRICT
BY _____

Executive Director

OREGON DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSIT DIVISION

Administrator

APPROVED AS TO LEGAL SUFFICIENCY:

Assistant Attorney General

Date _____

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: Granting a Franchise to Sunflower Recycling for the Purpose of Operating a Solid Waste Processing Facility

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Adopt attached Resolution granting Sunflower Recycling a solid waste franchise to process solid waste. This Franchise Agreement includes variances to certain sections of the Disposal Franchise Ordinance due to the small amount of solid waste received at Sunflower's site. The agreement is subject to review and modification if the solid waste processed by Sunflower exceeds 10 cubic yards per week.
- B. POLICY IMPACT: Granting Sunflower Recycling a franchise is consistent with the Disposal Franchise Ordinance. The Ordinance requires facilities which receive or process solid waste to obtain a District franchise in order to operate. Since Sunflower receives putrescible solid waste for its composting operation the company is required to obtain a District franchise agreement. The proposed operation conforms with the Waste Reduction Plan adopted by the Council in January 1981 since it diverts waste from area landfills.
- C. BUDGET IMPACT: None.

II. ANALYSIS:

- A. BACKGROUND: Sunflower Recycling operates a solid waste and recyclable collection service in southeast Portland. One of the services Sunflower offers its customers is collection of kitchen food scraps which the company composts at its site on 2230 S. E. Grand Avenue in Portland. Sunflower returns one barrel of compost each year to each customer who uses the service. The cost of the composting service per customer is \$1.00 to \$1.50 per month depending upon the number of pickups. Sunflower receives approximately 1/6 cubic yard of compostable material per day totaling 50 cubic yards per year. Solid waste is not accepted from the public at the site or from any other solid waste collection company. The material is composted in two converted cement mixers, each with a total capacity of 6 cubic yards. The material is composted in the mixer for a period of one to two months depending on the season of the year. No unprocessed solid waste material is stockpiled on the site. Sunflower receives approximately \$1,200 in annual revenue from its customers and from compost markets for the material.

Sunflower has requested variances to several sections of the Disposal Franchise Ordinance. These sections are:

Subsection 7(2)(a) and 8(5)(b), which requires franchisees to obtain a corporate surety bond (Resolution No. 81-271 requires a minimum \$25,000 bond);

Subsection 7(2)(c) and 8(5)(c) and (d), which requires \$500,000 public liability insurance (Sunflower currently has a \$300,000 public liability insurance policy);

Section 15(3), which requires franchise fees;

Section 16, which requires user fees.

In order to grant a variance from the provisions of the ordinance it must be demonstrated that one of the three conditions listed in subsection 12(1)(a), (b) or (c) of the Disposal Franchise Ordinance is met. Sunflower argues that since the composting operation receives such a small amount of solid waste and the revenue received from the operation is minimal, requiring the operation to pay user fees, increased public liability insurance and to post a \$25,000 bond would meet the condition of subsection 12(1)(c) of the Disposal Franchise Ordinance. This subsection states that strict compliance with particular requirements of the Ordinance: "Would result in substantial curtailment or closing down of the business, plant or operation which further the objectives of the District."

Further, Sunflower argues that the composting operation diverts waste from the landfill and, therefore, furthers the objectives of the Waste Reduction Plan adopted by the Council in January 1981.

The Solid Waste Policy Alternatives Committee (SWPAC) reviewed Sunflower's franchise application on April 19, 1982 and recommended approval of their variance requests with the exception of a total waiver of the corporate surety bond required by subsections 7(2)(a) and 8(5)(b) of the Disposal Franchise Ordinance. SWPAC recommended waiving the \$25,000 minimum bond amount required by Resolution No. 81-271 and replacing it with a lesser bond amount established by staff. Staff recommends a \$1,000 bond for the site. This is a sufficient amount to clean up the composting operation should the operator abruptly leave the site.

- B. ALTERNATIVES CONSIDERED: Not granting Sunflower Recycling a franchise to operate their composting operation would be contrary to Metro's solid waste management plan since the operation diverts waste from area landfills.

C. CONCLUSION:

Grant Sunflower Recycling a franchise to operate with the provision that:

1. The company is exempted from subsection 7(2)(c), 8(5)(c) and (d), Section 15(3), and Section 16 of the Disposal Franchise Ordinance.
2. The minimum bond amount of \$25,000 required by Resolution No. 81-271 for processing centers and transfer stations be waived and instead a \$1,000 bond be established for the composting operation.
3. The franchise agreement including these exemptions be reviewed by Metro and be subject to modification if the solid waste received by Sunflower for its composting operation exceeds ten (10) cubic yards per week.

TA/gl
5303B/283
05/13/82

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF GRANTING A) RESOLUTION NO. 82-329
FRANCHISE TO SUNFLOWER RECYCLING)
FOR THE PURPOSE OF OPERATING A) Introduced by the Regional
SOLID WASTE PROCESSING FACILITY) Services Committee

WHEREAS, Subsection 4 of the Disposal Franchise Ordinance states that it is unlawful 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; and

WHEREAS, Sunflower Recycling operates a processing facility which composts solid wastes collected by Sunflower; and

WHEREAS, Sunflower Recycling performs a valuable service by removing solid wastes from the waste stream; now, therefore,

BE IT RESOLVED,

The Council of the Metropolitan Service District grants to Sunflower Recycling a franchise to operate a solid waste processing center and authorizes the District to enter into the attached franchise agreement with Sunflower Recycling within ten (10) days of the adoption of this Resolution.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1982.

Presiding Officer

TA/gl
5293B/107
05/13/82

FRANCHISE NO.: 003
DATE ISSUED:
EXPIRATION DATE: June 1, 1987

SOLID WASTE FRANCHISE
issued by the
METROPOLITAN SERVICE DISTRICT
527 SW Hall Street
Portland, Oregon 97201
503-221-1646

NAME OF FRANCHISEE: Sunflower Recycling
ADDRESS: 2230 S. E. Grand Avenue
CITY, STATE, ZIP: Portland, Oregon 97214
NAME OF OPERATOR: Stan Kahn
PERSON IN CHARGE: Stan Kahn
ADDRESS: 722 S.E. 18th
CITY, STATE, ZIP: Portland, Oregon 97214
TELEPHONE NUMBER: (503) 238-1640

This Franchise will automatically terminate on the expiration date shown above, or upon modification, revocation or suspension, whichever occurs first. Until this Franchise terminates, Sunflower Recycling is authorized to operate and maintain a processing facility located at 2230 N.E. Grand Avenue, Portland, Oregon 97214, for the purpose of accepting, processing and disposing of solid waste in accordance with the Metro Code and the attached Schedules A, B, C, D and E. This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code. This Franchise does not relieve the Franchise Holder from responsibility for compliance with ORS Chapter 459 or other applicable federal, state or local laws, rules, regulations or standards.

Presiding Officer, Council
Metropolitan Service District

Stan Kahn
Sunflower Recycling

FRANCHISE CONDITIONS

Franchise Number: 003

Expiration Date: June 1, 1987

SCHEDULE A

AUTHORIZED AND PROHIBITED ACTIVITIES

- SA-1 The Franchise Holder is authorized to accept source separated food scraps, grass clippings, weeds, sawdust and sod for processing by composting. No other wastes shall be accepted unless specifically authorized in writing by Metro supplementary to this agreement.
- The Franchise Holder may accept solid waste from Sunflower Recycling vehicles only.
 - The Franchise Holder shall not accept solid waste at the facility from any other solid waste collection service or from the public.
 - The Franchise Holder's composting operation shall be confined to the northwest corner of the site adjacent to the office building at 2230 S. E. Grand Avenue, Portland, Oregon 97214. Said composting area shall not exceed 500 square feet.

FRANCHISE CONDITIONS

Franchise Number: 003

Expiration Date: June 1, 1987

SCHEDULE B

MINIMUM MONITORING AND REPORTING REQUIREMENTS

- SB-1 The Franchise Holder shall report to the District any changes in excess of five (5%) percent of ownership of the franchisee's corporation or similar entity, or of the partners of a partnership within ten days of such changes of ownership.
- SB-2 The Franchise Holder shall notify Metro in writing immediately upon any material change in its management personnel or operation as presently conducted including notification of solid wastes received in excess of 10 cubic yards per week. This Agreement is subject to review and modification if such material change occurs.

FRANCHISE CONDITIONS

Franchise Number: 003

Expiration Date: June 1, 1987

SCHEDULE D

GENERAL CONDITIONS

- SD-1 All notices required to be given to the franchisee under this franchise agreement shall be given to Stan Kahn, Sunflower Recycling, 2230 S. E. Grand Avenue, Portland, Oregon 97214. All notices and correspondence required to be given to Metro under this franchise shall be given to the Solid Waste Director, Solid Waste Department, Metro, 527 S.W. Hall, Portland, Oregon 97201.
- SD-2 The conditions of this Franchise agreement shall be binding upon the Franchise Holder, and the Franchise Holder shall be responsible for all acts and omissions of all contractors and agents of the Franchise Holder.
- SD-3 The Franchise Holder is exempt from Section 14(1) of Ordinance No. 81-111.
- SD-4 In the event that the processing facility is to be closed permanently or for an indefinite period of time during the effective period of this Franchise, the Franchise Holder shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.
- SD-5 The Franchise Holder shall submit a duplicate copy to the District of any information required by the Department of Environmental Quality (DEQ) pertaining to the processing facility during the term of the Franchise. Such information shall be forwarded to the District within two (2) working days of their submission to DEQ.
- SD-6 In the event a breakdown of equipment, flooding, fire, sliding or other occurrence causes a violation of any conditions of this Franchise Agreement or of the Metro Code, the Franchise Holder shall:
- a. Immediately take action to correct the unauthorized condition or operation.
 - b. Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
- SD-7 If the Executive Officer finds that there is a serious danger to the public health or safety as a result of the actions or inactions of a franchisee he/she may take whatever steps

FRANCHISE CONDITIONS

Franchise Number: 003

Expiration Date: June 1, 1987

SCHEDULE D

GENERAL CONDITIONS

- SD-1 All notices required to be given to the franchisee under this franchise agreement shall be given to Stan Kahn, Sunflower Recycling, 2230 S. E. Grand Avenue, Portland, Oregon 97214. All notices and correspondence required to be given to Metro under this franchise shall be given to the Solid Waste Director, Solid Waste Department, Metro, 527 S.W. Hall, Portland, Oregon 97201.
- SD-2 The conditions of this Franchise agreement shall be binding upon the Franchise Holder, and the Franchise Holder shall be responsible for all acts and omissions of all contractors and agents of the Franchise Holder.
- SD-3 The Franchise Holder is exempt from Section 14(1) of Ordinance No. 81-111.
- SD-4 In the event that the processing facility is to be closed permanently or for an indefinite period of time during the effective period of this Franchise, the Franchise Holder shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.
- SD-5 The Franchise Holder shall submit a duplicate copy to the District of any information required by the Department of Environmental Quality (DEQ) pertaining to the processing facility during the term of the Franchise. Such information shall be forwarded to the District within two (2) working days of their submission to DEQ.
- SD-6 In the event a breakdown of equipment, flooding, fire, sliding or other occurrence causes a violation of any conditions of this Franchise Agreement or of the Metro Code, the Franchise Holder shall:
- a. Immediately take action to correct the unauthorized condition or operation.
 - b. Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
- SD-7 If the Executive Officer finds that there is a serious danger to the public health or safety as a result of the actions or inactions of a franchisee he/she may take whatever steps

necessary to abate the danger without notice to the franchisee.

SD-8 Authorized representatives of Metro shall be permitted access to the premises of the facility owned or operated by the Franchise Holder at all reasonable times for the purposes of making inspections, surveys, collecting samples, obtaining data, examining books, papers, records and equipment, performing any 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, and carrying out other necessary functions related to this Franchise and the Metro Code. Access to inspect is authorized:

- a. during all working hours;
- b. at other reasonable times with notice;
- c. at any time without notice where, at the discretion of the Metro Solid Waste Division Director, when such notice would defeat the purpose of the entry.

SD-9 This Franchise Agreement is subject to suspension, modification, revocation or nonrenewal upon finding that a franchisee has:

- a. Violated the Disposal Franchise 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 or other information required to be submitted to the District;

SD-10 This Franchise Agreement, or a photocopy thereof, shall be displayed where it can be readily referred to by operating personnel.

SD-11 The granting of this 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.

FRANCHISE CONDITIONS

Franchise Number: 003

Expiration Date: June 1, 1987

SCHEDULE E

Variance Conditions

SE-1 Metro grants Sunflower Recycling variances to the minimum insurance amounts specified in 8(5)(c) and 7(2)(c) of Ordinance No. 81-111; Section 15(3) which requires payment of a franchise fee; and Section 16 which requires payment of user's fees. Metro also grants Sunflower Recycling a variance to the minimum bond amount for transfer stations and processing centers specified in Resolution No. 81-271. These variances are granted to Sunflower Recycling during the term of this Agreement due to the small size of Sunflower's composting operation, its experimental nature, and the heavy cost burden of Sunflower setting up an accounting system to comply with the Code and the heavy cost to Metro of auditing and ensuring payment of said requirements provided that the capacity of the facility does not exceed 10 cubic yards per week.

TA/srb
5491B/292
04/30/82

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

TO: Council Coordinating Committee/Regional Services Committee
FROM: Executive Officer
SUBJECT: Construction Management Services for Clackamas Transfer & Recycling Center (CTRC)

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Approve an amendment to the engineering contract with Black and Veatch Consulting Engineers for the design of the CTRC which will authorize Phase III, construction contract administration and engineering services during construction. The cost for Phase III engineering services is \$68,015.
- B. POLICY IMPACT: This action is consistent with Metro policy. On January 13, 1981, the Regional Services Committee recommended approval of the Summary and Recommendations of the Solid Waste Transfer Plan. One of the recommendations was to implement Phase I of the Resource Recovery project which included construction of the CTRC and filling the site.
- C. BUDGET IMPACT: This project is funded by a \$6.4 million grant/loan from the State of Oregon Pollution Control Bond Fund. Under the terms of this Agreement, 70 percent of the funds are a loan secured by Metro User Fees. The remaining 30 percent is a grant. This project was approved in the FY 82 Solid Waste Capital Improvement Fund budget. The cost for Phase III services is \$68,015.

II. ANALYSIS:

- A. BACKGROUND: On February 23, 1981, Metro issued a Request for Proposals to provide engineering services to design and construct the CTRC. Ten proposals were submitted. An evaluation committee which included representatives from the Department of Environmental Quality, Lane County, Jackson & Associates, Portland Recycling Team, Clackamas County Haulers Association and Metro solid waste staff reviewed the proposals and interviewed several engineering firms.

As a result, Black and Veatch was selected to provide engineering services for the CTRC. Metro Council approved this contract on May 28, 1981. The Phase I design work has been completed and during the first week of March 1982, an Invitation to Bid was issued for the construction of the CTRC. Phase II, engineering services during the bidding process, is currently being conducted by Black and Veatch.

Work under Phase III, construction contract administration and engineering services during construction is contingent on Council approval of the construction contract.

- B. ALTERNATIVES CONSIDERED: An alternative would be to issue a new Request for Proposals for construction contract administration and engineering services during construction. This is not recommended because Black and Veatch is thoroughly involved with the project. In addition, there is need for consistency with change orders and design changes.
- C. CONCLUSION: Recommend approval of an amendment to the Black and Veatch design contract which authorizes Phase III work (contract administration and engineering services during construction) to be contingent on Council approval of the construction contract.

NW/WC/srb
5405B/107
04/30/82

AMENDMENT NO. 6

TO

AGREEMENT BETWEEN METROPOLITAN SERVICE DISTRICT
AND BLACK AND VEATCH
TO FURNISH DESIGN SERVICES
TO THE METROPOLITAN SERVICE DISTRICT
FOR THE CLACKAMAS TRANSFER AND RECYCLING CENTER

METRO and CONTRACTOR hereby amend the above described Agreement, effective March 3, 1982, in the following manner.

Except as amended, the Agreement remains in full force and effect.

(1) The Scope of Work, Attachment A, is amended to include the following additional engineering services during construction:

A. Contract Administration:

1. Attend one (1) preconstruction conference at the METRO offices.
2. Attend three (3) progress meetings at the site of the work during the construction period, upon request by METRO. Prepare and issue to METRO minutes of these meetings.
3. Interpret the contract documents, as necessary. Transmit to the construction contractor clarifications and interpretations of the contract documents directly and through the resident engineering staff.
4. Consider and evaluate construction contractor's suggestions for modifications in drawings or specifications and report them with recommendations to METRO. Assist METRO in subsequent negotiations for change in construction Contract Price or Time. Prepare change orders to the contract documents, as necessary.
5. Revise Drawings to conform to construction records and furnish one reproducible set of mylars to METRO.

6. Review progress schedule, schedule of shop drawing submission, and schedule of values prepared by the construction contractor and advise METRO concerning their acceptability.
7. Provide copies of written correspondence to METRO's designated representative.

B. Shop Drawings and Samples: Receive, record date of receipt and review drawings and data submitted by the construction contractor for general conformity to the contract drawings and specifications.

(2) For engineering services during construction performed by the CONTRACTOR under this Agreement, METRO will pay the CONTRACTOR on a time and material basis not to exceed the contract amount of SIXTY-EIGHT THOUSAND AND FIFTEEN DOLLARS (\$68,015.00) without written authorization from METRO.

Payments shall be made to the CONTRACTOR upon receipt and approval of invoices indicating the actual direct personnel costs, actual outside professional services costs, and actual reimbursable expenses expended.

Payment for personnel costs including salary costs, overhead and profit will be based on actual direct salary costs multiplied by the following factors:

<u>Firm</u>	<u>Multiplier</u>
Black & Veatch (Field)	2.0
Black & Veatch (Office)	2.5
Cooper & Associates (Field)	2.53
Cooper & Associates (Office)	2.53

Reimbursement for all out-of-pocket expenses for moving, transportation, reproduction, telephone, postage, travel, lodging, subsistence and other miscellaneous field-related expenses increased incurred by assigned field and office personnel during the performance of service covered by this Agreement will be reimbursed at cost.

(3) The Commencement and Completion of Agreement, Article II,
is revised to reflect a completion date of February 1, 1983.

CONTRACTOR:

METRO:

By: _____

By: _____

Date: _____

Date: _____

WC:bb



METRO

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

MEMORANDUM

Date: May 17, 1982
To: Coordinating Committee
From: Norm Wietting
Regarding: Selection of Black & Veatch to Provide Resident Inspection Services for CTRC Construction

On March 9, 1982, we presented a recommendation to the Regional Services Committee (RSC), which asked their approval of an Amendment to Black & Veatch's CTRC Design Contract. That Amendment was to provide resident inspection services, contract administration and engineering review services during the construction phase of this project. The Committee approved the contract but asked that more information be prepared before the introduction at the March Coordinating Committee meeting.

The contract as well as the additional information was presented to the Coordinating Committee on March 15. It was the consensus of that Committee that the Engineering Review Services would be a logical extension of Black & Veatch's contract but that if there was sufficient flexibility in the schedule then the Resident Services and Contract Administration Services should be obtained through a Request for Proposal. On March 29, 1982, we issued an RFP.

On April 26, 1982, we received 13 proposals which ranged in price from \$82,000 to \$134,000. A selection committee was established to review the proposals. The committee members included Council Corky Kirpatrick, Kay Rich, Wayne Coppel and myself. A standard qualification rate sheet was used with the committee setting the weighing factors. The committee independently reviewed the written proposals and scored each one. As a result of the ratings, the committee selected four firms to interview.

The interviews were conducted on May 19th and three firms, Pinnell Engineering, SpanTec and Black & Veatch were asked to supply further clarification of their proposals. As a result of the additional information and checking references, Black & Veatch was selected unanimously by the committee.

Memorandum
Coordinating Committee
May 17, 1982
Page 2

The major reasons were:

- Competitive Price
- Knowledge of the Project
- Coordination with all Project Participants
- MBE

The combination of all services as presented to the Regional Services Committee was \$189,360. The combination of Resident Services, Contract Administrative and Engineering Review as currently proposed is \$155,815. This savings represents both a reduced number of hours and a reduced price for the resident inspector. The proposal as proposed includes approximately 40% local business participation.

NW:pp

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

TO: Council Coordinating Committee
FROM: Executive Officer
SUBJECT: Construction Management Services for Clackamas Transfer & Recycling Center (CTRC)

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Approval of Award of Contract to Black and Veatch Consulting Engineers for construction inspection services of the CTRC in the amount of \$87,800.00.
- B. POLICY IMPACT: This action is consistent with Metro policy. On January 13, 1981, the Regional Services Committee recommended approval of the Summary and Recommendations of the Solid Waste Transfer Plan. One of the recommendations was to implement Phase I of the Resource Recovery project which included filling the site construction of the CTRC.
- C. BUDGET IMPACT: This project is funded by a \$6.4 million grant/loan from the State of Oregon Pollution Control Bond Fund. Under the terms of this Agreement, 70 percent of the funds are a loan secured by Metro User Fees. The remaining 30 percent is a grant. This project was approved in the FY 82 Solid Waste Capital Improvement Fund budget. The cost for construction inspection services is \$87,800.

II. ANALYSIS:

- A. BACKGROUND: On March 29, 1982, Metro issued a Request for Proposals to provide inspection services to construct the CTRC. Thirteen proposals were submitted on April 26. An evaluation committee reviewed the proposals and interviewed four firms.

Proposals fulfilling MBE requirements ranged from \$87,515 to \$125,000.

- B. ALTERNATIVES CONSIDERED: Of the 13 responsive proposals submitted, four were selected by the evaluation committee to be interviewed. The committee recommended the selection of Black and Veatch.
- C. CONCLUSION: Recommend approval of the Award of Contract to Black and Veatch.

WC/gl
5925B/107
05/17/82

AGREEMENT
TO FURNISH CONSTRUCTION MANAGEMENT SERVICES
TO THE
METROPOLITAN SERVICE DISTRICT

THIS AGREEMENT, made and entered into this day of
 , 198 , by and between the METROPOLITAN SERVICE DISTRICT, a
municipal corporation, hereinafter referred to as "METRO," whose
address is 527 S. W. Hall Street, Portland, Oregon 97201, and
 a professional engineering company, hereinafter
referred to as "ENGINEER," whose address is

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

This Agreement is exclusively for Construction Management
 Services. ENGINEER shall perform the services and
deliver to METRO the work products described in the Scope of Work
attached hereto as Attachment A, all in accordance with the
requirements and provisions of the following documents which are
hereby made a part of this Agreement:

- A. ENGINEER's Proposal for Construction Management
Services for the
- B. Contract Documents -

All services and work products shall be provided in a
competent and professional manner in accordance with the Scope of
Work.

ARTICLE II

COMMENCEMENT & COMPLETION OF AGREEMENT

ENGINEER shall complete all services which are specifically to be furnished under this Agreement within the time period of the Contract (calendar days) including any time extension due to circumstances beyond the Contractor's control as specified in Article of the General Conditions of the Contract Documents. The Engineer shall commence work after written notice to proceed, subject to delays and other factors beyond the ENGINEER'S control.

ENGINEER shall coordinate efforts with other consultants of METRO.

ENGINEER will proceed with the work in accordance with Scope of Work.

ARTICLE III

AGREEMENT SUM

METRO shall compensate the ENGINEER for services performed and work products delivered as described in Article I in the manner and at the time designated in Article IV. The Agreement sum for such services and work products will be on a time and materials basis and shall not exceed

without prior written approval from METRO.

ARTICLE IV

TERMS OF PAYMENT

As consideration for providing services enumerated in

Article I, METRO shall pay the ENGINEER:

A. The Agreement sum as provided below.

B. For additional services authorized by METRO but not specifically provided for hereunder, METRO shall pay the ENGINEER an amount to be negotiated by the parties at the time the additional services are authorized.

C. On or after the 30th day of each month, ENGINEER may invoice METRO for the percentage of the Agreement services which have been completed during the preceding month. Each invoice shall be supported by a general description of the work performed during the invoice period and such other evidence of ENGINEER'S right to payment as METRO may direct. The invoice shall identify prior billings and total payment to date and percentage of work completed by task. Each invoice must be approved in writing by METRO prior to payment.

D. METRO shall pay ENGINEER the amount of all approved invoices within thirty (30) days after receipt of same, except that METRO may retain five (5) percent of all invoices except the final invoice.

E. ENGINEER shall notify METRO in writing when all services are completed and all terms of this Agreement are satisfied by ENGINEER. If METRO agrees, it shall acknowledge in writing within five (5) working days that the services are accepted. If METRO disagrees, it shall so notify ENGINEER in writing within five (5) working days and advise of deficiencies. Thereupon, ENGINEER shall take or cause to take corrective measures, upon the conclusion of which, if satisfactory, METRO shall then issue its acceptance of the services.

F. Upon receipt of METRO's acceptance of services, ENGINEER may submit its final invoice for all retainage and for any other amounts which may then be due and payable.

In no event shall the total payment to the ENGINEER exceed the total prescribed by Article III, without prior written approval for such additional sums.

ARTICLE V

METRO'S RESPONSIBILITIES

A. METRO shall provide information regarding its requirements for the Scope of Work.

B. METRO designates _____ Director of Solid Waste, as its representative authorized to act in its behalf. The representative shall examine submissions made by the ENGINEER and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the ENGINEER'S work.

C. METRO shall furnish information required of it as expeditiously as necessary for the orderly progress of the work and the ENGINEER shall be entitled to rely upon the accuracy and completeness thereof.

ARTICLE VI

ENGINEER'S ACCOUNTING RECORDS

Records of the ENGINEER'S services performed pertaining to the Scope of Work shall be kept in a generally recognized accounting basis and shall be available to METRO or its authorized representatives at mutually convenient times.

ARTICLE VII

LIABILITY & INDEMNITY

A. ENGINEER is an independent contractor and assumes

sole responsibility for the contents of its work and performance of its services and assumes full responsibility for all liability for bodily injuries or physical damage to person or property arising out of or related to this Agreement.

B. ENGINEER shall indemnify and hold METRO, its agents and employees, harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its negligent performance of this Agreement, with any patent infringement arising out of the use of ENGINEER's designs or other materials by METRO and from any claims or disputes involving subcontractors or contractors.

C. ENGINEER shall be liable for any and all damages to the site that may result from the services performed under this Agreement.

ARTICLE VIII

DRAWINGS & DATA

All drawings, specifications, designs, and data collected or prepared by ENGINEER hereunder shall become the property of METRO and may be used by METRO for any purposes whatsoever. ENGINEER shall have the right to use copies of all such documents prepared by it hereunder in the conduct of its business without accounting to METRO.

Insofar as the work under this Agreement may require, METRO shall furnish the ENGINEER maps, field survey data, reports and other pertinent data presently in METRO's possession.

ARTICLE IX

TERMINATION

METRO may terminate the Agreement: 1) if the necessary construction permits are not obtained within sixty (60) days after Site Development bid submission; or 2) for any other reason upon giving ENGINEER five (5) days written notice. In the event of termination, ENGINEER shall be entitled to payment for services performed to the date of termination. METRO shall not be liable for indirect or consequential damages. Termination by METRO will not waive any claims or remedies it may have against ENGINEER.

ARTICLE X

PUBLIC CONTRACTS

ENGINEER shall comply with all applicable provisions of ORS Chapters 187 (Legal Holidays) and 279 (Public Contracts Generally) and all other additions thereto and all other conditions and terms necessary to be inserted into public contracts in the State of Oregon, as if such provisions were a part of this Agreement.

ARTICLE XI

ATTORNEY'S FEES

In the event of any litigation or arbitration concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to an appellate court.

ARTICLE XII

SUCCESSORS & ASSIGNS

METRO and the ENGINEER each binds itself, its partners, successors, assigns and legal representatives to the other party to

this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. This Agreement may not under any condition be assigned or transferred by either party.

ARTICLE XIII

ARBITRATION

A. All claims, disputes and other matters in question arising out of, or relating to this Agreement or the breach thereof shall be decided by arbitration before an arbitrator to be mutually selected by both parties. The determination of the arbitrator shall be final and binding and there shall be no appeal from such determination.

B. Either party to this Agreement can demand arbitration by filing a Notice of Demand in writing with the other party to this Agreement. The Demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

C. Arbitration shall commence not more than thirty (30) days after Notice of Demand is filed. The Rules of Evidence shall not apply; provided, however, it is the intent of this Agreement that each party be given a fair and reasonable opportunity to present testimony, evidence, and documents to the arbitrator. The parties will have the right to counsel and cross examine witnesses.

D. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court with jurisdiction thereof.

ARTICLE XIV

EXTENT OF AGREEMENT

This Agreement represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

ARTICLE XV

SUBCONTRACTORS

ENGINEER shall employ such subcontractors as are necessary to perform the services required hereunder in a timely and professional manner and as approved by METRO. ENGINEER represents that ENGINEER will subcontract a portion of the work required hereunder to

as set forth in

ENGINEER's proposal to METRO.

ENGINEER agrees that he is as fully responsible to METRO for the acts and omissions of his subcontractors as he is for the acts and omissions of persons directly employed by him. Nothing contained herein shall create any contractual relationship between any subcontractor and METRO.

ENGINEER agrees to put forth his best effort to meet METRO's goal of hiring certified Minority Business Enterprises (MBE) as subcontractors.

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: Exemption of Zoo Gift Shop Purchases from Competitive Bidding

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Adoption of attached Ordinance exempting purchases of Zoo Gift Shop inventory and resale items from competitive bidding.
- B. POLICY IMPACT: The ordinance would mean that items purchased by the Zoo for resale at the gift shop could be purchased without competitive bidding. Generic items for which several suppliers exist would require competitive quotes.
- C. BUDGET IMPACT: Since such items are typically resold for more than their cost, any impact would be positive. The ordinance may require less administrative effort and cost in acquiring gift shop inventory.

II. ANALYSIS:

- A. BACKGROUND: The basis for this proposal is explained in the attached memo. There is substantial statewide precedent for the exemption of goods purchased by public agencies for resale.

The Council should be aware that it has previously exempted gift shop purchases from review by the Council and Contract Review Committee. Also, Metro contracts under \$10,000 are already exempted from competitive bidding. This ordinance would exempt gift shop purchases over \$10,000 from competitive bidding and certain purchases from competitive quotes.

- B. ALTERNATIVES CONSIDERED: None. Competitive bidding of resale items serves no useful purpose.
- C. CONCLUSION: Staff recommends adoption of the exemption proposed in the ordinance.

AJ/gl
5809B/107
4/27/82

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE EXEMPTING PURCHASES)
OF ZOO GIFT SHOP INVENTORY FROM)
COMPETITIVE BIDDING)
ORDINANCE NO. 82-134
Submitted by)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. This ordinance is adopted by the Council in its capacity as the Metro Contract Review Board.

Section 2. The Council finds that the purchase of inventory items and personal property for resale at and by the Washington Park Zoo gift shop should not be subject to competitive bidding as required by state law and regulation. Because such items and property are for resale rather than for use by the Zoo, ordinary competitive market activity is considered sufficient to accomplish the purposes of the public contracting law.

Section 3. The Council accepts the justification for exemption from competitive bidding provided in Exhibit 1 hereto and finds that the alternative purchasing procedures described therein are sufficient to discourage favoritism and promote competition and cost savings.

Section 4. Based upon the information provided in Exhibit 1 hereto, the Council hereby exempts purchases of inventory items and personal property for resale at the Washington Park Zoo gift shop

from competitive bidding and directs that such purchases be made in accordance with the procedures contained in Exhibit 1 hereto.

ADOPTED this _____ day of _____, 1982.

Presiding Officer

ATTEST:

Clerk of the Council

AJ/gl
5382B/107



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

MEMORANDUM

EXHIBIT 1

Date: May 5, 1982
To: Metro Council
From: Executive Officer
Regarding: Exemption of Gift Shop Purchasing from
Competitive Bidding Requirements

The gift shop at the Washington Park Zoo is a retail outlet for gift-type merchandise. It is anticipated such merchandise will cost approximately \$115,000 during FY 82.

Most items are not generic, therefore, style and design are important aspects to be considered. Quality of goods must balance price to achieve a value to the customer. The least expensive item (wholesale) is not necessarily the best selling retail.

Since the items are for resale rather than use by the public body, ordinary competitive market activity will accomplish the purposes of the public contracting procedures.

If exempted from bidding procedures, purchases of gift shop items will be consistent with the following procedures:

1. Bulk purchases of generic items for which there may be several suppliers will be subject to receipt of written or oral competitive quotes. The lowest quote obtained will be accepted unless valid reasons for rejecting it can be shown. Such reasons shall be in writing.
2. Purchases of non-generic items shall not require quotes.

We, therefore, request that purchases for the gift shop be exempted from competitive bidding procedures.

AJ/gl
5831B/D5

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: Reconsideration of Contested Case Order No. 81-6

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Reconsideration of the Council's action on Contested Case No. 81-6, In the Matter of a Petition for an Urban Growth Boundary Locational Adjustment by the City of Portland to add Jenne Lynd Acres and remove Schoppe Acres.
- B. POLICY IMPACT: Reconsideration was voted by Council at its May 6, 1982 meeting.
- C. BUDGET IMPACT: None.

II. ANALYSIS:

- A. BACKGROUND: On May 6, 1982, the Council voted to reconsider its denial of Contested Case 81-6, a petition adjusting the UGB by adding land at Jenne Lynd Acres and removing land at Shoppe Acres.

Having voted to reconsider its denial, the Council will hear arguments from the proponents and opponents of the action. Each side has been allocated 15 minutes, to be divided by mutual agreement among those wishing to offer argument.

After receiving testimony, the Council may:

- Affirm its Order
- Reverse its Order
- Amend its Order

- B. ALTERNATIVES CONSIDERED: None. Reconsideration was decided by the Council, by vote, on May 6, 1982.
- C. CONCLUSION: Council should hear argument on the Petition as outlined above. There is no staff recommendation on the action to be taken.



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

MEMORANDUM

Date: May 27, 1982
To: Council Coordinating Committee
From: Executive Officer
Regarding: Selection of a Contractor to Build the
Clackamas Transfer & Recycling Center (CTRC)

The purpose of this memo is to recommend to the Committee that the Council award the Section 1 contract for construction of the CTRC to Parker-Northwest. In making the award, staff further recommends that the Council waive the requirements that MBE information be submitted at the time of the bid and that Parker-Northwest be given a specific period of time (five days) to meet the MBE requirements. If Parker does not supply the necessary information within the period of time allowed, then we recommend moving to the second lowest bidder. The background on this issue is discussed below.

On March 5, 1982, the Metro Solid Waste Department issued an Invitation to Bid (see Attachment A) for the construction of the CTRC in Oregon City. The construction was divided into two sections:

Section I includes construction of a complete transfer station including modifications to Highway 213.

Section II includes the construction of approximately 4,900 feet of 10-inch water line and approximately 3,400 feet of 4-inch force main sewer pipe.

All bidders were required to submit their bids on forms that were prepared for Metro by Black and Veatch Consulting Engineers.

On April 2, 1982, a pre-bid conference was held at the Metro offices to discuss the project with prospective bidders and to answer questions raised by potential bidders. On April 20, 1982, at 2:00 p.m., we received and opened 14 bids. They included 10 bids for Section I, 4 bids for Section II and 4 bids for both sections combined. At the time the bids are opened, several items that are required to be submitted with the bid proposal are verified and read aloud. These include the bid price, bid bond, required signatures, experience questionnaire and Minority Business Enterprise (MBE) information.

Memorandum
May 27, 1982
Page 2

Following the bid opening, the three apparent low bids were examined in much greater detail by Metro solid waste staff, legal counsel and Black and Veatch. The details of those evaluations are included as Attachment B. It was determined that none of the proposals contained all of the information required to be submitted with the bid. For example, Parker-Northwest Construction Company, the apparent low bidder, omitted the MBE information required under Section B-12, Instructions to Bidders (Attachment C).

Christal, Grady and Harper, Inc., the apparent second low bidder, submitted extra prices on their bid form as well as not submitting the MBE information required under Section B-12, Instructions to Bidders.

OTKM Construction Company, Inc., the apparent third low bidder, submitted extra prices on their bid form as well as omitting sections of the Experience and Equipment Certification form as required under Section B-1, Instructions to Bidders. Additionally, OTKM submitted incomplete MBE information as required under Section B-12, Instructions to Bidders.

It is the staff's opinion, and that of Black and Veatch, that because 13 of the 14 bidders failed to submit the MBE information (for which there was no form in the bid package) that there was sufficient room for misinterpretation as to the requirements of the Metro MBE policy.

Therefore, we feel that there are two options which are available in awarding this contract. One option is to reject all bids and rebid the entire project. The second option is to award the contract to the lowest bidder. In considering the options, we looked at all of the bids, the time frame for the closure of Rossman's Landfill, the extra expense to all parties involved in rebidding and the "intent" of the Metro MBE policy.

In the interest of meeting the Metro Council's intent to employ MBE's and to assure that the ratepayers benefit by receiving the lowest responsible bid, we recommend that Parker Northeast be awarded the contract with the requirement that they submit their MBE information within five days after the Metro Council's approval. Black and Veatch has recommended Parker-Northeast as the lowest responsible bid assuming that the MBE goals are satisfied.

The firm of OTKM Construction Company, Inc., which was the only company which submitted any MBE information, has taken the position that we are offering Parker Northwest an unfair advantage in being able to select their MBE contractors after

Memorandum
May 27, 1982
Page 3

the bid opening. They suggest a third option of awarding the contract to their firm based on a strict interpretation of our MBE policy statement and disregard the discrepancies in their bid proposal.

We feel that if the lowest bidder is required to meet the MBE goals that, in fact, no competitive edge exists.

NW/gl
6049B/D5

Attachments: A. Invitation to Bid
 B. Bid Evaluation Details
 C. Instructions to Bidders

INVITATION TO BID

Sealed Bids will be received by Metropolitan Service District (OWNER) at the office of the Metropolitan Service District, 527 S.W. Hall Street, Portland, Oregon 97201, until 2:00 p.m., local time, April 19, 1982, for the construction of Clackamas Transfer/Recycling Center.

At said place and time, and promptly thereafter, all Bids that have been duly received will be publicly opened and read aloud.

The proposed Work provides for the construction of a solid waste transfer/recycling center including a transfer building, scale plaza, sitework, modifications to Oregon State Highway, and water and sewerage transmission lines. The transfer building is approximately 30,000 square feet and includes a finished office/storage area. The scale plaza includes two scales and a scale house of approximately 550 square feet. The water and sewer utility installation includes approximately 4,900 linear feet of 10 inch water main and approximately 3,400 linear feet of 4 inch sewer force main.

The site of the Work is in Oregon City, Oregon on Washington Street (Oregon Highway 213) near the interchange of Interstate 205.

The Work is divided into two sections as follows:

Section I - Transfer Center Site. Section I covers construction complete of the transfer center including modifications to Oregon State Highway and all construction except work furnished under Section II.

Section II - Water and Sewer Pipelines. Section II covers construction of the water and sewer pipelines and all appurtenances. The water pipeline construction shall include all piping, valves, stubouts, air and vacuum release manhole, and appurtenances as indicated on the drawings.

The sewer force main construction includes the piping, valves, manholes and structures, and appurtenances. Work shall start with the connection to the existing sewer and continue to and include the pig launching station to a location as indicated on the drawings.

All Bids must be in accordance with the Contract Documents on file with Metropolitan Service District at the address above and at 716 Main Street, Oregon City, Oregon 97045 and at the office of Black & Veatch, Consulting Engineers, 1500 Meadow Lake Parkway, mailing address P. O. Box 8405, Kansas City, Missouri 64114.

Copies of the Contract Documents for use in preparing Bids may be obtained from the Metropolitan Service District at the address stipulated above upon deposit of \$144.00 for each set of documents. Deposits are refundable as provided in the Contract Documents. Please add \$16.00 for postage and handling.

Bids will be received on a lump sum basis.

Substantial completion of the Work is required within 180 days and final completion of the Work is required within 210 days following the date stated in the Notice to Proceed.

Bid security in the amount of 10 per cent of the total Bid must accompany each Bid.

The successful Bidder will be required to furnish a Performance Bond guaranteeing faithful performance and the payment of all bills and obligations arising from the performance of the contract.

Before a contract will be awarded for the work contemplated herein, the Owner will conduct such investigation as is necessary to determine the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this contract. Upon request, the Bidder shall submit such information as deemed necessary by the Owner to evaluate the Bidder's qualifications.

The successful Contractor and all Subcontractors will be required to conform to the local labor standards set forth in the Contract Documents.

No bid will be considered by the Owner unless the Bidder certifies in his Bid that the provisions of Section 279.350, Oregon Revised Statutes, pertaining to prevailing wages shall be complied with by the Bidder.

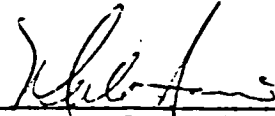
Bidders on this work will be required to comply with the provisions of the local minority business enterprise guidelines concerning equal employment opportunity, including all amendments and requirements issued thereunder.

No Bid may be withdrawn within a period of 60 days after the date fixed for opening Bids.

Metropolitan Service District reserves the right to reject all Bids, to waive informalities, and to reject nonconforming, nonresponsive, or conditional Bids. For information regarding this project contact Wayne Coppel, Metro, (503) 221-1646.

METROPOLITAN SERVICE DISTRICT

By


Mr. Merle Irvine, Director
Solid Waste Department

ATTACHMENT B
CTRRC BID EVALUATIONS

PARKER NORTHWEST CONSTRUCTION COMPANY (PNW)

Bid: Section I only - \$2,789,677.00

A. Bid Form

1. All appropriate spaces were filled in.
2. All addenda was acknowledged.
3. Proposal was signed and sealed by William Sage, President.
4. A complete bid document was submitted as required.
5. Two notations were made to proposal form:
 - a. All risk insurance includes no coverage for engineer and/or architect for errors and omissions (This coverage is not required under contract terms).
 - b. Proposal includes imported topsoil for planting areas (This is not required under contract terms).
 - c. All information that was requested in the Equipment Questionnaire was submitted.
 - d. All questions required in the Experience and Equipment Certification form were answered and the form was signed and attested.
 - e. A bid bond of 10 percent of the bid was submitted, signed and attested as required in the bid documents.
 - f. No MBE information was submitted with bid.

Section B-12 The Instructions to Bidder states:

"B-12. EQUAL OPPORTUNITY EMPLOYMENT. Contractor shall comply with Metropolitan Service District's Minority Business Enterprise Guidelines Booklet, dated October 1980 and revised February 1981. This document is hereby made a part of the Contract Documents. A free copy of the publication is available from the offices of the Metropolitan Service District at 527 S. W. Hall Street, Portland, Oregon.

Data and information to be submitted with the Bid shall include the following:

- a. Name of the firm.
- b. Principals involved.
- c. Address and telephone number.
- d. Scope of Work to be performed by the MBE.
- e. Dollar value of the subcontract.
- f. MBE percentage of the contract and dollar value."

CRISTAL, GRADY AND HARPER (C.G.H.)

Bid: Section I only - \$2,899,665.00

A. Bid Form

1. All appropriate spaces were filled in.
2. All addenda was acknowledged.
3. Proposal was signed by Durward Grady, President, and attested by William Harper, Secretary/Treasurer.
4. A complete bid document was submitted as required.
5. Two notations made to the proposal form:
 - a. Steel piling was bid at \$15.15 per foot for additional length and \$3.25 per foot for any decreased length. (Bid required one price for both add and deducts to assure a reasonable price for additional pile length.)
 - b. Predrilling for piles was bid at \$2.00 per foot for additional predrilling and \$.90 per foot for decreased length. (Bid required one price for both add and deducts to assure a reasonable price for additional predrilling.)
 - c. All information that was requested in the Equipment Questionnaire was submitted.
 - d. All questions required in the Experience and Equipment Certification form were answered and the form was signed and attested.
 - e. A bid bond of 10 percent of the bid was submitted, signed and attested as required in the bid documents.
 - f. No MBE information was submitted with the bid.

OTKM CONSTRUCTION COMPANY, INC.

Bid: Section I only - \$2,923,360.00

A. Bid Form

1. All appropriate spaces were filled in.
2. All addenda was acknowledged.
3. Proposal as signed and sealed by Patrick O'Brien, Vice President.
4. A complete bid document was submitted as required.
5. Three notations were added to the proposal form:
 - a. Steel piling was bid at \$16.34 per foot for additional length and \$3.50 per foot for a decreased length. (Bid required one price for both add and deducts to assure a reasonable price for additional pile length.)
 - b. Predrilling for piles was bid at \$2.09 per foot for additional predrilling and \$1.00 per foot for decreased length. (Bid required one price for both add and deducts to assure a reasonable price for additional predriling.)
 - c. Proposal includes a statement "If Varco Pruden Building is approved, deduct \$37,100.00." (No effect on the bid unless building specifications are amended to allow Varco Pruden.)
 - d. The Equipment Questionnaire was submitted with the bid as required, however, all spaces regarding building loads were omitted as well as color chart information. A statement on this form reads:

"Failure to furnish all information requested in the Questionnaire may be cause for rejection of the Bid."
 - e. The Experience and Equipment Certification form was submitted, signed and attested but several questions were not answered.

Question Asked: List some principle projects completed by your organization.

Answer: A complete list will be submitted upon request.

Question Asked: Have you ever performed work for the U. S. government?

Answer: Yes.

Question Asked: Any state government?

Answer: Yes.

Question Asked: Any county or city government?

Answer: Yes.

Question Asked: If yes to any of these, please list which agency, references and phone numbers.

Answer: A complete list will be submitted upon request.

Paragraph 2, Section B-1, Instructions to Bidders states:

"Bidders shall furnish under oath, on forms provided in these documents, proof of qualifications to perform the Work specified. Each Bidder shall furnish a description of comparable work performed by him within the previous five years indicating the location, construction contract, scope, contract sum, type of construction, and address of owner and engineer, date completed and construction period in number of days. Failure to submit such information, as proof of qualification at the time of bidding, shall be sufficient cause to reject the Bid."

- f. A bid bond of 10 percent of the bid was submitted, signed and attested as required in the bid documents.
- g. The following MBE information was submitted with the bid:
 - 1) name of firm: Fuitens Mechanical;
 - 2) scope of work: Mechanical/Section I;
 - 3) amount: \$290,587; and
 - 4) MBE percentage of work 10 percent.

Additional information required but not submitted:

- 1) actual name of firm is Fruiten's Plumbing & Heating Company;
- 2) principals involved; and
- 3) address and telephone number.

INSTRUCTIONS TO BIDDERS.

B-1. QUALIFICATION OF BIDDERS. The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request.

Bidders shall furnish under oath, on forms provided in these documents, proof of qualifications to perform the Work specified. Each Bidder shall furnish a description of comparable work performed by him within the previous five years indicating the location, construction contract, scope, contract sum, type of construction, and address of owner and engineer, date completed and construction period in number of days. Failure to submit such information, as proof of qualification at the time of bidding, shall be sufficient cause to reject the Bid.

In determining the Bidder's qualifications, the following factors will be considered: Work previously completed by the Bidder and whether the Bidder (a) maintains a permanent place of business, (b) has adequate plant and equipment to do the Work properly and expeditiously, (c) has the financial resources to meet all obligations incident to the Work, and (d) has appropriate technical experience.

Each Bidder may be required to show that he has handled former work so that no just claims are pending against such work. No Bid will be accepted from a Bidder who is engaged on any work which would impair his ability to perform or finance this Work.

B-2. TAXES AND PERMITS. Attention is directed to the requirements of the General Conditions and Supplementary Conditions regarding payment of taxes and obtaining permits. All taxes that are lawfully assessed against Owner or Contractor in connection with the Work shall be paid by Contractor. The bid prices shall include all such taxes and the costs of all required permits.

B-3. OREGON LEGAL REQUIREMENTS.

B-3.01. Preferences. Pursuant to Section 279.021(1), Oregon Revised Statutes, Owner shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal.

B-3.02. Foreign Corporations. Pursuant to Section 279.021(2)(a) Oregon Revised Statutes, foreign corporations are required to report to the Department of Revenue the award of any public contract exceeding \$10,000. Evidence of compliance with this requirement shall be submitted to the Owner before Owner is obligated to make final payment. A foreign

contractor shall be considered, one who is not domiciled in or registered to do business in the State of Oregon.

B-3.03. Conditions of Public Contracts. Contractor shall comply with the provisions of Sections 279.312, 279.314, and 279.320, Oregon Revised Statutes, pertaining to payment of laborers and material men, contributions to Industrial Accident Fund, liens, with holding taxes, payment of claims by public officers, and payment for medical care and attention to employees.

B-4. FAMILIARIZATION WITH THE WORK. Before submitting his Bid, each prospective Bidder shall familiarize himself with the Work, the site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work. He shall carefully correlate his observations with requirements of the Contract Documents and otherwise satisfy himself of the expense and difficulties attending performance of the Work. The submission of a Bid will constitute a representation of compliance by the Bidder. There will be no subsequent financial adjustment for lack of such familiarization.

B-4.01. Site Conditions. Each Bidder shall visit the site of the Work and completely inform himself relative to construction hazards and procedure, the availability of lands, the character and quantity of surface and subsurface materials, and utilities to be encountered, the arrangement and condition of existing structures and facilities, the character of construction equipment and facilities needed for performance of the Work, and facilities for transportation, handling, and storage of materials and equipment. All such factors shall be properly investigated and considered in the preparation of the Bid.

B-4.02. Prebid Conference. A prebid conference will be held at Metro Offices, 527 SW Hall Street, Portland, Oregon at a time to be indicated by addendum. Representatives of Engineer and Owner will be present to discuss the Project and answer questions. Bidders are encouraged to attend and participate in the conference.

B-5. INTERPRETATIONS. All questions about the meaning or intent of the Contract Documents shall be submitted to Engineer in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the bidding documents. Questions received less than five days prior to the date for opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

B-6. BID SECURITY. The amount of bid security is stated in the Invitation to Bid. The required security must be in the form of a certified or

bank cashier's check or a bid bond. The bid bond must be executed by a surety meeting the requirements set forth in General Conditions.

The bid security shall be made payable without condition to the Portland Metropolitan Service District, hereinafter referred to as Owner. The bid security may be retained by and shall be forfeited to the Owner as liquidated damages if the Bid is accepted and a contract based thereon is awarded and the Bidder should fail to enter into a contract in the form prescribed, with legally responsible sureties, within ten days after such award is made by Owner.

B-7. RETURN OF BID SECURITY. The bid security of the successful Bidder will be retained until he has executed the Agreement and furnished the required Contract Security, whereupon checks furnished as bid security will be returned; if he fails to execute and deliver the Agreement and furnish the required Contract Security within ten days of the Notice of Award, Owner may annul the Notice of Award and the bid security of that Bidder will be forfeited. The bid security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the Agreement is executed by Owner but not to exceed 60 days after the Bid opening. Checks furnished as bid security by other Bidders will be returned within ten days of the Bid Opening.

B-8. CONTRACT TIME. The Contract Time is an essential part of the contract and it will be necessary for each Bidder to satisfy Owner of his ability to complete the Work within the time set forth in the Bid Form. Provisions for delays, liquidated damages, and extensions of time are set forth in the General and Supplementary Conditions.

B-9. BIDS.

B-9.01. Bid Form. The Bid Form is bound in the Contract Documents and shall not be removed therefrom. Bid Forms must be completed in ink.

Bids by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The state of incorporation shall be shown below the corporate name. Bids by partnerships must be executed in the partnership name and signed by a partner; title and the official address of the partnership must be shown below the signature. Bids by joint ventures shall be signed by each participant in the joint venture or by an authorized agent of each participant.

The names of all persons signing must also be legibly printed below the signature. A Bid by a person who affixes to his signature the word "president", "secretary", "agent", or other designation without dis-

closing his principal may be held to be the Bid of the individual signing. When requested by Owner, evidence of the authority of the person signing shall be furnished.

All blank spaces in the Bid Form shall be filled. A bid price shall be indicated for each section, and adjustment price item, listed therein, or the words "No Bid", "No Charge", "No Change", or other appropriate phrase shall be entered. Bids received without all such items completed will be considered nonresponsive.

The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid Form.

No alterations in Bids, or in the printed forms therefor, by erasures, interpolations, or otherwise will be acceptable unless each such alteration is signed or initialed by the Bidder; if initialed, Owner may require the Bidder to identify any alteration so initialed.

B-9.02. Bid Pricing. Each lump sum price shall be based on the Work as indicated on the drawings and as specified.

Bidders may submit a Bid for a single section, or the complete contract as set forth on the Bid Form.

The adjustment unit prices provided for piling in the Bid Form shall apply only in the event of a Change Order providing for such increase or decrease in the quantities indicated on the drawings. The Contract Price will be subject to adjustment according to final measured, used, or delivered quantities, and the adjustment unit prices in the Bid will apply to such final quantities.

B-9.03. Submission Of Bids. One copy of the bound documents must be submitted with the Bid.

Each Bid and accompanying data shall be enclosed in a sealed opaque envelope or wrapping, addressed to Mr. Merle Irvine, Director, Solid Waste Department, Metropolitan Service District, 527 S.W. Hall Street, Portland, Oregon 97201, and identified on the outside with the Bidder's name and with the words "Bid for Clackamas Transfer/ Recycling Center", and in addition shall indicate what sections are being bid with "Section I", "Section II", or "Sections I and II".

If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "BID ENCLOSED" on the face thereof.

Bids shall be deposited at the designated location prior to the time and date for receipt of Bids indicated in the Invitation to Bid, or the

(PORTLAND MSD)
(CTRC)
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modified time and date indicated by Addendum. Bids received after the time and date for receipt of Bids will be returned unopened.

Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

Oral, telephone, or telegraph Bids are invalid and will not receive consideration.

No Bidder may submit more than one Bid. Multiple Bids under different names will not be accepted from one firm or association.

B-9.04. Modification and Withdrawal of Bids. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

B-9.05. Bids to Remain Open. All Bids shall remain open for 60 days after the day of the Bid opening. Owner shall release Bids and return bid securities as specified in this section under "Return of Bid Security". This time period can be extended if mutually agreed to by Owner and Bidder.

B-10. AWARD OF CONTRACT. Owner shall award a contract to the Bidder whom, in Owner's judgment, is the lowest responsive, responsible Bidder. Owner reserves the right to reject all Bids, to award the contract by sections, to waive informalities, and to reject nonconforming nonresponsive, or conditional Bids.

In evaluating Bids, Owner shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and alternatives and unit prices if requested in the Bid Form. Owner may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment), and may reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.

If the contract is awarded, Owner shall give the apparent successful Bidder a Notice of Award within 60 days after the date of the Bid opening.

B-11. COPIES OF CONTRACT DOCUMENTS. Copies of the drawings and specifications for use in preparing Bids may be obtained from Metropolitan Service District, 527 S.W. Hall Street, Portland, Oregon 97201, on the following basis:

	<u>Deposit</u>	<u>Refund</u>
Complete set of drawings and specifications	\$144.00	\$72.00
Complete set of drawings	\$74.00	\$37.00
Complete set of specifications	\$70.00	\$35.00
Individual sheets of drawings	\$2.50	None
Individual sheets of drawings 34 inch by 44 inch	\$2.50	None
Individual pages (8-1/2 x 11)	\$0.025	None

The full amount of the deposit for one set only of drawings and specifications will be refunded to each Bidder who has made a deposit and has filed a responsive Bid with Owner, upon the return, in good condition, of all documents not filed with his Bid.

The refund amount will be returned on all other deposits, including deposits made to secure documents for Subcontractors' or material suppliers' estimating purposes, upon the return of the documents in good condition within 10 days after the Bids are opened.

Each Contractor to whom a contract is awarded will be furnished, without cost to him, 15 copies of the specifications and 15 sets of the drawings, together with all Addenda thereto. Additional copies of specifications and drawings may be obtained from Owner on the following basis:

Full or partial sets of drawings	\$2.50 per sheet
Each book of specifications	\$35.00

B-12. EQUAL OPPORTUNITY EMPLOYMENT. Contractor shall comply with Metropolitan Service District's Minority Business Enterprise Guidelines Booklet, dated October 1980 and revised February 1981. This document is hereby made a part of the Contract Documents. A free copy of the publication is available from the offices of the Metropolitan Service District at 527 S.W. Hall Street, Portland, Oregon.

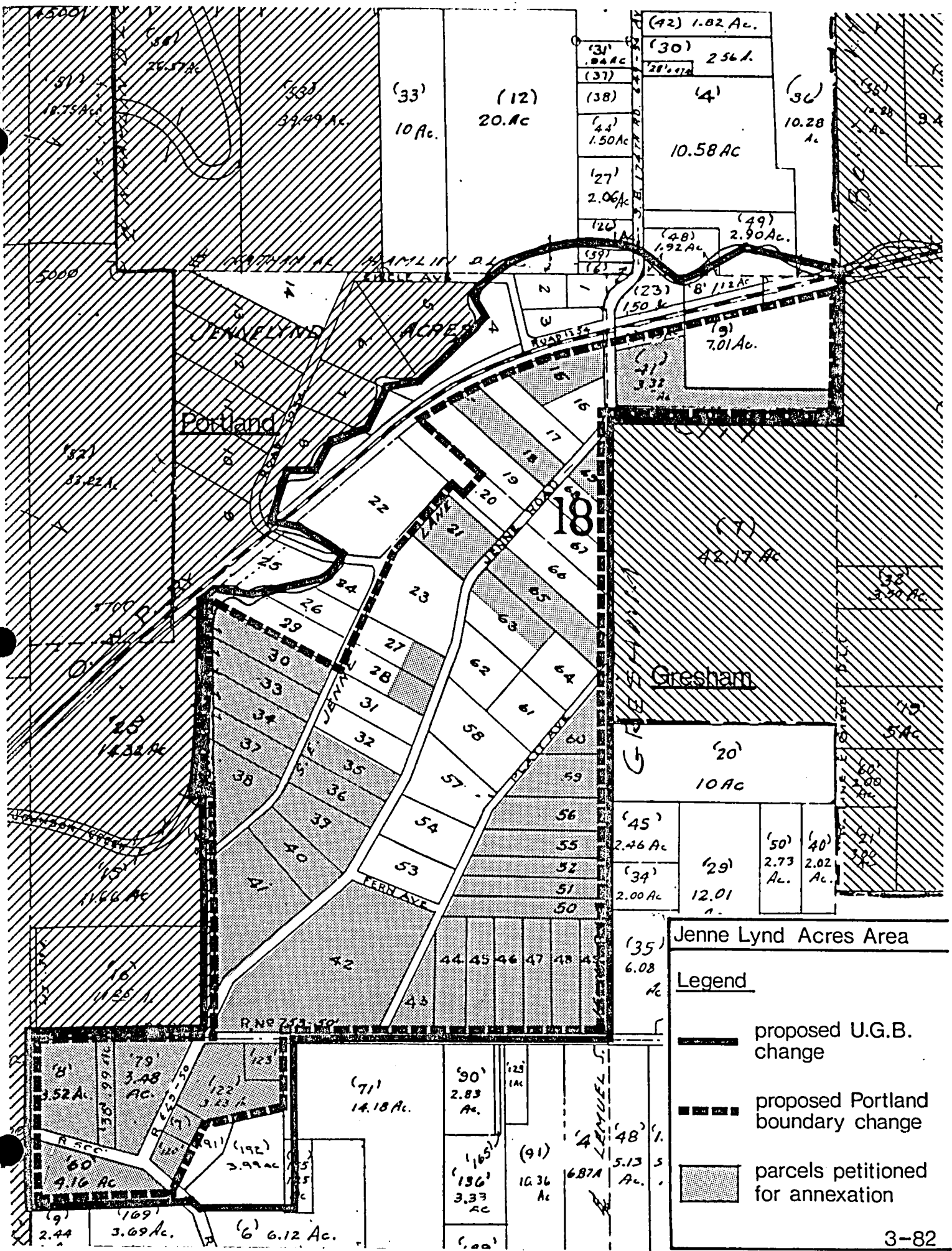
Data and information to be submitted with the Bid shall include the following:

(PORTLAND MSD)
(CTRC)
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- a. Name of the firm.
- b. Principals involved.
- c. Address and telephone number.
- d. Scope of work to be performed by the MBE.
- e. Dollar value of the subcontract.
- f. MBE percentage of the contract and dollar value.




B-13. MAJOR PUBLIC UTILITIES SERVING THE AREA OF WORK. The following is a list of the major public utilities serving the work area indicating the name and telephone number of the responsible authority of the various utilities which should be notified if conflicts or emergencies arise during the progress of the work:

<u>Utility</u>	<u>Responsible Authority</u>	<u>Contact</u>
Water lines and sanitary sewers	City of Oregon City	Mr. Bill Parrish City Engineer City Hall 320 Warner Milne Rd. Oregon City, OR 97045 503/655-8481
Gas	Northwest Natural Gas	Mr. Scott Palma 503/226-4211
Electrical	Portland General Electric	See the electrical section
Telephone	Pacific Northwest Bell	Mr. Lindsey Miller or Mr. Bill Buffington 835 N.E. 20 Ave. Portland, OR 97232 503/242-3070
Railroad	Southern Pacific Railroad	Mr. Duayne Fourney 503/228-8181



Jenne Lynd Acres Area

Legend

-  proposed U.G.B. change
-  proposed Portland boundary change
-  parcels petitioned for annexation

METROPOLITAN SERVICE DISTRICT

May 27, 1982

Madam Chair, members of the Council, my name is Jack Kalinoski. I represent the Oregon-Columbia Chapter of the Associated General Contractors.

Some time ago, the Metropolitan Service District opened bids for the construction of a solid waste transfer station to be located in Oregon City. Fourteen bids were received.

The Council now has before it a recommendation to award the contract to the apparent low bidder. Our purpose here today is to protest that recommendation and suggest that the contract for the work be awarded to the lowest responsible bidder.

Included in the project specifications is a requirement that bidders document how they plan to meet certain requirements for involvement of Minority Business Enterprise in the work to be done. The instructions to the bidders required this information be supplied with the bid at the time the bid is submitted.

The apparent low bidder did not supply that information. Neither did the second low bidder. The third low bidder did comply with the instructions and to the best of our knowledge, complied with all other bidding requirements the District was entitled to impose upon the bidders.

Interestingly, the third low bidder submitted a bid that was competitive and below your own estimate of the cost of the project.

The Associated General Contractors is very concerned about fairness and equity in the bidding process. We have seen a number of instances in recent months where irregularities in bids have been waived when, in our opinion, that action does violence to the competitive bidding process.

We are of the opinion that all bidders should have an equal chance to compete, that state laws should work equally with respect to all involved and that preferential treatment should not be shown to any bidder.

Our reasons for this are very simply stated. If a bidder should purposely fault his bidding documents and then, after the bid opening, find that he does not wish to accept the contract if it is offered to him, he has a good chance of escaping the obligation to perform and suffer no resulting penalty. Our attitude in this regard has even been expressed to the Public Contract Review Board. They agreed and are in the process of developing an administrative rule to identify those conditions which would render a bid for a public contract unacceptable. We may go even further by asking the next session of the Legislature to enact appropriate laws in this regard.

In the particular instance before you today, you are being asked to judge whether failure to submit information regarding minority business enterprise goals with the bid is an informality and should be waived. We contend that such failure renders those bids as non-responsive and they should not be considered. ?

We are not alleging that the apparent low bidder purposely faulted his bid. Indeed, we would add that we know that company to be credible in all respects. We will say the same of the second low bidder. But the fact still remains that they failed to comply with your bidding requirements by not submitting required information in a timely fashion. Additionally, it is our understanding that after the bid opening, the apparent low bidder was contacted by the staff of MSD and encouraged to submit evidence of their ability to meet the MBE goals and that information is now in your possession.

This is clearly an example of the type of concerns we have. If the low bidder, after re-examining his own bid in comparison with those of other bidders, decides he does not want the contract, he simply does not supply required information and his bid is no longer considered.

It is also appropriate that at this point we bring to your attention a state law with which you may not be familiar. This statute, ORS 279.029, applies to public contracts and purchasing, and contains the following language:

"After the bids are opened... and after a determination is made that a contract is to be awarded, the public contracting agency shall award the contract to the lowest responsible bidder. 'Lowest responsible bidder' means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified by the public contracting agency under ORS 279.037.

We feel that this state statute, applied in this particular case, gives you only the opportunity to award the contract for the work to the third low bidder.


For the reasons we have stated here, the Oregon-Columbia Chapter of the AGC respectfully requests consideration of our recommendation.



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

*5/27
Council
Meeting*

MEMORANDUM

Date: May 24, 1982
To: Metro Council
From: Joe Cortright 
Regarding: Reconsideration of Contested Case 81-6

For your convenience, I have assembled copies of the record in contested case 81-6. All of the information in this package was previously made available to you in the agenda packages for March 25 (Council hearing on the Regional Development Committee action) and on May 6 (Council approval of the City of Portland's motion for reconsideration).

The attached information is as follows:

Notice of Reconsideration	Orange
Council Order of March 25, 1982	
Portland's Exceptions of April 19	
Hearings Officers Report	Blue
Exceptions	
Regional Development Committee Report	Yellow
Exceptions	

JC:lz



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

Rick Gustafson
EXECUTIVE OFFICER

NOTICE

Metro Council
Cindy Banzer
PRESIDING OFFICER
DISTRICT 9

TO: Parties and Interested Persons in Contested Case 81-6
FROM: Michael A. Holstun, Assistant General Counsel
SUBJECT: Reconsideration of the Final Order in Contested Case 81-6

Bob Oleson
DEPUTY PRESIDING
OFFICER
DISTRICT 1

Charlie Williamson
DISTRICT 2

Craig Berkman
DISTRICT 3

Corky Kirkpatrick
DISTRICT 4

Jack Deines
DISTRICT 5

Jane Rhodes
DISTRICT 6

Betty Schedeen
DISTRICT 7

Ernie Bonner
DISTRICT 8

Bruce Etlinger
DISTRICT 10

Marge Kafoury
DISTRICT 11

Mike Burton
DISTRICT 12

On May 6 the Metro Council voted to grant the City of Portland's request that the Final Order in Contested Case 81-6 be reconsidered by the full Council. This matter will be reconsidered at the Council's May 27, 1982 regular meeting which begins at 7:30 p.m. The Metro Presiding Officer and the Chairperson of the Regional Development Committee have determined that the following procedure and time limits will be observed:

1. Proponents' oral argument to Council, 15 minutes. (a portion of the 15 minutes may be reserved for final comments or rebuttal).
2. Opponents' oral argument to Council, 15 minutes.
3. Proponents' final comments and rebuttal, if any.

The parties and interested persons are hereby informed that the reconsideration will be on the record, and no additional evidence should be offered. It is the responsibility of the proponents and opponents to divide their allotted time among persons wishing to offer arguments. Oral arguments should be focused upon the merits of the request for consideration.

Questions on this matter should be directed to Joe Cortright, 527 S.W. Hall Street, Portland, Oregon 97201. Phone 221-1646.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

IN THE MATTER OF A PETITION)
FOR AN URBAN GROWTH BOUNDARY)
LOCATIONAL ADJUSTMENT BY)
THE CITY OF PORTLAND TO ADD)
JENNE LYND ACRES AND REMOVE)
SCHOPPE ACRES)

CONTESTED CASE NO. 81-6
ORDER

WHEREAS, The City of Portland has submitted a petition for a locational adjustment to the Urban Growth Boundary (UGB) that requests, in part, the addition of the area known as Jenne Lynd Acres and the removal of the area known as Schoppe Acres; and

WHEREAS, Such request was given a contested case hearing before a Metro Hearings Officer on November 23, 1981; and

WHEREAS, The Hearings Officer has submitted Findings, Conclusions and Recommendations; and

WHEREAS, The Council has reviewed and agrees with the Findings, Conclusions and Recommendations as submitted by the Hearings Officer; now, therefore,

IT IS HEREBY ORDERED:

1. That the Council accepts and adopts the Findings, Conclusions and Recommendations submitted by the Hearings Officer in Contested Case No. 81-6.
2. That the City's request to add Jenne Lynd Acres to the UGB and remove Schoppe Acres is hereby denied.
3. That the Council designates as the record in this case all documents and evidence submitted.

before or at the March 25, 1982 Council meeting
on this matter.

SO ORDERED this 25th day of March, 1982.

Cindy Dwyer

Presiding Officer

JH/srb
5517B/107
03/12/82



CITY OF
PORTLAND, OREGON

BUREAU OF PLANNING

Mildred A. Schwab, Commissioner
Terry D. Sandblast, Director
621 S.W. Alder
Portland, Oregon 97205
(503) 248-4253

Code Administration 248-4250

Land Use 248-4260

Transportation Planning 248-4254

April 19, 1982

Metropolitan Service District
527 S.W. Hall Street
Portland, Oregon 97201

Re: Contested Case No. 81-6

As provided in section 5.02.050 of Metro's Procedure for Contested Cases, the City of Portland petitions the Metropolitan Service District for reconsideration on the final order for Case No. 81-6 which denied the City's petition for a locational adjustment to the Urban Growth Boundary.

We wish to have the matter reconsidered before Metro's full Council. The vote for denial was close: 4 to 3. Five Council members did not participate in the decision. A matter of this importance and controversy merits consideration by a larger representation of the District.

The record does not show that the Council in reaching its decision to deny Portland's petition March 25, 1982, addressed Metro's standards for approval. Nor did the Council consider the net benefits to the area within the UGB of the proposed 170 acre addition and the 170 acre withdrawal as provided by Section 8(c) of Ordinance 81-105. This omission does not follow Metro's own precedent for trade proposals.

Council members who voted for denial accepted the findings, conclusions and recommendations submitted to the Development Committee by the Hearings Officer. These findings and conclusions are patently in error because they are not substantiated by evidence in the record. Furthermore, the Hearings Officer's report was accepted by the Council without reference or discussion.

Attached are the City's exceptions to the findings and conclusions of the Hearings Officer. This supports the City's petition for reconsideration. Also included are responses to selected issues raised by Councilors during deliberation on Portland's petition.

We request Metro to follow an expedited procedure in determining the merits of the City's petition for reconsideration of the order for denial. Some petitioners are experiencing financial hardship. These owners and the City have participated in the development of the process and assiduously followed Metro's procedures for about three years. Unnecessary delay is severely burdensome and places some property owners in jeopardy.

Respectfully submitted,

CITY OF PORTLAND

By: *Roxanne Nelson*
Roxanne Nelson

RN:rs
Attc.

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I. Addition of Jenne Lynd Acres: Exception to Findings and Conclusions of Hearings Officer.

A. Introduction

The Hearings Officer's refusal to approve the proposed trade was based on his determination that the addition of Jenne Lynd Acres did not satisfy the requirements of Section 8(a)(1-5) and, therefore, that the proposed trade did not meet the requirements of Section 8(c)(2-5). The findings and conclusions on Sections 8(a) and (c) are contradictory and not supported by substantial evidence in the record. They clearly show a bias. Accordingly, the Hearings Officer's decision should be rejected and the proposed exchange should be approved.

The City's exceptions to the Hearings Officer's findings and conclusions will discuss the relevant subsections of Sections 8(a) and 8(c) in the same order as they are discussed in the Hearings Officer's findings.

B. Section 8(a)(1) - Orderly and Economic Provision of Public Facilities and Services

This standard provides for an "(o)rderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining area within the UGB; any area to be added must be capable of being served in an orderly and economical fashion."

The Hearings Officer's findings and conclusions to which the City takes exception are discussed below by topic.

1. Roads

Contrary to any evidence, the Hearings Officer finds that "(a)pproval of this addition will increase. . . the level of upgrading required for those roads" (Findings, p. 3). Evidence by all parties showed only that traffic problems already exist and that the development of Jenne Lynd Acres will increase the traffic on the roads which serve the area. The City's testimony explained that, according to the Portland Transportation Section, traffic from development in Jenne Lynd would make only a marginal contribution to the projected heavy increase in traffic volumes in the area. (Tape I, Sides A and B).

When the Hearings Officer states that "no jurisdiction even has any plans for the improvement of these roads," he ignores the clear evidence that the City's Mt. Scott/Powell Butte Transportation Study now underway will identify improvements for Jenne Lynd Acres if it is brought into the City's boundary. It is more correct to conclude that without approval of the Urban Growth Boundary change, no jurisdiction will have plans for the necessary improvement of Jenne Road. Without approval, Jenne Road will remain a rural road serving urban traffic levels but without a jurisdiction prepared to address the traffic problems. Also, it should be noted that the

boundary lines for this proposal extend outside Jenne Lynd Acres in order to include the troublesome intersection at Jenne Road and Foster Road within the UGB for transportation planning. This was done for the specified purpose of enabling the City to more fully address traffic problems in the area.

Where the findings state that the "evidence clearly indicates that neither Multnomah County nor the City of Portland . . . has the funds to improve either SE 174th or Jenne Road," they are certainly inaccurate. The evidence actually was that Multnomah County at- tests to being without funds to improve the road and that the City does not have any funds programmed for road improvements at this time. Furthermore, funds cannot be programmed by the City for roads over which it has no jurisdiction. The important point is that the City provides the only opportunity for transportation planning and road improvements in the area - only the City is addressing the problem. To require a transportation funding program prior to UGB approval goes beyond the requirements in the standards put forth in Metro Ordinance No. 81-105.

Finally, because a road improvement program and funding plan has not yet been identified, the City described a variety of possible funding methods for road improvements. Several sources were identified, including that of formation of a Local Improvement District. (Tape I, Sides A & B; Tape III, Side B) Steve Dotterrer's July 18, 1980 memo to City Council was submitted to Metro. It describes the need for a funding study for the Powell Butte/Mt. Scott Transportation Study and outlines potential funding sources. Another funding model presented at the hearing was of the Cornell Road LID in Washington County where small parcels were exempted from assessment. (Tape III, Side B) The Hearings Officer chose to ignore those references.

The finding that the formation of a Local Improvement District "would be a heavy burden for the residents of the Jenne Lynd area to bear" (p. 3) is presumptuous and not supported by any evidence. It is biased and unfair to suggest that the City would be inequitable in its assessment to property owners if formation of an LID occurred. Besides, the County's LID process for roads is also available to property owners, and is similar to the City's process.

In summary, the findings presented on transportation services are not supported by the available evidence. The data show that current traffic volumes and problems are high and growing. Jenne Lynd's potential impact on traffic volumes is only a marginal increase of projected volumes. Nowhere was it claimed that the level of upgrading would be greater if approval of this addition were given. Portland has begun the process of developing a comprehensive transportation plan for the area. Approval of the addition will allow Jenne Lynd to be included in the planning process and provide the most likely avenue to solve traffic problems in a reasonable and responsible manner. Jenne Road serves urban uses and should receive an urban designation to adequately manage its transportation needs, rather than to leave it with an inappropriate rural designation. The Hearings Officer based an important conclusion on the finding that approval of the addition of Jenne Lynd will increase the level of upgrading required for the roads. As shown, the finding is patently in error. The conclusion should be reversed.

2. Schools

The findings report that "existing schools in the area are overcrowded." The statement is wrong. The Centennial School District has experienced declining enrollment for each of the past five years for an average decrease of 100 students per year. Only one school, Pleasant Valley which serves the Jenne Lynd Acres area, has experienced an increase in enrollment, in part because the Middle School Program has not yet been implemented there. (Tape I, Side B)

The findings also report that: "(s)ome of the children are being bused to schools as far away as nine miles away." (p. 3) This is also inaccurate because there is no "busing" of children from outside their neighborhood. Busing of Pleasant Valley 7th and 8th graders to Lynch Meadows Middle School will not begin until the fall of 1982. (Pleasant Valley School is the only school out of six elementary schools in the district which had not participated in the Middle School Program.)

The reference to 9 miles transportation distance is based upon unsubstantiated testimony. Please refer to Exhibit 15, the School District map. Lynch Terrace Middle School to the north of the subject area is only slightly further from the center of Jenne Lynd Acres than Pleasant Valley to the south. With a rough calculation, it can be determined that the distance between the two schools is between 3-4 miles. (Please refer to Exhibit 7 or 15) At the most, the distance from any home in Jenne Lynd Acres to the Middle School is less than 3-4 miles. For others, the Middle School will be closer.

The Hearings Officer's conclusion that the "adjustment . . . would not provide for efficiencies in . . . school services . . ." is not based upon the full evidence. The administrative action of bringing Pleasant Valley into compliance with the District's Middle School program, coupled with the addition of four new classrooms at Pleasant Valley alleviates any overcrowding, bringing the school's enrollment to its level of 5 years ago. The Hearings Officer's conclusion ignores the evidence of continual declines in the District's school population, school building expansion and the administrative means to alleviate any imbalance which may occur.

More significantly, the standard requires a net improvement in efficiency. Evidence of overcrowding -- present or alleviated -- in one school does not properly justify a conclusion that the efficiency of the school system will be adversely affected by the proposed development. On the contrary, the record shows that approval of this addition can contribute to an improvement in the net efficiency of school facilities and services in the Centennial School District. The District and the neighborhood school are capable of serving additional students.

3. Water and Sewer Services

The Hearings Officer's findings on water service are inaccurate and not supported by the evidence in the record. He begins, "(a) part of the area can efficiently be provided with water service

from the 12" line which runs through a portion of the property." (Emphasis added.) The City's 12" supply line bisects the whole parcel. It can efficiently serve the whole area. No testimony or documentation suggested otherwise. On the contrary, as found in Exhibit I in a June 18, 1981 memo from Portland Water Bureau Chief Engineer, Paul Norseth:

"The City maintains a 12" main in SE Jenne Road to the intersection at Foster Road, then westerly which is supplied from a direct connection of Conduit No. 3 north of Powell Boulevard. Several customers are served as outside users along this line.

Recent construction of storage facilities and a transmission main in the Clatsop Butte area have improved the reliability of supply. Additional service can be provided from this main in accordance with current City of Portland Water Code rules and regulations. This addition of this area to the urban growth area is a plausible extension of the urban growth boundary from the water supply point of view.

Recent completion of the major storage facility at Powell Butte serves to increase the water supply pressure in this area, further improving supply generally."

The major capital water investment is already in place in the area. Clearly, a line of this size can efficiently and economically serve the whole area. Additional hookups will be of benefit to the whole system. Lastly, development of the area on public water is preferable to securing additional wells for development in the County.

The Hearings Officer's findings on sewers are inaccurate and unsubstantiated. He states that the "southern part of the area can be efficiently provided with sewer service." (p. 3) No evidence was presented at the hearing to conclude that the City's lines could serve only a portion of the area. To the contrary, as stated at the hearing, the whole area can be served from the north from a line in Circle Avenue and from the south from an extension at SE 162nd Avenue. The sewer design for these lines included an extension to this area because Jenne Lynd is a part of the drainage basin. (Tape I, Side A; Exhibits I and II)

The conclusions of the Hearings Officer do not support his own findings. Whereas the findings state that the area can be efficiently served with water and sewer, the conclusions are that the "adjustment might provide for efficiencies in sewer and water services . . ." With more confidence, he determines that the adjustment would not provide for efficiencies in the other services. The City takes exception to the findings and can not support the conclusions because water and sewer services are adjacent or in the area and sufficient capacity exists to efficiently serve it.

4. Emergency Protection

The findings on emergency protection are contrary to testimony and not supported by substantial evidence in the record. A

value judgement is made when the Hearings Officer states that the "Jenne Lynd Acres area currently has excellent fire and emergency medical protection with the capability of very rapid response time . . ." (p. 3) The conclusions may have merit but there is not sufficient evidence in the record to substantiate the claim. Similarly, the finding that the City's fire station would serve the area is untrue and contrary to testimony. The evidence in the record is that the City will provide the same level of fire protection by contract with Fire District 10 as it does for the incorporated area in the southeast. (Exhibit I) As explained by Captain Edwards at the hearing before the Development Committee, the City's contract with Fire District No. 10 includes newly annexed areas. Police and fire protection for the area will be of the same level of service Anderegg Meadows receives for its substantial investment in residential and commercial development at SE 174th and Powell. (Tape III, Side B) Furthermore, at the January and March hearings, it was explained that following annexation the installation of fire hydrants will substantially improve the level of fire protection in Jenne Lynd Acres.

Exception is also taken to the statement in the findings that a particular resident of Jenne Lynd would be dead if he had been served by the City of Portland. (p. 3) There was more substantial testimony upon which to draw. As stated above, the area will continue to receive fire protection from RFPD No. 10 when annexed to the City. Because of mutual aid agreements between the County and City, all emergency communications are dispatched from a single office. (Tape III, Side B) Therefore, in emergency conditions, the nearest available unit is dispatched to the scene, whether the location is under the City's or the County's jurisdiction.

There is no evidence to conclude that boundary changes will result in a lower level of protective services. Rather, emergency services would be at least the same in quality and form as at present if the addition is approved.

Conclusion for Section 8(a)(1):

As evidenced in the record, there will be a net improvement in the efficiency of public facilities and services if the proposed locational adjustment is made. Approval of the addition of Jenne Lynd Acres will comply with the intent of Section 8(a)(1). The language of the standard does not require an immediate improvement in efficiency of each and every service. Nor does Section 8(a)(1) require a commitment for funds for road improvements prior to an Urban Growth Boundary change.

It is more reasonable for Metro to take a comprehensive and long term approach in the evaluation of this standard. The facilities for sewer, water and educational services have the capacity to meet additional demand. A net improvement in transportation efficiencies is possible only if a jurisdiction will plan for and seek solutions to transportation problems. Portland has begun that process. Without approval, the road will remain a rural county road with mounting urban levels of traffic but without a planning mechanism to address those conditions.

The point is that the subject area is surrounded by large, planned developments, and all services are immediately available to serve the area. In turn, the addition of Jenne Lynd Acres would have a net positive effect on public services as a whole.

C. Section 8(a)(2) - Maximum Efficiency of Land Uses

The standard provides for:

"(m)aximum efficiency of land uses. Consideration shall include existing development densities on the area included within the amendment and whether the amendment would facilitate needed development on adjacent existing urban land."

The findings under the section are vaguely described, undefined and stretch beyond the evidence in the record. Clarification is necessary.

Building is impossible in only a small area - within the Johnson Creek floodway where it is prohibited. (Exhibit 11, par. 4; Tape I, Side B). Please refer to floodplain map, Exhibit 12, to see that the restricted area (floodway and floodplain) covers only a very small portion of the area within the whole proposal.

There is no evidence that building would be difficult because of slopes or soil composition. Instead, according to the City's testimony, Terry Craven (Bureau of Buildings reviewer for development proposals), does not consider slopes in the area to be a problem. (Tape I, Side B) The Jenne Lynd Acres area is not an aberration. Rather, its soil and drainage characteristics are similar to those in the surrounding area within the present Urban Growth Boundary and the City. (Exhibit 11, par. 1)

It is inaccurate to describe the northern portion of the area as unbuildable as the Hearings Officer has done since most of the present development is concentrated there. The City is prepared to extend urban services to the whole area for urban development. As is the City's procedure, conditions of slope and soil will be taken into account during the subdivision process.

Section 8(a)(2) requires a consideration of existing development densities in the area. Although outside the UGB, the area is committed to non-farm residential use: more than half of the 70 lots in Jenne Lynd Acres are developed. It is inevitable that the area will develop further. The remaining parcels can be developed on 5 acre lots according to County zoning. (Staff Report, p. 8) That is, the area can be developed with up to 85 homes on lots of record in the County. The impact of urbanization on three sides is unavoidable. Given these conditions, the present land use is inefficient, and the land use designation is inappropriate.

Portland's urban services for the area surrounding Jenne Lynd Acres is planned, if not in place. The development of Hunters Highland will receive all of its services from Gresham. The presence of Jenne Lynd Acres was not an obstacle to service planning in Portland and Gresham. How, given those conditions, can the petitioner be required to demonstrate that development in Jenne Lynd Acres would facilitate needed development on adjacent existing urban land? A more important consideration is that inclusion of the subject area within the UGB will improve

the efficiency of those planned and existing services. In addition, development of Jenne Lynd Acres will support neighboring commercial development at SE 174th and Powell and necessary road improvements, thereby improving the land use efficiency of adjacent areas.

Most importantly, Jenne Lynd Acres can be efficiently and economically served. Inclusion of the area within the UGB will allow the development of Jenne Lynd Acres to be compatible with surrounding urbanization. The addition of Jenne Lynd Acres to the UGB, and the withdrawal of Schoppe Acres would definitely improve the efficiency of land contained within the UGB.

D. Section 8(a)(3) - Environmental, Energy, Economic and Social Consequences

This standard provides for:

"(e)nvironmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive, and any limitations imposed by the presence of hazards or resource lands must be addressed."

The Hearings Officer's findings are unsubstantiated by the public record. Exception is taken to several topics.

1. Johnson Creek and flooding

The statement is made that "(d)eveloping the property to urban densities would increase the already serious flooding problems on Johnson Creek which, according to the evidence, has already been adversely impacted by recent development." There was no evidence of increased flooding of Johnson Creek. Residents in the area expressed concern for the potential for flooding; they described run-off in the roads during a rainy period due to development in the vicinity. Surface run-off is a consequence of nearly all development in the metropolitan area during the stages of site preparation.

The City's engineers have the experience and authority to require developers to minimize the effects of construction. It is significant that the Bureau of Sanitary Engineering supports approval of this addition and has concluded that "(d)evelopment of a large majority of the area would not be impeded by flood hazard conditions." (Exhibit 11, par. 5) Jenne Lynd Acres' 170 acre share of the 34,000 acre Johnson Creek drainage area is almost insignificant. Actually, there is greater reason for environmental concern if development of lots of record occurs on septic tanks and wells outside the UGB.

2. Slopes and Slide Hazards

The Hearings Officer's findings conclude that urban development could increase slide hazards. He further states that the petitioner did "not address how these hazards would be handled, except to state that they would be addressed under the applicable land development ordinances." (p. 4) The record does not support these findings. The prediction that hazardous conditions would

result from development in the city is only speculative and attributes no value to the City's applicable land development ordinances.

Testimony by the City was apparently ignored. The petitioner explained that according to the Portland Building Bureau, development would be guided by the short-term objective of controlling erosion and the long-term objective of limiting flooding. Techniques to implement these objectives were briefly described. They include development constraints such as confining the development period; retention ponds; rip rap drainage channels; and closed conduits. (Tape I, Side B) In fact, Mr. Craven of the Building Bureau "is of the opinion that the installation of storm sewers and reservoirs in the Johnson Creek area may actually improve drainage conditions." (Tape I, Side B)

The "applicable land development ordinances" referred to include adopted Comprehensive Policies 8.9, 8.11 and 8.12 which address Drainageways, the National Flood Insurance Program and Natural Hazards, respectively. Chapter 70 of the City's Building Code treats the floodplain and subdivision ordinances. City Resolution No. 32544 states that as a condition for subdivision approval, the City will adhere to Metro's "Interim Guidelines for Stormwater Run-off Management in the Johnson Creek basin." (Tape I, Side B: Exhibit 13)

Thus, the findings in the record show that land use regulations are in place to control the impact of development in the Johnson Creek basin. City zoning in southeast Portland (the "Hook") was given expressly to address conditions of slope. (i.e. R10 variable) These regulations allow a variety of techniques to manage run-off and control erosion and flooding. These are implemented in southeast Portland where similar and familiar conditions of soil and slope exist. The reason cited by the Hearings Officer for disapproval is actually the reason to support approval. Under the City's jurisdiction, development will be served by City water, sewer and stormdrainage lines under an orderly and managed process.

3. Transit Service

The Hearings Officer's findings and conclusions misinterpret the standard as it applies to the impact of development on a regional transit corridor. When the Hearings Officer finds that development would have a "negative impact on the transit corridor because no service is available to this area" he fails to make the distinction between public transit service and a regional transit corridor. As stated at the hearing and in the Metro Staff Report (p. 8), the area is not adjacent to an identified regional transit corridor. If there were one, development in the area would have a positive impact on the transit system. (However, as previously stated, the area is adjacent to all other urban services.)

The Hearings Officer is correct when he states that there is no transit service within Jenne Lynd Acres. The lack of Tri-Met bus service is entirely appropriate for the current low level of development in the area. As explained in public testimony, the "pressure of more than 1,300 new units in the immediate area will

increase the demand for a higher level of service." (Tape I, Side B) Jenne Lynd's future ridership contribution will enhance the efficiency of Tri-Met's future level of service to the area.

In sum, this proposed addition complies with the standard contained in Section 8(a)(3). Applicable City land use policies, standards and techniques will guide development in the area and protect the environment, just as they now do for the adjacent areas in Portland. And, as stated in Metro's staff report, "(i)nclusion of this area within the UGB will . . . provide development to help support transit service for this area." (p. 8)

E. Section 8(c)(3) - Presence of Unusual Circumstances

The City asks for a broad interpretation of Standard 8(a)(1) with respect to transportation because an evaluation of transportation efficiencies is unlike those for other service efficiencies. It is reasonable and appropriate to consider future conditions in the determination of public facility efficiency. Roads, especially in largely unimproved areas, are traditionally built to serve present needs. By comparison, the extension of water and sewer lines usually precede development of an area. Future connections are a realization of predicted demand. With roads, however, it is unheard of to encourage additional demand in order to improve efficiency!

The conditions on Jenne Road are unusual because Jenne Road is a rural road serving increasingly greater urban needs. Jenne Lynd Acres potential is only a marginal increment of projected volumes. Yet, if the area remains without an urban designation, it will not have the planning or resources to address its transportation problems. Approval will permit the City to plan for road improvements, thereby resulting in an improvement in transportation efficiency, as required by standard 8(a)(1).

The Hearings Officer chose not to consider the intent of this standard nor to consider the net efficiency of urban services as a whole. Instead, he looked only at the immediate and short-term effect of additional development on only one service. The statement, "(a)pproval of this addition would require upgrading of Foster Road, Jenne Road and SE 174th." (p. 6) is misleading. The evidence is that improvements are needed now regardless of whether Jenne Lynd Acres is developed within the UGB. Traffic volumes will increase while Jenne Lynd Acres potential contribution will be only a portion of projected traffic volumes.

In addition, the Hearings Office is in error when he expects the petitioner to "demonstrate that existing or planned public services for transportation can adequately serve the property to be added to the UGB without upgrading or expanding the capacity of the existing roadways." He has obviously misinterpreted the standard.

F. Section 8(c)(5) - Relative Suitability of Land Added and Land Removed

This standard provides that:

"(a)ny amount of land may be added or removed as a result of a petition under this subsection but the net amount of vacant land

added or removed as a result of a petition shall not exceed ten (10) acres. Any area in addition to a ten (10) acres net addition must be identified and justified under the standards for an addition under subsection (d) of this section."

The Hearings Officer made no findings on this section and never discussed it in his report.

The proposal for a trade comprises 350 acres, a large amount of land. The net difference, however, would not alter the total area within the UGB. Approval of the trade would produce a boundary which more closely meets CRAG's/Metro's intent in establishing a boundary which defines the territory where urbanization shall occur.

Each of the three proposals in the trade before Metro complies with the appropriate standards for an addition or withdrawal from the UGB. When the Jenne Lynd Acres area is compared with Schoppe Acres, its merits are only enhanced.

The Urban Growth Boundary describes an area within which services can be provided for urban development in the metropolitan area. The differences in service levels is the most distinguishing characteristic between the 170 acres proposed for addition and the 170 acres proposed for removal. Urban services are not and will not be available to Schoppe Acres because of the distance and expense in extending them to an area remotely located from the City's center. By comparison, all urban services are available to serve urban development in Jenne Lynd Acres in an efficient and economic manner. City water already serves a third of existing development.

The tract in the northwest is an incorporated extension nearly surrounded by land placed outside the UGB. The area is comprised of large rural parcels and is hardly distinguishable from surrounding non-urban territory. With or without Metro's approval, the area will remain undeveloped because of the inefficiencies and expense of urbanizing the area.

On the other hand, Jenne Lynd Acres is nearly surrounded by incorporated territory which is in the process of development. The Jenne Lynd Acres parcel is subdivided into tracts averaging 2 acres in size and developed with about 40 homes. Its residents work and shop in the cities of Portland and Gresham.

Simply stated, the Jenne Lynd Acres tract is far more urban and more developable than the parcel in the northwest. It should be within Metro's Urban Growth Boundary.

G. Relief Requested

The provisions of Metro Ordinance No. 81-105, Section 8 are not for the proposed trade submitted by the City of Portland. We ask the Metro Council on behalf of 19 petitioning property owners, for the reasons set forth above, to reject the Hearings Officer's decision and approve the exchange requested by the City of Portland in Metro's Case No. 81-6.

II. Response to Issues Raised by Metro Council at March 25, 1982 Hearing.

A. Storm Drainage

The motion to deny Portland's petition was made because of concerns for flooding from Johnson Creek.

Ron Sunnarborg's memo of March 10, 1982, attached to the City's exceptions to the Development Committee's conditions, places the subject of stormwater management for Jenne Lynd Acres into perspective. Jenne Lynd Acres comprises only .5% of the Johnson Creek basin. Only 13% of the basin is within Portland's jurisdiction.

The 1400 planned housing units within the area immediately surrounding the Jenne Lynd Acres site will be served with public sewers. However, the unincorporated area north of Johnson Creek is developed without storm or sanitary sewers, frequently at densities greater than the R10 zoning usually associated with Jenne Lynd Acres.

It is totally unreasonable to deny Portland's petition because the City cannot accept full responsibility for solving the flooding problems in Johnson Creek. Stormwater management in the basin is a regional problem. It is punitive to property owners, and unproductive to impose a moratorium on urban development in this relatively small parcel within the basin. Rather, Portland's role in helping to solve flooding problems can be more effectively addressed at a more appropriate time.

Portland's written and oral testimony on this case before Metro has described the techniques and regulations the City's sanitary and stormwater engineers apply in the development process. A recent example of these efforts is illustrative and relevant. In studying the water drainage needs for a development in far southeast Portland, sanitary engineers and City planners are proposing a requirement for off-site (rather than the usual on-site) storage basin. If adopted, this area-wide solution will be the most favorable drainage solution for the specific site, and will also serve the Jenne Lynd Acres area.

B. Septic Tanks

Several Council members discussed the potential approval for septic tanks. The subject requires explanation.

Currently there is no sewer service in Jenne Lynd Acres for the approximately 40 homes in the area. If the UGB amendment is denied, sewers are "not available" for further development. Multnomah County, the agent for DEQ, may issue up to 45 additional septic tank permits in the area.

If the amendment is approved, and Portland's annexation proposal is approved by the Boundary Commission, all further development within Jenne Lynd Acres will have to be on public sewers. All of the area approved for annexation would be eligible to connect to the City's sewer. If a property owner in the remaining small unincorporated area wished to develop, sewers will be available through the annexation process.

If the UGB amendment were approved but, for some reason, annexation did not occur, septic tank permits would still not be allowed. DEQ discourages issuing septic tank permits when sewers can be made

available through whatever process it takes. On several occasions, DEQ has called upon the City to develop an annexation proposal which will enable a relatively distant parcel to be served with public sewers. This would certainly be the case with the Jenne Lynd pocket. Given the large number of petitions and the configuration of Jenne Lynd's boundaries, nearly every parcel is annexable to the City's boundaries.

With approval of the UGB amendment, public sewers are assured for the whole area. Denial of the amendment will allow about 80 homes to be served with septic tanks. Eventually, declaration of a health hazard by the State Health Department is a real possibility. Portland would be forced to annex the area. That process would be lengthy, costly and controversial. That course of action encourages creation of a health hazard condition, and places the boundary decision upon the State of Oregon.

C. Annexation to Portland

The City of Portland was encouraged by Metro staff to accompany Portland's petition for a UGB change with an annexation proposal. The City complied because it seemed reasonable to demonstrate its intention to serve the area if the amendment were approved.

The issue of annexation has received an unduly amount of attention. Metro's standards do not address annexation. During public hearings the City heard, on one hand, concerns that Portland would force annexation upon Jenne Lynd Acre residents, and on the other hand, that Portland could not annex the whole area.

Portland's exceptions to the Development Committee's conditions of approval explain annexation procedures and limitations. The annexation process is strictly defined by State law, and the Boundary Commission makes the final decision. For political and legal reasons, Portland does not make it a practice to submit annexation proposals if there is not support from property owners and residents. The Jenne Lynd Acres annexation proposal was initiated by 19 property owners whose petitions were approved by City Council. The fact that 19 owners of record want City services for their development, and that those services are in place, explains why Portland supports the UGB amendment and annexation of the area. Other areas in Multnomah County will be annexed to a full service city only when there is sufficient support.

The statement by one Councilor that "there are better opportunities for those kinds of developments already within the Urban Growth Boundary" addresses need. Metro's standard for requiring a demonstration of need applies only for a proposed major boundary change. When comparisons are made, it is more appropriate to compare Schoppe Acres with Jenne Lynd Acres. The public record demonstrates that the area within the UGB will better serve the purposes of an urban growth boundary if development occurs in Jenne Lynd Acres rather than in Schoppe Acres.

D. Urban Services

Several Council members expressed doubts that the City would, in fact, extend urban services to the area if the UGB amendment is approved.

The City of Portland is responsible for and provides water, police, fire, park and planning services to all areas within its boundaries. Eighty-five percent of Portland is sewered. Most development in Portland on subsurface disposal systems is located where there have been no drainage problems.

The record shows that the full range of urban services is available to serve the area. The preceding section on annexation explains that when the annexation proposal is approved, nearly all of the subject area will lie within the City's jurisdiction, eligible for all urban services. The small unincorporated area will be annexed and served when property owners need services. City services will be extended because property owners want them.

Financial conditions for the housing industry are depressed at this time. But, despite current economic conditions, several property owners are prepared to begin construction immediately. The petition should not be denied nor approval postponed because of the economy. Granted, conditions were better two years ago but Metro had not yet developed procedures to modify the UGB. Interest rates and bonding rates were more favorable when the petition was submitted nearly a year ago. Approval of the City's petition now will meet the need of property owners who cannot afford further delays in their development plans. Approval now will provide the necessary lead time to service the remaining area and plan for road improvements.

Lastly, there was a misinterpretation of the information regarding fire protection. If the amendment is approved, there will be an improvement in fire protection because fire hydrants will be installed in the area. Currently, there are none to serve the existing homes.

RN:rs
4/19/82

BEFORE THE HEARINGS OFFICER
OF THE METROPOLITAN SERVICE DISTRICT

Petition for Locational)	NO. 81-6
Adjustment by City of)	
Portland: Removal of Schoppe)	FINDINGS, CONCLUSIONS AND
Acres and Addition of Jenne)	RECOMMENDATION
Lynd Acres)	

INTRODUCTION

The standards for approval of the City's request are the standards for trades found in Section 8(c) of Ordinance No. 81-105. These standards require an evaluation of the merits of each area proposed for removal (Subsection c(1)) and addition (Subsections c(2) and c(3)), as well as evaluation of the overall merits of the entire trade (Subsections c(4) and c(5)).

The format of these Findings, Conclusions and Recommendation is to evaluate each area individually first against the applicable standards, and then to use these evaluations in making the Findings necessary on the entire trade.

This petition was originally heard by this Hearings Officer on October 8, 1981. All of the written evidence introduced in that hearing was admitted into the evidence in this hearing.

At the close of the hearings on Jenne Lynd Acres, the parties requested permission to submit proposed Findings. The record was held open for this purpose until December 15, 1981. The following parties submitted materials after the close of the hearing and prior to December 15, 1981:

(1) City of Portland, by letter dated December 15, 1981, with attachments;

(2) Mr. Bruce Burmeister, by letter dated December 14, 1981, with attachments; and

(3) Attorney Diane Spies, by letter dated December 14, 1981, with attached proposed Findings and Conclusions.

The materials submitted by the City of Portland and Mr. Burmeister contained new evidence. This new evidence was not

considered by this Hearings Officer in reaching the Findings and Conclusions below, because the only purpose of holding open the record was for the submission of proposed Findings and Conclusions and not receipt of additional evidence.

I. REMOVAL OF SCHOPPE ACRES

The Summary and Standards for Approval and the Findings of the Staff contained in the Staff Report on Contested Case No. 81-6, and the Petition for Locational Adjustment by the City of Portland, pages 1-5, are incorporated herein and adopted by this reference.

II. ADDITION OF JENNE LYND ACRES

Summary:

The Jenne Lynd Acres area is approximately 170 acres located between the cities of Portland and Gresham, forming what has been characterized as a non-urban "hook" in the UGR. The area is divided into some 80 parcels owned by some 40 property owners. About half of the parcels are developed for single family use. The lots range in size from less than one acre to over ten acres. Johnson Creek runs along the western and northern edges of the area. A portion of the area is located within the 100-year floodplain and the entire area is within the Johnson Creek drainage basin. Jenne Road runs through the area from Foster Road to the south to SE 174th to the north. All three of these roads require upgrading to serve existing and planned development.

STANDARDS FOR APPROVAL FINDINGS AND CONCLUSIONS

1. The standards set forth in 81-105, Section 8(a) (1)-(5), and my Findings and Conclusions with regard to these standards are set forth below:

Section 8(a)(1):

"(a) ... locational adjustments shall be consistent with the following factors:

(1) Orderly and Economic Provision of Public Facilities and Services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining area within the UGR; any area to be added must be capable of being served in an orderly and economical fashion."

Finding:

A part of the area can efficiently be provided with water service from the 12" line which already runs through a portion of the property. The southern part of the area can be efficiently provided with sewer service, and extension of sewers to the area will, in fact, enhance the efficient use of the Johnson Creek Interceptor, which was sized to serve this area. The existing schools in the area are overcrowded. Some of the children are being bused to schools as far as nine miles away. Jenne Road running through the area, as well as Foster Road and SE 174th serving both the area affected and adjacent urban areas, will require substantial upgrading to serve existing and projected traffic. Approval of this addition will increase the traffic on those roads and the level of upgrading required for those roads. The evidence clearly indicates that neither Multnomah County nor the City of Portland, nor any other jurisdiction, has the funds to improve either SE 174th or Jenne Road. Furthermore, no jurisdiction even has any plans for the improvement of these roads. In fact, at one point in the hearing, the City of Portland suggested that Jenne Lynd Road could be improved by the formation of a local improvement district which, of course, would be a heavy burden for the residents of the Jenne Lynd area to bear, particularly in light of the City's previous testimony that much of the traffic on Jenne Road came from other urban areas.

The Jenne Lynd area currently has excellent fire and emergency medical protection with the capability of very rapid response time because of the close proximity of the fire station to the local area. The City of Portland's fire station, which would serve the local area if it is annexed into the City of Portland, is located at a much greater distance from the site and could not provide the rapid response which the current fire district provides. In fact, one of the witnesses testified that his life was saved when he had a heart attack due to the rapid response of the local fire district, and that if the area had been served by the City of Portland, he would have been dead by the time the emergency medical crew arrived.

Conclusion:

The proposed locational adjustment will not result in net improvements in the efficiency of public facilities and services. The adjustment might provide for efficiencies in sewer and water services, but it would not provide for efficiencies in transportation, school services, or emergency medical and fire services. In addition, the area is not capable of being served in an orderly and economic fashion in regard to transportation services. SE 174th in Multnomah County would require improvements to accommodate development on the subject site, but the County has indicated that it has no funds to improve SE 174th. Furthermore, no jurisdiction has indicated that it has funds to improve Jenne Road.

Section 8(a)(2):

"Maximum Efficiency of Land Uses. Consideration shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land."

Finding:

The area is rural in character. It contains steep wooded hillsides, unstable soil, which makes building difficult or impossible, Johnson Creek and the Johnson Creek floodplain. Because of these factors, the northern area probably could not be developed to urban densities. However, the southern area, which is not as steep and hilly, could be developed to urban densities. There is no evidence that approval of this petition is needed to facilitate development of adjacent urban lands.

Conclusion:

The inclusion of this land within the UGB would not promote maximum efficiency of land use because some of the land could not be developed to urban density; and would not facilitate development of adjacent urban lands.

Section 8(a)(3):

"Environmental, Energy, Economic and Social Consequences. Any impact on regional transit corridor development must be positive, and any limitations imposed by the presence of hazards on resource lands must be addressed."

Finding:

As noted above, a portion of the area is located within the Johnson Creek 100-year floodplain and the entire area is located in the Johnson Creek drainage basin. Developing the property to urban densities would increase the already serious flooding problems on Johnson Creek which, according to the evidence, has already already been adversely impacted by recent development. Also, due to the steepness of the terrain, there are possible slide hazards, and the removal of vegetation on the hillsides which would take place for urban development could increase these hazards. The petitioner has not addressed how these hazards would be handled, except to state that they would be addressed under the applicable land development ordinances. In a new subdivision to the northwest of the site located in the City of Portland, there are serious water runoff and erosion problems contributing to the flooding of Johnson Creek.

There is no transit service within the immediate area, and regional development of this large 174 acre area would have a negative impact on the transit corridor because no service is available to this area.

Conclusion:

There is insufficient evidence to show that the inclusion of this land within the UGR would have a positive impact on the regional transit corridor. There would be an adverse impact on the environment in that development of the area would contribute to the flooding of Johnson Creek.

Section 8(a)(4):

"Retention of Agricultural Lands. When a petition includes land with Class I through IV Soils, that is not irrevocably committed to nonfarm use, the petition shall not be approved unless the existing location of the UGR is found to have severe negative impacts on service or land use efficiency in the adjacent urban area, and it is found to be impractical to ameliorate those negative impacts except by means of the particular adjustment requested."

Finding:

Multnomah County's plan, as acknowledged by LCDC, includes an exception to Goal No. 3 (Agricultural Lands) for this area, based upon its commitment to non-farm use.

Conclusion:

Based upon the above Finding, this standard, therefore, does not apply.

Section 8(a)(5):

"Compatibility of Proposed Urban Uses with Nearby Agricultural Activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) and (4) of this Subsection must clearly outweigh the adverse impact of any incompatibility."

Finding:

The land to the south has been designated by the County for rural residential, rather than agricultural use.

Conclusion:

Based upon the above Finding, this standard, therefore, does not apply.

2. Section 8c(3) provides:

"If, in considering factor (1) of Subsection (a) the petitioner fails to demonstrate that existing or planned public services or facilities can adequately serve the property to be added to the UGB without upgrading or expanding the capacity of those facilities or services, the petition shall not be approved absent a showing of unusual circumstances."

Finding:

Approval of this addition would require upgrading of Foster Road, Jenne Road and SE 174th. As noted above, no jurisdiction has any plans or any funds to improve the roads in question. The best that can be said is that the City of Portland will study the area. Although some improvements will be required to these roads to serve adjacent urban areas, substantial improvements will be required if the site is included in the UGB.

Conclusion:

The petition has failed to demonstrate that existing or planned public services for transportation can adequately serve the property to be added to the UGB without upgrading or expanding the capacity of the existing roadways. The petitioner has failed to introduce any evidence of unusual circumstances to justify approval without plans to upgrade and expand the capacity of existing roadways.

III. OVERALL EVALUATION OF PROPOSED TRADE

1. Section 8, Subsection c(4) of Ordinance 81-105 provides:

"Any amount of land may be added or removed as a result of a petition under this subsection but the net amount of vacant land added or removed as a result of a petition shall not exceed ten (10) acres. Any area in addition to a ten (10) acre net addition must be identified and justified under the standards for an addition under subsection (d) of this section."

Finding:

The proposed trades cannot meet the above criteria for the reason that the proposal for the addition of Jenne Lynd Acres does not meet all of the requirements set forth in the Ordinance for the reasons set forth in Paragraph II above. Without Jenne Lynd Acres as a part of the trade, the net amount of land removed would be greater than ten (10) acres.

Conclusion:

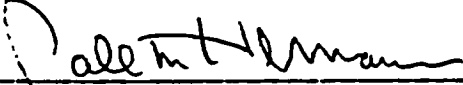
Since the proposal does not qualify as a trade, then the only question remaining is whether the proposal for the removal of Schoppe Acres and the addition of the Scott property can be considered under other provisions of Ordinance No. 81-105. In regard to the removal of Schoppe Acres, Section 8(b)(4) provides that no petition shall remove more than 50 acres of land.

RECOMMENDATION

Based upon the foregoing legal criteria, I have no choice but to recommend that the petition for removal of Schoppe Acres be denied because it does not qualify as a trade and seeks to remove more than 50 acres.

The petition for the addition of Jenne Lynd Acres should be denied because as noted in Paragraph II, it does not meet all of the requirements of Ordinance 81-105.

Dated: December 22, 1981.



Dale M. Hermann
Hearings Officer



CITY OF
PORTLAND, OREGON
BUREAU OF PLANNING

Mildred A. Schwab, Commissioner
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Code Administration 248-4250

Land Use 248-4260

Transportation Planning 248-4254

January 8, 1982

Metropolitan Service District
527 SW Hall Street
Portland, Oregon 97201

ATTN: Jill Hinckley, Land Use Coordinator

RE: Contested Case No. 81-6

EXCEPTIONS TO HEARINGS OFFICER'S FINDINGS AND CONCLUSIONS

I. Introduction

A. Background

The Portland City Council (City), on July 22, 1981, unanimously approved a resolution petitioning the Metropolitan Service District for a minor adjustment to the Urban Growth Boundary in the form of a 350 acre trade. The City's petition comprises proposed UGB changes in three areas: 1) removal of 170 acres in Northwest Portland; 2) addition of 170 acres at Jenne Lynd Acres; and 3) addition of five acres owned by the Scotts.

To demonstrate to Metro the City's commitment to serve the area proposed for addition to the UGB, City Council unanimously adopted a resolution approving the annexation of the 5 acre parcel as well as the majority of the Jenne Lynd Acres tract. The resolution to deannex the area known as Schoppe Acres was also approved. These proposals to modify the UGB and then the City's boundary were reviewed and supported by all City bureaus.

The City has supported CRAG's and then Metro's efforts to establish and manage the Urban Growth Boundary. Subsequently, City Council passed a Resolution giving recognition to their support and stating that the City will not seek to annex property outside the UGB. Over the years, in response to numerous requests, the Planning Bureau has dissuaded owners of property outside the UGB from attempting to annex or petition for a UGB change.

Several years ago, property owners in the Jenne Lynd Acres area signed petitions to annex to the city. Upon the advice of Metro and the City, they were asked to wait until administrative procedures were developed. Without a procedure to make a major boundary adjustment, the City by the provision of Ordinance 81-105 developed a program last spring to petition for a minor adjustment

by proposing to withdraw an equivalent amount of land from the UGB.

The City's proposal to petition Metro for a trade was given serious consideration. Each of the three parts of the proposal can stand on its merits against Metro's standards for additions or withdrawals. The proposal for the trade merits approval because the net result will more accurately fulfill the intent of the Boundary by withdrawing an area which can not be served and adding an area where urban services are efficiently and economically available.

The City of Portland's petition for the addition of Jenne Lynd Acres is supported by petitions for annexation from 19 property owners or "owners of record." At the public hearing before the Hearings Officer, the City, as petitioner, represented the City's position and the interest of petitioning property owners. Opposition to the proposal was made by 13 persons from the general area. Of those 13, only 11 live within the subject area. Those 13 speakers represent only 8 properties within the whole area as contrasted with 19 properties petitioned in favor.

Generally, the City concurs with Metro staff findings on Contested Case 81-6 and is in full agreement with the recommendations for approval of the three proposed boundary changes. The findings of fact and conclusions on the Scott parcel are fully acceptable. The City supports the Hearings Officer's adoption by reference of the Staff Report for removal of Schoppe Acres. However, the City takes exception to both the findings and conclusions put forth by the Hearings Officer with respect to the proposal for the Jenne Lynd Acres addition.

B. Purpose

The intent of this communication is to take exception to the Hearings Officer's report dated December 22, 1981, where it treats the addition of Jenne Lynd Acres. We will show that the Hearings Officer ignored or misinterpreted both verbal and written evidence presented to him. It will also show that the Hearings Officer misinterpreted the standards which apply to the boundary adjustment process. This document will focus on the first three of the five standards for an addition to the Urban Growth Boundary.

C. Exception to Procedure

Before presenting exceptions to the Hearings Officer's findings, the City wishes to take exception to a procedural matter, namely the manner in which the record was held open for additional written testimony. Near the close of the hearing on Jenne Lynd, the Hearings Officer made provisions for the record to be held open until Dec. 15 to allow written objections to exhibits or testimony and for parties to submit proposed findings.

Subsequently, the City submitted rebuttal to testimony given and

exhibits submitted at the November 23 hearing.

However, in his report of December 22, the Hearings Officer claims that the record was held open to allow submission of proposed Findings and Conclusions. He fails to acknowledge the provision made for the submission of written rebuttal or objections. The following sources do not support his interpretation of the purpose for keeping the record open. 1) A telephone conversation December 2 with Jill Hinckley corroborated the City's understanding that objections and rebuttal were expected by the Hearings Officer. 2) Later a review of the tapes from the hearing showed that the Hearings Officer offered to accept additional rebuttal. (Tape III, Side B) 3) Most recently, Jill Hinckley's December 23 memo refers to "materials filed in rebuttal." (par. 4)

Then, without qualification, the Hearings Officer rejected the City's submittal (based on his perception that it was new evidence) in spite of the fact that the City was very careful not to introduce new evidence. The City has no way of knowing if part or all of its rebuttal testimony was rejected.

Exception is taken to the Hearings Officer's recollection of the purpose for holding open the public record. Also, objection is taken to the apparent rejection of the entire document submitted by the City.

The City requests that its rebuttal statement be considered for admissibility and, if acceptable, forwarded to the Development Committee.

II. Addition of Jenne Lynd Acres: Exception to Findings and Conclusions of Hearings Officer

A. Introduction

The Hearings Officer's refusal to approve the proposed trade was based on his determination that the addition of Jenne Lynd Acres did not satisfy the requirements of Section 8(a)(1-5) and, therefore, that the proposed trade did not meet the requirements of Section 8(C)(2-5). The findings and conclusions on Sections 8(a) and (c) are contradictory and not supported by substantial evidence in the record. They clearly show a bias. Accordingly, the Hearings Officer's decision should be reversed and the proposed exchange should be approved.

The City's exceptions to the Hearings Officer's findings and conclusions will discuss the relevant subsections of Sections 8(a) and 8(c) in the same order as they are discussed in the Hearings Officer's findings.

B. Section 8(a)(1) - Orderly and Economic Provision of Public Facilities and Services

This standard provides for an "(o)rderly and economic provision of

public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining area within the UGB; any area to be added must be capable of being served in an orderly and economical fashion."

The Hearings Officer's findings and conclusions to which the City takes exception are discussed below by topic.

1. Roads

Contrary to any evidence, the Hearings Officer finds that "(a)pproval of this addition will increase . . . the level of upgrading required for those roads" (Findings, p. 3). Evidence by all parties showed only that traffic problems already exist and that the development of Jenne Lynd Acres will increase the traffic on the roads which serve the area. The City's testimony explained that, according to the Portland Transportation Section, traffic from development in Jenne Lynd would make only a marginal contribution to the projected increase in traffic volumes in the area. (Tape I, Sides A and B).

When the Hearings Officer states that "no jurisdiction even has any plans for the improvement of these roads," he ignores the clear evidence that the City's Mt. Scott/Powell Butte Transportation Study now underway will identify improvements for Jenne Lynd Acres if it is brought into the City's boundary. It is more correct to conclude that without approval of the Urban Growth Boundary change, no jurisdiction will have plans for the necessary improvement of Jenne Road. Also, it should be noted that the boundary lines for this proposal extend outside Jenne Lynd Acres in order to include the troublesome intersection at Jenne Road and Foster Road within the UGB for transportation planning. This was done for the specified purpose of enabling the City to address traffic problems.

Where the findings state that the "evidence clearly indicates that neither Multnomah County nor the City of Portland . . . has the funds to improve either SE 174th or Jenne Road," they are certainly inaccurate. The evidence actually was that Multnomah County attests to being without funds to improve the road and that the City does not have any funds programmed for road improvements at this time. Furthermore, funds cannot be programmed by the City for roads over which it has no jurisdiction. The important point is that the City provides the only opportunity for transportation planning and road improvements in the area - only the City is addressing the problem.

Finally, because a road improvement program and funding plan has not yet been identified, the City described a variety of possible funding methods for road improvements. Several sources

were identified, including that of formation of a Local Improvement District. (Tape I, Sides A & B; Tape III, Side B) (A Local Improvement District is a funding method commonly used by city and county governments. Assessment formulas and public hearings strive for fairness to participating property owners.) Further, it was explained that in all likelihood, only petitioning owners would organize to form a LID to improve the southern portion of Jenne Road, the location of an identified dangerous intersection. (Tape I, Side B) Another funding model presented at the hearing was of the Cornell Road LID in Washington County where small parcels were exempted from assessment. (Tape III, Side B)

The finding that the formation of a Local Improvement District "would be a heavy burden for the residents of the Jenne Lynd area to bear" (p. 3) is presumptuous and not supported by any evidence. It is biased and unfair to suggest that the City would be inequitable in its assessment to property owners if formation of an LID occurred.

In summary, the findings presented on transportation services are not supported by the available evidence. Jenne Lynd's potential impact on traffic volumes is only a marginal increase to projected volumes. Nowhere was it claimed that the level of upgrading would be greater if approval of this addition were given. Portland has begun the process of developing a comprehensive transportation plan for the area. Approval of the addition will allow Jenne Lynd to be included in the planning process and provide the most likely avenue to solve traffic problems in a reasonable and responsible manner. Jenne Road serves urban uses and should receive an urban designation to adequately manage its transportation needs. The Hearings Officer based an important conclusion on the finding that approval of the addition of Jenne Lynd will increase the level of upgrading required for the roads. As shown, the finding is patently in error. The conclusion should be reversed.

2. Schools

The findings report that "existing schools in the area are overcrowded." The statement is wrong. The Centennial School District has experienced declining enrollment for each of the past five years for an average decrease of 100 students per year. Only one school, Pleasant Valley which serves the Jenne Lynd Acres area, has experienced an increase in enrollment, in part because the Middle School Program has yet been implemented there. (Tape I, Side B)

The findings also report that: "(s)ome of the children are being bused to schools as far away as nine miles away." (p. 3.) This is also inaccurate because there is no "busing" of children. Both proponents and opponents stated that the School Board passed a motion to implement busing of Pleasant Valley 7th and 8th graders to Lynch Meadows Middle School in the fall of 1982.

The reference to 9 miles transportation distance is based upon unsubstantiated testimony. Please refer to Exhibit 15, the School District map. Lynch Terrace Middle School to the north of the subject area is only slightly further from its center than Pleasant Valley to the south. With a rough calculation, it can be determined that the distance between the two schools is between 3-4 miles. (Please refer to Exhibit 7 or 15)

The Hearings Officer's conclusion that the "adjustment . . . would not provide for efficiencies in . . . school services . . ." is not based upon the full evidence. The administrative action of bringing Pleasant Valley into compliance with the District's Middle School program will bring the schools' enrollment to its level of 5 years ago. Pleasant Valley is the only school out of 6 elementary schools that has not implemented the middle school program. The transfer, coupled with the recent addition of 4 new classrooms at Pleasant Valley alleviates any overcrowding. The Hearings Officer's conclusion ignores the evidence of continual declines in the District's school population, school building expansion and the administrative means to alleviate any imbalance which may occur.

More significantly, the standard requires a net improvement in efficiency. Evidence of overcrowding -- present or alleviated -- in one school does not properly justify a conclusion that the efficiency of the school system will be adversely affected by the proposed development. On the contrary, the record shows that approval of this addition can contribute to an improvement in the net efficiency of school facilities and services in the Centennial School District. The District and the neighborhood school are capable of serving additional students.

3. Water and Sewer Services

The Hearings Officer's findings on water service are inaccurate and not supported by the evidence in the record. He begins, "(a) part of the area can efficiently be provided with water service from the 12" line which runs through a portion of the property." The City's 12" supply line bisects the whole parcel. It can efficiently serve the whole area. No testimony or documentation suggested otherwise. On the contrary, as found in Exhibit I in a June 18, 1981 memo from Portland Water Bureau Chief Engineer, Paul Norseth:

"The City maintains a 12" main in SE Jenne Road to the intersection at Foster Road, then westerly which is supplied from a direct connection of Conduit No. 3 north of Powell Boulevard. Several customers are served as outside users along this line.

Recent construction of storage facilities and a transmission main in the Clatsop Butte area have improved the reliability of supply. Additional service can be provided from this main

in accordance with current City of Portland Water Code rules and regulations. This addition of this area to the urban growth area is a plausible extension of the urban growth boundary from the water supply point of view.

Recent completion of the major storage facility at Powell Butte serves to increase the water supply pressure in this area, further improving supply generally."

The major capital investment is already in place. Clearly, a line of this size can efficiently and economically serve the whole area.

The Hearings Officer's findings on sewers are inaccurate and unsubstantiated. He states that the "southern part of the area can be efficiently provided with sewer service." (p. 3) No evidence was presented at the hearing that the City's lines could serve only a portion of the area. To the contrary, as stated at the hearing, the whole area can be served from the north from a line in Circle Avenue and from the south from an extension at SE 162nd Avenue. The sewer design for these lines included an extension to this area since it is a part of the drainage basin. (Tape I, Side A; Exhibits I and II)

The conclusions of the Hearings Officer do not support his own findings. Whereas the findings state that the area can be efficiently served with water and sewer, the conclusions are that the "adjustment might provide for efficiencies in sewer and water services . . ." Curiously, with weaker findings he concludes that the adjustment would not provide for efficiencies in the other services. The City again takes exception to the findings and can not support the conclusions because water and sewer services are adjacent or in the area and sufficient capacity exists to efficiently serve it.

4. Emergency Protection

The findings on emergency protection are contrary to testimony and not supported by substantial evidence in the record. A value judgement is made when the Hearings Officer states that the "Jenne Lynd Acres area currently has excellent fire and emergency medical protection with the capability of very rapid response time . . ." (p. 3) The conclusions may have merit but there is not sufficient evidence in the record to substantiate the claim. Similarly, the finding that the City's fire station would serve the area is untrue and contrary to testimony. The evidence in the record is that the City will provide the same level of fire protection by contract with Fire District 10 as it does for the incorporated area in the southeast. (Exhibit I) As was pointed out in the City's testimony, police and fire protection for the area will be of the same level of service

Anderegg Meadows, an area nearby which was recently annexed to the City, receives for its substantial investment in residential and commercial development at SE 174th and Powell. (Tape III, Side B)

Exception is also taken to the statement in the findings that a particular resident of Jenne Lynd would be dead if he had been served by the City of Portland. (p. 3) There was more substantial testimony upon which to draw. As stated above, the area will continue to receive fire protection from RFPD No. 10 when annexed to the City. Because of mutual aid agreements between the County and City, all emergency communications are dispatched from a single office. (Tape III, Side B) Therefore, in emergency conditions, the nearest available unit is dispatched to the scene, whether the location is under the City's or the County's jurisdiction.

There is no evidence to conclude that boundary changes will result in a lower level of protective services. Rather, emergency services would be at least the same in quality and form as at present if the addition is approved.

Conclusion for Section 8(a)(1):

As evidenced in the record, there will be a net improvement in the efficiency of public facilities and services if the proposed locational adjustment is approved. Approval of the addition of Jenne Lynd Acres will comply with the intent of Section 8(a)(1). The language of the standard does not require an immediate improvement in efficiency of each and every service. Nor does Section 8(a)(1) require a commitment for funds for road improvements prior to an Urban Growth Boundary change.

It is more reasonable for Metro to take a comprehensive and long term approach in the evaluation of this standard. The facilities for sewer, water and educational services have the capacity to meet additional demand. A net improvement to the local road conditions can occur only if the area is brought under the City's jurisdiction where planning and funding to solve them can be sought. A net efficiency in transportation is then possible. Without approval, the road will remain a rural county road with mounting urban levels of traffic but without a planning mechanism to address these conditions.

The point is that the subject area is surrounded by urbanization and all services are immediately available to serve the area. In turn, the addition of Jenne Lynd Acres would have a net positive effect on public services as a whole.

D. Section 8(a)(2) - Maximum Efficiency of Land Uses

The standard provides for:

"(m)aximum efficiency of land uses. Consideration shall include existing development densities on the area included within the amendment and whether the amendment would facilitate needed development on adjacent existing urban land."

The findings under the section are vaguely described, undefined and stretch beyond the evidence in the record. Clarification is necessary.

Building is impossible in only a small area - within the Johnson Creek floodway where it is prohibited. (Exhibit 11, par. 4; Tape I, Side B). Please refer to floodplain map, Exhibit 12, to see that the restricted area (floodway and floodplain) covers only a very small portion of the area within the whole proposal.

There is no evidence that building would be difficult because of slopes or soil composition. Instead, according to the City's testimony, Terry Craven (Bureau of Buildings reviewer for development proposals), does not consider slopes in the area to be a problem. (Tape I, Side B) The Jenne Lynd Acres area is not an aberration. Rather, it's soil and drainage characteristics are similar to those in the surrounding area within the present Urban Growth Boundary and the City. (Exhibit 11, par. 1)

It is inaccurate to describe the northern portion of the area as unbuildable as the Hearings Officer has done since most of the present development is concentrated there. The City is prepared to extend urban services to the whole area for urban development. Conditions of slope and soil will be taken into account during the subdivision process, as usual.

Section 8(a)(2) requires a consideration of existing development densities in the area. Although outside the UGB, the area is committed to non-farm residential use: more than half of the 70 lots in Jenne Lynd Acres are developed. The remaining parcels can be developed at 5 acre minimums according to County zoning. Development is also allowed on lots of record. (Staff Report, p. 8) The impact of urbanization on three sides is unavoidable. Given these conditions, the present land use is inefficient.

This portion of the standard deserves a broad interpretation. For, while approval is not "needed" for neighborhood development, urban services traverse Jenne Lynd Acres to serve adjacent development. Development of the subject area would support neighboring commercial development at SE 174th and Powell and necessary road improvements, thereby improving the land use efficiency of adjacent areas. Most importantly, Jenne Lynd Acres can be efficiently and economically served; inclusion of the area within the Urban Growth Boundary supports the land use efficiency of adjacent areas.

E. Section 8(a)(3) - Environmental, Energy, Economic and Social Consequences

This standard provides for:

"(e)nvironmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive, and any limitations imposed by the presence of hazards or resource lands must be addressed."

The Hearings Officer's findings are unsubstantiated by the public record. Exception is taken to several topics.

1. Johnson Creek and flooding

The statement is made that "(d)eveloping the property to urban densities would increase the already serious flooding problems on Johnson Creek which, according to the evidence, has already been adversely impacted by recent development." There was no evidence of increased flooding of Johnson Creek. Residents in the area expressed concern for the potential for flooding; they described run-off in the roads during a rainy period due to development in the vicinity. Surface run-off is a consequence of nearly all development in the metropolitan area during the stages of site preparation.

The City's engineers have the experience and authority to require developers to minimize the effects of construction. It is significant that the Bureau of Sanitary Engineering supports approval of this addition and has concluded that "(d)evelopment of a large majority of the area would not be impeded by flood hazard conditions." (Exhibit 11, par. 5) Actually, there is greater reason for environmental concern if development of lots of record occurs on septic tanks and wells outside the UGB.

2. Slopes and Slide Hazards

The Hearings Officer's findings conclude that urban development could increase slide hazards. He further states that the petitioner did "not address how these hazards would be handled, except to state that they would be addressed under the applicable land development ordinances." (p. 4) The record does not support these findings. The prediction that hazardous conditions would result from development in the city is only speculative and attributes no value to the City's applicable land development ordinances.

Testimony by the City was apparently ignored. The petitioner explained that according to the Portland Building Bureau, development would be guided by the short-term objective of controlling erosion and the long-term objective of limiting flooding. Techniques to implement these objectives were briefly

described. They include development constraints such as confining the development period; retention ponds; rip rap drainage channels; and closed conduits. (Tape I, Side B) In fact, Mr. Craven of the Building Bureau "is of the opinion that the installation of storm sewers and reservoirs in the Johnson Creek area may actually improve drainage conditions." (Tape I, Side B)

The "applicable land development ordinances" referred to include adopted Comprehensive Policies 8.9, 8.11 and 8.12 which address Drainageways, the National Flood Insurance Program and Natural Hazards, respectively. Chapter 70 of the City's Building Code treats the floodplain and subdivision ordinances. City Resolution No. 32544 states that as a condition for subdivision approval, the City will adhere to Metro's "Interim Guidelines for Stormwater Run-off Management in the Johnson Creek basin." (Tape I, Side B: Exhibit 13)

Thus, the findings in the record show that land use regulations are in place to control the impact of development in the Johnson Creek basin. City zoning in southeast Portland (the "Hook") was given expressly to address conditions of slope. (i.e. R10 variable) These regulations allow a variety of techniques to manage run-off and control erosion and flooding. These are implemented in southeast Portland where similar and familiar conditions of soil and slope exist. The reason cited by the Hearings Officer for disapproval is actually the reason to support approval. Under the City's jurisdiction, development will be served by City water, sewer and stormdrainage lines under an orderly and managed process.

3. Transit Service

The Hearings Officer's findings and conclusions misinterpret the standard as it applies to the impact of development on a regional transit corridor. When the Hearings Officer finds that development would have a "negative impact on the transit corridor because no service is available to this area" he fails to make the distinction between public transit service and a regional transit corridor. As stated at the hearing and in the Metro Staff Report (p. 8), the area is not adjacent to an identified regional transit corridor. If there were one, development in the area would have a positive impact on the transit system.

The Hearings Officer is correct when he states that there is no transit service within Jenne Lynd Acres. The lack of Tri-Met bus service is entirely appropriate for the current low level of development in the area. As explained in public testimony, the "pressure of more than 1,300 new units in the immediate area will increase the demand for a higher level of service." (Tape I, Side B) Jenne Lynd's contribution will enhance the efficiency of Tri-Met's future level of service to the area.

In sum, this proposed addition complies with the standard contained in Section 8(a)(3). Applicable City land use policies, standards and techniques will guide development in the area and protect the environment, just as they now do for the adjacent areas in Portland. And, as stated in Metro's staff report, "(i)nclusion of this area within the UGB will . . . provide development to help support transit service for this area." (p. 8)

F. Section 8(c)(3) - Presence of Unusual Circumstances

Petitioners have asked for a broad interpretation of Standard 8(a)(1) with respect to transportation. Arguments were made to show that it is reasonable and appropriate to allow future conditions to be considered in the determination of public facility efficiency. Roads, especially in largely unimproved areas, are traditionally built to serve present needs. Unlike sewer systems additional demand is not encouraged in order to improve efficiency.

The conditions on Jenne Road are unusual because Jenne Road is a rural road serving increasingly greater urban needs. Jenne Lynd Acres potential is only a marginal increment of projected volumes. Yet, if the area remains without an urban designation, it will not have the planning or resources to address its transportation problems. Approval will permit the City to plan for road improvements, thereby resulting in an improvement in transportation efficiency, as required by standard 8(a)(1).

The Hearings Officer chose not to consider the intent of this standard nor to consider the net efficiency of urban services as a whole. Instead, he looked only at the immediate and short-term effect of additional development on only one service. The statement, "(a)pproval of this addition would require upgrading of Foster Road, Jenne Road and SE 174th." (p. 6) is misleading. The evidence is that improvements are needed now regardless of whether Jenne Lynd Acres is developed within the UGB. Traffic volumes will increase while Jenne Lynd Acres potential contribution will be only a portion of projected traffic volumes.

In addition, the Hearings Officer is in error when he expects the petitioner to "demonstrate that existing or planned public services for transportation can adequately serve the property to be added to the UGB without upgrading or expanding the capacity of the existing roadways." He has obviously misinterpreted the standard.

G. Section 8(c)(5) - Relative Suitability of Land Added and Land Removed

This standard provides that:

"(a)ny amount of land may be added or removed as a result of a petition under this subsection but the net amount of vacant land added or removed as a result of a petition shall

not exceed ten (10) acres. Any area in addition to a ten (10) acre net addition must be identified and justified under the standards for an addition under subsection (d) of this section."

The Hearings Officer made no findings on this section and never discussed it in his report.

The proposal for a trade comprises 350 acres, a large amount of land. The net difference, however, would not alter the total area within the UGB. Approval of the trade would provide a more effective boundary.

Each of the three proposals in the trade before Metro complies with the appropriate standards for an addition or withdrawal from the UGB. When the Jenne Lynd Acres area is compared with Schoppe Acres, its merits are only enhanced.

The Urban Growth Boundary describes an area within which services can be provided for urban development in the metropolitan area. The differences in service levels is the most distinguishing characteristic between the 170 acres proposed for addition and the 170 acres proposed for removal. Urban services are not and will not be available to Schoppe Acres because of the distance and expense in extending them to an area remotely located from the City's center. By comparison, all urban services are available to serve urban development in Jenne Lynd Acres in an efficient and economic manner.

The tract in the northwest is an incorporated extension nearly surrounded by land placed outside the UGB. The area is comprised of large rural parcels and is hardly distinguishable from surrounding non-urban territory. With or without Metro's approval, the area will remain undeveloped.

On the other hand, Jenne Lynd Acres is nearly surrounded by incorporated territory which is in the process of development. The Jenne Lynd Acres parcel is subdivided into tracts averaging 2 acres in size and developed with about 40 homes. Its residents work and shop in the cities of Portland and Gresham.

Simply stated, the Jenne Lynd Acres tract is far more urban and more developable than the parcel in the northwest. It should be within Metro's Urban Growth Boundary.

III. Relief Requested

We ask the Development Committee on behalf of the Portland City Council and 19 petitioning property owners, for the reasons set forth above, to reverse the Hearings Officer's decision and approve the exchange requested by the City of Portland in Metro's Case No. 81-6.

Respectfully submitted,

City of Portland

BY: *Roxanne Nelson*
Roxanne Nelson
Portland Bureau of Planning

RN:sa

cc: Dale Hermans, Hearings Officer
Metropolitan Service District
527 SW Hall Street
Portland, Oregon 97201

BEFORE THE REGIONAL DEVELOPMENT COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

In re a petition for locational) No. 81-6
adjustment of the UGB by the)
City of Portland) EXCEPTIONS

Leonard Anderson, in conjunction with other affected land-owners, joins with Petitioner City of Portland in requesting a locational adjustment of the Metropolitan Urban Growth Boundary pursuant to Metropolitan Service District Ordinance No. 81-805, to wit, the removal of 170 acres known as "Schoppe Acres", the addition of 170 acres known as "Jenne Lynd Acres", and the addition of 5 acres owned by Kenneth and Mildred Scott. Co-Petitioner Anderson takes exception to the Findings, Conclusions and Recommendation of the Hearings Officer in this matter, in that the Hearings Officer erroneously interprets the provisions of Metro Ordinance No. 81-105 and, furthermore, the Hearings Officer makes Findings of Fact that are either unsubstantiated or flatly contradicted by evidence in the record.

Ordinance No. 81-105(a)(c) provides that a petition to both remove land from the UGB in one location and extend the UGB in another location may be approved under certain conditions. The Metro Staff, the Hearings Officer, and all petitioners agree that both the proposed removal of Schoppe Acres from the UGB and the proposed addition of the Scott property to the UGB meet the criteria contained in Ordinance No. 81-105. Therefore, co-petitioner Anderson will confine his exception to that portion of the Hearings Officer's Report dealing with Jenne Lynd Acres. The committee

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1 should note, however, that presumably the 166 acres of vacant
2 land in Shoppe Acres were included in Metro's buildable lands
3 inventories used to calculate lands needed to meet the housing
4 needs of the Metropolitan area; and, therefore, in that Shoppe
5 Acres is unlikely to ever be developed despite its location within
6 the current UGB, the Metro staff and Hearings Officer have identified
7 a defect in the UGB that exists independently of the proposed trade
8 under consideration, but which could be corrected by approval of
9 this Petition.

10 ADDITION OF JENNE LYND ACRES

11 Lands to be added to the UGB must comply with the criteria
12 contained in Metro Ordinance No. 81-105 Section 8(a) (1) through
13 (5).

14 Section 8(a) (1). The Hearings Officer errs fundamentally
15 in interpreting this subsection to require that existing public
16 facilities and services must be able to accommodate immediate
17 development at urban densities before the UGB can be adjusted
18 to include new lands. However, a determination of "net improve-
19 ment in the efficiency of public facilities and services" cannot
20 always be based only upon a comparison of existing facilities
21 versus facilities needed for urban development of those lands to
22 be added to the UGB, especially when the proposed locational adjust-
23 ment of the UGB is the result of a land "trade" pursuant to Section
24 8(c). Any lands currently outside of the UGB are rural by definition,
25 and would not have urban level public facilities in place. There
26 is no indication in the language of Ordinance No. 81-105 that there

1 must be an express commitment by a local jurisdiction to
2 immediately provide urban level public facilities before a loca-
3 tional adjustment of the UGB may occur pursuant to the provisions
4 of that ordinance. The purpose of a UGB is to identify and separ-
5 ate lands appropriate and necessary for urban development through
6 the year 2000. The Land Conservation and Development Commission
7 defines "urbanizable land" as follows:

8 Urbanizable lands are those lands within the urban
9 growth boundary and which are identified and (a) deter-
10 mine to be necessary and suitable for future urban areas;
 (b) can be served by urban services and facilities; (c)
 are needed for the expansion of an urban area.

11 Therefore, a determination whether a locational adjustment of the
12 Metro UGB results in a "net improvement in the efficiency of public
13 facilities and services" must be, in part, prospective.

14 The real issue, and a more appropriate interpretation of the
15 criteria of Section 8(a)(1), is whether Jenne Lynd Acres can be
16 more efficiently urbanized than Schoppe Acres. Schoppe Acres is
17 currently within the UGB to meet a demonstrated need for urban
18 land. However, in comparison with Jenne Lynd Acres, Schoppe Acres
19 is more valuable as rural land and Jenne Lynd Acres is more valuable
20 as urbanizable land. A comparison of any public facility or service
21 demonstrates that existing public facilities and services to Jenne
22 Lynd Acres are far superior to existing public facilities and
23 services in Schoppe Acres. Furthermore, it would be far more effi-
24 cient to plan and develop whatever additional public facilities
25 and services would be needed to accommodate future urbanization
26 on Jenne Lynd Acres than on Schoppe Acres.

1 Furthermore, in order to conclude that a locational adjust-
2 ment of the UGB will result in an overall net improvement in the
3 efficiency of public facilities and services, it is not necessary
4 to find that the efficiency of each and every public facility and
5 service in the adjoining area will be individually improved. If
6 the efficiency of a majority of the public facilities and services
7 will be improved, there may be an improvement in the overall net
8 efficiency of public facilities in the adjoining areas, despite a
9 lack of improvement of efficiency of any single public facility
10 or service.

11 Finally, funding commitments are not a condition of Section
12 8(a)(1). There is no indication in Ordinance 81-105 that affected
13 local jurisdictions must make binding commitments to immediately
14 fund urban facilities on lands to be added to the UGB before loca-
15 tional adjustments of the UGB can occur. Those problems identified
16 by the Hearings Officer-the fact that unannexed lands within the
17 UGB do not always have urban level services in place, and the fact
18 that the financing of needed improvements in public facilities is
19 often problematical-attend any new development and annexation and
20 could apply just as well to almost all of the unannexed lands within
21 the UGB. The fact is that the City of Portland is more capable and
22 willing to provide urban services to Jenne Lynd Acres than to Shoppe
23 Acres. The fact is that Multnomah County is unlikely to address
24 existing public facility deficiencies in the area so long as Jenne
25 Lynd Acres remains outside of the Urban Growth Boundary. The fact
26 is that the City of Portland has a comprehensive plan and zoning

1 ordinance that have been acknowledged by LCDC to provide public
2 facilities in a matter that complies with LCDC goal 11 as a matter
3 of law. Metro Ordinance 81-105 is not designed to regulate funding
4 of public facilities and services. Actual funding and development
5 of such services needed in Jenne Lynd Acres can only be administered
6 by the City of Portland and Multnomah County, but such administra-
7 tion cannot possibly occur until Metro takes the initial step of
8 including Jenne Lynd Acres within the Metro UGB.

9 Therefore, co-petitioner Anderson urges the committee to take
10 into account prospective efficiency and comparative efficiency
11 when determining "net improvement in the efficiency of public
12 facilities and services" pursuant to subsection 8(a) and 8(c).

13 In addition to erroneously interpreting subsection 8(a)(1),
14 the Hearings Officer made Findings of Fact as to the conditions
15 of that subsection that are unsubstantiated or contradicted by
16 evidence in the record, to wit:

17 Schools. At page 3 of his report, the Hearings Officer stated
18 "the existing schools in the area are overcrowded. Some of the
19 children are being bused to schools as far as nine miles away."
20 There is no evidence whatsoever in the record to support such
21 findings. In fact, the evidence in the record flatly contradicts
22 such findings. The most authoritative source of data on school
23 enrollment in the area is contained in the Jenne Lynd Acres Study
24 Area at page I-13, to wit:

25 The Centennial School District provides educational
26 services to the Jenne Lynd Neighborhood. The district
encompasses part of urban and rural Pleasant Valley,

1 Multnomah County, parts of the cities of Gresham and
2 Portland, and a part of rural Clackamas County.

3 A total of 4,973 students were enrolled in the dis-
4 trict schools for the 1978-79 year. This was a de-
5 crease of 213 from 1977-78. Centennial High School,
6 the major school facility of the district, had an
7 enrollment increase of 100 students in that same
8 year with a total of 1,540 students. The tax rate
9 for the school district in 1978, per \$1,000 valua-
10 tion, was \$17.18 including the Multnomah County
11 I.E.D. charge. In 1979, the tax rate including
12 I.E.D., will be \$16.65 or a decrease of \$0.53 per
13 \$1,000 valuation.

14 The Field Training and Service Bureau of the Uni-
15 versity of Oregon was commissioned by the district
16 to analyze the district's growth potential to 1983.
17 The study, Facility Analysis in Relation to Fluc-
18 tuations in Student Population, was presented to
19 the School Board in August, 1978. The study pro-
20 jects that the overall student enrollment through
21 the 1982-83 school year will remain relatively
22 stable with a 1.1% decrease from the 1978-79 year.

23 * * *

24 Lynch Terrace Middle School, Lynch Wood Elementary,
25 Pleasant Valley Elementary and Centennial High
26 School are within 1/2 to 1 mile of the Jenne Lynd
27 Neighborhood. School District enrollment projec-
28 tions indicate the capability to serve the future
29 development of the neighborhood. * * *

30 The studies cited remain the most authoritative source
31 of data to date. In addition, Centennial School District officials
32 have informed City of Portland planning officials that the main
33 problem facing the district is decreasing student enrollment, rather
34 than over-crowding; and, that there are standard administrative
35 techniques for alleviating any spot-overcrowding that may occur.
36 Current spot-overcrowding and busing are the result of shifts in
37 student populations planned at the time the Centennial School
38 District was formed.

1 Current residents of Jenne Lynd Acres who do not desire to
2 be included within either the UGB or the City of Portland alleged,
3 inter alia, that including Jenne Lynd Acres within the UGB would
4 wreak havoc on the Centennial School District. The Hearings Officer
5 ignored contrary, authoritative sources of planning data in deference
6 to the unsubstantiated, unqualified, and biased allegations of such
7 opponents. The Hearings Officer's Findings regarding the Centennial
8 School District are patently unsubstantiated and conclusory, and
9 therefore constitute reversible error.

10 Transportation. At page 3 of his report, the Hearings Officer
11 stated:

12 Jenne Road running through the area, as well as Foster
13 Road and S.E. 174th serving both the area affected and
14 adjacent urban areas, will require substantial upgrading
15 to serve existing and projected traffic. Approval of
16 this addition will increase the traffic on those roads
17 and the level of upgrading required for those roads.

18 Traffic problems identified by the Hearings Officer already
19 exist and will certainly be exacerbated by developments that have
20 already been approved. Traffic on Jenne Road, Foster Road, and
21 S.E. 174th will inevitably be increased by four residential develop-
22 ments in the area: 1) the Meadowland Dairy subdivision with 480
23 residential units and a shopping center; 2) Hunter's Highland
24 subdivision to the east with 759 residential units; 3) Rolling Hills
25 subdivision south of Foster Road and west of 162nd with 197 resi-
26 dential units; and 4) Blackberry Bluff subdivision south of Foster
Road and west of 162nd with 10 residential units. Therefore, 1,446
additional residential units have already been approved for the area,

1 and that development is bound to increase traffic on the streets
2 identified by the Hearings Officer. Eventual development of Jenne
3 Lynd Acres would add only a marginal increase to the on-going
4 traffic growth in the area.

5 Furthermore, the existing traffic situation in the area is
6 a regional problem requiring comprehensive, regional solutions.
7 Traffic on the roads in the area is generated and increased by
8 development approved by various local jurisdictions, including
9 Clackamas County. As the Staff Report stated, the City of Portland
10 is currently conducting a Mt. Scott/Powell Butte Transportation
11 Study to identify needed improvements and suggest appropriate
12 solutions. It is clear to Portland officials that the need for
13 regional traffic improvements already exists and, accordingly,
14 Portland has begun the process of planning a comprehensive traffic
15 plan for the area. As the Staff Report states, including Jenne
16 Lynd Acres within the UGB would allow Portland to plan the road
17 improvements needed to serve an urban level of development for
18 Jenne Lynd Acres as well as for the general region. Multnomah
19 County is unlikely to plan transportation improvements for the
20 area so long as Jenne Lynd Acres retains its current rural desig-
21 nation under Multnomah County jurisdiction. In sum: solutions to
22 current and future traffic problems in the area are currently being
23 planned; and, including Jenne Lynd Acres within the UGB will allow
24 Portland to plan a more comprehensive traffic plan for the area.

25 Fire Protection. Jenne Lynd Acres is currently served by
26 Fire District No. 10. The City of Portland has reciprocal agree-

1 ments with Fire Districts in unincorporated areas to respond to
2 calls for assistance outside of this specific service areas. It
3 is also the practice of Portland to contract with unincorporated
4 Fire Districts to serve outlying city areas. Portland officials
5 testified that the Jenne Lynd Neighborhood would continue to re-
6 ceive service from Fire District No. 10 if included within the
7 Urban Growth Boundary. The Hearings Officer's Finding that if
8 Jenne Lynd Acres is included within the UGB it would receive
9 diminished fire protection is totally false.

10 Section 8(a)(2). At page 4 of his Report, the Hearings Officer
11 states that Jenne Lynd Acres is "rural in character", and that
12 portions of it "could not be developed to urban densities". The
13 Metro Staff stated:

14 Although the density of development is rural in
15 character and will limit the extent to which the
16 area can be developed to urban density, the number
17 of existing lots of record will allow for continued
18 development even if the area is not included within
19 the UGB. Inclusion within the UGB will allow ser-
20 vice provision and development for the area to
21 be planned on a more orderly and efficient basis.

22 * * *

23 The area is surrounded by urban lands on three
24 sides and continuing pressure for urbanization
25 is unavoidable.

26 The Soil and Slope Map contained in the Jenne Lynd Acres
Study at page IV-4 demonstrates that approximately 35 acres within
Jenne Lynd Acres have a slope of 30-60%. There are currently
eight houses in that area. Three acres are sloped at 15-30%.
Approximately 12 acres are in the Johnson Creek floodplain. The

1 remaining 120 acres are free of topographical constraints to de-
2 velopment. The Hearings Officer's Recommendation does not define
3 "urban density". Portland's acknowledged comprehensive plan and
4 zoning ordinance establish one zoning district that allows the de-
5 velopment of planned unit developments on all existing slopes in
6 Jenne Lynd Acres. See, Title 33, Portland Municipal Code, chapter
7 33.76. Development density would be limited on only 29% of the
8 lands within Jenne Lynd Acres, while 71% of the lands could be
9 developed at any densities the City deemed appropriate.

10 Furthermore, as stated above, the inclusion of Jenne Lynd
11 Acres within the UGB would facilitate the development of the ad-
12 jacent urbanizable lands that exist on three sides of Jenne Lynd
13 Acres by allowing the City of Portland to form a comprehensive
14 program for the provision of services to the entire area. If Jenne
15 Lynd Acres remains under Multnomah County jurisdiction as rural
16 land, Portland cannot resolve the public facility deficiencies
17 that already exist in the area.

18 Section 8(a)(3). At page 4 of his report, the Hearings Officer
19 stated that development of Jenne Lynd Acres would exacerbate
20 natural hazards in the area, including flooding problems in Johnson
21 Creek, and such findings are unsubstantiated, conclusory, and false.
22 There is no evidence whatsoever that development of the area would
23 contribute to the flooding of Johnson Creek. As the Jenne Lynd
24 Acres Study states at page I-11:

25 The Jenne Lynd Neighborhood is within the Johnson
26 Creek Drainage Basin and such is subject to the
guidelines for storm water run-off management in

1 the Johnson Creek Basin approved by the City of
2 Portland. There are numerous alternatives of keeping
3 within the planned guidelines and will be dependent
4 on the eventual development pattern and time frame
5 (sic).

6 The Metro Staff Report states:

7 Development of lots of record can occur whether
8 or not this petition is approved. Such resubdi-
9 vision of the land as will occur as a result of
10 inclusion within the UGB will be subject to the
11 Johnson Creek Guidelines for Stormwater Manage-
12 ment which are designed to minimize development
13 impact.

14 In fact, the development of Jenne Lynd Acres could have
15 a positive impact on Johnson Creek flooding. Storm sewers could
16 be installed on Jenne Road and on Platt Avenue, which is currently
17 unimproved. Such storm sewers would divert and channel the un-
18 directed surface water run-off that now occurs.

19 In sum, there are land-use regulations in place to control
20 the impact of development in the Johnson Creek Basin. These regu-
21 lations allow a variety of standard engineering techniques to
22 control development so as to avoid aggravation of flooding in the
23 Johnson Creek floodplain. Finally, there are City of Portland
24 zoning districts that allow development on slopes such as those in
25 Jenne Lynd Acres, and there is testimony from the professional
26 engineering firm of Marx and Chase, Inc., that "there are no known
27 hazards that could limit future development in the neighborhood and
28 no known natural resources that couldn't be enhanced or preserved
29 by future development." Jenne Lynd Acres Study page II-3.

30 Section 8(a)(3) states that "any impact on regional transit.
31 corridor development must be positive." This language allows for

1 situations in which there is no impact on transit corridor
2 development, which is clearly the case in this situation. As
3 the Staff Report stated, the area is not adjacent to an identified
4 regional transit corridor, and, therefore, there is no impact on
5 such a corridor. The condition of the ordinance is therefore met.

6 Section 8(a)(4) and Section 8(a)(5). Co-Petitioner Anderson
7 agrees with the Hearings Officer's recommendation that because
8 Multnomah County's comprehensive plan, as acknowledged by LCDC,
9 takes an exception to goal three (agricultural lands) for Jenne
10 Lynd Acres based upon its commitment to non-farm use, subparagraphs
11 (4) and (5) do not apply.

12 Section 8(c)(3). At page six of his Report, the Hearings
13 Officer stated, "the petitioner has failed to introduce any evi-
14 dence of unusual circumstances to justify approval without plans
15 to upgrade and expand the capacity of existing roadways." However,
16 both the Metro Staff and the petitioner identified unusual circum-
17 stances to justify the petition.

18 The unusual circumstances identified in the Metro Staff
19 Report bear repeating:

20 Approval of this addition would require an upgrading
21 of Foster Road, Jenne Road, and S.E. 174th.

22 However, these roads require improvement to serve
23 existing and planned development in the adjacent
24 urban area and approval of this addition will allow
these improvements to be designed based on the area's
eventual urban development.

25 Since eventual urban development of the area, given
its location and parcelization, appears inevitable,

26

1 its inclusion now will allow these improvements to
2 be identified and provided in a more orderly and
3 efficient manner that if a decision on Urbanization
4 were postponed.

5 This standard is designed to protect the service
6 planning efficiencies of a fixed UGB. In this case,
7 however, transportation plans for the adjoining area
8 have not been finalized and sewer plans were designed
9 and implemented prior to UGB adoption and were based
10 on this area's urban development.

11 The plans for urban development of the area proposed
12 for removal from the UGB as part of this trade have
13 been abandoned. The sewer extension and road improve-
14 ments needed to allow Schoppe Acres to urbanize would
15 be far more substantial than the road improvements
16 needed to accommodate urbanization of the Jenne Lynd
17 area.

18 This combination of circumstances is sufficient to
19 justify approval of the trade proposed notwith-
20 standing the road improvement needed to accommodate
21 this proposed addition.

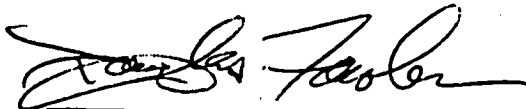
22 One final special circumstance is the full support of the
23 City of Portland for this petition. There is no question that
24 annexation will be approved after the land is included within the
25 UGB. Furthermore, the comprehensive plan of the City of Portland
26 has been acknowledged by LCDC as being in compliance with the
statewide planning goals. All of the general policies relating
to the provision of public facilities will insure adequate plan-
ning for the area.

27 Conclusion. This petition has the full support of the Pro-
28 fessional Planning Staffs of both the Metropolitan Service District
29 and the City of Portland. Expert testimony in support of the
30 petition was put forth by professional planners and by the pro-
31 fessional engineering firm of Marx and Chase, Inc., in the form

1 of an exhaustive study of the Jenne Lynd Neighborhood. Every
2 qualified expert who has analyzed this petition has agreed that
3 Jenne Lynd Acres is vastly superior to Schoppe Acres as Urbanizable
4 land. As the Metro Staff stated, Schoppe Acres is a convex finger
5 in the UGB, surrounded by rural lands. Jenne Lynd Acres is a con-
6 cave finger, surrounded by urban land. There are no plans to pro-
7 vide sewer services to Schoppe Acres, while sewer lines to Jenne
8 Lynd Acres are already in place. There are no shopping or employ-
9 ment opportunities near Schoppe Acres, while Jenne Lynd Acres is
10 near to both. Both areas would need road improvements to accommo-
11 date urbanization, but there are no plans to make transportation
12 improvements in the Schoppe Acres region, while plans for improve-
13 ments to the Jenne Lynd Acres transportation region are already in
14 the works.

15 For all of the foregoing reasons, Co-petitioner Leonard
16 Anderson requests the development committee to submit a Recommendation
17 that this Petition be approved.

18
19 Respectfully submitted this 11th day of January, 1982.

20
21 

22 Douglas Fowler, attorney for
23 Co-petitioner Leonard Anderson
24
25
26

JENNELYND NEIGHBORS GROUP
5926 S. E. Jenne Road
Portland, Oregon 97236

January 11, 1982

METRO
Jill Hinckley
501 S. W. Hall
Portland, Oregon 97201

SUBJECT: Contested Case 81-6

We don't care to file an exception, but we do want it on record that we want the opportunity to object to items presented before the Regional Development Committee by the City of Portland and, or the Co-Petitioner.

We also ask that a copy of our rebuttal statement be forwarded to the Regional Development Committee so that they may examine the "New" evidence. In order to show factual evidence in a rebuttal, a letter from Dr. George Benson, Superintendent, Centennial District #28JT, was admitted. It was used to refute testimony made by Roxanne Nelson in regards to statements she said were made by Gerald W. Hamann (a Centennial School District Administrator) about the Centennial Schools. We also ask the Regional Development Committee review the tapes of the hearings and read all previous testimony and letters and exhibits presented by the parties in opposition to this case.

We want the Regional Development Committee to know that we the people who LIVE in Jennelynd Acres are the majority (28-16) of property owners opposed to this petition. We also hope you accept the report of findings made by Mr. Hermann. He has listened to the story twice, the first time with the city and the petitioner making a half hour presentation then the second time the city and petitioner spent three hours making their presentation. The story was the same, only longer; and Mr. Hermanns report did not change.

We hope you will give us the same amount of time that the city and petitioner are given at this hearing.



Bruce R. Burmeister
5926 S. E. Jenne Road
Portland Oregon 97236

FINDINGS, CONCLUSIONS AND PROPOSED ORDER
OF THE REGIONAL DEVELOPMENT COMMITTEE IN
CONTESTED CASE NO. 81-6: PETITION FOR
LOCATIONAL ADJUSTMENT BY CITY OF PORTLAND

INTRODUCTION

The City's petition involves proposed UGB changes in three areas: 1) the removal of 170 acres at Schoppe Acres; 2) the addition of 170 acres at Jenne Lynd Acres; and 3) the addition of five acres owned by Kenneth and Melinda Scott. The Scott property is the subject of separate Council action; this report addresses the first two areas.

The standards for approval of the City's request are the standards for trades found in Section 8(c) of Ordinance No. 81-105. These standards require an evaluation of the merits of each area proposed for removal (Subsection c(1)) and addition (Subsections c(2) and c(3)), as well as evaluation of the overall merits of the entire trade (Subsections c(4) and c(5)).

The format of this report is first to evaluate each area individually against the applicable standards, and then to use these evaluations in making the findings necessary on the entire trade. The discussion of the Jenne Lynd Acres area begins on p. ____ .

I. REMOVAL OF SCHOPPE ACRES

Summary:

This petition is one part of a three-part proposal by the City of Portland for a locational adjustment involving a trade of approximately 170 acres to be removed from the Urban Growth Boundary (UGB) and approximately 175 acres to be added to the UGB.

This section examines the petition to remove 170 acres located at the extreme northwest "hook" of the City of Portland in the vicinity of Kaiser, Brooks and Quarry Roads. The area is rural in character and contains four dwelling units.

Of the service providers contacted, all of them support the proposed de-annexation and subsequent UGB adjustment. Multnomah County did not review this portion of the City's proposed trade since most of the land is now within the City's jurisdiction.

Standards for Approval (Section 8(c), Ordinance No. 81-105):

c(1): THE LAND REMOVED FROM THE UGB MEETS THE CONDITIONS FOR REMOVAL IN SUBSECTION (b) OF THIS SECTION.

b(1): CONSIDERATION OF THE FACTORS IN SUBSECTION (a) OF THIS SECTION DEMONSTRATE THAT IT IS APPROPRIATE THAT THE LAND BE EXCLUDED FROM THE UGB.

a(1): Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining area within the UGB; any area to be added must be capable of being served in an orderly and economical fashion.

- According to the City, the land under consideration was annexed in 1965 as the first stage in a plan to extend City services south to Sunset Highway. The plan has since been abandoned.
- The land does not currently receive the full level of urban services. The nearest City water line is to the east at NW Skyline Boulevard. Private wells currently serve the four residences in the area.
- The surrounding roads are not improved to urban standards and there is no convenient bus service to the site. By not allowing urban development, which would create new transportation demands in an isolated area, transportation efficiency is enhanced.
- There is no sewer service and there are no plans to extend sewer lines to the area. Because of topography, the logical trunk line would extend from USA facilities in Washington County. It would, however be impractical for USA to extend trunk lines through the intervening non-urban area solely to serve this narrow strip of urban land.
- Maintenance of roads in the area would remain the responsibility of Multnomah County. Removal of the land would not result in a change of responsibility for road maintenance.
- The removal of this land from the UGB would reduce the amount of City land which is expensive and relatively inefficient to serve at urban levels with police and fire protection. The net effect of this proposal, therefore, would be a slight increase in overall service provision efficiency.

a(2): Maximum efficiency of land uses. Consideration shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.

- The City's current plan designation for the land is Farm and Forest, which permits agricultural use and residential development with a minimum lot size of two acres. This land, which is unsubdivided and either in agricultural use or heavily wooded, is similar to the surrounding rural land already outside the UGB. The removal of this land would not hinder the development of the adjoining urban land lying to the east.
- In December 1980, the City approved a property owner's request for de-annexation of thirty-three (33) acres on the site currently proposed for UGB removal. This action resulted in a noncontiguous boundary for the City. The proposed UGB adjustment in conjunction with the de-annexation of the remaining land in question would re-establish a contiguous and presumably more efficient City boundary.
- The property is surrounded by non-urban land on three sides. Its removal would create a straighter more effective UGB.

a(3): Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive, and any limitations imposed by the presence of hazards or resource lands must be addressed.

- The site in question is not located near any regional transit corridors.
- Land which is not in agricultural use contains stands of trees which might be retained as timber or other forest resource if the site is removed from the UGB. The surrounding land, currently under Multnomah County's jurisdiction, is zoned either Multiple Use Agriculture or Multiple Use Forest.
- There have been no other resources identified which would inhibit urban development if the land were to remain

within the UGB, other than the agricultural resource discussed in a(4) below.

a(4): Retention of agricultural land. When a petition includes land with Class I through IV Soils, that is not irrevocably committed to nonfarm use, the petition shall not be approved unless the existing location of the UGB is found to have severe negative impacts on service or land use efficiency in the adjacent urban area, and it is found to be impractical to ameliorate those negative impacts except by means of the particular adjustment requested.

- The soils on the subject site range from Class III to Class VI. The City notes that much of the land which is not wooded is being farmed, as is the adjacent land already outside the UGB. Approximately eighty (80) acres are under farm tax deferral status.
- Removing this land from the UGB would promote its retention as agricultural land.

a(5): Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

- Non-urban use for the area would be more compatible with adjoining non-urban lands zoned Multiple Use Forest or Multiple Use Agriculture.
- The land immediately east of the site which would remain in the UGB is zoned by the City as Farm and Forest with a two acre minimum lot size for residential development. It is unlikely, at the densities allowed, that this adjoining urban land would prove incompatible with agricultural activity on the site proposed for removal from the UGB.

b(2): THE LAND IS NOT NEEDED TO AVOID SHORT-TERM LAND SHORTAGES FOR THE DISTRICT OR FOR THE COUNTY IN WHICH THE AFFECTED AREA IS LOCATED AND ANY LONG-TERM LAND SHORTAGE THAT MAY RESULT CAN REASONABLY BE EXPECTED TO BE ALLEVIATED THROUGH ADDITION OF LAND IN AN APPROPRIATE LOCATION ELSEWHERE IN THE REGION.

- The trade proposed involves the addition of approximately 131 vacant acres and the removal of approximately 166 vacant acres, resulting in the net removal of 35 vacant acres in Multnomah County. However, since Schoppe Acres is unlikely to be sewered even it remains in the UGB, the development potential of the land to be added is actually greater than that of the area to be removed.
- On the 166 vacant acres proposed for removal, the probable conversion from City zoning (two-acre lots) to County zoning (20-acre lots) would decrease the potential population by approximately 137. This would have little impact on the projected year 2000 capacity even for that portion of Multnomah County west of the Willamette.
- The proposal will not create short- or long-term land shortages in either the District or the County.

b(3): REMOVALS SHOULD NOT BE GRANTED IF EXISTING OR PLANNED CAPACITY OF MAJOR FACILITIES SUCH AS SEWERAGE, WATER AND ARTERIAL STREETS WILL THEREBY BE SIGNIFICANTLY UNDERUTILIZED.

- As noted above, the City does not serve the subject property with sewer or water and there are no plans to extend these services. The adjacent land on the eastern border, which would remain within the UGB, is zoned by the City for low density residential/agricultural use (Farm and Forest). There is little likelihood that the City will invest in high capacity water and sewer lines in the area.
- Of the access roads serving the subject property, Skyline Boulevard has never been upgraded to urban standards. Multnomah County maintains Skyline as well as Brooks and Kaiser Roads.
- Since urban level services have not been planned, no existing or planned services will be underutilized as a result of the proposed removal.

b(4): NO PETITION SHALL REMOVE MORE THAN 50 ACRES OF LAND.

- This standard does not apply to land removed as part of trade. See discussion at c(4) in Section IV of this report.

II. ADDITION OF JENNE LYND ACRES

Summary:

The Jenne Lynd Acres area is approximately 170 acres located between the cities of Portland and Gresham, forming a non-urban "hook" in the UGB. The area is divided into some 80 parcels owned by some 40 property owners. About half the parcels are developed for single family use. The lots range in size from less than one acre to over 10 acres. Johnson Creek runs along the western and northern edges of the area. A portion of the area is located within the 100-year floodplain and the entire area is within the Johnson Creek drainage basin. Jenne Road runs through the area from Foster Road to the south to S. E. 174th to the north. All three of these roads require upgrading to serve existing and planned development.

Standards for Approval, Section 8, paragraph c, of Ordinance No. 81-105:

c(2): CONSIDERATION OF THE FACTORS IN SUBSECTION (A) OF THIS SECTION DEMONSTRATE THAT IT IS APPROPRIATE THAT THE LAND TO BE ADDED SHOULD BE INCLUDED WITHIN THE UGB.

a(1): Orderly and Economic Provision of Public Facilities and Services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining area within the UGB; any area to be added must be capable of being served in an orderly and economical fashion.

WATER AND SEWER:

- A 12-inch City of Portland water line (former supply line) is located in Jenne Road and already serves about ten households because of failures in private water supplies. The reliability of supply in the area has been improved by the recent construction of storage facilities and a transmission line in the Clatsop Butte area to the west of Jenne Lynd Acres. Construction of an underground reservoir on Powell Butte will further increase water pressure and supply to the area. The existing 12" line is available for immediate extension to serve additional development.
- The area is in the Johnson Creek Interceptor service area. Current sewer lines exist north of Johnson Creek in Circle Avenue and to the southwest at Foster and 162nd Avenue. The Johnson Creek Interceptor was constructed to accommodate development in this area at no greater density than is permitted by R10 zoning. Sewer extensions

into this area would likely be funded through a Local Improvement District (LID). Opponents who could remonstrate against an LID for their area, argued that they would not support such an improvement because they have functioning septic tanks and could not afford the cost of such a system.

- Because no system improvements would be needed to water storage and transmission facilities or to sewer lines in order to serve this area, the addition would increase the efficiency of water and sewer services within the existing UGB by increasing overall system usage for little or no increase in cost. Water and sewer service can also both be provided efficiently to the area, but unless and until area residents support annexation and the extension of city services, these services are unlikely to be provided.

TRANSPORTATION:

- Jenne Road, running through the area, as well as Foster Road and S. E. 174th, serving both the area affected and the adjacent urban area, will require upgrading to serve existing and projected traffic, whether or not the subject petition is approved.
- The City of Portland is currently conducting a Mt. Scott/Powell Butte Transportation Study to identify improvements needed in its study area. The City will include an analysis of improvements needed as a result of this addition, if it is approved.
- The City estimates that urbanization of the area would produce a maximum of 418 units, generating 4,180 trips a day on Jenne Road. These trips would represent about 16 percent of projected traffic on Jenne at Foster and about 11 percent of the projected traffic on 174th south of Powell.
- Approval of this addition would allow the City to plan the road improvements needed to serve an urban level of development for the subject site and to establish appropriate design and improvement standards to be applied in conjunction with approval of development requests in this area.
- Some means of mitigating the volume and danger of traffic on Jenne Road, whether through road improvements or through development of alternate routes, will have to be found even if Jenne Lynd remains rural. The road does now serve area

residents and will continue to do so if the area is urbanized. The increased traffic resulting from urbanization can be considered a negative impact on transportation service in the area itself (on Jenne Road) and in the adjoining urban area (on Foster, Powell and 174th). However, inclusion within the UGB would have the positive effect of allowing for the traffic problems in this area to be studied and resolved on a comprehensive basis and based on consideration of ultimate development patterns and traffic demand, provided the entire area is under the control of one jurisdiction. In net, the positive and negative effects in both the area itself and the adjoining urban area balance one another and the overall effect is judged neutral.

SCHOOLS:

- The Centennial School District as a whole has had declining enrollment.
- The area is served by Pleasant Valley School, where enrollment has been increasing. Starting next year, students in the seventh and eighth grades will be transferred to Lynch Terrace Middle School. If there are no further increases in enrollment at Pleasant Valley, enrollment after the seventh and eighth graders are transferred would then be at 1977-1978 levels for students remaining at Pleasant Valley.

In addition, four additional classrooms have been added at Pleasant Valley. Centennial School District initially filed a position of "no comment"; however, the Superintendent of the District later submitted a letter stating that the District disapproves of the locational adjustment because of resulting transfers and disruption for the Pleasant Valley School attendance area. The Superintendent also states that the District is prepared to meet the growth of Anderegg Meadows and Hunters Highlands developments, but "additional development in the Jenne Lynd neighborhood could create overloads in those schools bordering the southern portion of our District."

- According to the testimony of the Superintendent of the Centennial School District, urbanization of this area may cause some disruption and overcrowding in the service area for the Pleasant Valley School. However, because enrollments have been declining in the rest of the District, the

District as a whole does have the capacity to provide school services to the area. For that portion of the School District within the existing urban area, the increase in enrollment that would result from including this area within the UGB might be considered to increase the District's efficiency, but without the District Superintendent's support for this view, the impact on the adjacent urban area must be considered neutral.

STORM DRAINAGE:

- If and when the land is resubdivided for urban level development, facilities for detention and release of stormwater would be provided. The City of Portland's subdivision ordinance requires that adequate drainage facilities be provided as determined by the City Engineer.
- The provision of drainage facilities for the area would neither increase nor decrease the efficiency of storm drainage facilities in the adjoining urban area. The environmental consequences of urbanization of this area regarding drainage and flooding are discussed under a(3), below.

POLICE AND FIRE PROTECTION:

- The City of Portland would provide police protection for the area if it were annexed. Although response time would increase somewhat, emergency service would be dispatched from the closest available unit, whether City or County, through the 911 system.
- The area is currently served by RFPD #10. The Portland Fire Bureau commented that should annexation occur, RFPD #10 would continue to provide protection for the area via contract with the City. Fire hydrants connected to the existing water lines in Jenne Road would be provided by the Water Bureau upon annexation.
- The area can be provided with adequate police and fire protection without increasing or decreasing the efficiency of these services to the adjoining urban area.

CONCLUSIONS:

- The area can be provided with urban services in an orderly and economical fashion, provided it is annexed in its entirety to a city which is

responsible for sewer extension and capable of identifying and implementing transportation improvements needed to relieve traffic hazard and congestion in and adjacent to the area.

Urbanization would have neither a positive nor a negative impact on the provision of police and fire protection, transportation, schools and storm drainage to the adjacent urban area; but would increase the efficiency of existing water and sewerage facilities in the adjacent urban area, resulting in a net increase in services overall. This increase in efficiency is particularly significant when evaluated in conjunction with the efficiencies achieved through removal of Schoppe Acres in trade for this addition.

a(2): Maximum Efficiency of Land Uses. Consideration shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.

- The area is abutted by the Urban Growth Boundary and the city limits of Portland and Gresham on three sides. Over the next 20 years, almost all of these abutting urban lands will be developed.
- Most of the area is part of the Jenne Lynd subdivision, containing some 70 lots and about 35 ownerships. About half the parcels in the area are developed for single family uses.
- If the area remained rural, present Multnomah County zoning would allow construction of a maximum of about 50 new houses on existing lots of record and new lots portioned from the larger existing lots. Development of all legal existing and new lots would depend on whether or not a septic tank permit could be issued.
- Soils in the area are generally rated poor for subsurface sewerage disposal. In a letter to Co-Petitioner Anderson, W. H. Doak, a soil scientist and registered sanitarian, states that "There have been quite a number of septic tank denials in the immediate area." Furthermore, Mr. Anderson was ordered by Multnomah County to replace his septic tank before he took up residence three years ago.
- The City estimates that 24 acres of the area are unbuildable, 65 acres would be subject to a variable density zone overlay designed for

application in areas "characterized by a diversity of physiographic conditions," including both stable and unstable soils allowing development at an estimated average density of 2.1 units an acre; and 81 acres are buildable at R10 densities (4.35 units an acre). Under this zoning, the maximum development potential would be 418 units. Full development to maximum potential is unlikely, however, due to existing development, platting, and topographic patterns.

- As the land in the adjacent urban area continues to develop, along with further development on lots of record in Jenne Lynd Acres itself, the pressures for urbanization of Jenne Lynd will increase, and the viability of a continued rural life style diminish. Eventual urbanization of the area appears virtually inevitable. Although the existing level of rural development limits the degree to which the area can develop to urban densities, efficient urbanization and service extensions will be still more difficult if attempted later rather than sooner.
- The City of Portland has voted to support a triple majority petition for annexation of the southern portion of the area. Properties to the north are not currently proposed for annexation and residents appear opposed at this time to any annexation proposal. If the northern portion of the area is not annexed to a city capable of providing sewer service to allow urbanization, this portion of the area would remain a pocket of rural development surrounded by urban uses on all sides. The inefficiencies of such a land use pattern would defeat many of the benefits of the addition.
- Approval is not needed to facilitate development of adjacent urban lands.

a(3): Environmental, Energy, Economic and Social Consequences. Any impact on regional transit corridor development must be positive, and any limitations imposed by the presence of hazards or resource lands must be addressed.

- A portion of the area is located within the Johnson Creek 100-year floodplain and the entire area is located in the Johnson Creek drainage basin.
- Approximately 20 percent of the area is sloped 30 percent or more. Much of the soil in the area is clay with poor drainage and slow permeability.

- Inclusion in the proposed addition to the UGB of land within the floodplain is necessary to include buildable lands to the south and east.
- Section 34.70.020(B) of Portland's subdivision ordinance requires that: "Drainage facilities shall be provided within the subdivision to serve both the subdivision and areas that drain through or across the subdivision. The facilities shall connect the subdivision drainage to drainage ways or storm sewers outside the subdivision. Design of drainage within the subdivision may be required to include on-site retention facilities, as required by the City Engineer. Design criteria for the retention facilities shall fulfill the requirements of the City Engineer."
- The City of Portland has indicated that it will have storm sewers, emptying into Johnson Creek, installed in conjunction with development of the area. The use of storm sewers would mitigate the negative impacts of increased run-off from the high land in the southern portion of the area through the lowlands in the northern portion. Urbanization will, however, increase the total volume of stormwater run-off.
- Portland Resolution No. 32544 further provides for the imposition of Metro's Stormwater Management guidelines within the Johnson Creek Basin. These guidelines include standards for on-site retention, to be applied by the City Engineer.
- Metro's Stormwater Management Guidelines for Johnson Creek provide that when land is subdivided, provision must be made for sufficient on-site detention of stormwater to ensure that the volume of runoff from the site during a storm of such severity as would occur once every 25 years would not be greater than the volume of runoff that would be produced from the site, if it remained undeveloped, during a storm of such severity as would occur once every 10 years. Since less rain, and thus less runoff, is produced in a 10-year than in a 20-year storm, this standard means that after the property is developed, the volume of stormwater runoff should be less than or equal to the volume of runoff prior to development. This standard applies to both the amount of stormwater that must be detained and to the rate at which detained stormwater may be released. Implementation of this policy will mitigate impacts of urbanization on the flooding of Johnson Creek.

- Implementation of these guidelines is nonetheless not sufficient to eliminate altogether the negative impacts of increased runoff from urbanization. In particular, there are two problems the guidelines, and the City's implementation of them, do not address. First is the timing of the release of detained stormwater. Because there are no standards controlling when stormwater may be released, release may occur during times of flooding and thus exacerbate flooding problems. Second, the guidelines do not explicitly require, and the City of Portland does not appear to have provided for, inspection and maintenance of drainage facilities to ensure that they continue to function effectively.
 - Opponents have questioned if and how the City's drainage policies have been and will be effectively enforced. Testimony regarding stormwater gushing from storm sewers when the Creek is flooding may indicate either that facilities have been improperly constructed or that even when stormwater is properly retained and released, the amount and timing of stormwater release can still cause problems.
 - These negative impacts should, however, be balanced against the positive impacts of urbanization, including the environmental benefit of replacing septic tanks with sewers and the overall environmental, energy and economic benefits of development in the Jenne Lynd area, in close proximity to urban facilities and services and to shopping and employment opportunities, in place of the more remote Schoppe Acres.
 - The area is not adjacent to the regional transit corridor identified by Metro in its "Priority Corridor Report." Inclusion of this area within the UGB will, however, provide development to help support improved transit service for this area.
- a(4): Retention of Agricultural Lands. When a petition includes land with Class I through IV Soils, that is not irrevocably committed to nonfarm use, the petition shall not be approved unless the existing location of the UGB is found to have severe negative impacts on service or land use efficiency in the adjacent urban area, and it is found to be impractical to ameliorate those negative impacts except by means of the particular adjustment requested.
- Although many residents raise animals on their property, Multnomah County's plan, as acknowledged

by LCDC, includes an exception to Goal No. 3 (Agricultural Lands) for this area, based upon its commitment to non-farm use. This standard, therefore, does not apply.

a(5): Compatibility of Proposed Urban Uses with Nearby Agricultural Activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

- The land to the south has been designated by the County for rural residential, rather than agricultural use. This standard, therefore, does not apply.

c(3): IF, IN CONSIDERING FACTOR 1 OF SUBSECTION (A) THE PETITIONER FAILS TO DEMONSTRATE THAT EXISTING OR PLANNED PUBLIC SERVICES OR FACILITIES CAN ADEQUATELY SERVE THE PROPERTY TO BE ADDED TO THE UGB WITHOUT UPGRADING OR EXPANDING THE CAPACITY OF THOSE FACILITIES OR SERVICES, THE PETITION SHALL NOT BE APPROVED ABSENT A SHOWING OF UNUSUAL CIRCUMSTANCES.

- Approval of this addition would require an upgrading of Foster Road, Jenne Road and S. E. 174th.
- However, these roads require improvement to serve existing and planned development in the adjacent urban area and approval of this addition will allow these improvements to be designed based on the area's eventual urban development.
- Since eventual urban development of the area, given its location and parcelization, appears inevitable, its inclusion now will allow these improvements to be identified and provided in a more orderly and efficient manner than if a decision on urbanization were postponed.
- This standard is designed to protect the service planning efficiencies of a fixed UGB. In this case, however, transportation plans for the adjoining area have not been finalized and sewer plans were designed and implemented prior to UGB adoption and were based on this area's urban development.
- The plans for urban development of the area proposed for removal from the UGB as part of this trade have been abandoned. The sewer extension and road improvements needed to allow Schoppe Acres to urbanize would be far more substantial than the road improvements needed to accommodate urbanization of the Jenne Lynd area.

- This combination of circumstances is sufficient to justify approval of the trade proposed notwithstanding the road improvement needed to accommodate this proposed addition.

III. OVERALL EVALUATION OF PROPOSED TRADE

c(4): ANY AMOUNT OF LAND MAY BE ADDED OR REMOVED AS A RESULT OF A PETITION UNDER THIS SUBSECTION BUT THE NET AMOUNT OF VACANT LAND ADDED OR REMOVED AS A RESULT OF A PETITION SHALL NOT EXCEED TEN (10) ACRES. ANY AREA IN ADDITION TO A TEN (10) ACRE NET ADDITION MUST BE IDENTIFIED AND JUSTIFIED UNDER THE STANDARDS FOR AN ADDITION UNDER SUBSECTION (d) OF THIS SECTION.

- The total addition requested is 174 acres, of which approximately 131 acres are vacant.
- The requested removal is for 170 acres of which approximately 166 acres are vacant.
- The trade, if approved, would result in the net removal of approximately 35 vacant acres from the UGB.
- Because Schoppe Acres is less parcelized and developed, and subject to fewer natural constraints to development than Jenne Lynd, the net reduction in development capacity is, in theory, still greater than this figure would suggest. In practice, however, the extension of sewers to Schoppe Acres is so impractical that it is unlikely to develop at more than one unit per two acres even if it remained within the UGB. Accordingly, the trade would provide for some increase in the development capacity of the Urban Growth Boundary.

c(5): THE LARGER THE TOTAL AREA INVOLVED, THE GREATER MUST BE THE DIFFERENCE BETWEEN THE RELATIVE SUITABILITY OF THE LAND TO BE ADDED AND THE LAND TO BE REMOVED BASED ON CONSIDERATION OF THE FACTORS IN SUBSECTION (a).

- The differences between the Schoppe Acres area proposed for removal and the Jenne Lynd Acres proposed for addition are extreme:
 - (1) Schoppe Acres is a convex finger in the UGB, surrounded by non-urban land; Jenne Lynd Acres is a concave finger, surrounded by urban land;
 - (2) Schoppe Acres could be extended sewers only at enormous cost and inefficiency; Jenne Lynd Acres can be served by existing capacity in the Johnson Creek Interceptor and the sewer lines that serve it;

- (3) There are no shopping or employment opportunities close to Schoppe Acres, and planned densities in that area would not accommodate transit, while Jenne Lynd Acres is close to employment and shopping opportunities and planned housing development that could be served by transit.
- Both areas would need road improvements to accommodate an urban level of development; thus the improvements needed to accommodate urbanization of Jenne Lynd Acres should be considered as a neutral factor in comparing the relative suitability of the two areas.
 - Jenne Lynd Acres is more parcelized and developed than Schoppe Acres. On the one hand, this means the area will be more difficult to urbanize efficiently; on the other, that it is more difficult to preserve for resource use. On balance, the level of development should be considered neutral when comparing the suitability of the two sites.
 - The only way in which Jenne Lynd Acres compares unfavorably with Schoppe Acres is in terms of hazards present. The presence of the Johnson Creek floodplain in Jenne Lynd Acres limits the development potential on a portion of that area and development in the remainder of the area may have a negative impact on stormwater runoff. The development potential of the area outside the floodplain still exceeds that for Schoppe Acres, however, due to the ready availability of sewers, and the Johnson Creek Stormwater Management Guidelines will help protect against increasing stormwater runoff from development of the remainder of the area.
 - On balance, the difference between the urban suitability of the two sites is sufficiently strong to warrant an adjustment of this size.

IV. CONCLUSIONS AND PROPOSED ORDER

The Development Committee finds that the City of Portland's petition for a trade to add some 170 acres in the area known as Jenne Lynd Acres and to remove 170 acres in the area of the West Hills known as Schoppe Acres meets the standards for trades established in Ordinance No. 81-105, provided that the entire Jenne Lynd Acres area is annexed to a city within two years. The Committee recommends, accordingly, that the Council adopt a Resolution of Intent to approve the petition if, at any time in the next two years, such annexation occurs.

JH/gl
5334B/274

HEARINGS OFFICER'S RECOMMENDATION

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

IN RE A PETITION BY THE CITY)
OF PORTLAND FOR A LOCATIONAL)
ADJUSTMENT TO THE URBAN GROWTH)
BOUNDARY)

No. 81-6

EXCEPTIONS TO THE REGIONAL
DEVELOPMENT COMMITTEE REPORT

Leonard Anderson, in conjunction with other affected land owners, joins with petitioner City of Portland in requesting a locational adjustment of the Metropolitan Urban Growth Boundary pursuant to Metropolitan Service District Ordinance No. 81-105, to wit, the removal of 170 acres known as "Schoppe Acres", the addition of 170 acres known as "Jenne Lynd Acres", and the addition of five acres owned by Kenneth and Mildred Scott. With minor exceptions, co-petitioner Anderson concurs with the findings of fact and the recommendation of approval issued by the Regional Development Committee. However, co-petitioner Anderson takes exception to the proposed condition that the Metropolitan Service District adjust the urban growth boundary only if the entire Jenne Lynd Acres is annexed to the City of Portland at one time on or before March 25th, 1984.

The City of Portland has voted to support a triple majority petition for annexation of the southern portion of Jenne Lynd Acres, while properties to the north are not currently proposed for annexation because of opposition from the residents. The committee report offers no explanation whatsoever for imposing a condition that is certain to dissatisfy every party to this petition, proponents and opponents alike. If the condition is allowed to stand, either the entire petition to amend the UGB must fail, or a significant number of land

owners must be annexed to the City of Portland against their will. No purpose would be served by either turn of events. The Metropolitan Service District Council should approve the petition to amend the UGB as proposed without requiring the City of Portland to annex the entire Jenne Lynd Acres area at one time within two years. All of the identified planning and service deficiencies of the area could be corrected merely by including the area within the urban growth boundary. Those land owners within the southern portion of Jenne Lynd Acres could be immediately annexed to the City of Portland and form their own local improvement district to pay for city services to them. Those land owners in the northern portion of Jenne Lynd Acres could remain outside of the City of Portland until, if ever, they chose to petition for annexation.

The committee's decision to impose the proposed condition is inexplicable. The only reference to the condition in the committee report occurs at page 11:

The City of Portland has voted to support a triple majority petition for annexation of the southern portion of the area. Properties to the north are not currently proposed for annexation and residents appear opposed at this time to any annexation proposal. If the northern portion of the area is not annexed to a city capable of providing sewer service to allow urbanization, this portion of the area would remain a pocket of rural development surrounded by urban uses on all sides. The inefficiencies of such a land use pattern would defeat many of the benefits of the addition.

Such a statement is conclusory, and illogical. In the paragraph immediately preceding that quoted above, the committee report states:

As the land in the adjacent urban area continues to develop, along with further development on lot of record in Jenne Lynd Acres itself, the pressures for urbanization of Jenne Lynd will increase, and the viability of a continued rural lifestyle diminish.

Eventual urbanization of the area appears virtually inevitable.

At page 10 the committee report states:

The area is abutted by the urban growth boundary and the city limits of Portland and Gresham on three sides. Over the next twenty years, almost all of these abutting urban lands will be developed.

At page 14 the committee report states:

Since eventual urban development of the area, given its location and parcelization, appears inevitable, its inclusion now will allow these improvements to be identified and provided in a more orderly and efficient manner than if a decision on urbanization were postponed.

Therefore, Jenne Lynd Acres is already "a pocket of rural developments surrounded by urban uses on all sides." Including Jenne Lynd Acres within the urban growth boundary will create the opportunity for identified land use planning defects to be eventually corrected through annexation. What is wrong with allowing such annexation to occur in increments timed to reflect the desires of resident land owners? The committee's approach seems to be that those identified planning defects will be corrected either immediately and all at once or not at all. There is a distinct possibility that the practical effect of the committee's findings, conclusions and proposed order will be to identify defective and inefficient land use patterns that could be corrected by a series of phase annexations, but to preclude correction of the existing problems by imposing an unworkable and unnecessary condition.

Urbanization pressures have already persuaded owners of land in the south of Jenne Lynd Acres that it is in their economic self interests to petition the City of Portland for annexation to accommodate urban level development on their land. Land owners in the northern portion of Jenne Lynd Acres remain unpersuaded at this

time. As ownerships change and development increases over the course of time, a majority of northern land owners either may petition for annexation at some future time or may continue to opt for a rural lifestyle. In any event, approving the petition for amendment of the UGB without the proposed condition would create some immediate planning benefits and would at least create the potential for an eventual resolution of all planning problems in the area: Portland could immediately include Jenne Lynd Acres within its transportation studies, and city water and sewer services could be extended to those areas choosing immediate annexation; and, development pressures would be entirely removed from Schoppe Acres, which would be most appropriately designated as non-urban resource land. Of course, any partial solution is not as satisfactory as a complete solution, especially where serious public facility deficiencies already exist. However, a partial solution is clearly preferable over no solution whatsoever, especially where such planning problems as exist are certain to be exacerbated unless corrective steps are taken.

The effect of the proposed condition is to confuse the functions of annexation procedures with the functions of an urban growth boundary. The purpose of an urban growth boundary, according to LCDC Goal 14, is to identify and separate urbanizable land from rural land. In this case, the committee report states that Jenne Lynd Acres is not truly rural and is not truly separated from surrounding urban areas. The unavoidable implication of the committee report is that Jenne Lynd Acres should never have been excluded from the Metropolitan UGB. In fact, the Metropolitan Service District sued Clackamas before the Land Use Board of Appeals for allowing development densities outside of the UGB equivalent to the development densities currently allowed

in Jenne Lynd Acres. Therefore, one must wonder what function the UGB is in fact serving around Jenne Lynd Acres, except to perpetuate and exacerbate public facility deficiencies. In any event, a UGB is designed to regulate long range urban development.

Goal 14 states:

Land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses.

The Metropolitan Service District is authorized by statute to establish an urban growth boundary only. It is the function of the Metropolitan Boundary Commission, in conjunction with the City of Portland, to regulate the actual annexation process. ORS 199.410(2) provides:

The purposes of ORS 199.410 to 199.519 are to:

- A. Provide a method for guiding the creation and growth of cities and special service districts in Oregon in order to prevent illogical extensions of local government boundaries;
- B. Assure adequate quality and quantity of public services and the financial integrity of each unit of local governments;
- C. Provide an impartial forum for the resolution of government jurisdictional questions; and
- D. Provide that boundary determinations are consistent with local comprehensive planning, conformance with state-wide goals. However, when the proposed boundary commission action is within an acknowledged urban growth boundary, the state-wide planning goal shall not be applied. The commission shall consider the timing, phasing and availability of services in making a boundary determination.

ORS 199.462 provides standards for review of annexations:

In order to carry out the purposes described by ORS 199.410 when reviewing a petition for a boundary change, a boundary commission shall consider economic, demographic and sociological trends and projections pertinent to the proposal, past and prospective physical development of land that would directly or indirectly be affected by the proposed boundary change and the goals adopted under ORS 197.225.


Therefore, there is an explicit legislative intent that the Metropolitan Boundary Commission be empowered to consider the timing and phasing of urbanizable lands. Such statutory authority is noticeably absent in ORS Chapter 268, which created the Metropolitan Service District. Furthermore, there is no authority in any case law or even in the Metro framework plan, for invading the statutory annexation powers of the City of Portland and the Metropolitan Boundary Commission. Therefore, the proposal to condition an amendment to the UGB upon a usurpation of the Boundary Commission's authority to regulate the timing and phasing of annexations to the City of Portland is legally unauthorized and constitutes reversible error.

It would appear that the Regional Development Committee did not fully consider all ramifications when it chose to condition its approval of the petition before it on the requirement that all of Jenne Lynd Acres be annexed at one time within two years. Certainly, no explanation is offered for imposing a condition that could negate the committee's express intention to approve the petition before it. There is no reference either to legal authority for imposing the condition or to findings and conclusions that require it. This committee report is replete with a description of public facility and land use inefficiencies that could be corrected over time by amending the UGB as proposed, but without an artificial time constraint. Local jurisdictions could begin a planning process to address existing traffic problems that are certain to become worse. Land owners who desire immediate annexation could petition for such. Land owners who desire to retain large lots outside of city limits could also do so. The City of Portland and the Metropolitan

Boundary Commission could exercise their statutory powers to regulate the timing and phasing of annexations. Such a result would appear to be satisfactory to all parties. However, if the condition is allowed to stand, either the entire petition to amend the UGB must fail, or a significant number of land owners must be annexed to the City of Portland against their will.

For all the foregoing reasons, co-petitioner Anderson urges the council of the Metropolitan Service District to approve the petition by the City of Portland for locational adjustment to the urban growth boundary, but to reject the condition proposed by the Regional Development Committee that the entire Jenne Lynd Acres be annexed to the City of Portland at one time within two years.

Respectfully submitted this 12th day of March, 1982.


Douglas Fowler OSB#80424
Attorney for co-Petitioner
Leonard Anderson

16711 S. E. McKinley Road
Portland, Oregon 97236
661-3558 or 667-2001

March 10, 1982

Metropolitan Service District
527 S. W. Hall Street
Portland, Oregon 97201

Re: Contested Case 81-6, City of Portland
Petition for Location Adjustment to UGB

Subject: Findings and Conclusions of the Regional Development
Committee

Dear District Council Members:

Part IV. "Conclusions and Proposal Order" states that the City of Portland's petition meets the standard for trades established in Ordinance No. 81-105, then it adds a requirement that the entire Jenne Lynd Acres area be annexed to a city within two years. In searching Ordinance No. 81-105, I cannot find justification for this requirement; however, since I am not an attorney, I will leave the legal arguments on this issue to the lawyers and address the consequence of this provision.

For all practical purposes, the requirement to annex the entire area kills the City of Portland's petition and it kills my dream. If this provision is allowed to stand, I will be forced to break up my property into lots-of-record and sell them off individually. Mr. Okasaki will be forced to do likewise. This means 15 more houses and 15 more septic tanks with the effluent from the drain-fields running downhill just below the surface of the ground until it reaches Johnson Creek, or a cut and then spills out on the surface.

Mr. Neufeld, at 5916 S. E. Jenne Road, testified that he had trouble with his septic tank and had to install a pump to pump his sewerage up the hill to a new drainfield above his house. He also testified that he had a seven-foot cut made in the bank behind his house and found clay so pure it could be used on a potter's wheel. Please refer to the soils reports included in the Marx and Chase Studies which confirm this condition. Mr. William H. Doak, Soils Scientist, states in his letter (page IV-3, Jenne Lynd Acres Study prepared by Marx and Chase) that the restrictive fragipan ranges from 18" to 36" below the surface and that the seasonal groundwater perches 10" to 18" below the surface.

I testified that in December 1977, I dug four holes 3' wide and 5' deep with a backhoe on a day we had 2" of rainfall. About 27" to 30" below the surface, the water spurted into the holes in streams like a garden hose. The water level stayed about 24" below the surface.

Tell me honestly, considering the facts I have described above, would you like to have 15 septic tank drainfields on the hill above your house? This is what you will be forcing me to do if you follow the Committee's recommendations.

I would like to call your attention to the map enclosed. Please note the area shown in yellow. There is 60.37 acres with 10 property owners and all have signed a petition for annexation to the City of Portland. This entire area would come under one L.I.D. with the sewer connections at 162nd and Foster. At least 95% of this land is buildable with a gentle slope of less than 10%. There are six homes and three businesses in this area. With water and sewer readily available, it is ideal for development.

The owners of Lots 191 and 192 are opposed to annexation for they are separated from the other properties by a natural barrier; a ravine over 15 feet deep. Therefore, I suggest they be left out of the L.I.D.

The 30 acres shown in pink are owned by George Hammersmith, who has signed the City's petition. His property slopes to the west and cannot be served by the L.I.D. shown in yellow; however he can connect to the sewer close to the Portland Traction R.R. without involving any other property owners.

The area colored blue slopes to the north and west and could be tied in with the Hammersmith property, but does not necessarily have to be. This area has approximately 75 acres and 37 property owners. Eight of the owners, with a total of over 14 acres, have signed the City of Portland's petition for annexation. Twenty-nine property owners have the remaining 61 acres. I have reason to believe two more owners will sign the City's petition. Two more, PP & L and the Portland Gun Club, refuse to commit either way.

The above figures break down as follows:

	<u>Land Area</u>	<u>Value</u>	<u>No.Owners</u>
For annexation	104 acres	\$1,208,500	19
Opposed, or non-committed	61 acres	773,160	29

The proponents for annexation have a 3/2 ratio in land area and value and the opponents have a 3/2 ratio of property owners. It

Metropolitan Service District
March 10, 1982
Page 3

is obvious the requirement that the entire area be annexed at one time kills the petition.

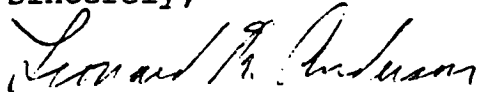
I agree that it would be highly desirable to annex the entire area at once; however, since it appears impossible at this time, I urge you to follow the City of Portland's plan and bring the entire area into the UGB and allow annexation to the City of Portland as shown on their proposal. This would allow work to proceed in the area shown in yellow on the enclosed map.

Mr. Okasaki and I own 40+ acres that can be fully developed with over 200 homes connected to sewer if you approve the City of Portland's petition. On the other hand, if you insist on the "all or nothing at all" recommendation, we will be forced to sell the lots of record, which means 15 more septic tanks and drainfields draining into Johnson Creek.

We have waited 3½ years; we have tried very hard to follow the advice and instructions we received from CRAIG, MSD, Multnomah County and the City of Portland; we have spent huge sums of money and countless hundreds of hours trying to get this property into the City of Portland so we can use their services.

Time is of the essence; we cannot wait another two years. We must do something. The question is: "Will it be with sewer OR with septic tanks?"

Sincerely,



Leonard R. Anderson

LRA/sh

Encls

JENNE LYND NEIGHBORS
5926 S. E. Jenne Road
Portland, Oregon 97236

March 11, 1982

METRO COUNCIL
Metropolitan Service District
527 S. W. Hall St.
Portland, Oregon 97201

SUBJECT: Contested Case 81-6, Exceptions to current METRO findings, conclusions and proposed order of the Regional Development Committee.

Although we generally agree with the resolution that the Regional Development Committee has proposed to the METRO Council, we feel that your staff needs to have several "facts" that they included in their findings brought up to date and, or explained in a more understandable manner. You need these corrections that we will present in this letter to make your decision much easier in this case.

I will begin our exceptions on page 6 of the findings. The second sentence should read - "The area is divided into some 85 parcels owned by some 50 property owners. About half the parcels are developed for single family use." That should say 37 are developed for single family use.

Under Water and Sewer on that same page it says "The reliability of supply in the area has been improved by the recent construction of storage facilities and a transmission line in the Clatsop Butte area to the West of Jenne Lynd Acres". There is absolutely no proof to such a statement. This has no bearing on this case whatsoever. Next sentence "Construction of an underground reservoir on Powell Butte will further increase water pressure and supply to the area". The only increase in water pressure and supply from that project has been uncontrolled mud slides from Powell Butte because of the enormous excavations and change in the topographical characteristics of Powell Butte. Also the uncontrolled run off of water from Powell Butte is eroding the hill and then going directly into Johnson Creek. This seems to be a City of Portland problem, but will they take any responsibility for it?

The last paragraph on page 6 states that "The Johnson Creek Interceptor was constructed to accommodate development in this area at no greater density than is permitted by R 10 zoning". This statement seems to change with the increase in development. Or shall we say it changes to meet the needs of developers. A letter dated October 17, 1977 to the Portland Bureau of Planning, from J. P. Niehuser of the Portland Bureau of Sanitary Engineering states that, "The Johnson Creek Interceptor is designed for the ultimate development of the district boundry under the existing zoning designation and does

not have adequate capacity to exceed that." But now someone says it can meet R 10, next week they may say R5, etc., etc., etc.

Going on to page 7, the first full paragraph, first sentence. We disagree with the part that says no increase in cost. Sure the city would not need to spend more money but to the individual property owner the cost would be outrageous.

Under Transportation on page 7, paragraph 3, it states that "The City estimates that urbanization of the area would produce a maximum of 418 units, generating 4,180 trips a day on Jenne Road". Now 418 units just for Jenne Lynd, what about the 900 plus units at Hunters Highland, 700 plus units at Anderegg Acres and 200 plus units at Rolling Hills. None of these show any sign of development at the present time, but if and when they do, imagine the traffic pressure they will apply on our area. No plan has been adopted to solve this problem.

In the next paragraph it says "Approval of this addition would allow the City to plan the road improvements needed to serve an urban level of development, etc." The City may make a plan but thats it. The roads will remain under County jurisdiction until "someone" brings the roads up to City standards.

When you study the section on schools remember, the Superintendent of the Centennial School District knows and understands the facts about this district. His position should be of more importance than your staffs opinions. We totally disagree with the conclusion, "that the impact on the adjacent urban area must be considered neutral".

Under the topic of Storm Drainage on page 9, we see several faults. The first paragraph simply states the city will drain everything directly into Johnson Creek. This interpretation is based on the fact that the City Engineer can change the City of Portlands subdivision ordinance to meet the needs of any developer. Evidence of this can be seen on Circle Avenue where drains from the new Albertsons Shopping Center and Powell Butte dump their storm water run off directly into Johnson Creek.

The next paragraph says "The provision of drainage facilities for the area would neither increase or decrease the efficiency of storm drainage facilities in the adjoining urban area". Now if we tile the entire area and drain all the water directly into Johnson Creek from Jenne Lynd Acres your staff is telling me that nobody in the adjoining urban area will be effected. Flooding - Johnson Creek - Flooding, Downstream from Jenne Lynd Acres.

On page 9 under Police and Fire Protection. The last sentence should read "The area is provided with adequate police and fire protection— —.

In the conclusions on the top of page 10, first we re-emphasizé the statement about roads. The City of Portland Transportation Department says that the City will not accept any road until it is brought up to City standards. Therefore this item is not met.

Naturally we disagree with the remainder of conclusions on page 10 because of the inaccuracies on the previous pages of the findings.

In the middle of page 10, we find a paragraph that again states an incorrect number of lots and ownerships.

The next paragraph which states "If the area remained rural--,. It might be noted that the original Staff report and the Hearings Officers two findings stated that this was quite possible.

Continuing on to the paragraph dealing with Soils on page 10. "Furthermore, Mr. Anderson was ordered by Multnomah County to replace his septic tank before he took up residence three years ago." Now this could be confusing - first he obviously got a permit, second was the permit for his house or for the large mobil home he moved onto an adjacent lot, or is it possible he never put in the septic tank and thats why he doesn't reside at that house? We don't know the answers to these - maybe your staff does.

The next paragraph which runs from page 10 to 11 states how many acres are buildable - numbers can be used to manipulate anything - we would like to see exactly where all these acres are that are buildable under the Cities plan.

On page 11, the second paragraph, two sentences illustrate someones opinion based solely on looking into a crystal ball and totally lacking in facts. It should be stricken from these findings.

Under Hazards listed at the bottom of page 11 we wonder why slide hazards were omitted. Powell Butte is a prime example of this as well as the other side of the Hill to the East of Jenne Lynd, where Hunters Highland Development has raped the land and now it is eroding away.

The first three paragraphs of page 12 have been objected to earlier. But the final paragraph dealing with the flooding of Johnson Creek needs to be totally reinvestigated. The facts about 10, 100 and 500 year floodplains are these. Floods can occur in any given year if climactic conditions are right. The only difference in the three is the percent of chance of them occurring in any given year. A 10 year flood has a 10% chance in any given year, a 100 year flood has a 1% chance in any given year and a 500 year flood has a .2% chance in any given year. These figures were made available to us from Mr. Peck of the Corps of Engineers.

We agree with paragraph 1 on page 13 and most of paragraph 2 -all, if it had ended with "Testimony regarding stormwater gushing from storm sewers when the creek is flooding may indicate (either that) the facilities have been improperly constructed.

We do not agree with the conclusion in the third paragraph on page 13. The balance of comparing Storm Water Drainage and Septic Tanks are not even. The entire water run off cycle is being threatened with storm sewers and continuous development. Mr. Seltzers letter is an example of what we are trying to say. And last in that paragraph the statement "remote Schoppe Acres". If you measured on a map how "remote" Schoppe Acres is from your METRO office you would find that Jenne Lynd is just a "remote". The distance is about the same.

Continuing on to page 14 under c(3): Starting with paragraph 1. WHO will upgrade Foster Road, Jenne Road and S. E. 174th? Paragraph 2 talks about plans and designs. Paragraph 3 is an opinion. Paragraph 4 tries to make it look like an error was made with the UGB. Paragraph 5 tries to use the apparent original Schoppe Acres mistake to justify this trade. And the last should read "This combination of circumstances, the Hearings Officers findings and the road improvements needed to accommodate this proposed addition indicate this factor of rules has not been met."

On page 15 near the bottom of the page, designated (1) Schoppe Acres is a convex finger -- Jenne Lynd Acres is a concave finger --. This ridiculous statement seems to pop up in so many of these staff reports. Could we along the same vein call the Octopus like arm of the City reaching out S. E. Foster as far as S. E. 164 just as ridiculous.

On the last page of the report, page 16, middle of the page, Johnson Creek is mentioned again but the possibility of slides caused by large disturbance of ground was not. Why? It is a hazard.

You may think that to us this is a very emotional issue, well in some respects that may be true, but basically we are concerned about our homes, property and our rights as citizens. We realize to you council members this may be just another contested case, but to us its much more important than that. It is a case of the majority of property owners opposing City Hall. Please give us ample time to present our facts in this case.

Now we get to the conclusion and proposed order. As stated before our purpose of presenting these exceptions was to show and explain errors made by your staff in these findings. We do however agree with the plan for an election (one) within the next two years, of those residents of the area who are registered voters within the proposed Jenne Lynd Acres. This election should be for the purpose of determining what the people who live in this area want - annexation to the City of Portland or staying the way we are. We hope that if this democratic method is used it will show everyone where the majority of people stand.

Thank you



Bruce R. Burmeister
Spokesman
JENNE LYND NEIGHBORS