



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Agenda

Meeting: Council Meeting
Date: November 12, 1987
Day: Thursday
Time: 5:30 p.m.
Place: Council Chamber

Approx.
Time*

Presented By

- | | | |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 5:30 | CALL TO ORDER
ROLL CALL | |
| | 1. Introductions | |
| | 2. Written Communications to Council on Non-Agenda Items | |
| | 3. Citizen Communications to Council on Non-Agenda Items | |
| | 4. Councilor Communications | |
| | 5. Executive Officer Communications | |
| 5:55
(5 min.) | 6. CONSENT AGENDA
(Action Requested: Approval of the Items Listed Below) | |
| | 6.1 Consideration of Minutes of October 8 and
October 22, 1987 | |
| | 6.2 <u>Consideration of Resolution No. 87-825, for the</u>
<u>Purpose of Confirming a Citizen Member to the</u>
<u>Transportation Policy Alternatives Committee</u>
(John Godsey) | Cotugno ✓ |
| 6:00
(15 min.) | 7. Report of Independent Certified Public Accountants
on Metro's FY 1987 Annual Financial Report and
Schedule of Federal Financial Assistance
(No Action Requested) | Cox |

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

(continued)

Approx.
Time*

Presented By

8. CONTRACTS

- | | | |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 6:15
(10 min.) | 8.1 Consideration of an Amendment to the Contract with Zimmer Gunsul Frasca Partnership for Design Services for the Oregon Convention Center Project
(Action Requested: Approval of Contract Amendment) | Wilson |
| 6:25
(15 min.) | 8.2 Consideration of an Intergovernmental Agreement with the State of Oregon for the Interim Task Force on Regional Metropolitan Government
(Action Requested: Approval of Agreement) | Phelps |

9. ORDINANCES (NOTE: Ordinance Nos. 87-231 and 87-232 are subject to the Executive Officer's veto.)

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|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 6:40
(5 min.) | 9.1 <u>Consideration of Ordinance No. 87-230, for the Purpose of Amending Metro Code Chapter 2.04 Relating to Contract Procedures and Creating an Exemption for Computer Software Purchases</u>
(Second Reading)
(Action Requested: Adoption of Ordinance)
(NOTE: The Council will consider this Ordinance in its capacity as the Metro Contract Review Board.) | Sherlock ✓ |
| 6:45
(20 min.) | 9.2 <u>Consideration of Ordinance No. 87-231, for the Purpose of Amending Metro Code Chapter 2.04 Relating to the Disadvantaged Business Program</u>
(Second Reading)
(Action Requested: Adoption of Ordinance) | Phelps/ ✓ |
| 7:05
(5 min.) | 9.3 <u>Consideration of Ordinance No. 87-232, for the Purpose of Amending Metro Code Section 2.02.010 and Adding a Code Section 2.04.035 Relating to Personnel and Contracting Rules for the Metropolitan Exposition-Recreation Commission</u>
(Second Reading)
(Action Requested: Adoption of Ordinance) | Cooper ✓ |

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

(continued)

Approx.
Time*

Presented By

9. ORDINANCES (continued)

7:10
(5 min.) 9.4 Consideration of Ordinance No. 87-233, for the Purpose of Amending Metro Code Section 2.04.041 Creating an Exemption for Agreements for the Lease or Use of the Oregon Convention Center from Public Bidding Requirements (Second Reading) (Action Requested: Adoption of Ordinance) (NOTE: The Council will consider this Ordinance in its capacity as the Metro Contract Review Board)

Cooper ✓

7:15
(5 min.) 9.5 Consideration of Ordinance No. 87-234, for the Purpose of Adopting a Final Order and Amending the Metro Urban Growth Boundary in Contested Case No. 87-1 for the Chicken Creek, Harborton and Bull Mountain Sites (First Reading and Public Hearing) (Action Requested: Motion for Adoption)

Hinckley ✓

10. RESOLUTIONS

7:20
(5 min.) 10.1 Consideration of Resolution No. 87-⁸222, for the Purpose of Initiating Annexation to Metro and Expressing Council Intent to Amend the Urban Growth Boundary in Contested Case No. 87-1 for the Edy Road, Highway 99W, Middleton and Substation Sites (Action Requested: Adoption of Resolution)

Hinckley ✓

7:25
(10 min.) 10.2 Consideration of Resolution No. ⁸⁸87-820, for the Purpose of Complying with the Clackamas Transfer and Recycling Center (CTRC) Conditional Use Permit (Action Requested: Adoption of Resolution, Pending Negotiations with the City of Oregon City)

Gardner ✓

7:45
(20 min.) 10.3 Consideration of Resolution No. 87-812, for the Purpose of Granting a Processing Facility Franchise to K.B. Recycling, Inc. (Action Requested: Adoption of Resolution)

Owings/ ✓
Rapp

8:05
(10 min.) 10.4 Consideration of Resolution No. 87-~~8~~26, for the Purpose of Establishing Rental Rates, Terms and Conditions for the Oregon Convention Center (Action Requested: Adoption of Resolution)

Wilson ✓

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

(continued)

Approx.

Time*

Presented By

10. RESOLUTIONS (continued)

8:15
(15 min.)

10.5 Consideration of Resolution No. 87-821, for the Purpose of Amending Resolution No. 87-744, Revising the FY 1987-88 Budget & Appropriations Schedule for an Aquarium Study, Interim Task Force on Regional Metropolitan Governments, Health Impact Review Panel (Relating to the Solid Waste Resource Recovery Project), Two Copier Purchases and Council Needs (Public Hearing)
(Action Requested: Adoption of Resolution)

Phelps ✓
Sims

8:30
(15 min.)

10.6 Consideration of Resolution No. 87-824, for the Purpose of Adding One Analyst 3, One Secretary and .5 FTE Office Assistant to the Solid Waste Department (Action Requested: Adoption of Resolution)

Owings ✓

8:45
(15 min.)

10.7 Consideration of Resolution No. 87-⁸¹⁶~~815~~, for the Purpose of Adopting Affirmative Action Goals and Objectives for FY 1987-88
(Action Requested: Adoption of Resolution)

Phelps/ ✓
Boose

9:00

11. COMMITTEE REPORTS

9:05

ADJOURN

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

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11/04/87



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 13, 1987

To: Metro Councilors
Executive Officer
Interested Staff

From: Marie Nelson, Clerk of the Council *Ann*

Regarding: COUNCIL ACTIONS OF NOVEMBER 12, 1987

<u>Agenda Item</u>	<u>Action Requested</u>
5.0 Executive Officer Communications: 1) Report on the Task Force on Metropolitan Regional Government (No Action Requested); and 2) Report from Rich Owings on a tour of Dano facilities in Western Europe (No action requested)	
6.0 Consent Agenda:	Motion carried to approve
6.1 Minutes of October 8 and 22, 1987	the Consent Agenda
6.2 Resolution No. 87-825, Confirming a Citizen Member to TPAC (Godsey)	(Van Bergen/DeJardin; 7/0 vote)
7.0 Report of Independent CPA's on Metro's FY 1987 Annual Financial Report and Schedule of Federal Financial Assistance	No action taken; the Council Management Committee will review the Auditor's Letter to Management at its December meeting
8.1 Amendment to the Contract with Zimmer Gunsul Frasca Partnership for Design Services for the Oregon Convention Center Project	Approved (Ragsdale/DeJardin; 11/0 vote)
8.2 Intergovernmental Agreement with the State of Oregon for the Interim Task Force on Regional Metropolitan Government	Approved (Kelley/Hansen; 11/0 vote)
9.1 Ordinance No. 87-230, Amending Code Chapter 2.04 Relating to Contract Procedures and Creating an Exemption for Computer Software Purchases **	Adopted (Cooper/Ragsdale; 11/0 vote)

** This ordinance is not subject to the Executive Officer's veto.

Council Actions of 11/12/87
page 2

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.2 Ordinance No. 87-231, Amending Code Chapter 2.04 Relating to the Disadvantaged Business Program * | Motion carried to adopt staff's proposed amendments (Gardner/Ragsdale; 11/0 vote). Ordinance adopted as amended (Kirkpatrick/ Knowles; 11/0 vote) |
| 9.3 Ordinance No. 87-232, Amending Code Section 2.02.010 and Adding a Code Section 2.04.035 Relating to Personnel and Contracting Rules for the Metropolitan Exposition-Recreation Commission * | Adopted (Kirkpatrick/Ragsdale; 11/0 vote) |
| 9.4 Ordinance No. 87-233, Amending Code Section 2.04.041 Creating an Exemption for Agreements for the Lease or Use of the Oregon Convention Center from Public Bidding Requirements ** | Adopted (Kirkpatrick/Ragsdale; 11/0 vote) |
| 9.5 Ordinance No. 87-234, Adopting a Final Order and Amending the Metro UGB in Contested Case No. 87-1 for the Chicken Creek, Harborton and Bull Mountain Sites ** | Motion received to adopt the ordinance (DeJardin/Ragsdale); passed to a second reading on 11/24/87 |
| 10.1 Resolution No. 87-822, Initiating Annexation to Metro and Expressing Council Intent to Amend the UGB in Contested Case No. 87-1 for the Edy Road, Highway 99W, Middleton and Substation Sites | No action requested; will will considered on 11/24/87 |
| 10.2 Resolution No. 87-820, Complying with the CTRC Conditional Use Permit | Motion carried to set over consideration to 11/24/87 pending negotiations with the City of Oregon City (Van Bergen/Collier; 11/0) |
| 10.3 Resolution No. 87-812, Granting a Processing Facility Franchise to K.B. Recycling Inc. | Withdrawn from consideration at the request of K.B. Recycling, Inc. |
| 10.4 Resolution No. 87-826, Establishing Rental Rates, Terms and Conditions for the Oregon Convention Center | Adopted (Ragsdale/Cooper; 11/0 vote) |

* This ordinance is subject to the Executive Officer's veto.

** This ordinance is not subject to the Executive Officer's veto.

Council Actions of 11/12/87
page 3

10.5 Resolution No. 87-821, Amending Resolution No. 87-744, Revising the FY 1987-88 Budget & Appropriations Schedule for the Aquarium Study, Interim Task Force on Regional Metropolitan Governments, Health Impact Review Panel (Relating to the Resource Recovery Project), Two Copier Purchases and Council Needs

Motion carried to delete the Aquarium Study portion from the resolution and to consider it separately on 11/24/87 (Bonner/Collier; 11/0 vote)

Motion carried to adopt the Resolution as amended and to consider the Health Impact Review portion separately (Collier/Kelley; 11/0 vote)

Motion carried to approve the Health Impact Review portion of the resolution (Hansen/Knowles; 8/3 vote)

10.6 Resolution No. 87-824, Adding One Analyst 3, One Secretary and one .5 FTE Office Assistant to the Solid Waste Department

Motion carried to delete the Analyst 3 position from the resolution (Gardner/Bonner; 6/5 vote). Motion carried to adopt the resolution as amended (Hansen/Kelley; 8/3 vote).

10.7 Resolution No. 87-815, Adopting Affirmative Action Goals and Objectives for FY 1987-88

Adopted (Ragsdale/Kelley; 10/0 vote)

11.0 Committee Reports:

The Council CONVENTION CENTER COMMITTEE has scheduled a hearing for December 3, 4:00 p.m., to interview nominees named by the Executive Officer for the Metropolitan Exposition-Recreation Commission.

The Council requested the SOLID WASTE COMMITTEE and Metro's Legal Counsel review the total expended to date by DEQ for landfill siting and the State Statute be examined to determine The extent of Metro's liability for siting costs.

AGENDA NOTES: NOV. 12, 1987, COUNCIL MEETING

TO: Richard Waker, Presiding Officer
FROM: Marie Nelson, Clerk of the Council

CALL TO ORDER
ROLL CALL

Announce that item 10.3, a resolution granting a solid waste franchise to K.B. Recycling, Inc., has been withdrawn from consideration at the request of K.B. Recycling.

1. INTRODUCTIONS

2. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

3. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

4. COUNCILOR COMMUNICATIONS

- a. Read the memo from Councilor Kirkpatrick regarding the Legislative Interim Committee Appointment (it's marked "Agenda Item No. 4" in the top right-hand corner).

5. EXECUTIVE OFFICER COMMUNICATIONS

- a. Solid Waste Staff will present a 10-minute report regarding recent visits to DANO facilities.

6. CONSENT AGENDA (Action Requested: Approval of items listed on the Consent Agenda)

6.1 Consideration of Minutes of October 8 and 22, 1987

6.2 Consideration of Resolution No. 87-825, for the Purpose of Confirming a Citizen Member to the Transportation Policy Alternatives Committee (John Godsey)

- a. Receive a motion to approve the items listed on the Consent Agenda.
- b. Vote on the motion.

7. REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS on Metro's FY 1987 Annual Financial Report and Schedule of Federal Financial Assistance (No Action Requested)

- a. Have Don Cox, Accounting Manager, and the auditors present the report.
- b. Discussion: Councilor questions and comments.

8. CONTRACTS

8.1 Consideration of an Amendment to the Contract with Zimmer Gunsul Frasca Partnership for Design Services for the Oregon Convention Center Project (Action Requested: Approval of Contract Amendment)

- a. Have Tuck Wilson, Convention Center Project Manager, present the staff report.
- b. Have Councilor Ragsdale, Chair of the Council Convention Center Committee, give the Committee's recommendation.
- c. Receive a motion to approve the contract amendment.
- d. Discussion: Councilor questions and comments.
- e. Vote on the motion to approve the contract.

8.2 Consideration of an Intergovernmental Agreement with the State of Oregon for the Interim Task Force on Regional Metropolitan Government (Action Requested: Approval of Agreement)

- a. Have Ray Phelps, Finance & Administration Director, present the staff report.
- b. Receive a motion to approve the intergovernmental agreement.
- c. Discussion: Councilor questions and comments.
- d. Vote on the motion to approve the agreement.

9. ORDINANCES

9.1 Consideration of Ordinance No. 87-230, for the Purpose of Amending Metro Code Chapter 2.04 Relating to Contract Procedures and Creating an Exemption for Computer Software Purchases (Second Reading) (Action Requested: Adoption of Ordinance)

- a. Announce that the Council will consider Ordinance No. 87-230 in its capacity as the Metro Contract Review Board.
- b. Announce that this is the second reading of the ordinance. The first reading and public hearing was held on October 22, 1987. At that meeting a motion to adopt the ordinance was made by Councilors Cooper and Ragsdale.

- c. Have the Clerk read the ordinance by title only a second time.
- d. Have Yvonne Sherlock, Contract Officer, present the staff report.
- e. Discussion: Councilor questions and comments.
- f. Take a roll call vote on the motion to adopt the ordinance.

9.2 Consideration of Ordinance No. 87-231, for the Purpose of Amending Metro Code Chapter 2.04 Relating to the Disadvantaged Business Program (Second Reading) (Action Requested: Adoption of Ordinance)

- a. Announce that this is the second reading of the ordinance. The first reading and public hearing was held on October 22, 1987. At that meeting a motion to adopt the ordinance was made by Councilors Kirkpatrick and Knowles.
- b. Have the Clerk read the ordinance by title only a second time.
- c. Have Yvonne Sherlock, Contract Officer, present the staff report which will include responses to questions of Councilors and the public raised at the October 22 meeting.
- d. Discussion: Councilor questions and comments.
- e. Take a roll call vote on the motion to adopt the ordinance.

9.3 Consideration of Ordinance No. 87-232, for the Purpose of Amending Metro Code Section 2.02.010 and Adding a Code Section 2.04.035 Relating to Personnel and Contracting Rules for the Metropolitan Exposition-Recreation Commission (Second Reading) (Action Requested: Adoption of Ordinance)

- a. Announce that this is the second reading of the ordinance. The first reading and public hearing was held on October 22, 1987. At that meeting a motion to adopt the ordinance was made by Councilors Kirkpatrick and Ragsdale.
- b. Have the Clerk read the ordinance by title only a second time.
- c. Have Dan Cooper, General Counsel, present the staff report.

- d. Discussion: Councilor questions and comments.
- e. Take a roll call vote on the motion to adopt the ordinance.

9.4 Consideration of Ordinance No. 87-233, for the Purpose of Amending Metro Code Section 2.04.041 Creating an Exemption for Agreements for the Lease or Use of the Oregon Convention Center from Public Bidding Requirements (Second Reading) (Action Requested: Adoption of Ordinance)

- a. Announce that the Council will consider Ordinance No. 87-233 in its capacity as the Metro Contract Review Board.
- b. Announce that this is the second reading of the ordinance. The first reading and public hearing was held on October 22, 1987. At that meeting a motion to adopt the ordinance was made by Councilors Kirkpatrick and Ragsdale.
- c. Have the Clerk read the ordinance by title only a second time.
- d. Have Dan Cooper, General Counsel, present the staff report.
- e. Discussion: Councilor questions and comments.
- f. Take a roll call vote on the motion to adopt the ordinance.

9.5 Consideration of Ordinance No. 87-234, for the Purpose of Adopting a Final Order and Amending the Metro Urban Growth Boundary in Contested Case No. 87-1 for the Chicken Creek, Harborton and Bull Mountain Sites (First Reading) (Action Requested: Motion for Adoption); and

10.1 Consideration of Resolution No. 87-822, for the Purpose of Initiating Annexation to Metro and Expressing Council Intent to Amend the Urban Growth Boundary in Contested Case No. 87-1 for the Edy Road, Highway 99W, Middleton and Substation Sites (Action Requested: Motion for Adoption)

- a. Announce that Ordinance No. 87-234 and Resolution No. 87-222 will be considered together. Ordinance No. 87-234 will be considered by the Council in its capacity as a quasi-judicial board. Contrary to what has been erroneously published in the meeting agenda, there will be no public hearing on the ordinance. A public hearing has already been conducted and the hearings officer report is included in the agenda materials. Also, Resolution No. 87-222 will not be considered for adoption at this meeting. The Council will consider adoption of both the ordinance and the resolution on November 24, 1987.

- b. Have the Clerk read the ordinance by title only a first time.
- c. Have Jill Hinckley, Land Use Coordinator, present the staff report.
- d. Receive a motion to adopt Ordinance No. 87-234. A motion to adopt Resolution No. 87-822 will be entertained at the November 24 Council meeting.
- d. Discussion: Councilor questions and comments.
- e. Announce that the second reading of the ordinance is scheduled for November 24. At that meeting, the Council will vote on the motion to adopt the ordinance and will entertain and vote on a motion to adopt the resolution.

10. RESOLUTIONS

10.2 Consideration of Resolution No. 87-820, for the Purpose of Complying with the Clackamas Transfer and Recycling Center (CTRC) Conditional Use Permit (Action Requested: Adoption of Resolution, Pending Negotiations with the City of Oregon City)

- a. Have Councilor Gardner, Chair of the Council Solid Waste Committee, present the Committee's recommendation.
- b. Receive appropriate motion(s).
- c. Discussion: Councilor questions and comments.
- d. Vote on appropriate motion(s).

10.3 Consideration of Resolution No. 87-812, for the Purpose of Granting a Processing Facility Franchise to K.B. Recycling, Inc. (Action Requested: Adoption of Resolution)

- a. Have Richard Owings, Solid Waste Director, and Steve Rapp, Analyst, present staff's report.
- b. Have Councilor Gardner, Chair of the Council Solid Waste Committee, present the Committee's recommendation.
- c. Receive a motion to adopt Resolution No. 87-812.
- d. Discussion: Councilor questions and comments.
- e. Vote on the motion to adopt the resolution.

10.4 Consideration of Resolution No. 87-826, for the Purpose of Establishing Rental Rates, Terms and Conditions for the Oregon Convention Center (Action Requested: Adoption of Resolution)

- a. Have Tuck Wilson, Convention Center Project Director, present staff's report.
- b. Have Councilor Ragsdale, Chair of the Council Convention Center Committee, present the Committee's recommendation.
- c. Receive a motion to adopt Resolution No. 87-826.
- d. Discussion: Councilor questions and comments.
- e. Vote on the motion to adopt the resolution.

10.5 Consideration of Resolution No. 87-821, for the Purpose of Amending Resolution No. 87-744, Revising the FY 1987-88 Budget & Appropriations Schedule for an Aquarium Study, Interim Task Force on Regional Metropolitan Governments, Health Impact Review Panel (Relating to the Solid Waste Resource Recovery Project), Two Copier Purchases and Council Needs (Public Hearing) (Action Requested: Adoption of Resolution)

- a. Read Councilor Kirkpatrick's memo request the Aquarium Study portion of the resolution be withdrawn from consideration until November 24.
- b. Receive a motion to withdraw the Aquarium Study project from Resolution No. 87-821 and to consider the Study as part of a separate resolution on November 24, 1987.
- c. Vote on the above motion.
- d. Have Ray Phelps, Finance & Administration Director, and Jennifer Sims, Management Services Director, present staff's report.
- e. Have Councilor Gardner, Chair of the Council Management Committee, present the Committee's recommendation regarding applicable portions of the resolutions.
- f. Receive a motion to adopt Resolution No. 87-821 (as revised, if the Aquarium Study is removed from the resolution).
- g. Open the public hearing.

- h. Close the public hearing.
- i. Discussion: Councilor questions and comments.
- j. Vote on the motion to adopt the resolution.

10.6 Consideration of Resolution No. 87-824, for the Purpose of Adding One Analyst 3, One Secretary and .5 FTE Office Assistant to the Solid Waste Department (Action Requested: Adoption of Resolution)

- a. Have Richard Owings, Solid Waste Director, present staff's report.
- b. Have Councilor Gardner, Chair of the Council Solid Waste Committee, present the Committee's recommendation.
- c. Receive a motion to adopt Resolution No. 87-824.
- d. Discussion: Councilor questions and comments.
- e. Vote on the motion to adopt the resolution.

10.7 Consideration of Resolution No. 87-815, for the Purpose of Adopting Affirmative Action Goals and Objectives for FY 1987-88 (Action Requested: Adoption of Resolution)

- a. Explain this item was initially considered by the Council on October 22, 1987. At that meeting, the Council adopted a motion to defer consideration of the resolution until this meeting.
- b. Have Ray Phelps, Finance & Administration Director, and Randy Boose, Personnel Officer, present staff's report.
- c. Receive a motion to adopt Resolution No. 87-824.
- d. Discussion: Councilor questions and comments.
- e. Vote on the motion to adopt the resolution.

11. COMMITTEE REPORTS

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11/12/87



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 12, 1987

To: Metro Council

From: Councilor Jim Gardner
Chairman, Council Solid Waste Committee

Regarding: COMMITTEE REPORT ON NOVEMBER 12, 1987, COUNCIL MEETING
AGENDA ITEMS

Agenda Item 10.2 Consideration of Resolution No. 87-820, for the Purpose of Complying with the Clackamas Transfer & Recycling Center (CTRC) Conditional Use Permit

Committee Recommendations

The Committee recommends that the Council defer action on Resolution No. 87-820 until current negotiations with Oregon City are completed.

Discussion

General Counsel Daniel Cooper discussed with the Committee, in Executive Session, the lawsuit and recent negotiations with Oregon City officials regarding compliance with the CTRC Conditional Use Permit. Following Executive Session, the Committee discussed at length the pros and cons of adopting Resolution No. 87-820. The Committee considered the merits of being a "good neighbor" and abiding by the requirements of the Conditional Use Permit versus the problems that may result from implementing any of the solutions proposed to date, e.g., closing the facility when the daily total limit is reached. The Committee determined that further negotiations with Oregon City officials should be pursued. The Committee voted 4 to 1 to defer action on the Resolution. Councilors Hansen, Kirkpatrick, DeJardin and Gardner voted yes, and Councilor Kelley voted no.

Agenda Item 10.3 Consideration of Resolution No. 87-820, for the Purpose of Granting a Processing Facility Franchise to K. B. Recycling, Inc.

The Committee did not consider this item. The request was withdrawn by the applicant prior to the Committee meeting.

Agenda Item 10.6

Consideration of Resolution No. 87-824, for the Purpose of Adding One Analyst 3, One Secretary and .5 FTE Office Assistant to the Solid Waste Department

Committee Recommendation

The Committee recommends to Council the adoption of Resolution No. 87-824.

Discussion

By a 3 to 2 vote the Committee recommended approval of the additional 2.5 FTE positions to the Solid Waste Department. The majority felt that the Solid Waste Director sufficiently justified the additional positions and sufficiently answered the questions posed by the Committee and Council staff (see attached memo from Council staff). The Solid Waste Director pointed out that significant additional responsibilities have been given the Department since the FY 1987-88 budget was adopted. He also indicated that funds for the additional positions could come from savings in contractual services which have occurred as a result of work done in-house.

The minority expressed concern that the Solid Waste Department had shifted a program position to an administrative position, i.e., an Analyst 3 position in the Solid Waste Reduction Program was administratively redefined as the Assistant to the Director. The minority felt that the hazardous waste work requested by the Solid Waste Director could be accomplished by filling a vacant analyst position in the functional planning program with a qualified individual and reassigning the Assistant to the Director position to a specific program area to work on the functional planning effort. This would accomplish the hazardous waste work program without the appropriation of additional funds for Personal Services.

Councilors Hansen, Kelley and DeJardin voted in favor of the Resolution. Councilors Kirkpatrick and Gardner voted no.

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Attachment



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 10, 1987
To: Council Solid Waste Committee
From: Ray Barker, Council Assistant
Regarding: RESOLUTION NO. 87-824: ADDING NEW POSITIONS TO THE
SOLID WASTE DEPARTMENT

Council Administrator Don Carlson asked that I review the request of the Solid Waste Department for Analyst 3, Secretary and Office Assistant positions. This memo was prepared to assist the Solid Waste Committee in its consideration of Resolution No. 87-824 scheduled for the November 10, 1987, Committee meeting.

Analyst 3 Position

An Analyst 3 position is requested by the Solid Waste Department to develop policies and procedures for Metro's participation in hazardous waste materials management and disposal; to identify and implement the agency's role in hazardous waste materials planning, collection, transportation, and facility siting; and to develop and implement regularly scheduled collection events regionwide and public education/information programs on an ongoing basis.

The Analyst 3 would work in the Waste Reduction division of the Solid Waste Department. Salary and fringe benefits are estimated to be \$20,043 for the final seven months of the current fiscal year.

Current Budget Provisions

The current budget for the Solid Waste Department provides for a minimal effort regarding hazardous waste. A portion of a staff position was budgeted to coordinate a single household hazardous waste collection event. No other significant hazardous waste efforts were planned or budgeted for.

The FY 1987-88 Waste Reduction Division budget provides \$273,460 for Contractual Services, compared with \$616,500 for FY 1986-87.

Significant Role Proposed

The Solid Waste Department is proposing a significant increase in Metro's role in the hazardous waste area. The Department recommends that in order to meet legislative mandates, and other identified needs, a work program be implemented that includes the following:

1. Development of a management plan for hazardous waste.
2. Develop materials for regional distribution regarding collection of household hazardous waste.
3. A program for training Metro staff and contract employees for hazardous waste materials handling and disposal.
4. Provide coordination and assistance to other agencies in the region to develop disposal programs for hazardous waste.
5. Development and management of a twice yearly regionwide household hazardous waste collection program.

Clerical/Support Staff

In addition to the Analyst 3 position, the Solid Waste Department is requesting a full-time Secretary and an Office Assistant (.5 FTE) to work in support services. Estimated costs, including fringe benefits, are \$12,293 and \$4,087 respectively for the last seven months of the current fiscal year.

Justification for Clerical Staff

According to the Solid Waste Department, the major reasons they need additional clerical staff include the following:

1. Council actions since adoption of the FY 1987-88 budget.
 - a. Solid Waste Functional Planning. Time frame reduced from 24 months to 18 months.
 - b. Resource Recovery
 - Increase in number of negotiations with vendors
 - Creation of a Health Impacts Committee
2. Legislative Action
 - Hazardous waste management and reduction
3. Unanticipated Support Services Needs
 - Data management -- reference library

Source of Funds

It is proposed that funds for the 2.5 FTE positions (estimated to be \$36,423 for the remainder of the current fiscal year) come from the

Contractual Services category in the Facilities Development program. The balance in that account is \$444,594. \$505,000 was originally budgeted.

Waste Reduction Program

On October 6, 1987, the Solid Waste Department gave a status report on the Waste Reduction program to the Council Solid Waste Committee (see attached copy of report).

See Exhibit "A" for a staffing comparison in the Waste Reduction Division for FY 1986-87 and FY 1987-88.

Questions

In reviewing the Solid Waste Department request for additional personnel, the following questions were raised:

1. What does legislative action require Metro to do regarding hazardous waste and what additional work is being suggested by the Solid Waste Department?
2. Who is currently assigned to hazardous waste and what other assignments do they have?
3. Are there any positions that have been removed from Waste Reduction? If so, what are they and what are the respective duties?
4. Are there other programs or projects currently provided for in the FY 1987-88 budget that could be postponed in order to shift personnel to the hazardous waste program to avoid creating the proposed new positions?
5. Are there other solid waste programs besides hazardous waste that are affected by recent legislation that may require additional personnel?
6. It is proposed that funds be transferred from Contractual Services category in the Facilities Development program to the Personal Services category in Solid Waste Administration and Waste Reduction. Are there any new or expanded projects contemplated that will require Contractual Services under the Facilities Development program?
7. What positions are currently vacant throughout the Solid Waste Department and what are the duties assigned the positions?

8. The current budget provides .93 FTE for the west transfer and recycling center. What is the Solid Waste staff doing now that was assigned to WTRC? Are there other programs or projects that have been delayed or dropped?
9. What is the status of the certification program and how many FTE are assigned to the program?

Conclusions

1. The current Solid Waste budget provides very little resources for hazardous waste activities, and few hazardous waste activities were planned for the 1987-88 fiscal year at the time the budget was adopted.
2. Significant additional responsibilities have been given to the Solid Waste Department by the Legislature and by the Metro Council since the FY 1987-88 budget was adopted.
3. There may be opportunities to meet the hazardous waste requirements with existing staff because of projects (such as WTRC) that have been dropped or delayed.
4. Several questions remain unanswered regarding Metro's role in hazardous waste and the proposed additional positions in the Solid Waste Department.

Recommendations

Based upon the information presented in the Solid Waste Department's staff report, a review of the FY 1987-88 budget, and the conclusions reached above, the following is recommended:

1. That the Solid Waste Committee withhold a recommendation regarding the adoption of Resolution No. 87-824 until answers to the above questions are received.
2. That the Council Solid Waste Committee request that the Solid Waste Department prepare a matrix or list that shows all the positions in all of the solid waste programs and the respective assignments for each position. This would be useful for future review and analysis work. The Solid Waste Department has so many programs and projects that it is difficult to determine who is doing what.

RB/sm
8492C/D1

cc: Don Carlson
Rich Owings
Dennis Mulvihill

EXHIBIT "A"

WASTE REDUCTION STAFFING

<u>Personal Services</u>	<u>FTE</u> <u>FY 1986-87</u>	<u>FTE</u> <u>FY 1987-88</u>
Solid Waste Director	0.27	0.07
Operations Manager	0.03	0
Engineering Manager	0.57	0.02
Facilities Manager	0.01	0.02
Engineer 3	0.20	0.10
Engineer 1	0	0.10
Secretary	0.37	0.32
Senior Analyst	0.30	0.22
Analyst 3	0	2.00
Analyst 2	3.71	1.90
Analyst 1	3.14	1.00
Program Assistant 2	0.99	1.00
Administrative Assistant	0.18	0.13
Waste Reduction Manager	0.86	0.65
Office Assistant	1.11	1.06
Temporary	0	0.02
TOTAL	<u>11.74</u>	<u>8.62</u>

8492C/D1

INSTITUTE FOR

LOCAL SELF-RELIANCE

Common Sense Economic Development for Cities

ABOUT NEIL SELDMAN

Neil Seldman, Ph.D., co-founder, in 1974, of the Institute for Local Self-Reliance (ILSR), is currently serving as its Director of Waste Utilization and President. He has helped develop approaches to municipal solid-waste management which can respect environmental quality and create economic development opportunities for minority youth, community organizations, and small businesses. Seldman views recycling and waste utilization as a means to establish urban self-reliance; that is, to enable a city and its citizenry to transform waste disposal from an increasingly costly service to a productive sector of the local economy.

Towards this end, Seldman has worked with agencies such as the National Science Foundation, the World Bank, the California Office of Appropriate Technology, the cities of Philadelphia, New Haven, Saint Paul, and Newark, and with numerous state, private industry, and citizen groups around the country.

Seldman and his associates were responsible for influencing the City Council of Philadelphia to switch from a proposed huge mass-burn plant to a plan for integrated resource recovery -- a concept combining a careful selection of recycling, composting, and resource recovery technologies. This concept spread quickly to other major cities in the United States.

Since 1974, Dr. Seldman has addressed over 400 conferences, forums, community groups, and town meetings on the subjects of community economic development, local self-reliance, resource management, and waste utilization. Among the publications he has written or coauthored are: Proven Profits from Pollution Prevention: Case Studies in Resource Conservation and Waste Reduction (1986), Waste-to-Wealth: A Business Guide for Community Recycling Enterprises (1985), Resource Recovery State-of-the-Art: A Data Pool for New Jersey Decision-makers (1985), Integrated Resource Recovery: Recycling from Municipal Refuse: A State-of-the-Art Review and Annotated Bibliography (1985) for the World Bank, and Community-Based Waste Recycling: A Neighborhood Action Guide (1979) for the Civic Action Institute.

agenda item 3
11/12/87

Agenda Item No. 4

November 11, 1987

Meeting Date Nov. 12, 1987

From: Corky *CK*
To: Metro Council

re: Legislative Interim Committee appointment

I was not contacted by Don Rocks, even though the memo from Rena indicated all councilors would be called to see if there is support for the appointment of Dr. Nohad Toulon to the study committee on metropolitan government.

Although I have high regard for Dean Toulon personally, I do not think it is an appropriate appointment to this committee for two reasons:

1. Metro was specifically asked to balance the committee by adding a citizen from Washington County. It is my understanding Presiding Officer Waker conveyed this request to the Executive Officer and she ignored it when making her appointment.

2. It is in the best interests of the region to have a balance of people with different backgrounds. Both Representative Cease and Dean Toulon are from the same department at Portland State University.

I urge you not to confirm this appointment.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Item 5
11/12/87

November 9, 1987

The Honorable Jim Gardner
2930 S.W. Second Avenue
Portland, OR 97201

Dear Jim:

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
Officer
District 3

Mike Ragsdale
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Executive Officer
Rena Cusma

At the October 22 Council meeting, the Council requested a status report concerning the landfill siting process being conducted by the Department of Environmental Quality (DEQ). Council concerns were related to the costs already incurred for this project, as well as the uncertainty if the site will ever be developed as a waste disposal facility. To briefly summarize the recent history regarding this issue:

In June, 1987, the Environmental Quality Commission (EQC) issued an order naming the Bacona Road site for a waste disposal facility to serve the region. At the hearing, the EQC also determined to conduct a contested case hearing to receive testimony from affected parties regarding the order and site feasibility.

During July and August a hearings officer appointed by the Commission held hearings and reviewed the order issued by the EQC in June.

In September a decision was rendered by the hearings officer, recommending further study of the landslide potential and the leachate treatment system at the Bacona Road Site. On October 2 the EQC agreed with the findings of the hearings officer and requested that further study of the landslide potential and leachate treatment at the Bacona Road site be conducted. To meet this directive, the DEQ is planning a phased approach to address the issues raised by the hearings officer's findings.

The first phase of this analysis involves installation of four instruments on site to collect data pertaining to slope stability. This phase is expected to cost approximately \$110,000. A second phase is planned which would require additional slope stability work, based on the data resulting from the first phase of analysis, and

an evaluation of leachate treatment options. It is estimated that the work required for the second phase would cost approximately \$350,000.

A decision by the EQC regarding the second phase will be made after bids for an out-of-region waste disposal site have been received and reviewed by Metro. If the bids clarify the region's landfill disposal concerns and an acceptable alternative site is identified, the DEQ may discontinue work on the Bacona Road site, and it would receive no further consideration as a potential waste disposal facility. It would not, however, be released as an ordered site until July, 1989, in accordance with legislation passed in the 1987 Session. This statutory provision required that any order of the EQC requiring the DEQ to establish a disposal site at a location selected by the EQC would not expire before July 1, 1989.

If the EQC authorizes the DEQ to conduct further investigations, it is expected the Bacona Road site will be ordered as a waste disposal site in June, 1988. The design and permitting process would require approximately 18 months; construction would require an estimated 24 months. The facility would then be operable by January, 1992. Our current projections for the St. Johns Landfill indicate that facility will reach capacity in August, 1990.

As of October 1, 1987, \$2.4 million has been expended by the DEQ for the landfill siting project. The current phase will bring that to about \$2.5 million. The second phase, if implemented, will potentially increase expenditures to \$2.9 million by June, 1988. These costs do not include design, permitting, or construction, which would be over and above that which has already been or may be proposed to be expended on the site.

The Solid Waste Department technical staff are currently reviewing and finalizing the costs for developing and operating a landfill at Bacona Road for comparative purposes with other waste disposal options. It is my intention to present this information to you in January, 1988.

Sincerely,



Rena Cusma
Executive Officer

RC:mrs

cc: Rich Owings, Solid Waste Director



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Agenda

Meeting: Council Meeting
Date: November 12, 1987
Day: Thursday
Time: 5:30 p.m.
Place: Council Chamber

CONSENT AGENDA

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 Agenda Criteria established by the Rules and Procedures of the Council. The Council is requested to approve the recommendations presented on these items.

- 6.1 Minutes of October 8 and 22, 1987
- 6.2 Resolution No. 87-825, for the Purpose of
Confirming a Citizen Member to the Transportation
Alternatives Committee (John Godsey)

Rena Cusma
Executive Officer

amn

Agenda Item No. 6.1

Meeting Date Nov. 12, 1987

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

Regular Meeting
October 8, 1987

Councilors Present: Mike Bonner, Tanya Collier, Tom DeJardin,
Jim Gardner, Gary Hansen, Sharron Kelley,
Corky Kirkpatrick, David Knowles, Mike
Ragsdale, George Van Bergen and Richard
Waker

Councilors Absent: Larry Cooper

Also Present: Rena Cusma, Executive Officer

Presiding Officer Waker called the meeting to order at 5:35 p.m. and announced the meeting order would be revised to accommodate the schedule of certain visitors.

5. EXECUTIVE OFFICER COMMUNICATIONS

5.1 Consideration of Resolution No. 87-813, for the Purpose of
Recognizing Recycling Achievement in the Metro Region

Presiding Officer Waker read the Resolution which acknowledged achievements of the City of Portland for its recent curbside recycling promotion and education program, and of the Grimm's Fuel Company for its innovative yard debris recycling program.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Gardner, to adopt Resolution No. 87-813.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried and Resolution No. 87-813 was adopted.

Executive Officer Cusma presented recycling awards to City of Portland Commissioner Bob Koch and Rod Grimm of Grimm's Fuel Company and commended them for their successful programs.

1. INTRODUCTIONS

None.

2. WRITTEN COMMUNICATIONS TO COUNCILORS ON NON-AGENDA ITEMS

The Presiding Officer read a letter received from LaQuita Stec, President of the Oregon Association of Municipal Records (OAMR), announcing that Marie Nelson, Metro Council Clerk, had been elected to the post of Region II OAMR Director.

4. COUNCILOR COMMUNICATIONS

None.

5. EXECUTIVE OFFICER COMMUNICATIONS (continued)

5.2 Status Report on the Convention Center Area Development Strategy

Tuck Wilson, Convention Center Project Director, introduced Chris Kopca from the Portland Development Commission (PDC). He explained Metro had entered into a contract with the PDC to develop a convention center area development strategy. Mr. Kopca distributed a written report entitled "Convention Center Area Development Strategy," dated October 1987, and summarized the report.

Fundamental principles guiding the development of the concept plans included: 1) develop the ring road concept (a well-defined transportation system to separate through traffic from local access traffic); 2) build a more urban character; 3) designate Holladay Street as the main spine around which the highest density development would occur; 4) develop strong physical and visual connections to other major convention-related uses; 5) design the Union/Holladay intersection as the ceremonial entrance to the convention center; and 6) create district gateways at key access points.

Discussion followed about plans for a headquarter hotel and development strategies for areas adjacent to the convention center.

Mr. Wilson introduced William Scott, President of Pacific Development, Inc. The corporation was recently formed to enter into real estate transactions with Lloyd Center Properties, Inc. Mr. Scott endorsed Mr. Kopca's conclusions. He said the primary goal was for convention center visitors to enjoy the immediate area. The environment should introduce them to other areas of interest in the region and state. Development should also tie the immediate area into Old Town and downtown Portland, he said, and MAX was the largest asset in developing that connection. Finally, Mr. Scott envisioned a headquarter hotel not being built until adequate year-around business could be ensured.

10. EXECUTIVE SESSION

At 6:25 p.m., Presiding Officer Waker called the meeting into executive session under the provision of ORS 192.660(1)(e) and (h) for the purpose of discussing a real property transaction related to the convention center project and litigation related to the Clackamas Transfer & Recycling Center (CTRC). Eleven Councilors were present at the executive sessions. Councilor Cooper was absent. Dan Cooper, General Counsel, Executive Officer Cusma, Don Carlson and Ray Barker were present at both sessions. Harry Bodine of The Oregonian was present at both sessions.

Staff present at the executive session regarding the convention center real estate transaction included Tuck Wilson, Neil McFarlane, Jan Schaeffer, and a representative from the Portland Development Commission.

Jim Owings was present at the executive session regarding CTRC.

Presiding Officer Waker called the meeting into regular session at 6:35 p.m.

10.1 Convention Center Property Acquisition

Motion: Councilor Ragsdale moved to approve the Portland Development Commission's recommendation relating to the Roberts Motors property and the Oregon Convention Center. Councilor Kirkpatrick seconded the motion.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried unanimously.

10.2 Clackamas Transfer & Recycling Center (CTRC)

The Presiding Officer appointed himself, Councilor DeJardin and Councilor Gardner to work with Executive Officer Cusma on a task force to mitigate concerns raised by the City of Oregon City concerning the Clackamas Transfer & Recycling Center (CTRC). There were no objections to the appointments.

6. CONSIDERATION OF MINUTES

Motion: Councilor Gardner moved, seconded by Councilor DeJardin, to approve the minutes of August 27 and September 10, 1987.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye.

The motion carried unanimously and the minutes were approved.

7. ORDINANCES

7.1 Consideration of Ordinance No. 87-229, for the Purpose of Amending Metro Code Chapter 3.02, Amending the Regional Waste Treatment Management Plan, and Submitting the Plan for Recertification (First Reading and Public Hearing)

The Clerk read the Ordinance a first time by title only. Mel Huie, Local Government Coordinator, introduced members of the Water Resources Policy Alternatives Committee present at the meeting including: David Abraham, Director of the Clackamas County Utility Department; Gene Appel, City of Portland, Bureau of Environmental Services; Greg DiLoreto, City of Gresham Engineer; and Paul Haines, City of Lake Oswego Public Works Director.

Mr. Huie reviewed the process for annually updating the Regional Waste Treatment Management Plan and noted a copy of the Plan had been filed with the Council Clerk.

Motion: Councilor DeJardin moved, seconded by Councilor Kirkpatrick, to adopt Ordinance No. 87-229.

In response to Councilor DeJardin's question, Mr. Haines of Lake Oswego reported the city of Lake Oswego's Public Works Master Plan would soon be completed. He said interested citizens who had addressed the Metro Council last year about sewage services in Lake Oswego had been invited to participate in that Master Plan process.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed. He announced a second reading of the ordinance would occur on October 22, 1987.

3. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Ed Martiszus, 53215 Timber Road, Vernonia, Oregon 97064, an opponent of the proposed Bacona Road landfill site, testified about the types of special waste being disposed at the St. Johns Landfill. Mr. Martiszus said many of the chemicals had extremely high toxicity ratings. Although the chemicals were being disposed legally, he questioned the long-term effects of those chemicals on the environment. He was particularly concerned that a landfill liner at the Bacona Road site would not safely contain toxins due to the unstable nature of the soil and underground water movement. He urged the

Council to deal with the problem and expressed willingness to work together with Councilors toward a solution.

Councilor Gardner requested Mr. Martizsus indicate the quantities of special wastes disposed in his written communications to Councilors.

Patricia Jensen, Vernonia, Oregon, was concerned that a landfill liner would not be able to contain leachate and other hazardous materials disposed at the Bacona Road landfill site due to the unstable nature of the land. A landslide would result in water contamination, she said. Ms. Jensen also objected to building a mass incinerator in Columbia County. She proposed Metro encourage recycling and ship garbage to a drier climate for landfilling.

Presiding Officer Waker noted Metro was developing a request for bids document to operate a landfill in Eastern Oregon.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 87-812, for the Purposer of Granting a Processing Facility to K.B. Recycling, Inc.

The Presiding Officer announced the item was being removed from the agenda at the request of K.B. Recycling. The item would be continued to a future meeting.

8.2 Consideration of Resolution No. 87-811, for the Purpose of Promoting Bi-State Cooperation Toward Regional Solutions to Solid Waste Disposal Facilities and Solid Waste Management

Ray Barker, Council Assistant, reviewed staff's written report. Councilor Hansen added that information was already being shared and new areas of cooperation would soon occur, especially in marketing.

Motion: Councilor Hansen moved to adopt Resolution No. 87-811 and Councilor Kelley seconded the motion.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Cooper was absent.

The motion carried unanimously and Resolution No. 87-811 was adopted.

8.3 Consideration of Resolution No. 87-810, for the Purpose of Establishing Policies for the Creation of Operating Commissions; and

9. Consideration of Ordinance No. 87-225, Establishing a Regional Commission to Construct and Operate Regional Convention, Trade and Spectator Facilities (Introduced by the Executive Officer) (Second Reading)

The Clerk read Ordinance No. 87-225 a second time by title only.

Presiding Officer explained that at the August 27, 1987, Council meeting, a motion was adopted (moved by Councilors Knowles and DeJardin) to introduce Ordinance Nos. 87-225, 87-226 and 87-227 for first reading. Ordinance No. 87-225 was introduced by the Executive Officer, Ordinance No. 87-226 was introduced by the Presiding Officer at the request of the CTS Committee, and Ordinance No. 87-227 was introduced by Councilors Kirkpatrick and Van Bergen. A public hearing was conducted on August 27 for all three ordinances.

Also on August 27, the Presiding Officer announced he would refer the three ordinances to the Ad Hoc Task Force on the CTS Commission for review and recommendation. At that meeting, the Council adopted a motion requiring the Ad Hoc Task Force to return to the Council on or before October 8, 1987, with a recommended ordinance for a second reading and final adoption.

The Task Force met on September 3, 17 and 29 and as a result of those meetings, was now recommending the Council table Ordinance Nos. 87-226 and 87-227 from further consideration and adopt Resolution No. 87-225 as amended.

Presiding Officer Waker announced he had received a request from several Councilors to continue discussion of the Ordinance to the October 22 meeting. He requested Councilor Kirkpatrick present the Task Force's recommendation before such a continuation was considered.

Councilor Kirkpatrick, Chair of the Ad Hoc Task Force on the CTS Commission, reviewed the group's written report (contained in the meeting agenda packet) and explained the Task Force's process for reviewing legislation. She said the group had used the Convention Center Master Plan as a basis for evaluating all legislation. The group had examined the Exposition-Recreation (E-R) Commission operations and had talked to people working for and serving on the Commission. The Councilor then reviewed major amendments to Ordinance No. 87-225 recommended by the Task Force as listed in their written report. She concluded the Council would, on October 22, be asked to consider an ordinance that would amend Metro's personnel and

Metro Council
October 8, 1987
Page 7

contracting rules to transfer certain authority from the Executive Officer to the Commission.

Presiding Officer Waker reviewed the issues before the Council. Resolution No. 87-810 set out a policy for establishing the need for commissions and the manner in which commission members would be appointed. The Council was requested to adopt the Resolution at this meeting.

Ordinance No. 87-225 as amended defined the procedures for appointing Metro CTS Commission members and the chair. There was agreement among all parties that language was satisfactory. The Ordinance also set up the Commission and charged that body with returning to the Metro Council for approval of an operating plan and personnel and contract procedures. If the Commission did not recommend Metro's existing personnel and contracting rules be used, they were required to demonstrate why they would not work. The Presiding Officer pointed out that some parties did not agree with the revised ordinance and recommended the Commission be empowered to establish their own personnel and contracting rules without having to demonstrate why Metro's rules would not work.

Presiding Officer Waker supported the ordinance as amended by the Ad Hoc Task Force, saying Metro was about consolidation of government and the ordinance clearly embodied the intent of the Convention Center Master Plan.

Motion: Councilor Knowles moved, seconded by Councilor Hansen, to defer consideration of Resolution No. 87-810 and Ordinance No. 87-225 to another meeting.

Councilor Knowles thought consideration should be delayed until Councilor Cooper could attend. Councilor Hansen concurred and added a delay might resolve the substantial differences between the Ordinance's authors and the City of Portland and Multnomah County. Councilor Ragsdale said Clackamas County Commissioner Ed Lindquist supported a delay in order for the County to take an official position on the legislation.

Councilor Kirkpatrick said she had challenged Executive Officer Cusma and other parties to convince her a delay would result in negotiations. Because no one had offered to negotiate a compromise, she urged the Council not to delay consideration because nothing would be gained.

Vote: A vote on the motion resulted in:

Ayes: Councilors Hansen, Kelley, Knowles and Ragsdale

Nays: Councilors Bonner, Collier, DeJardin, Gardner,
Kirkpatrick, Van Bergen and Waker

Absent: Councilor Cooper

The motion failed.

Motion: Councilor Kirkpatrick moved to adopt Resolution
No. 87-810 and Councilor Van Bergen seconded the
motion.

Councilor DeJardin said he would support Ordinance No. 87-225 as amended because it expressed a balance between what the City of Portland, Multnomah County and Metro Council wanted to achieve. Regarding the issue of personnel and contract rules, he questioned why the newly formed commission should reinvent the wheel when the systems had been proven workable. He said Representative Cease's letter, included in the agenda packet, stated his own views concerning the issue of the Commission's autonomy and accountability. He also pointed out that delays traditionally made decision-making more difficult and urged the Council to adopt the Ordinance and Resolution at this meeting.

Councilor Bonner concurred with Councilor DeJardin.

Councilor Gardner supported the ordinance as revised, pointing out any separate rules the Commission would propose would embody the same open hiring and contracting principles contained in Metro's existing rules. The ordinance clearly allowed the Council to grant the Commission exemptions where Metro's rules were not found workable. He agreed with Councilor Kirkpatrick there was no more room to compromise.

Vote: A vote on the motion to adopt Resolution No./ 87-810
resulted in:

Ayes: Councilors Bonner, Collier, DeJardin, Gardner,
Kelley, Kirkpatrick, Van Bergen and Waker

Nays: Councilors Hansen, Knowles and Ragsdale

The motion carried and Resolution No. 87-810 was adopted.

Motion: Councilor Kirkpatrick moved to adopt Ordinance
No. 87-225 as amended by the Ad Hoc CTS Commission
Task Force. Councilor Van Bergen seconded the motion.

Executive Officer Cusma addressed the Council saying if politics were the art of compromise, she did not believe there was any middle ground left. Metro would need partners, she said, and the differences could be resolved. The problem was that Metro's convention center partners did not think the amended ordinance embodied a commission structure promised during the General Obligation bond election campaign. She then quoted election literature prepared by Metro staff for the campaign:

The existing Portland Exposition-Recreation Commission will be expanded to become a regional commission. The expanded commission will operate the new convention center as well as existing coliseum and stadium facilities. The regional commission, to be established by the Metropolitan Service District, will have seven councilors appointed in coordination with the governments of Washington, Multnomah and Clackamas counties."

She concluded that "the guts of the E-R Commission was its autonomy from the City of Portland" and the proposed CTS Commission must have the same relationship with the Metro Council to succeed.

Councilor Ragsdale concurred with the Executive Officer. He could not believe the Council was at an impasse with the City of Portland and Multnomah County over the issue of personnel and contract rules and he refused to believe those concerns were minor. He thought it critical the Council not adopt the ordinance at this meeting so that further negotiations could be attempted.

Councilor Knowles added it was not important whether the City or County believed the ordinance was not acceptable. What was important was that the City and County had the perception the ordinance was not acceptable. If Metro wanted a successful convention center, it had to cooperate and attain the goodwill of its partners, he explained. Regional government was about building consensus and Metro could not do a proper job without consensus.

Councilor Hansen also urged against adopting the ordinance until a consensus could be reached.

Motion: Councilor Ragsdale moved, seconded by Councilor Knowles, to defer consideration of Ordinance No. 87-225 as amended until October 22, 1987.

Councilor Collier thought the second motion to defer out of order. After discussion, Dan Cooper, General Council, declared the motion appropriate.

In response to Councilor Kelley's question, Presiding Officer Waker and Councilor Kirkpatrick thought nothing would be gained by deferring action on the ordinance. Councilors Gardner and Waker agreed.

Councilor Ragsdale disagreed. He noted when both parties wanted the same objective, the parties could be very close to reaching a compromise. He thought some language could be proposed that would be satisfactory to all parties and there was no risk in delaying action. A delay would send a signal to partners that Metro was willing to accommodate them.

Vote: A vote on the motion to delay consideration of Ordinance No. 87-225 to October 22 resulted in:

Ayes: Councilors Gardner, Hansen, Kelley, Knowles and Ragsdale

Nays: Councilors Bonner, Collier, DeJardin, Kirkpatrick, Van Bergen and Waker

Absent: Councilor Cooper

The motion failed.

Vote: A vote on the motion to adopt Ordinance No. 87-225 as amended resulted in:

Ayes: Councilors Bonner, Collier, DeJardin, Gardner, Kelley, Kirkpatrick, Van Bergen and Waker

Nays: Councilors Hansen, Knowles and Ragsdale

Absent: Councilor Cooper

The motion carried and Ordinance No. 87-225, as amended by the Ad Hoc CTS Commission Task Force, was adopted.

NOTE: At the end of the meeting, Councilor Kelley announced she might move to reconsider the Ordinance at the October 22, 1987, Council meeting.

11. COMMITTEE REPORTS

Council Solid Waste Committee. Councilor Gardner reported the Committee met twice to review a request for bids document for landfill services. As a result of testimony by citizens and potential vendors and Councilors comments, staff returned at the second meeting with a modified proposal. Staff proposed vendors be asked to submit a firm bid for landfill services only and not include transfer

Metro Council
October 8, 1987
Page 11

stations or transportation of waste to the landfill. Those other services would be subject to one or more later Request for Proposals after decisions were made about resource recovery project(s) and the type and optimal locations of transfer and materials recovery centers needed. The latter decisions would come out of the functional planning process.

Councilor Gardner further reported landfill vendors were not entirely pleased with staff's approach, arguing they should be allowed to propose reload facilities and processing centers as part of their landfill "package." At those meetings, staff responded that to do so would preempt many of the system decisions in functional planning. They also felt it would be extremely difficult to compare proposals from different vendors on a lowest bid basis since they would involve different locations. Everyone agreed on one point: it would take a proposal (rather than bid) process to allow varied, "full service" proposals, and proposals would take considerably more time, at least six months. To get firm information on the cost of landfill services before the Council made its decisions on resource recovery, the shorter bid process was necessary.

Zoo. Councilor Kirkpatrick said the Vollum family had selected the Africa Aviary as a project to fund.

OTHER BUSINESS

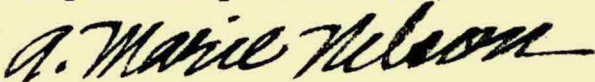
Notice of Reconsideration of Ordinance No. 87-225 as Amended.

Councilor Kelley announced she was serving notice of possible reconsideration of Ordinance No. 87-225. Presiding Officer Waker noted the Council's procedures would require the motion for reconsideration to be received as the first item of business at the October 22, 1987, meeting.

Clackamas Transfer & Recycling Center. In response to Councilor Van Bergen's question, Don Carlson announced he was working with Dan Cooper, General Counsel, on an ordinance for Council consideration that would define procedures for initiating Metro litigation.

There was no further business and the meeting was adjourned at 8:10 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

amn
8365C/313-2
10/26/87

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

Regular Meeting
October 22, 1987

Councilors Present: Mike Bonner, Tanya Collier, Larry Cooper,
Tom DeJardin, Jim Gardner, Gary Hansen,
Sharron Kelley, Corky Kirkpatrick, David
Knowles, Mike Ragsdale, George Van Bergen
and Richard Waker

Councilors Absent: None

Also Present: Rena Cusma, Executive Officer

Presiding Officer Waker called the meeting to order at 5:35 p.m. He announced that agenda item 6 would be considered first, that item 8.2 would be considered last, and that an executive session would be added to the agenda.

6. RECONSIDERATION OF ORDINANCE NO. 87-225, Establishing a
Metropolitan Exposition-Recreation Commission to Operate
Regional Convention, Trade and Spectator Facilities

Presiding Officer Waker explained that on October 8, 1987, the Council adopted Ordinance No. 87-225 as amended by the Ad Hoc Convention, Trade and Spectator Facilities Task Force by an eight to three vote. At the end of that meeting, Councilor Kelley, who had voted for adopting the ordinance, orally gave notice of intent to move to reconsider the ordinance on October 22. The Presiding Officer then reviewed the Council's rules for reconsideration.

The Presiding Officer also explained that on October 15, Dan Cooper, Metro's Counsel, issued a written opinion stating Ordinance No. 87-225 could not be vetoed by the Executive Officer while it was subject to reconsideration. Because a reconsideration notice was served and until the Council moved to reconsider or decided not to reconsider, the ordinance was not yet enacted.

Motion: Councilor Kelley moved, seconded by Councilor Hansen, to reconsider Ordinance No. 87-225.

Councilor Kelley said although she believed the ordinance adopted on October 8 was good public policy, she was glad Councilor Kirkpatrick had used the last two weeks to work out a compromise with Metro's partners in the convention center project. She requested Councilor Kirkpatrick review the amendments to Ordinance No. 87-225.

Vote: A vote on the motion to reconsider Ordinance
No. 87-225 resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kelley,
Kirkpatrick, Knowles, Ragsdale and Waker

Nays: Councilors Bonner, Collier and Van Bergen

The motion carried.

In response to Councilor Van Bergen's question, Mr. Cooper advised that because amendments had been prepared to the ordinance, Councilors could consider those amendments and adoption of the ordinance at this time.

Motion to Amend: Councilor Kelley moved, seconded by
Councilor DeJardin, to amend Ordinance No. 87-225 as
submitted by Councilor Kirkpatrick.

The amendments were included in a document distributed to Councilors and identified as "Kirkpatrick Amendments (10/20/87)."

Councilor Kirkpatrick said she agreed the Ordinance adopted on October 8 was good public policy. She also believed the amended version of the ordinance now before the Council was good public policy, would maintain accountability of the new Commission to the Metro Council, and would allow the Commission to conduct its business as appropriate. The Councilor then reviewed all the proposed amendments.

Councilor DeJardin, referring to the amended Section X.01.030(g) requiring that no person elected or appointed to a public office could serve on the Commission, said he disagreed with the policy but would not vote against the amendment.

Presiding Officer Waker strongly disagreed with the amended Sections X.01.030(h) and (j), which allowed for the Commission to adopt its own personnel and contracting rules. The originally adopted ordinance had required the Commission to operate under Metro's rules with the Council granting exemptions to the rules as necessary. He explained he had received letters from many parties suggesting the Exposition-Recreation (E-R) Commission's current organization be used as a model for the Metropolitan E-R Commission. He then read excerpts of Chapter 14 of the City of Portland's Charter relating to how the Commission's purchasing and personnel operations should be conducted. He also read positions of a legal opinion from attorney Chris Thomas to Metro employee Neil McFarlane which discussed the relationship of the E-R Commission to the City of Portland. Presiding Officer Waker concluded the E-R Commission was a department of

the City -- not a completely autonomous body -- and that most purchases were made according to City rules. All clerical and maintenance employees -- the bulk of the work force -- were subject to the City's personnel rules. He thought any requirement that the new Metropolitan Commission write its own personnel and contracting rules redundant, and were counter to the E-R Commission model. He said he would not support the new amendments to Ordinance No. 87-225 and suggested that parties advocating independent rules were seeking a much greater authority than the E-R Commission had actually been granted by the City.

In response to Presiding Officer Waker's question about amendments to Section X.01.030(m), Councilor Kirkpatrick explained the original language authorized the Commission to acquire services by "other means." The amendment defined "other means" as being by budget amendment.

Responding to Councilor Van Bergen's question about the amended language for Section X.01.090(a), Councilor Kirkpatrick said she envisioned the Council Convention Center Committee as a permanent committee.

Councilor Collier said she was opposed to the amended ordinance because the voters had clearly authorized Metro to run the convention center. Metro, by adopting the amendments, would relinquish control of the operation to a non-elected body. If the Council were to live up to its responsibility to voters, Metropolitan Exposition-Recreation commissioners would have to be elected, she said. She perceived problems would occur that were similar to Metro's current relationship with the Department of Environmental Quality (DEQ): the State had given the DEQ authority to site a regional landfill and Metro the responsibility to pay for the siting process. As a result, Metro had to pay DEQ's bills with no oversight of how the money was spent. She further pointed out the City of Portland did not give the E-R Commission authority to set up its own personnel and contracting rules and questioned why Metro would relinquish that control when it had established rules which included worthwhile affirmative action and minority and women-owned business participation goals. Councilor Collier concluded that to allow the Commission to adopt its own operating rules would constitute costly duplication of services. She also questioned why Metro would grant so much liberty to the Commission when it was still unknown who would serve on that board.

Executive Officer Cusma disagreed with Councilor Collier's comments. She commended Councilor Kirkpatrick's work in drafting the amendments which still gave the Council control of the convention center operation through setting policy and approving budgets. The Commission would also continue to report to the Council's subcommittee and would use central Metro services.

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Councilor Kirkpatrick read letters from City of Portland Mayor Bud Clark and Multnomah County Board of Commissioners Chair Gladys McCoy. Both expressed approval of the amendments and appreciation for the Councilors in redrafting legislation that could be endorsed by all the partners involved in the convention center project.

Councilor Knowles thanked Councilor Kirkpatrick for her hard work and leadership. He said the amendments to the ordinance showed the Council wanted to bring about mutual agreement among all regional jurisdictions.

Presiding Officer Waker noted there was a difference between good government and good politics. He thought if the amendments were adopted, Metro's constituents would be the losers for the sake of good politics.

Councilor Ragsdale did not perceive adoption of the amendments as giving in to politics: adoption would be a mature, well reasoned legislative action. He explained the Council had total control over the project's budget as it did over the budget for siting the land-fill. The Councilor was proud of the amendments and hoped they passed unanimously.

Councilor Gardner thought both the original ordinance and the new amendments represented good government. However, the amendments represented good government and good politics, he said. Metro had a responsibility to its partners and because the first ordinance did not please those partners, he was glad a solution had been worked out that would be agreeable to all parties.

Councilor Van Bergen said he had supported the Presiding Officer's earlier remarks concerning accountability of the Commission to Metro and thought the amendments submitted for consideration at this meeting brought the accountability issue to a trivial level. He said he agreed with the remarks made earlier by Councilor Collier and expressed regret that so much had been given away over minor differences.

Councilor Cooper supported the amendments, saying they would give Metro authority and accountability. He said he had never known Metro to be bashful about asserting its authority and urged the Council to remain open-minded in order to improve regional government.

Councilor Hansen supported the amendments and praised the parties responsible for working out the compromise. The amendments would bring back enthusiasm of Metro's partners, he said, and that enthusiasm was needed for a successful project.

Councilor DeJardin noted on October 8 he had supported Ordinance No. 87-225 and had commented that if Metro gave the commission autonomy, it had to expect responsibility in return. He thought Metro had maintained responsibility plus the added support of its partners. He had strongly disagreed with recent Oregonian editorials on the subject and thought it was time to move on.

Vote on the Amendments to Ordinance No. 87-225: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kelley, Kirkpatrick, Knowles, Ragsdale and Waker

Nays: Councilors Bonner, Collier and Van Bergen

The motion carried and the amendments to Ordinance No. 87-225 were adopted as submitted by Councilor Kirkpatrick.

Motion to Adopt Ordinance No. 87-225: Presiding Officer Waker announced a motion had been made by Councilor Kirkpatrick and seconded by Councilor Van Bergen on October 8, 1987, to adopt Ordinance No. 87-225. The Council would again vote on that original motion for adoption.

Councilor Ragsdale recalled at the October 8 meeting, Councilor Kirkpatrick said she did not believe compromise was possible. He commended her for her courage and statesmanship skills in finding a compromise. Councilor Kirkpatrick acknowledged Councilor Ragsdale's assistance in reaching a compromise.

Vote on the Motion to Adopt Ordinance No. 87-225: The vote resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kelley, Kirkpatrick, Knowles, Ragsdale and Waker

Nays: Councilors Bonner, Collier and Van Bergen

The motion carried and Ordinance No. 87-225 was adopted as amended.

Presiding Officer called a recess at 6:30 p.m. The Council reconvened at 6:45 p.m.

NOTE: During consideration of agenda item 7.2, Ordinance No. 87-233, a discussion occurred regarding the Executive Officer's ability to veto Ordinance No. 87-225.

1. INTRODUCTIONS

None.

2. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Presiding Officer Waker said he and the Executive Officer had received letters from the Boundary Commission requesting a workshop be organized early in 1988 to brief the Council about the Commission and to develop a process for appointing new commissioners. Councilors would be advised of a meeting date.

3. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Ione Pilate, HCR 61, Box 3, Buxton, Oregon, testified before the Council about problems encountered during a recent forest fire in the Vernonia. She explained a fire at the landfill, if sited at Bacona Road, could cause the same problems recently experienced including: Depletion of available water supplies; the presence of only one evacuation route (Highway 47), disruption of power to over 300 people (even though the Department of Environmental Quality's siting reports stated only eight families lived near the Bacona Road Site); and potential animal management problems caused by animals becoming "spooked" around fires. She also noted Highway 47 was very unsafe and many accidents happened along that route. Ms. Pilate reported that as many as three fires a day had been known to occur in the existing municipal dump or on trucks in route to the dump.

Councilor Ragsdale requested staff present a formal update to the Council on the status of the Department of Environmental Quality's (DEQ) landfill siting process and whether Metro could, if feasible, request further consideration of the Bacona Road Site cease. Councilor Van Bergen also requested staff report on the amount of money spent by the DEQ on the siting process. Councilor Cooper concurred with the request, saying he did not want more money spent on the landfill siting process if those expenditures were unnecessary. Executive Officer Cusma said she would have the report presented at the November 12, 1987, Council meeting.

4. COUNCILOR COMMUNICATIONS

None.

5. EXECUTIVE OFFICER COMMUNICATIONS

None.

7. ORDINANCES

Presiding Officer Waker announced that Ordinance Nos. 87-232 and 87-233 would be necessary for the interim operation of the convention center. When the new commission adopted their own contracting and personnel rules, the Ordinances would become obsolete.

7.1 Consideration of Ordinance No. 87-232, for the Purpose of Amending Metro Code Section 2.02.010 and Adding a Code Section 2.04.035 Relating to Personnel and Contracting Rules for the Metropolitan Exposition-Recreation Commission (First Reading and Public Hearing)

The Clerk read the ordinance a first time by title only.

Dan Cooper, General Counsel, reviewed staff's written report. There was no discussion.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Ragsdale, to adopt Ordinance No. 87-232.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed. He announced the second reading of the ordinance was scheduled for November 12, 1987.

7.2 Consideration of Ordinance No. 87-233, for the Purpose of Amending Metro Code Section 2.04.041 Creating an Exemption for Agreements for the Lease or Use of the Oregon Convention Center from Public Bidding Requirements (First Reading and Public Hearing)

The Clerk read the ordinance a first time by title only. The Presiding Officer announced the Council would be considering this ordinance in their capacity as the Metro Contract Review Board.

Dan Cooper, General Counsel, reviewed staff's written report, explaining the exemption would be necessary for the convention center to operate as a competitive business.

Councilor Van Bergen, referring to the Council's recent adoption of Ordinance No. 87-225, asked Mr. Cooper to comment on the Executive Officer's letter of October 15, 1987, to Councilor Kirkpatrick in which she had announced her veto of Ordinance No. 87-225. He asked that action be clarified.

Executive Officer Cusma said it was clear the letter related to the ordinance as adopted on October 8. She said she would clarify her views in another letter to Councilors.

Councilor Collier pointed out new Council procedures were needed that took into account the Executive Officer's veto. The Presiding Officer asked Mr. Cooper to recommend changes to the Council's procedures for future consideration. Councilor Ragsdale further suggested parliamentary procedures other than Roberts Rules of Order be adopted for Council use.

There were no questions of Councilors concerning Ordinance No. 87-233.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Ragsdale, to adopt Ordinance No. 87-232.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed. He announced the second reading of the ordinance was scheduled for November 12, 1987.

7.3 Consideration of Ordinance No. 87-229, for the Purpose of Amending Metro Code Chapter 3.02, Amending the Regional Waste Treatment Management Plan, and Submitting it for Recertification (Second Reading)

The Clerk read the ordinance by title only a second time.

Presiding Officer Waker announced that a first reading and public hearing had been conducted on October 8 and at that meeting, Councilor DeJardin and Kirkpatrick had moved for adoption of the ordinance.

There was no discussion.

Vote: A roll call vote on the motion to adopt the ordinance (made by Councilors DeJardin and Kirkpatrick on October 8, 1987) resulted in all twelve Councilors voting aye.

The motion carried and Ordinance No. 87-229 was unanimously adopted.

7.4 Consideration of Ordinance No. 87-230, for the Purpose of Amending Metro Code Chapter 2.04 Relating to Contract Procedures and Creating an Exemption for Computer Software Purchases (First Reading and Public Hearing)

The Clerk read the ordinance a first time by title only. Presiding Officer Waker announced the ordinance would be considered by the Council in their capacity as the Metro Contract Review Board.

Ray Phelps, Finance & Administration Manager, reported Metro's Code already granted exemptions for computer hardware. By adoption of

this ordinance, software could be acquired by a request for proposals process, rather than a low bid process.

Councilor Van Bergen asked if the exemption would result in increased staff time to analyze proposals. Mr. Phelps said he would return on November 12 with an answer to the question.

Motion: Councilor Cooper moved to adopt Ordinance No. 87-230 and Councilor Ragsdale seconded the motion.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed. He announced the second reading of the ordinance was scheduled for November 12, 1987.

7.5 Consideration of Ordinance No. 87-231, for the Purpose of Amending Metro Code Chapter 2.04 Relating to the Disadvantaged Business Program (First Reading and Public Hearing)

Ray Phelps reviewed staff's written report. He explained that two events had occurred this year which required revisions in Metro's Disadvantaged Business Program: 1) the 1987 Oregon Legislature adopted a bill which transferred certification authority for disadvantaged and women businesses (DBE's and WBE's) from the Oregon Department of Transportation (ODOT) to the Executive Department; and 2) the Ninth Circuit Court of Appeals rendered a decision which clarified the constitutional limits of disadvantaged business programs. Staff had also determined it would be practical for the program's goal year to run concurrently with the budget year rather than the federal fiscal year.

Mr. Phelps reported that as a result of public concerns, an informal "task force" of DBE's, WBE's, prime contractors and local government representatives had been meeting to review Metro's DBE program and to make recommendations for improvement. Those in attendance at the final October 5 session of the review group concurred with the revisions to the program embodied in Ordinance No. 87-230, he said. A list of the group's participants was distributed to Councilors.

Mr. Phelps then reviewed recommended changes to the DBE program. Referring to page 11, subsection (d), Councilor Ragsdale suggested the language be changed to read: "Even though no DBE/WBE subcontracting opportunities appear likely at the time of contract award, the Liaison Officer [may] shall direct the inclusion of a clause in any contract described in this section . . ." He thought the change consistent with staff's stated intent.

Councilor Kelley requested staff indicate which changes were in compliance with state law and which changes were in response to the

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task force's recommendations. Mr. Phelps said he would supply that information at the November 12 meeting.

Councilor Collier asked if all the review task force participants had agreed with the ordinance changes. Mr. Phelps responded that those attending the October 5 task force meeting had agreed to the changes.

Mr. Phelps continued to review proposed changes to the DBE program. The Presiding Officer requested Councilors submit all questions in writing to Mr. Phelps so he could respond to them at the November 12 meeting.

A discussion followed about the impact of the Ninth Circuit Court's decision on the DBE program. Mr. Phelps explained the new ordinance had been prepared with the assumption the Court of Appeal's decision was the current law. Staff had consulted with other jurisdictions before drafting the ordinance to determine how other programs were being adjusted to reflect the decision. Metro's program was more ambitious than the City of Portland's and Multnomah County's because of staff's desire to improve the program.

Motion: Councilor Kirkpatrick moved to adopt Ordinance No. 87-230 and Councilor Knowles seconded the motion.

Presiding Officer Waker opened the public hearing.

Jack Kalinoski, 9450 S.W. Commerce Circle, Wilsonville, Oregon 97070, representing the Oregon-Columbia Chapter of the Associated General Contractors (AGC), submitted written testimony to the Council which he read. He said the AGC was of the opinion that Metro, except for federally-aided projects, did not have the authority to require any of its contractors to subcontract portions of work to subcontractors in order to achieve DBE participation. The Ninth Circuit Court had clearly decided states and local governments had this authority only after a specific finding of government-imposed discrimination, and the Court had clearly stated only Congress could impose those requirements.

Mr. Kalinoski then reviewed specific concerns he had with Ordinance No. 87-231 as detailed in his written testimony: 1) that "USDOT" and "ODOT" be used to clearly differentiate between the U.S. Department of Transportation and the Oregon Department of Transportation; 2) the ordinance conform to Oregon State laws with regard to subcontracting when funds from the USDOT were utilized and not utilized; 3) the definitions for Disadvantaged Business Enterprise (DBE), Women-owned Business Enterprise (WBE) and Minority Business Enterprise (MBE) be clearly defined and used consistent with Oregon State law; 4) new section 2.04.115 be amended to eliminate duplication of

wording or if duplication was not intended, the language be clarified; 5) new section 2.04.135(a) should be eliminated since ODOT, not Metro, had the authority to certify for DBE eligibility; 6) new section 2.04.150(d) should be amended since it would give Metro's liaison officer authority to change a contract after it had been awarded, a practice contrary to Oregon State law; 7) new section 2.04.155 be amended to allow the bidder to attest on the bid form that a good faith effort was made prior to bid opening to achieve the goals required but that goals could not be attained; 8) new section 2.04.155(d) be amended to allow five days for the apparent low bidder to submit documents to Metro; 9) new section 2.04.155(e) be amended to not violate the integrity of the competitive bidding system; 10) new section 2.04.155(f) be amended to be in compliance with Oregon State law; and 11) section 2.04.155(g), on the third line of the paragraph, the second "will" be deleted and in the fifth line after (d), the word "made" inserted.

Councilor Knowles discussed the intent of Oregon State law with Mr. Kalinoski as it related to the ordinance. At the Presiding Officer's request, the Councilor agreed to submit questions and concerns in writing to staff. Mr. Kalinoski was willing to meet with staff to discuss his concerns.

Carolyn Brown, 1717 S.W. Park Avenue, Apartment 1102, Portland, Oregon 97201, thanked the Council for its good faith effort to improve the DBE program. She thought the AGC would use Metro as a model government contracting program and was surprised the AGC had claimed it was not informed of Metro's review process.

Bruce Broussard, 1863 North Jantzen, Portland, Oregon 97217, publisher of The American Contractor trade journal, commended Yvonne Sherlock, Metro's Contract Officer, and Mr. Phelps for their work with individuals participating in the DBE program review meetings. Referring to a distributed list of participants or those notified of the meetings, he noted the list reflected a very broad range of interests and was surprised Mr. Kalinoski was unaware of Metro's process. Mr. Broussard said Metro's staff had always been available to receive comments about the DBE program. Regarding the Circuit Court decision, he said the group had discussed that situation and the consensus of those participating at the final meeting was reflected in Ordinance No. 87-230. Finally, Mr. Broussard suggested the review group reconvene to consider the amendments suggested by Mr. Kalinoski, that the AGC be invited to participate at the meeting by certified mail and for the sake of continued fairness in process, the majority consensus of the group be reflected in any amendments proposed to the ordinance.

In response to Councilor Collier's question, Mr. Broussard said he was basically happy with Ordinance No. 87-230 and acknowledged the

proposed legislation had been written after input of many parties and special interests.

Councilor Ragsdale noted that Mr. Broussard's compliments of staff's work and the resulting ordinance reflected a significant change in Metro's DBE program efforts.

Kevin Spellman, 435 N.E. Mirimar Place, Portland, President of Emerick Construction Company, testified that although he was a member of the AGC, he had not represented the AGC when participating in the review group activities. He thought the ordinance was an improvement to Metro's current DBE program and that the group's intent was for the program to be consistent with Oregon State law. He also commended Ray Phelps and Yvonne Sherlock for their patience and outstanding work on the project.

Presiding Officer Waker again urged Councilors to submit any questions or comments about the ordinance to staff in writing in time for a response at the November 12 Council meeting and second reading of the ordinance.

8. RESOLUTIONS

8.6 Consideration of Resolution No. 87-819, for the Purpose of Approving Recommendations of the North Portland Enhancement Committee for the Expenditure of \$40,000 from the Rehabilitation and Enhancement Fund

Councilor Hansen, Chair of the North Portland Enhancement Committee (NPEC) reported that the FY 1987-88 Council Budget Committee had required staff to return to the Council for approval of expenditures for enhancement projects. The NPEC was pleased to announce the recommendation of nine projects for funding. The Councilor then reviewed the process for soliciting and screening proposals. He also introduced three NPEC members in attendance: John Fisher, Pamela Arden and Steve Roso. Finally, he thanked Metro staff members Judith Mandt and Marilyn Smalls for their assistance to the Committee.

Presiding Officer Waker acknowledged the NPEC had been a successful joint venture between the community and the Council.

During discussion of agenda item 8.7, Councilor Gardner reported the Council Solid Waste Committee had unanimously recommended adoption of Resolution No. 87-819.

Motion: Councilor Hansen moved, seconded by Councilor Collier, to adopt Resolution No. 87-819.

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NPEC member Steve Roso thanked Councilor Hansen and Ms. Mandt for their work on the project and said he looked forward to the successful closure of the St. Johns Landfill.

Vote: A vote on the motion resulted in all nine Councilors present voting aye. Councilors Cooper, Knowles and Ragsdale were absent.

The motion carried and Resolution No. 87-819 was adopted.

EXECUTIVE SESSION

At 8:25 p.m., Presiding Officer Waker called the meeting into executive session under the authority of ORS 192.660(1)(e), to discuss real property acquisition for the Oregon Convention Center, and ORS 192.660(1)(h), to discuss litigation relating to the Clackamas Transfer & Recycling Center (CTRC). All Councilors except Councilor Cooper were present at the executive session. Other persons present included Executive Officer Cusma, Dan Cooper, Greg Mau, Tuck Wilson, Neil McFarlane, Don Carlson, Neil McFarlane and Jan Schaeffer. The Presiding Officer called the meeting back into regular session at 8:45 p.m.

Convention Center Project Real Property Acquisition

Motion: Councilor Van Bergen moved, seconded by Councilor Gardner, to accept the Portland Development Commission's recommendation with respect to the Roberts Motors Property.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Knowles were absent.

The motion carried.

8.7 Consideration of Resolution No. 87-820, for the Purpose of Complying with the Clackamas Transfer & Recycling Center (CTRC) Conditional Use Permit

Councilor Gardner, Chair of the Council Solid Waste Committee (SWC), the SWC took no formal action on the resolution because a quorum was not available at the time it was considered. He and Councilor DeJardin had strongly recommended the Council defer action pending completion of negotiations between the Council Negotiating Task Force (Councilors Waker, Gardner, DeJardin and Executive Officer Cusma) and representatives from the City of Oregon City Commission. He said the recommendation was based on testimony received at the October 20 SWC meeting.

Councilor Gardner further explained the City of Oregon City Commission was of the opinion that actions taken by Metro to comply with the 700 per ton limit at CTRC would be detrimental to the haulers and public in Clackamas County. They recommended Metro attempt to resolve the matter through negotiation or litigation prior to imposing limits on the use of CTRC.

Councilor Van Bergen requested a date be established for future consideration of Resolution No. 87-820, explaining Councilors had all taken oaths to abide by the laws in the State of Oregon. The Councilor said he could not accept violation of Oregon City's ordinance limiting tonnage at CTRC.

Motion: Councilor Gardner moved, seconded by Councilor DeJardin, to defer consideration of Resolution No. 87-820 to November 12, 1987.

Presiding Officer Waker noted that if negotiations between Metro and Oregon City had not been completed by November 12, the matter could be set over to a later meeting.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bonner, Collier, DeJardin, Gardner, Hansen, Kelley, Kirkpatrick, Knowles, Van Bergen and Waker

Nay: Councilor Ragsdale

Absent: Councilor Cooper

The motion to defer carried.

8.1 Consideration of Resolution No. 87-815, for the Purpose of Adopting Disadvantaged Business Program Goals for FY 1987-88

Ray Phelps reported that the written staff report explained the program and annual goal adoption process.

In response to Councilor Kelley's question, Mr. Phelps explained the Women-owned Business Enterprise (WBE) participation goal had been decreased from the previous year. The previous goal had been amended from staff's recommendation and as a result, the amended goal had been unreasonable high and unattainable. Councilor DeJardin agreed it was a good management practice to establish reasonable goals for the program and that nothing would preclude exceeding that goal.

Motion: Councilor Knowles moved for adoption of Resolution No. 87-815. Councilor DeJardin seconded the motion.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Van Bergen were absent.

The motion carried and Resolution No. 87-815 was adopted.

8.3 Resolution No. 87-816, for the Purpose of Adopting Affirmative Action Goals and Objectives for Fiscal Year 1987-88

Ray Phelps and Randy Boose reviewed staff's written report, including an analysis of last fiscal year's Affirmative Action efforts. Mr. Phelps reported that for the first time, Department Managers would be directly involved in program efforts.

Presiding Officer Waker thought that if Metro continued to increase Affirmative Action goals as they were met, the agency would, at some point, no longer be in parity with the community work force.

In response to Councilor Gardner's question, Mr. Phelps explained that male participation was indicated as high in the normally female dominated "food service worker" category because other types of male dominated jobs were included in that category such as security guards.

In response to Councilor Ragsdale's question, Mr. Boose explained the proposed goals were developed based on the State of Oregon Employment Division's statistics and they reflected the makeup of the community work force.

Discussion followed about whether the proposed categories and goals were satisfactory.

Motion: Councilor Knowles moved, seconded by Councilor Kelley, to continue consideration of Resolution No. 87-816 to November 12, 1987.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Van Bergen were absent.

The motion carried.

8.4 Consideration of Resolution No. 87-817, for the Purpose of Confirming the Appointment of Citizens to the Investment Advisory Board

Ray Phelps briefly summarized staff's written report and recommended Sue McGrath, Bonnie Kraft and Rebecca Marshall be reappointed to the Board.

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Councilor Kirkpatrick noted a typographical error in the resolution which should be corrected to reflect that Sue McGrath would be appointed to a one-year, rather than three-year, term.

Motion: Councilor Kirkpatrick moved to adopt Resolution No. 87-817. Councilor Gardner seconded the motion.

Responding to Councilor Ragsdale's question, Mr. Phelps said Ms. Marshall's appointment would not constitute a conflict of interest since her company's relationship with Metro had not and would not result in exchange of money or services.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Van Bergen were absent.

The motion carried and Resolution No. 87-817 was adopted.

8.5 Consideration of Resolution No. 87-818, for the Purpose of Adding an Analyst 3 Position to the Zoo Administration Division

Kay Rich, Acting Zoo Director, discussed the need for the position as outlined in staff's written report.

Councilors Collier and Kirkpatrick were concerned staff had not anticipated the need for the position during the FY 1987-88 budget process. Both stated the contingency fund should be used for true emergencies and discouraged the practice mid-year staffing requests.

Mr. Rich explained staff had requested the position in response to the auditor's recommendation that tighter management was needed for the Zoo's revenue center operations. It had taken Accounting personnel time to analyze and approve that recommendation. He thought the new position could save the Zoo money.

Presiding Officer Waker recommended the Council approve the new position, explaining when a good manager thought he needed assistance, he asked for help. He acknowledged that sometimes the annual budget process was too long a wait to keep up with needed changes that needed to be made.

Councilor Hansen and DeJardin agreed with the need for the position. In response to Councilor DeJardin's question, Mr. Rich said the Zoo had planned to propose adding a Senior Animal Keeper position mid-year but would postpone that request until the next budget cycle. Because it was not a true emergency.

Councilor Ragsdale noted he viewed the contingency fund as a reserve of money to be used to adapt to changing situations.

Motion: Councilor Ragsdale moved, seconded by Councilor DeJardin, to adopt Resolution No. 87-818.

Vote: A vote on the motion resulted in:

Ayes: Councilors Bonner, DeJardin, Gardner, Hansen, Kelley, Knowles, Ragsdale and Waker

Nays: Councilors Collier and Kirkpatrick

Absent: Councilors Cooper and Van Bergen

The motion carried and Resolution No. 87-818 was adopted.

OTHER BUSINESS

9.1 Consideration of an Intergovernmental Agreement with the State of Oregon for the Interim Task Force on Regional Metropolitan Government

Ray Phelps reported the FY 1987-88 Council Budget Committee had contemplated the expenditure of funds for the study. He also explained staff was requesting the Council grant the Executive Officer authorization to develop an agreement based on the terms outlined in the staff report.

Motion: Councilor Kirkpatrick moved to authorize the Executive Officer to develop an agreement based on the terms outlined in the staff report. Councilor Collier seconded the motion.

Councilor Knowles noted the Metro Code required the Council to approve all agreements.

Revision of Motion: Councilors Kirkpatrick and Collier revised the motion to provide the Council to authorize the Executive Officer to develop an agreement based on the terms outlined in the staff report and for staff to bring back the agreement to the Council for approval.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Van Bergen were absent.

The motion carried.

8. RESOLUTIONS (continued)

8.2 Consideration of Resolution No. 87-814, for the Purpose of
Amending Resolution No. 87-744, Revising the FY 1987-88 Budget
& Appropriations Schedule
(Relating to the Zoo Analyst 3 Position; the Interim Task Force
on Regional Metropolitan Governments; Local Area Network and
Contract Funding for the Solid Waste Department; the Zoo
Aquarium Study; an Agency-Wide Classification Study; Transpor-
tation Department Projects; and a Budget Appropriations
Schedule Correction)

Jennifer Sims, Support Services Manager, reviewed staff's written report and explained the projects covered under the budget amendment request.

Councilor Gardner referred to a memo from himself to the Council dated October 21, 1987, which reported the Solid Waste Committee's recommendations on agenda items including the purchase of Local Area Network (LAN) equipment and software for the Solid Waste Department. The SWC recommended the Management Committee (who would be asked to approve the contract) conceptually approve the contract and that the Solid Waste Department utilize existing appropriations for computer purchases (\$36,800) to acquire this system and to return to the Council at a later time for an additional appropriation should more computers be needed in the future.

Regarding funding for Phase II of the Aquarium Feasibility Study, Councilor Gardner reported the Management Committee recommended the project be funded.

Councilor Bonner requested funding for the Aquarium Study be separated from Resolution No. 87-814 and held over to November 12 because people wanting to testify on that issue had assumed it would appear as a separate, easily identified agenda item.

After discussion related to the budget adjustment necessary to fund the Interim Study on Regional Government, the Council concurred the Interim Study portion of the budget adjustment should be separated from Resolution No. 87-814 so that it could be considered together with the intergovernmental agreement with the State of Oregon for conduct of the study.

Councilor Ragsdale requested the budget adjustment relating to the Zoo Aquarium Study also be separated from the resolution in order to receive testimony concerning attendance projections reported in Phase I of the study.

Councilor Collier said she had learned funding efforts were underway for a public aquarium in Newport, Oregon. She was concerned those efforts would conflict with the facility proposed for Portland. Presiding Officer Waker reported the Portland Aquarium Study Group was aware of Newport's efforts and were committed to making no plans that would conflict with their aquarium. He also noted the Newport facility would be much smaller and of a different nature than the aquarium proposed for Portland.

Presiding Officer Waker opened the public hearing on Resolution No. 87-814.

Bruce Allen, representing the Portland Development Commission (PDC), testified he had assisted the PDC and the Zoo in completing Phase I of the Aquarium Feasibility Study. He strongly recommended the Council approve funding for Phase II. Referring to Councilor Ragsdale's earlier concern about Phase I attendance projections, Mr. Allen reported he had met with the person raising objections and had worked out differences. He also explained a Portland Aquarium Study Group member was serving on the Newport Aquarium Board and a Newport person would attend Portland group meetings. He thought the Portland Aquarium Feasibility Study would assist with Newport's efforts.

Jon Gramstad, 1306 N.E. 153rd, Portland, Oregon, member of Wildlife Defense Northwest, a group of some 2,000 members against the capture of wildlife, thought the real intent of the Portland Aquarium was economical and recreational -- interests in obvious conflict with the need to preserve wildlife. In response to the notion that animals exhibited in the aquarium would be ambassadors of their species, Mr. Gramstad said that human beings should also be ambassadors of their species and not permit the loss of other species.

Barbara Spears, 3113 N.E. Rocky Butte Road, Portland, Oregon 97220, also a member of Wildlife Defense Northwest, agreed with Mr. Gramstad it was inappropriate to exhibit intelligent animals in a theatrical or recreational atmosphere. She noted sea otters were the only marine mammals exhibited at the Monterey Bay Aquarium and explained those otters had been injured in the wild. If healthy, they would not have been exhibited.

Tom Dehen, 2965 NW.. Verde Vista, Portland, Oregon 97210, said he shared the concerns of those previously testifying about marine animals in captivity. He pointed out that when marine mammals were captured for exhibitry, more animals were captured than would be exhibited to allow for the high morbidity rate after capture.

Motion: Councilor Kirkpatrick moved, seconded by Councilor DeJardin, to adopt Resolution No. 87-814 with the provision that the following projects be deleted from the resolution and rescheduled for consideration on November 12, 1987: 1) Phase II of the Zoo Aquarium Study; 2) the Interim Study on Metropolitan Government; and 3) \$35,000 from the Contingency Fund for Solid Waste Department computer equipment.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Cooper and Van Bergen were absent.

The motion carried and Resolution No. 87-814 was adopted as amended.

NOTE: After the meeting, it was clarified the Council Solid Waste Committee had recommended the Council not approve staff's request that \$35,000 be transferred from Contingency for computer software. Staff were instructed to bring back requests to purchase equipment as necessary.

10. COMMITTEE REPORTS

Council Solid Waste Committee. A memo to Councilor Gardner, Chair of the Solid Waste Committee, from Don Rocks, Executive Assistant, dated October 21, 1987, entitled "Formation of Health Impact Review Panel" was distributed to Councilors. The memo included a proposal to staff the Panel which had been established by Council adoption of Resolution No. 87-809 on September 22.

Councilor Gardner requested Councilors read the report and submit their comments to Mr. Rocks as soon as possible since the study needed to be completed before a resource recovery project was selected. He said staff would return to the Council requesting a budget transfer to fund the proposal.

A discussion followed about the proposed cost of the person staffing the panel. Councilor Gardner said he initially had thought costs to be high but had come to accept that budget because of the great quantity of work to be accomplished on very short notice.

Convention Center Committee. Councilor Ragsdale reported convention center architects had to revise the facility's design due to budget constraints. He invited all Councilors to attend a joint meeting of the Committee and the Advisory Committee on Design and Construction at 4:00 p.m., November 3.

Metro Council
October 22, 1987
Page 21

There was no further business and the meeting was adjourned at
10:40 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "A. Marie Nelson".

A. Marie Nelson
Clerk of the Council

amn
8402C/313-2
11/03/87

STAFF REPORT

Agenda Item No. 6.2

Meeting Date Nov. 12, 1987

CONSIDERATION OF RESOLUTION NO.87-825 FOR THE
PURPOSE OF CONFIRMING A CITIZEN MEMBER TO THE
TRANSPORTATION POLICY ALTERNATIVES COMMITTEE

Date: October 29, 1987

Presented by: Andrew Cotugno

FACTUAL BACKGROUND AND ANALYSIS

One of the six citizen members on TPAC has resigned.

A thorough recruitment process was done in June 1987 when all six citizen vacancies were filled. Due to the short time span, the Transportation Department has chosen to review the applicants interviewed at that time as several additional applicants were well qualified to serve on TPAC.

The Executive Officer has appointed John Godsey to the Committee subject to confirmation by the Council.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends that the appointment of John Godsey be confirmed by the Council by adoption of Resolution No. 87-825.

KT/sm
8397C/517
10/29/87

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF CONFIRMING	)	RESOLUTION NO. 87-825
A CITIZEN MEMBER TO THE TRANS-)	
PORTATION POLICY ALTERNATIVES	)	Introduced by the
COMMITTEE	)	Executive Officer

WHEREAS, There are six citizen members serving two-year terms on the Transportation Policy Alternatives Committee; and

WHEREAS, One citizen member has resigned prior to the end of the term; and

WHEREAS, Public recruitment was performed in June 1987 to fill all six citizen positions and the list of qualified applicants is still applicable to serve out the two-year term on the Transportation Policy Alternatives Committee; now, therefore,

BE IT RESOLVED,

That the appointment of John Godsey to fill the vacancy and complete the term is hereby confirmed.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

KT/sm
8397C/517
10/29/87



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Policy Alternatives Committees Application

Policy Alternatives Committees (PACs) are made up of public officials, technicians, special interest group representatives and members of the public. The purpose of Metro's PAC is to evaluate and advise the Metro Council on policy and program alternatives related to its specific assignment.

Please print or type:

Name John M. Godsey Jr.

Residence address 3076 S.E. Oak Res. phone 648-3220

City Hillsboro County Washington Zip 97123

Business address 12655 S.W. Center, Suite 360 Bus. phone 646-4509

Occupation Civil Engineer

Committees/areas of interest

Check one or more indicating priority choice by number.

☐ Budget ☐ Air Quality ☐ Solid Waste ☒ Transportation

Related activities

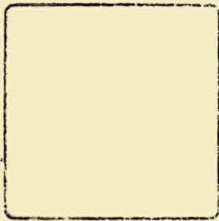
List education, employment and volunteer activities relevant to your area of interest. You may substitute a recently prepared resume.

<u>Dates</u>	<u>Activity</u>	<u>Relevant skills or knowledge</u>
See attached resume		

6-86 to present	Chairman, Transportation Committee, Beaverton Area Chamber of Commerce	Comittee participation and leadership regarding Beaverton and regional transportation issues
11-86 to present	Chairman, Economic Development Comittee, Hillsboro Chamber of Commerce	Committee leadership regarding economic opportunit in Hillsboro area

Interest in applying

Solutions to local problems often impact or involve regional and state issues. Regional participation is necessary to address those issues so that the state and region benefit, as well as the local jurisdictions. My interest is to utilize my background and experience to work towards an effective regional transportation system.



CONSULTING ENGINEERING SERVICES

Central Plaza, W. • Suite 300 • 12635 SW Center St. • Beaverton, Oregon 97005-1601 • (503) 648-4500 • Fax (503) 648-4501

JOHN M. GODSEY JR., P.E., P.L.S.

PARTNER

Education: Bachelor of Science degree, Civil Engineering, University of Washington, 1971
Associate of Science degree, Seattle Community College, 1969

Registered Professional Engineer:

State of Oregon Civil Engineer 8466, 1975
State of Oregon Land Surveyor 1194, 1977
State of Washington Civil Engineer 22716, 1985
State of Washington E.I.T. 4976, 1971

Member: American Society of Civil Engineers
American Public Works Association

**Principal and Co-Founder of Consulting Engineering Services
January 1985.**

Residential:	174 units multifamily; planning, site design, and construction services 62 units single family; planning, site design, and construction services
Commercial:	Self Service Furniture; site design
Industrial:	Warehouse-Offices; planning, site design, building design, construction services
Office:	Medical Office; site design, adjacent street design, construction services
Governmental:	ODOT; highway design, Umpqua Highway Washington County Fair Board; parking lot, drainage design, construction services

Previous Experience:

1980-1985	Public Works Director, City of Lake Oswego
1979-1980	Assistant Engineering Manager, Waker Associates, Consulting Engineers
1974-1979	City Engineer, City of Hillsboro
1972-1974	Project Engineer, City of Corvallis
1971-1971	Civil Engineer, Washington Department of Highways

STAFF REPORT

Agenda Item No. 7

Meeting Date Nov. 12, 1987

CONSIDERATION OF REPORT OF INDEPENDENT CERTIFIED
PUBLIC ACCOUNTANTS ON METRO'S FY 1987 ANNUAL
FINANCIAL REPORT AND SCHEDULE OF FEDERAL FINANCIAL
ASSISTANCE

Date: November 12, 1987

Presented by: Donald Cox

FACTUAL BACKGROUND AND ANALYSIS

The audit firm of Peat Marwick Main & Co. has completed their examination of the Annual Financial Report prepared by Metro's accounting staff. Roger Rowe, Audit Manager, and Joe Hoffman, Partner of Peat Marwick, are present to discuss their unqualified opinion on Metro's combined financial statements as well as the various other reports required of them by the Single Audit Act of 1984 and state of Oregon.

The auditor's Letter to Management will be discussed at the Council Management Committee meeting of December 17, 1987.

A copy of Metro's Annual Financial Report and Schedule of Federal Financial Assistance has previously been distributed to the Council and is available upon request to other interested parties. The two primary changes in this year's financial report are the disclosures required under Statement Three of the Governmental Accounting Standards Board (see pp. 25-27 of the Annual Financial Report) and the addition of the Convention Center Enterprise Fund.

EXECUTIVE OFFICER'S RECOMMENDATION

No action is required.

DRC/sm
8427C/517
10/30/87

STAFF REPORT

Agenda Item No. 8.1

Meeting Date: November 12, 1987

CONSIDERATION OF AMENDMENT TO CONTRACT WITH ZIMMER GUNSUL
FRASCA PARTNERSHIP FOR DESIGN SERVICES FOR OREGON
CONVENTION CENTER PROJECT

Date: October 29, 1987

Presented by: Tuck Wilson

BACKGROUND AND FACTUAL ANALYSIS

Proposed Action:

Approval of amendment to contract with Zimmer Gunsul Frasca Partnership (ZGF) for design services for the Oregon Convention Center Project. This amendment adds design work related to street relocations necessitated by the project.

Background:

Building the convention center entails modifications to streets and highways around the site. In particular, the vacation of streets by the City of Portland within the project boundary will require the construction of replacement street connections as part of the project. The nature and scope of these modifications could not be known when the original contract with ZGF was negotiated. For that reason, the original agreement included only street design work on the site and the curb and sidewalks surrounding it. Design work for the major street modifications was included in the original RFP and contract negotiations, but because of the uncertainty of which specific improvements would be required, this work was categorized as an extra work item (i.e. requiring a contract amendment).

Since the contract was signed eight months ago, Metro, the City of Portland, PDC's area plan consultants, and the ZGF design team have been extensively involved in planning the necessary transportation changes. While the work has not yet been finalized, we now know with some confidence which streets will be involved, and the general nature of the improvements which will be required. The street design work must begin now on the First and Glisan "ring road" surrounding the site so that utility relocations necessary prior to site excavation can be planned in concert with the future street improvements. This work is also needed now to coordinate the design of

streets adjacent to the site with on-site improvements (curbs, driveways, storm drainage, sidewalks) which will be specified in the construction documents being prepared by the ZGF design team beginning in late November.

This amendment requires the ZGF design team to provide these street design services. It authorizes an additional lump sum payment of \$85,500 for the work.

The required work is described in detail in the attachments to the amendment. It includes the changes to Glisan Street, First Avenue, Union Avenue, Holladay Street, and minor improvements to Oregon Street and Hassalo Street. In the event that the Oregon Department of Transportation elects to do some of the work related to designing a new connection between Glisan Street and the Steel Bridge, the payment to ZGF will be reduced.

The required work also includes development of a temporary traffic routing plan for the period between the beginning of site excavation (next spring) and the opening of the new streets (September, 1990).

The overall \$85 million budget includes funding for street improvements and the design of those improvements. This amendment moves funds from the street improvements line item into the amount allocated for the design team. It does not increase the total budget for the project, and the cost of the work is within previous estimates. The contract amendment does not include signal design work, which will likely be undertaken by the City Bureau of Traffic Management. This contract also provides an avenue for increasing participation of disadvantaged business enterprises in the ZGF design team.

This contract amendment was reviewed by the Advisory Committee on Design and Construction at their October 23 meeting, and your approval was recommended.

EXECUTIVE OFFICER RECOMMENDATION:

The Executive Officer recommends approval of the amendment to the contract with Zimmer Gunsul Frasca Partnership for street design services for the convention center project.



GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

GRANT/CONTRACT NO. 87-2-261CC

BUDGET CODE NO. 52-00-00-8630-30500

FUND: CCP CAPITAL DEPARTMENT: CCP

(IF MORE THAN ONE) - - - - -

SOURCE CODE (IF REVENUE) - - - - -

INSTRUCTIONS

- OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
- COMPLETE SUMMARY FORM.
- IF CONTRACT IS —
 - SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - OVER \$2,500, ATTACH QUOTES, EVAL. FORM, NOTIFICATION OF REJECTION, ETC.
 - OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
- PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

1. PURPOSE OF GRANT/CONTRACT PROVIDE STREET DESIGN SERVICES FOR THE OREGON CONVENTION CENTER

2. TYPE OF EXPENSE ☒ PERSONAL SERVICES ☐ LABOR AND MATERIALS ☐ PROCUREMENT
☐ PASS THROUGH AGREEMENT ☐ INTER-GOVERNMENTAL AGREEMENT ☐ CONSTRUCTION
☐ OTHER

OR

TYPE OF REVENUE ☐ GRANT ☐ CONTRACT ☐ OTHER

3. TYPE OF ACTION ☒ CHANGE IN COST ☒ CHANGE IN WORK SCOPE
☐ CHANGE IN TIMING ☐ NEW CONTRACT

4. PARTIES METRO & ZIMMER GUNSUL FRASCA PARTNERSHIP

5. EFFECTIVE DATE NOVEMBER 1, 1987 TERMINATION DATE UPON COMPLETION OF WORK
 (THIS IS A CHANGE FROM - - - - -)

6. EXTENT OF TOTAL COMMITMENT:	ORIGINAL/NEW	\$ <u>3,763,000</u>
	PREV. AMEND	<u>218,500</u>
	THIS AMEND	<u>85,800</u>
	TOTAL	\$ <u>4,067,300</u>

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 198	<u>7-88</u>	\$ <u>70,000</u>
B. BUDGET LINE ITEM NAME <u>ENGINEERING SERV</u>	AMOUNT APPROPRIATED FOR CONTRACT	\$ <u>2,978,000</u>
C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF <u>October 1</u>	<u>1987</u>	\$ <u>2,470,747</u>

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

SUBMITTED BY <u>- - - - -</u>	\$ <u>- - - - -</u>	<input type="checkbox"/> MBE
	AMOUNT	
SUBMITTED BY <u>- - - - -</u>	\$ <u>- - - - -</u>	<input type="checkbox"/> MBE
	AMOUNT	
SUBMITTED BY <u>- - - - -</u>	\$ <u>- - - - -</u>	<input type="checkbox"/> MBE
	AMOUNT	

9. NUMBER AND LOCATION OF ORIGINALS ① ZGF ; ② CONTRACTS OFFICER ; ③ CONVENTION CENTER PROJECT OFFICE

10. A. APPROVED BY STATE/FEDERAL AGENCIES? ☐ YES ☐ NO ☒ NOT APPLICABLE
 B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT ☐ YES ☐ NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? ☒ YES ☐ NO
 IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____
12. WILL INSURANCE CERTIFICATE BE REQUIRED? ☐ YES ☒ NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED? ☐ YES ☒ NOT APPLICABLE
 TYPE OF BOND _____ AMOUNT \$ _____
 TYPE OF BOND _____ AMOUNT \$ _____
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE) PER ORIGINAL AGREEMENT + NEW AS LISTED:
 NAME AE CONSULTANTS, INC. SERVICE STRUCTURAL/CIVIL DESIGN ☒ MBE
 NAME Jade CONSULTANTS SERVICE CIVIL ENGINEERING SUPPORT ☒ MBE
 NAME ELCON ASSOCIATES SERVICE ELECTRICAL ☒ MBE
 NAME _____ SERVICE _____ ☐ MBE
15. IF THE CONTRACT IS OVER \$10,000
 A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?
☒ YES ☐ NO
 B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?
☐ YES DATE _____ INITIAL _____
16. COMMENTS:

GRANT/CONTRACT APPROVAL

INTERNAL REVIEW

[Signature]

DEPARTMENT HEAD

[Signature]

FISCAL REVIEW

10/30/87

BUDGET REVIEW

10/30/87

CONTRACT REVIEW BOARD

(IF REQUIRED) DATE _____

1. _____
COUNCILOR
2. _____
COUNCILOR
3. _____
COUNCILOR

COUNCIL REVIEW

(IF REQUIRED)

DATE _____

LEGAL COUNSEL REVIEW AS NEEDED:

- A. DEVIATION TO CONTRACT FORM _____
- B. CONTRACTS OVER \$10,000 Shellock Comments
- C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

AMENDMENT NO. 4

This amends the Agreement between the Metropolitan Service District ("Owner") and Zimmer Gunsul Frasca Partnership ("Architect") executed February 27, 1987 ("original agreement") as amended.

WHEREAS, the parties agreed to the conditions set forth in the original agreement and desire to amend the Agreement as amended;

The following changes are made to the original agreement as previously amended:

ARTICLE II

GENERAL RESPONSIBILITIES OF THE ARCHITECT

F. Consultants

- s. AE Consultants, Inc. (Structural Engineering)
- t. Jade Consultants, (Civil Engineering)
- u. ELCON Associates (Electrical, Street Lighting)

EXHIBIT C, COMPENSATION TO ARCHITECT

B. Total Cost

The total cost of the services provided under this agreement during all phases shall not exceed [3,981,500] \$4,067,300.

C. Architect's Basic Services Compensation

9. For design and specification of street work related to street or highway relocations, widenings or improvements as specified in Attachment A hereto.

EXHIBIT D, EXTRA WORK ITEMS

[12. For design and specification of street work related to street or highway relocations, widenings or improvements except for the sidewalks and curbs immediately adjacent to the site and modifications to the adjacent streets necessitated by work on these sidewalks and curbs.]

WHEREAS, all other conditions and covenants remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized officers.

ARCHITECT:
ZIMMER GUNSUL FRASCA PARTNERSHIP

OWNER:
METROPOLITAN SERVICE DISTRICT

BY: _____

BY: _____

(TITLE) _____

(TITLE) _____

DATE: _____

DATE: _____

ATTACHMENT A
STREET DESIGN SCOPE OF SERVICES

I. Roadway Segments Included

Roadway segments included under this agreement are noted below. The improvements are described generally, and may, within reason, be modified to respond to City, ODOT, and Owner comments.

A. Improvement of N.E. Glisan Street/N.E. First Avenue couplet from N.E. Union Avenue to N.E. Holladay Street including the intersection with the new off-ramp from the Steel Bridge proposed by ODOT. The improvements will include the following features:

1. New construction from N.E. Union Avenue to N.E. Oregon Street.
2. Portion between N.E. Oregon Street and N.E. Holladay Street, an overlay of existing pavement and widening east side to new curb line.
3. New sidewalks, full length, both sides, except adjacent to freeway ramps.
4. Adjustments to water system, sanitary sewer, storm sewer and other utilities particular to the street construction.
5. New street lights and street tree provisions, full length, except adjacent to freeway ramps.

B. Improvement of N.E. Union Avenue from N.E. Glisan Street to N.E. Holladay Street to include the following features:

1. Elimination of parking from the west side of the street.
2. New pavement improvements along the westerly side including new concrete curb.
3. New sidewalks, full length, along west side. No sidewalk improvements on east side of street.
4. Adjustments to water system, sanitary sewer, storm sewer, and other utilities particular to the street construction.
5. New street lights and street tree provisions, full length, along the west side of the street.

C. Improvement of N.E. Holladay Street from N.E. First Avenue to N.E. Union Avenue to include the following features:

1. New pavement improvements along the southerly side of the street, including new concrete curb.

2. New sidewalks, full length, along the south side. No sidewalk improvements along the north side of the LRT tracks.
3. New island curb improvements, as required, to allow for a light rail station (LRT), pedestrian improvements, and landscaping between N.E. First Avenue and N.E. Union Avenue.
4. Adjustments to the water system, sanitary sewer, storm sewer, and other utilities particular to the street construction.
5. New street lights and street tree provisions, full length along the south side of the street, and within the median.
6. Other civil design work as required to specify minor improvements necessary to accommodate the reversed direction of Holladay Street between Oregon and Occident, along Occident north to Holladay, and along Holladay to Union.

D. Minor improvements to Oregon Street between 7th and 9th and Hassalo between the Steel Bridge and Grand as may be required by City of Portland as part of street vacation procedures.

II. Services for each Roadway Segment

A. Programming, preliminary concepts, and schematic design phases.

1. Attend meetings with ZGF, METRO, ODOT, PDOT, Tri-Met, PDC, and other City Bureaus, and private utility companies as necessary in order to identify all aspects of the improvements.
2. Collect and review all available data and information from ZGF, Metro, ODOT, PDOT, Tri-Met, PDC, and other City bureaus, private utility companies, and other sources, as appropriate, to assist in preparing elements of the design work and to reasonably identify all project alternatives.
3. Prepare preliminary concept drawings and schematic design drawings showing layout of the basic features of improvements. Submit and present drawings as requested for review.
4. Prepare and submit an estimate of cost for the improvements abased on current drawings. Amend and update as necessary during the review processes.

B. Design Development Phase.

1. Prepare design development documents based on approved schematic design drawing. The documents will include plan view, provide data, and other details, as appropriate to specifically identify and fix all elements of the project.

2. Prepare and submit a revised estimate of cost for the improvements based on the approved design development documents.

C. Construction Document Phase.

1. Prepare the final design consisting of detailed construction drawings and specifications for the improvements. All drawings will be prepared on standard City of Portland mylar plates (22" x 34") consistent with the City's format for obtaining the street construction permit.

2. Prepare construction specifications and estimates of quantities for the improvements and assist in referencing pertinent architectural specifications with applicable City of Portland standards and specifications, making modifications where required.

3. Prepare a detailed construction cost estimate for the approved improvements based on current cost data deemed to be appropriate at the time the drawings are completed.

4. Secure final design approval from ZGF, Metro, and any other interested parties prior to formal submittals to the City. Submit final construction drawings to the Portland Department of Transportation for their review and distribution internally to other City Bureaus, and externally to private utility companies and other affected agencies.

5. Modify the final construction drawings, as necessary, to reflect comments received by the Portland Department of Transportation during their first review process.

6. Submit the modified final construction drawings to the Portland Department of Transportation and provide consulting services, as needed for the obtaining of the street construction permit from the City.

7. Furnish sufficient copies of the approved construction drawings for obtaining bids for the improvements and for construction purposes.

8. Provide interpretations, clarifications or addenda, as required, during the project bidding period to enable the contractors to understand the requirements of the contract drawings and specifications.

D. Construction Phase

1. Provide liaison during construction between the Architect, the Owner, the Contractor, other consultants, the City, and the private utility companies.

2. Make periodic visits to the project site to observe the progress and quality of the work and to determine if the work is proceeding in accordance with the intent of the contract documents.

3. Review shop drawings, diagrams, illustrations, catalog data, test results, and other data that may be required for conformance with the design concept of the project and with the contract documents.

4. Attend final inspection of the construction jointly with the Architect, the Owner, the Contractor, the City, and other interested parties and submit recommendation for the final settlement of the construction contract.

E. Prepare a temporary traffic routing plan, as required by the City of Portland prior to street vacation, providing for the relocation of Oregon Street traffic once streets on the site are closed for project construction.

III. Budget

Architect agrees to provide these services for an additional fixed fee of \$85,800.

Should the Oregon Department of Transportation approve a project overlapping the N.E. Glisan/N.E. First Avenue improvement described above, and should the Oregon Department of Transportation or its agents choose to develop construction documents itself, provided owner will so instruct prior to the initiation of construction documents phase, total compensation shall be reduced by \$12,000.

STAFF REPORT

Agenda Item No. 8.2

Meeting Date Nov. 12, 1987

CONSIDERATION OF AN INTERGOVERNMENTAL AGREEMENT
WITH THE STATE OF OREGON FOR THE INTERIM TASK
FORCE ON REGIONAL METROPOLITAN GOVERNMENT

Date: November 2, 1987

Presented by: Ray Phelps

FACTUAL BACKGROUND AND ANALYSIS

The Metro Council and Executive Officer endorsed the concept of a legislative review of this organization. The Emergency Board of the Oregon Legislature has approved a \$130,000 budget for the Interim Task Force on Regional Metropolitan Government with a December 31, 1988, completion date. Funding will be shared equally between the State and Metro, the legislative budget staff, the committee staff and the task force chairman have reviewed the budget and concurred with the terms and conditions of the attached intergovernmental agreement (Attachment A).

The project budget will include the provision of certain support services by Metro. These will be paid directly by Metro and deducted from the necessary cash payment to the State (see Attachment B). A projection and analysis of quarterly expenses indicates that Metro's share of costs for FY 87-88 will be \$41,974. This amount includes \$38,487 to be paid to the state; increases in the Management Services Division of \$1,125 to cover additional postage and printing costs; and an in-kind contribution for rent valued at \$2,362. These expenditures will be counted toward Metro's share of project costs.

For FY 88-89, Metro's share of the costs will be \$23,026. This will include \$20,702 to be paid to the state, an increase of \$750 in the Management Services Division to cover additional postage and printing costs; and an in-kind contribution for rent value at \$1,574. Metro's total share of project costs for the entire effort, which will span two fiscal years, will be \$65,000.

EXECUTIVE OFFICER'S RECOMMENDATION

Approve the attached intergovernmental agreement with the Legislative Assembly of the State of Oregon regarding the Interim Task Force on Regional Metropolitan Government.

JS/sm
8218C/517
11/02/87

EXHIBIT A

CONTRACT: INTERIM TASK FORCE ON
REGIONAL METROPOLITAN GOVERNMENT

This contract is between the Legislative Assembly of the State of Oregon acting by and through the Legislative Administration Committee (hereinafter called "Committee") and the Metropolitan Service District (hereinafter called "Metro").

1. Statement of Work.

(1) The Interim Task Force on Regional Metropolitan Government shall study and make recommendations to the Sixty-fifth Legislative Assembly concerning metropolitan government in the tri-county area comprising the Metropolitan Service District. The study of the task force and its report to the Sixty-fifth Legislative Assembly shall cover at least the following:

(a) Governance of Metro:

- (A) Elected versus appointed executive officer;
- (B) Size of council;
- (C) Full-time versus part-time council; and
- (D) Other appropriate issues raised during deliberations of SB 629 in the 1987 session.

(b) Mergers:

Merger of existing regional agencies with Metro, including boundary commission and Tri-Met.

(c) Regional Functions:

Assumption of potential regional functions such as library services, parks, drainage and others.

(d) Funding:

Funding of Metro by an excise tax or other needed taxing authority.

(e) Other:

Other issues including the current effectiveness of Metro in providing regional governmental services and its accountability and responsiveness to its residents.

(2) The structure of the task force is that of an 11-member interim committee: Two members appointed from among the Senators by the Senate President; two members from among House members, appointed by the Speaker; three members, one from each county in Metro, appointed by the respective county governing boards; and three members from community groups served by Metro, appointed

jointly by the President and Speaker. The chairperson shall be one of the legislator members, appointed jointly by the President and Speaker.

(3) Task force meetings shall be quarterly. Meetings of subcommittees shall be in addition to the quarterly meetings. Volunteer citizen advisory committees may be used. However, only legislator members are entitled to receive per diem and that receipt is limited to 18 meetings, including mileage, for full task force meetings. Local government personnel who are not acting in any official capacity and citizen volunteers are entitled to receive actual and necessary expenses only. The chairperson and staff of interested governmental units may meet in a less formal structure for which legislator members are entitled to receive per diem.

2. Effective date. This Contract shall take effect on _____, 1987, and shall end December 31, 1988.

3. Financial arrangement.

(1) The budget for the study described in paragraph 1 of this Contract shall not exceed \$130,000, to be funded \$65,000 by Committee and \$65,000 by Metro, but no interest shall accrue to the account in which the funds are held. A part of the Metro share may be in-kind.

(2) The specific division of responsibility between Metro and Committee is as follows:

(a) Committee shall provide staff as described in paragraph 4 of this Contract. Committee shall also provide support for budget administration with monthly budget status reports showing expenditures and balances for both Committee and Metro.

(b) Metro shall provide office space for staff for in-kind credit, provide, without charge, quarterly reports as to direct and in-kind expenses relating to the task force and provide quarterly cash payments in advance for estimated expenses. All cash requirements shall be equally shared except for the last quarter when Metro shall be credited for services rendered.

(c) Metro's cash contribution shall be reduced dollar for dollar for the following services at the following rates:

(A) Rent, 350 sq. ft. at \$9.00/sq. ft. annually	\$3,936.00
(B) Postage	1,000.00
(C) Copies, 5,000 copies at \$0.05 per copy	250.00

(D) Printing, 25,000 copies at
\$0.025 per copy

625.00
\$5,811.00

(3) Unexpended cash balances shall revert to Committee and Metro on the basis of the proportion the cash contribution of each bears to the total cash contribution of both.

(4) Unused supplies and equipment shall be returned to the party that supplied them.

4. Staff.

(1) Staff shall consist of one full-time administrator and one full-time assistant, or equivalent, employed from their dates of appointment through December 1988. Staff shall be employees of Committee.

(2) Required support staff would be supplied by Committee and Metro.

(3) The task force reserves the right to retain one staff person, either full or part time, during the 1989 legislative session if funds are available and the study indicates that continuity and expertise are necessary.

5. Subcontracts; Assignment.

(1) Neither party shall enter into any subcontracts for any of the work scheduled under this Contract without obtaining prior written approval from the other party.

(2) Neither party shall assign or transfer any interest in this Contract without the express written consent of the other party.

6. Funds Available and Authorized. Both parties certify at the time this Contract is entered into that sufficient funds are available and authorized for expenditure to finance costs of this Contract within current appropriation or limitation.

7. Amendments. The terms of this Contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

8. Termination.

(1) This Contract may be terminated by mutual consent of both parties, or by either party upon 30 days' notice, in writing, and delivered by certified mail to the principal office of the parties or in person.

(2) Either party may terminate this Contract effective upon delivery of written notice to the other party under any of the

following conditions:

(a) If the funding for either party from federal, state or other sources is not obtained and continued at levels sufficient to allow for performance of this Contract. This Contract may be modified to accommodate a reduction in funds.

(b) If federal or state laws, rules, regulations or guidelines are modified, changed or interpreted in such a way that performance is no longer allowable or appropriate under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

(c) If any license or certificate required by law or regulation to be held by either party to provide the services required by this Contract is for any reason denied, revoked or not renewed.

(3) Any termination of this Contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to termination.

(4) Either party, by written notice of default, including breach of contract, to the other party, may terminate the whole or any part of this Contract:

(a) If either party fails to provide funds or services called for by this Contract within the time specified herein or any extension thereof; or

(b) If either party fails to perform any of the other provisions of this Contract, or so fails to pursue performance under this Contract in accordance with its terms, and after receipt of written notice from the other party fails to correct such failures within 10 days unless the other party authorizes a longer period for performance.

(5) The rights and remedies of the parties provided in this paragraph relating to defaults, including breach of contract, shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

9. Waiver. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision.

10. State Tort Claims Act. Committee is an officer of the state as this term is used in ORS 30.265.

11. Indemnity.

(1) Metro shall save and hold harmless the State of Oregon, the Legislative Assembly and the Legislative Administration Committee, its officers, agents, employees and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of

the activities of Metro or its subcontractors, agents or employees under this Contract.

(2) In the event a lawsuit of any kind is instituted on behalf of either party to enforce any provision of this Contract, the other agrees to pay such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred therein.

12. Ownership of Work Product. All work products which result from this Contract are the joint property of both parties.

13. Force Majeure. Neither party shall be held responsible for delay or default caused by fire, riot, acts of God and war which was beyond the party's reasonable control.

14. Severability.

(1) If any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(2) The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.

15. Compliance with Applicable Law. Both parties agree to comply with all federal, state, county and local laws, ordinances and regulations applicable to this Contract. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon.

16. Captions. The captions or headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Contract.

17. Nondiscrimination. Both parties agree to comply with Title VI of the Civil Rights Act of 1964, and with Section V of the Rehabilitation Act of 1973.

18. Successors in Interest. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors.

19. Contract Complete. This Contract constitutes the entire contract between the parties. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no

understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Metro and Committee have executed this Contract as of the date written.

Approved for the Metropolitan
Service District:

Approved for the
Legislative Administration
Committee:

Michael Greenfield

Title

Legislative Administrator
Title

Date

Date

ATTACHMENT B

PROJECT BUDGET (Detail of Metro's Contribution)

	<u>FY 87-88</u>	<u>FY 88-89</u>	<u>Total</u>
Direct Expenses to be Paid by Metro			
Postage	\$ 600	\$ 400	\$ 1,000
Copier, 5,000 copies at \$.05/copy	150	100	250
Printing, 25,000 copies at \$25/copy	375	250	625
SUBTOTAL	<u>\$ 1,125</u>	<u>\$ 750</u>	<u>\$ 1,875</u>
Project contribution, no direct cost			
Rent, 350 sq. ft. at \$9.00/sq. ft.	2,362	1,574	3,936
TOTAL IN-KIND	<u>\$ 3,487</u>	<u>\$ 2,324</u>	<u>\$ 5,811</u>
Metro share paid to state	38,487	20,702	59,189
TOTAL PROJECT COSTS	<u>\$41,947</u>	<u>\$23,026</u>	<u>\$65,000</u>

Also available for specific project support:

General Counsel at \$32.00/hour
Word Processing at \$15.00/hour

Assumptions:

- two staff members housed at Metro
- no "in-kind" contribution charged for Metro staff involvement (except on requested services from General Counsel and/or Word Processing)
- project provides its own office supplies, fleet services, telephones and furniture
- 15-month project, October 1, 1987, to December 31, 1988

8218C/517

CONTRACT: INTERIM TASK FORCE ON
REGIONAL METROPOLITAN GOVERNMENT

This contract is between the Legislative Assembly of the State of Oregon acting by and through the Legislative Administration Committee (hereinafter called "Committee") and the Metropolitan Service District (hereinafter called "Metro").

1. Statement of Work.

(1) The Interim Task Force on Regional Metropolitan Government shall study and make recommendations to the Sixty-fifth Legislative Assembly concerning metropolitan government in the tri-county area comprising the Metropolitan Service District. The study of the task force and its report to the Sixty-fifth Legislative Assembly shall cover at least the following:

(a) Governance of Metro:

- (A) Elected versus appointed executive officer;
- (B) Size of council;
- (C) Full-time versus part-time council; and
- (D) Other appropriate issues raised during deliberations of SB 629 in the 1987 session.

(b) Mergers:

Merger of existing regional agencies with Metro, including boundary commission and Tri-Met.

(c) Regional Functions:

Assumption of potential regional functions such as library services, parks, drainage and others.

(d) Funding:

Funding of Metro by an excise tax or other needed taxing authority.

(e) Other:

Other issues including the current effectiveness of Metro in providing regional governmental services and its accountability and responsiveness to its residents.

(2) The structure of the task force is that of an 11-member interim committee: Two members appointed from among the Senators by the Senate President; two members from among House members, appointed by the Speaker; one member appointed by the Metro Executive Officer, confirmed by the Metro Council; three members, one from each county in Metro, appointed by the respective county

governing boards; and three members from community groups served by Metro, appointed jointly by the President and Speaker. The chairperson shall be one of the legislator members, appointed jointly by the President and Speaker.

(3) Task force meetings shall be quarterly. Meetings of subcommittees shall be in addition to the quarterly meetings. Volunteer citizen advisory committees may be used. However, only legislator members are entitled to receive per diem and that receipt is limited to 18 meetings, including mileage, for full task force meetings. Local government personnel who are not acting in any official capacity and citizen volunteers are entitled to receive actual and necessary expenses only. The chairperson and staff of interested governmental units may meet in a less formal structure for which legislator members are entitled to receive per diem.

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11. Indemnity.

(1) Metro shall save and hold harmless the State of Oregon, the Legislative Assembly and the Legislative Administration Committee, its officers, members, agents and employees, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of Metro or its subcontractors, agents or employees under this Contract.

(2) Committee shall save and hold harmless Metro, its officers, members, agents and employees, from all claims, suits or actions of

whatsoever nature resulting from or arising out of the activities of Committee or its subcontractors, agents or employees under this Contract.

(3) In the event a lawsuit of any kind is instituted on behalf of either party to enforce any provision of this Contract, the other agrees to pay such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred therein.

12. Ownership of Work Product. All work products which result from this Contract are the joint property of both parties.

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specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Metro and Committee have executed this Contract as of the date written.

Approved for the Metropolitan
Service District:

Approved for the
Legislative Administration
Committee:

Michael Greenfield

Title

Legislative Administrator
Title

Date

Date

STAFF REPORT

Agenda Item No. 9.1

Meeting Date Nov. 12, 1987

CONSIDERATION OF ORDINANCE NO. 87-230 FOR THE
PURPOSE OF AMENDING METRO CODE SECTION 2.04
RELATING TO CONTRACT PROCEDURES AND CREATING AN
EXEMPTION FOR COMPUTER SOFTWARE PURCHASES

Date: October 2, 1987

Presented by: Yvonne Sherlock

FACTUAL BACKGROUND AND ANALYSIS

At its September 10, 1987, meeting the Council adopted a resolution which exempted the purchase of certain accounting software from the normal competitive bid process and allowed, instead, for the software to be selected, along with the computer hardware, through an RFP process. At that time the Council indicated that it would make sense to amend Metro's Contract Rules to provide for all software acquisitions be allowed to follow the RFP process rather than requiring staff to come to the Council for an exemption each time software is purchased.

The exemption of a class of contracts -- i.e., all computer software purchases -- requires that the Council find 1) that it is unlikely that the exemption will encourage favoritism in the awarding of Public Contracts or substantially diminish competition and 2) that the exemption will result in substantial cost savings. The first finding is satisfied by the fact that the exemption specifies that an RFP process be used for computer software acquisitions. The finding of substantial cost savings is justified by virtue of the nature of software purchases. The compatibility and quality issues and other unquantifiable factors involved do not lend themselves to the competitive bid process. A low bid requirement may very well result in a higher long-term cost to Metro. The proposed ordinance incorporates the required findings.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends that Ordinance No. 87-230 be approved.

YS/gl
8273C/517
10/12/87

BEFORE THE METROPOLITAN SERVICE DISTRICT
CONTRACT REVIEW BOARD

AN ORDINANCE AMENDING METRO CODE	)	ORDINANCE NO. 87-230
SECTION 2.04 RELATING TO CONTRACT)	
PROCEDURES AND CREATING AN)	
EXEMPTION FOR COMPUTER SOFTWARE)	
PURCHASES)	

WHEREAS, This ordinance exempts a class of contracts (computer software) from the usual competitive bid process and such an exemption requires that the findings detailed in ORS 279.015(2) be adopted by the Council of the Metropolitan Service District; and

WHEREAS, The required findings are 1) that it is unlikely that the exemption will encourage favoritism in the awarding of Public Contracts or substantially diminish competition; and 2) that the exemption will result in substantial cost savings; and

WHEREAS, Such findings are satisfied 1) by the requirement that computer software be purchased through a competitive Request For Proposals process; and 2) because the many unquantifiable factors such as compatibility and quality of the product which are involved in the selection of appropriate software indicate that the purchase of software does not lend itself to the competitive low bid process and that, consequently, the use of a low bid process for these purchases would likely result in greater long-term costs; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Section 2.04.041(b)(8) is amended to read as follows (bracketed matter is deleted; underlined matter is new):

(8) Contracts for computer [equipment] hardware and software. Selection procedures for [T]these contracts, however,

must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

ATTEST:

Clerk of the Council

YS/gl
8273C/517
10/26/87



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Item 9.2
November 12, 1987

Date: November 2, 1987

To: Metro Councilor Sharron Kelley

From: Yvonne Sherlock *Yvonne*, Contracts Officer

Regarding: QUESTIONS RAISED REGARDING PROPOSED REVISIONS TO METRO'S
DISADVANTAGED BUSINESS PROGRAM

I understand that you had a couple of questions about the Disadvantaged Business Program ordinance which was on the Council's October 22, 1987, agenda. I will attempt to address these concerns in this memorandum.

You asked where in the ordinance the recommendations of the contract review "task force" were addressed. Several of the task force's suggestions are found in the additions to Section 2.04.135 (pp. 6-8) which section describes the affirmative action techniques Metro will employ to encourage DBE and WBE participation in contracts. Those additions include using DBE/WBE goal attainment as a criteria for department head's salary reviews; establishing an interdepartmental contract management committee which will address DBE/WBE issues; and requiring that at least one DBE/WBE be contacted for all quotes for goods or services and that all known and qualified DBE/WBEs be contacted for larger contracts. Additionally, subsection (m) was added to that section to allow additional recommendations of the committee to be implemented on an ad hoc basis.

You were also concerned as to exactly how we had addressed the Ninth Circuit Opinion in AGC v. San Francisco in the proposed revised program. The primary impact of that decision was the addition of several affirmative action techniques to be performed by Metro in Section 2.04.135 and the addition of subsection (7) to Section 2.04.160(b) (see pp. 7, 8 and 17, respectively). These additions make it clear that Metro's Program has a goal-oriented approach and does not mandate unconstitutional set asides or quotas. What is required by the program of both Metro staff and prime contractors are affirmative action efforts aimed at maximizing the number of bids received from DBEs and WBEs. Neither Metro nor any bidder on Metro contracts is required to discriminate in favor of a DBE/WBE. This is in keeping with the AGC v. San Francisco opinion and other related Supreme Court cases interpreting the equal protection clause of the Constitution.

Memorandum
November 2, 1987
Page 2

If you have any additional questions about the proposed ordinance,
feel free to contact me.

YS/sm
8409/D5

cc: Rena Cusma
Ray Phelps
Don Carlson✓

STAFF REPORT

Agenda Item No. 9.2

Meeting Date Nov. 12, 1987

CONSIDERATION OF ORDINANCE NO. 87-231 FOR THE
PURPOSE OF AMENDING THE DISADVANTAGED BUSINESS
PROGRAM

Date: September 25, 1987

Presented by: Raymond Phelps
Yvonne Sherlock

FACTUAL BACKGROUND AND ANALYSIS

Metro adopted a Disadvantaged Business Program in 1985 which is designed to encourage the participation of minorities and women in Metro contracting activities. This year two events occurred which warrant revisions to the program: 1) the 1987 Oregon Legislature adopted a bill which transfers certification authority for disadvantaged and women businesses (DBEs and WBEs) from ODOT to the Executive Department, and 2) the Ninth Circuit Court of Appeals rendered a decision which clarified the constitutional limits of these types of programs. It was also determined that it would be more practical for the program's goal year to run concurrently with our budget year rather than the federal fiscal year (October through September). UMTA has approved this change.

Another facet of the revision process has involved listening to the concerns and comments of the public on the effectiveness of our program. Several months ago, members of the Disadvantaged and Women Business communities, as well as interested prime contractors and local government representatives, were invited to participate in a review of Metro's program. A series of meetings of this informal "task force" of reviewers has resulted in a number of new affirmative action techniques being recommended for addition to the program. Those in attendance at the final (October 5) session of the review group concurred with the revisions made to the program.

Ordinance No. 87-231 incorporates the changes needed to bring the program into conformance with Oregon law, to change the goal year to our fiscal year, and makes certain other changes which staff believes will strengthen the program while, at the same time, will ensure its constitutionality.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends that Ordinance No. 87-231 be approved.

YMS/srs
0016.yms

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 87-231
CODE SECTION 2.04 RELATING TO THE)
DISADVANTAGED BUSINESS PROGRAM)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

That the Metropolitan Service District Disadvantaged Business Program, incorporated in Metro Code Sections 2.04.100 through 2.04.180, is amended as follows (bracketed matter is deleted; underlined matter is new):

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of [T]this ordinance [is] which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and [is] are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1)

2.04.[120] 105 Policy Statement:

(a) Through this Program, Metro:

- (1) expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;

(2) informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and

(3) assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

(1) to assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees[,], and DOT subrecipients and contractors.

(2) to initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all DOT agreements with DOT subrecipients and in all DOT assisted contracts between Metro or DOT subrecipients and any contractor. (Ordinance No. 83-165, Sec. 2)

2.04.[130] 110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

(1) APPLICANT -- one who submits an application, request or plan to be approved by a DOT official or by Metro as a condition to eligibility for Department of Transportation (DOT) financial assistance; and "application" means such an application, request or plan.

(2) CONSTRUCTION CONTRACT -- means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(3) CONTRACT -- means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.

- (4) CONTRACTOR -- means the one who participates, through a contract or subcontract, in the Program and includes lessees.
- (5) DEPARTMENT or "DOT" -- means the United States Department of Transportation, including its operating elements.
- (6) DOT ASSISTED CONTRACT -- means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with DOT financial assistance [or any contract or modification of a contract between Metro and a lessee].
- (7) DOT FINANCIAL ASSISTANCE -- means financial aid provided by DOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.
- (8) DISADVANTAGED BUSINESS or DBE -- means a small business concern which is certified by an authorized agency and:
 - (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (9) EXECUTIVE DEPARTMENT -- means the State of Oregon's Executive Department.
- [(9)] (10) JOINT VENTURE -- is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.
- [(10)] (11) LABOR AND MATERIALS CONTRACT -- is a contract including a combination of [personal] service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

- [(11)] (12) LESSEE -- means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.
- [(13)] OREGON DEPARTMENT OF TRANSPORTATION OR "ODOT" -- means the State of Oregon's Department of Transportation.
- [(12)] (14) PERSONAL SERVICES CONTRACT -- means a contract for services of a personal or professional nature.
- [(13)] (15) PROCUREMENT CONTRACT -- means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.
- [(14)] (16) RECIPIENT -- means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.
- [(15)] (17) SMALL BUSINESS CONCERN -- means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- [(16)] (18) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR DISADVANTAGED INDIVIDUALS -- means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

[(17)] (19) WOMEN-OWNED BUSINESS ENTERPRISE or WBE -- means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2)

2.04.[140] 115 Notice to Contractors, Subcontractors and Subrecipients:

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are DOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate. (Ordinance No. 83-165, Sec. 4)

2.04.[150] 120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program. (Ordinance No. 83-165, Sec. 5)

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that [disadvantaged businesses] DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

2.04.[160] 125 Directory:

A directory of [certified disadvantaged businesses and certified women-owned businesses] DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying [disadvantaged and women-owned] such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements. (Ordinance No. 83-165, Sec. 6)

2.04.[170] 130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks. (Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3)

2.04.[180] 135 Affirmative Action and Equal Opportunity Procedures:

Metro shall use affirmative action techniques to facilitate [disadvantaged and women-owned business] DBE and WBE participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of [disadvantaged and women-owned businesses] DBEs and WBEs.

(b) [The Metropolitan Service District will refer businesses] Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads [in order] to insure that they are aware of the program goals and desired activities on their part to facilitate reaching the goals. Additionally, efforts toward and success in meeting DBE/WBE goals for department contracts shall be a factor in merit and/or salary increases for department heads.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes. [Notify DBE/WBE planning centers of awards to all contractors.]

(g) Study the feasibility of certain DOT-assisted contracts and procurements being set aside for DBE/WBE participation. (Ordinance No. 83-165, Sec. 8, amended by Ordinance No. 84-181, Sec. 4)

(h) Distribution of lists to potential DBE/WBE [vendors] contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to [acceptable certifying agencies] ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may

waive this requirement if he/she determines that there are no DBEs or WBES on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBES in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBES in Metro contracting activities.

2.04.[190] 140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a [disadvantaged or women-owned business] DBE or WBE, contractors, subcontractors and joint ventures must have been certified [pursuant to 49 CFR §23.51 through §23.55] by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather[, pursuant to 49 CFR §23.45(f) and 49 CFR §23.51(c)(2) and (3),] Metro will rely upon the certification and recertification processes of [the City of Portland, Oregon, the State of Oregon (]ODOT[), the metropolitan area transit district (Tri-Met), and the Small Business Administration (SBA)] and will utilize [the] ODOT's certification list[s] until December 31, 1987, and, thereafter, the Executive Department's list [of said agencies] in determining whether a prospective contractor or subcontractor is certified as a [disadvantaged business] DBE or WBE. A prospective contractor or subcontractor must be certified as a [disadvantaged or women-owned business] DBE or WBE by [any] one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the award of a contract [in order] to be considered by Metro to be an eligible [disadvantaged or women-owned business] DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to [49 CFR §23.55 and applicable agency regulations or they may file appeals directly to the U. S. Department of Transportation] applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for DOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the DOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

"(1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the recipient [certifying agency] as a disadvantaged business. The challenge shall be made in writing to the recipient.

"(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

"(3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

"(i) If the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.

"(ii) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.

"(4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.

"(5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall

provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

"(6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

"(7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.

"(8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69. (Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5)

2.04.[200] 145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each [September] June, establish annual [disadvantaged business] DBE goals, and separate WBE goals, for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and DOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) projection of the number and types of contracts to be awarded by Metro;
- (2) projection of the number, expertise and types of [disadvantaged businesses] DBEs and WBEs likely to be available to compete for the contracts;
- (3) past results of Metro's efforts under the Program; and
- (4) for DOT-assisted contract goals, existing goals of other local DOT recipients and their experience in meeting these goals.
- (5) for locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

2.04.[220] 155 Contract Award Criteria:

(a) [Efforts will be made to assure that prime contracts are awarded to competitors that meet applicable disadvantaged and women-owned business goals. In order] To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for [disadvantaged and women-owned businesses] DBE and WBE participation, or prove that they have made good faith efforts to meet the goal.

(b) All [solicitations] invitations to bids or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Utilization form and a Women Business Utilization form and include said forms with bid or proposal documents. The forms shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers who indicate compliance with the goal shall, within [five (5)] two (2) working days of bid opening (or [bid] proposal submission date when no public opening is had), submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A [form] sample Letter of Agreement will be provided by Metro.

(e) An apparent low bidder/proposer who states in its bid that the goal will be met but who fails to meet the goal or fails to provide Letters of Agreement with DBE/WBE firms in a timely manner, [may] shall, in lieu thereof, submit written evidence of good faith efforts to meet the goal [as provided in paragraph (f) of this section] within two (2) working days of bid opening or proposal submission in accordance with Section 2.04.160.

[(f) Apparent low bidders who will not meet the goal but who state in their bid that they have made good faith efforts to meet the goal shall within five (5) working days of bid opening (or bid submission date when no public opening is had) submit to Metro evidence of such good faith efforts. Evidence of good faith efforts, and Metro's determination of the sufficiency of such efforts, shall be in accordance with Section 2.04.230 of this chapter.]

[(g)] (f) In very limited situations and for DOT-assisted contracts only the Liaison Officer may in writing, at his/her discretion, extend the [five] two working day deadline noted in

(c) Annual goals for DOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the [overall] DOT-assisted contract goals are available for inspection when they are submitted to DOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice. (Ordinance No. 83-165, Sec. 10)

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

2.04.[210] 150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000 and shall be met pursuant to [Section 2.04.210(b) of this chapter] the following subsections.

(b) Contract goals for construction contracts over \$50,000 may be complied with by prime contractors only by subcontracting a percentage of the contract work, equal to or exceeding the contract goal, to one or more [disadvantaged business] DBE or WBE subcontractors or by a showing of good faith efforts to comply pursuant to Section 2.04.[230] 160 of this chapter.

(c) The Liaison Officer may set a contract goal for any contract other than construction contracts over [\$50,000] \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type. Contract goals for such contracts may be complied with pursuant to Section 2.04.[260] 175 (a)(2) or Section 2.04.[230] 160 of this chapter. (Ordinance No. 83-165, Sec. 11)

(d) Even though no DBE/WBE subcontracting opportunities appear likely at the time of contract award, the Liaison Officer may direct the inclusion of a clause in any contract described in this section which requires the prime contractor to meet DBE/WBE goals established by the Liaison Officer or make good faith efforts to do so in the event such subcontracting opportunities arise during the performance of the contract.

solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE/WBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE/WBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE/WBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE/WBE sufficient opportunity to develop quotes or proposals for the work described.] Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.

- (3) [Evidence of follow-up to initial soliciations of interest, including the following:
- [A. the names, addresses, telephone numbers of all DBE/WBE contacted;
 - [B. a description of the information provided to DBE/WBE firms regarding the plans and specifications for portions of the work to be performed; and
 - [C. a statement of the reasons for non-utilization of DBE/WBE firms, if needed to meet the goal.

[(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6, and Ordinance No. 86-197, Sec. 1)]

Written notification to a reasonable number but no less than five (5) DBE/WBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE/WBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE/WBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for

paragraphs (d) and [(f)] (e) above to allow for additional positive efforts to utilize [certified disadvantaged or women-owned businesses] DBEs or WBEs prior to contract award. Such extensions shall not exceed a total of ten (10) additional working days.

[(h)] (g) Except as provided in paragraph [(i)] (h) this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (f) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within [five] two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

[(i)] (h) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law. (Ordinance No. 83-165, Sec. 12)

2.04.160 Determination of Good Faith Efforts:

(a) [Pursuant to Section 2.04.220 of this chapter,] Bidders or Proposers on DOT-assisted contracts to which DBE/WBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. [(b)] A showing of good faith efforts must include written evidence of at least the following:

- (1) [Advertisement in a trade association newsletter or general circulation newspaper and through a minority-owned newspaper or minority-owned trade publication at least 10 days before bids or proposals are due.] Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) [Written notification to no less than three (3) DBE/WBE firms that their interest in the contract is

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBES of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBES to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade-oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBES for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBES for that work specialty then the solicitation must be mailed to or supply at least the number of DBEs/WBES listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all of the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

- (5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBES who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

which quotes or proposals are solicited from DBE/WBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE/WBE sufficient opportunity to develop quotes or proposals for the work described.

(4) Evidence of follow-up to initial soliciations of interest, including the following:

A. the names, addresses, telephone numbers of all DBE/WBE contacted;

B. a description of the information provided to DBE/WBE firms regarding the plans and specifications for portions of the work to be performed; and

C. a statement of the reasons for non-utilization of DBE/WBE firms, if needed to meet the goal.

(5) Negotiation in good faith with DBE/WBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE/WBE firms;

(6) Where applicable, the bidder must provide advice and assistance to interested DBE/WBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;

(7) Overall, the bidder's efforts to obtain DBE/WBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and

(8) The bidder must use the services of mnority community organizations, minority contractor groups, local, state and frederal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

2.04.165 Replacement of [Disadvantaged Business] DBE or WBE Subcontractors:

Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a [disadvantaged business] DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so. (Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess [disadvantaged and women-owned business] DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to [disadvantaged or women-owned businesses] DBEs and WBEs by number, percentage and dollar amount. [Specifically the percentage of dollar value of all contracts awarded to D/WBE and total dollar value of all contracts D/WBE.]
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All [disadvantaged and women-owned business] DBE and WBE records will be separately maintained. Required [disadvantaged and women-owned business] DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare [semiannual] reports, at least semiannually, on [disadvantaged and women-owned business] DBE and WBE participation to include the following:

- (1) the number of contracts awarded;
- (2) categories of contracts awarded;
- (3) dollar value of contracts awarded;
- (4) percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
- (5) the extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1)

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

contract than would be expected on the basis of normal industry practices, the [disadvantaged business] DBE or WBE shall be presumed not to be performing a commercially useful function. The [disadvantaged and women-owned business] DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by DOT for DOT-assisted contracts.

(6) A [disadvantaged and women-owned business] DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than [disadvantaged and women-owned business] DBE or WBE suppliers and manufacturers, provided that the [disadvantaged and women-owned business] DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.

(7) Metro shall count its entire expenditure to a [disadvantaged and women-owned business] DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(8) Metro shall count against the goals 20 percent of its expenditures to [disadvantaged and women-owned business] DBE or WBE suppliers that are not manufacturers, provided that the [disadvantaged and women-owned business] DBE or WBE supplier performs a commercially useful function in the supply process.

(9) When DOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any [disadvantaged or women-owned business] DBE or WBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any DOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:

"(a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

"(b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a contract to be performed by [disadvantaged and women-owned businesses] DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.
- (4) Metro shall count toward its goals only expenditures to [disadvantaged businesses and women-owned] DBEs and WBEs that perform a commercially useful function in the work of a contract. A [disadvantaged and women-owned business] DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a [disadvantaged and women-owned business] DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a [disadvantaged and women-owned business] DBE or WBE may enter into subcontracts. If a [disadvantaged business] DBE or WBE contractor subcontracts a significantly greater portion of the work of the

[disadvantaged business] DBE and WBE participation. (Ordinance No. 83-165, Sec. 17)

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

ATTEST:

Clerk of the Council

YS/gl/8206C/514
10/12/87

maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts."

(b) [Disadvantaged or women-owned business] DBE or WBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a [disadvantaged or women-owned businesses] DBE or WBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to [disadvantaged business] DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

amendments

*Item #9.2
11/12/87*

Date: November 5, 1987

To: Rena Cusma, Executive Officer

From: Ray A. Phelps, *Ray* Jr., Director of Finance & Administration

Regarding: PROPOSED AMENDMENTS TO ORDINANCE NO. 87-231
(DISADVANTAGED BUSINESS PROGRAM)

At the Council's October 22, 1987, meeting a first reading of Ordinance No. 87-231 was held. During the public hearing on the ordinance, several issues were raised concerning provisions of the ordinance. Staff was asked to respond to those concerns raised. A memorandum which was prepared in response to Councilor Kelley's questions is attached.

Additional concerns raised by the public were in need of resolution. In an effort to receive comments from all interested individuals, another gathering of the Disadvantaged Business Program Review "task force" was held Monday, November 3. A list of those in attendance is attached. All of the issues raised were discussed. The participants of the November 3 meeting and staff are recommending that the following changes be made to the proposed ordinance:

✓ 1. All references to DOT should be changed to USDOT to avoid confusing the U.S. Department of Transportation with Oregon's Department of Transportation (ODOT).

2. On page 11 of the ordinance, amend paragraph (d) of Section 2.04.150 as follows:

(d) Even though no DBE/WBE subcontracting opportunities appear likely at the time of contract award, the Liaison Officer may direct the inclusion of a clause in any contract described in this section which requires the prime contractor to meet DBE/WBE goals established by the Liaison Officer or make good faith efforts to do so in the event such subcontracting opportunities arise during the performance of the contract.

*see
attach-
11/12/87
memo*

This subsection shall apply only to those contracts for which no DBE/WBE goals were established prior to contract award.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Agenda Item No. 9.2

Meeting Date Nov. 12, 1987

Date: November 9, 1987
To: Metro Councilors
From: Rena Cusma, Executive Officer *R. Cusma*
Regarding: PROPOSED AMENDMENTS TO ORDINANCE NO. 87-231

Enclosed is a memorandum discussing several amendments to Ordinance No. 87-231. These amendments were prepared in response to the issues raised on October 22, 1987, during the first reading of this ordinance. I recommend adoption of these amendments when Ordinance No. 87-231 is read for the second time on November 12, 1987.

I would like to take this opportunity to thank the members of our Disadvantaged Business Program Review Task Force and the many individuals who helped the Task Force revise Metro's Program. In addition, I want to acknowledge the efforts of our Contracts Officer, Yvonne Sherlock, for all the assistance she provided the Task Force with legal opinions and the preparation of the amendments to implement the revisions to the Program developed by the Task Force.

RC/RP/gl
8504C/D2

Enclosure

cc: Council Staff
Members of the Task Force and
Attendees

The addition of this sentence makes it clear that contractors will not be required to make additional good faith efforts or meet additional DBE/WBE goals when they have already satisfied the requirements of the program.

3. On page 12, amend paragraph (a) of Section 2.04.155 as follows:

(2) (a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due.

The addition emphasizes the requirement that bidders make all good faith efforts prior to bid opening.

4. On page 12, add the following sentences to the end of Section 2.04.155(a):

(3) Bidders/Proposers are required to utilize the most current list of DBEs and WBEs certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

Bidders are directed by these sentences to use only the state's official certification list.

5. On page 12, amend paragraph (b) as follows:

(4) (b) All [solicitations] invitations to bids or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business [Utilization] Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

6. On page 12, amend paragraph (d) as follows:

(5) (d) Apparent low bidders/proposers who indicate compliance with the goal shall [within five working days

of] by the close of the next working day following bid opening, (or [bid] proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A [form] sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

Proposed changes 5 and 6 change the current process by requiring a Compliance Form at bid opening followed by more detailed information. This change was requested by prime contractors to allow them sufficient time to submit the more detailed information.

7. On page 12, replace existing paragraph (e) with the following:

(6) (e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right determine the sufficiency of such efforts.

The new language clarifies the bidder's responsibilities which are unclear under the existing paragraph.

8. On page 12, delete paragraph (f) entirely.

This section allowed bidders, in certain situations, to perform good faith efforts after the bid opening. This provision was unacceptable because of the unfairness of allowing the low bidder to perform actions after the bid opening rather than before bid opening.

Staff recommends that Ordinance No. 87-231 be amended to reflect the above described changes. It is the consensus of staff and the participants of the review process that the revised Program will result in increased contracting opportunities for minorities and women.

opening date. If the paragraph is left as is, apparent low bidders who have not met the goals or who have only partially met the goals would not be required to submit these forms. The intent is for all apparent low bidders to submit these forms so that staff can determine to what extent they have achieved the goals.

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METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 12, 1987
To: Metro Council
From: Rena Cusma, Executive Officer *RC*
Regarding: ORDINANCE NO. 87-231 (Disadvantaged Business Program)

Two final amendments to Ordinance No. 87-231 are recommended:

1. On page 11, rephrase the language of new paragraph (d) of Section 2.04.150 to read as follows:

① (d) Even though no DBE/WBE subcontracting opportunities appear likely at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type. This section shall apply only to those contracts for which no DBE/WBE goals were established at the time that bid/proposal documents were drafted.

one established at the time bid goals were established, the Liaison Officer shall direct the

New paragraph (d) was added to cover those situations where staff has determined that no subcontracting opportunities exist for the anticipated contract but because of the size, length or complexity of the contract, the possibility of future subcontracting opportunities does exist and a DBE/WBE requirement should be included for those future opportunities. The rephrased language makes it clear that the Liaison Officer must act to include this "future" DBE/WBE subcontracting goal in the bid documents or RFP.

2. On page 12, amend paragraph (d) of Section 2.04.155 by deleting the phrase "who indicate compliance with the goal."

As it currently reads, paragraph (d) directs apparent low bidders to submit DBE and WBE Utilization forms on the day following the bid

(over for doc. #)

① engross - remove all brackets
+ under lines.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

② change all references to DOT to read USDOT

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 87-231
CODE SECTION 2.04 RELATING TO THE)
DISADVANTAGED BUSINESS PROGRAM)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

That the Metropolitan Service District Disadvantaged Business Program, incorporated in Metro Code Sections 2.04.100 through 2.04.180, is amended as follows (bracketed matter is deleted; underlined matter is new):

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of [T]this ordinance [is] which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and [is] are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1)

2.04.[120] 105 Policy Statement:

(a) Through this Program, Metro:

- (1) expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;

- (2) informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

- (1) to assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees[,] and DOT subrecipients and contractors.
- (2) to initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all DOT agreements with DOT subrecipients and in all DOT assisted contracts between Metro or DOT subrecipients and any contractor. (Ordinance No. 83-165, Sec. 2)

2.04.[130] 110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

- (1) APPLICANT -- one who submits an application, request or plan to be approved by a DOT official or by Metro as a condition to eligibility for Department of Transportation (DOT) financial assistance; and "application" means such an application, request or plan.
- (2) CONSTRUCTION CONTRACT -- means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.
- (3) CONTRACT -- means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.

- alpha order*
- (4) CONTRACTOR -- means the one who participates, through a contract or subcontract, in the Program and includes lessees.
- (5) DEPARTMENT or "^{USDOT}DOT" -- means the United States Department of Transportation, including its operating elements.
- (6) ^{US}DOT ASSISTED CONTRACT -- means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with ^{US}DOT financial assistance [or any contract or modification of a contract between Metro and a lessee].
- (7) ^{US}DOT FINANCIAL ASSISTANCE -- means financial aid provided by ^{US}DOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.
- (8) DISADVANTAGED BUSINESS or DBE -- means a small business concern which is certified by an authorized agency and:
- (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (9) EXECUTIVE DEPARTMENT -- means the State of Oregon's Executive Department.
- [(9)] (10) JOINT VENTURE -- is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.
- [(10)] (11) LABOR AND MATERIALS CONTRACT -- is a contract including a combination of [personal] service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

- [(11)] (12) LESSEE -- means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.
- (13) OREGON DEPARTMENT OF TRANSPORTATION OR "ODOT" -- means the State of Oregon's Department of Transportation.
- [(12)] (14) PERSONAL SERVICES CONTRACT -- means a contract for services of a personal or professional nature.
- [(13)] (15) PROCUREMENT CONTRACT -- means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.
- [(14)] (16) RECIPIENT -- means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.
- [(15)] (17) SMALL BUSINESS CONCERN -- means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- [(16)] (18) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR DISADVANTAGED INDIVIDUALS -- means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

[(17)] (19) WOMEN-OWNED BUSINESS ENTERPRISE or WBE -- means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2)

2.04.[140] 115 Notice to Contractors, Subcontractors and Subrecipients:

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are DOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate. (Ordinance No. 83-165, Sec. 4)

2.04.[150] 120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program. (Ordinance No. 83-165, Sec. 5)

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that [disadvantaged businesses] DBEs and WBES are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

2.04.[160] 125 Directory:

A directory of [certified disadvantaged businesses and certified women-owned businesses] DBEs and WBES certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying [disadvantaged and women-owned] such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements. (Ordinance No. 83-165, Sec. 6)

2.04.[170] 130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks. (Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3)

2.04.[180] 135 Affirmative Action and Equal Opportunity Procedures:

Metro shall use affirmative action techniques to facilitate [disadvantaged and women-owned business] DBE and WBE participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of [disadvantaged and women-owned businesses] DBEs and WBES.

(b) [The Metropolitan Service District will refer businesses] Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads [in order] to insure that they are aware of the program goals and desired activities on their part to facilitate reaching the goals. Additionally, efforts toward and success in meeting DBE/WBE goals for department contracts shall be a factor in merit and/or salary increases for department heads.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes. [Notify DBE/WBE planning centers of awards to all contractors.]

(g) Study the feasibility of certain DOT-assisted contracts and procurements being set aside for DBE/WBE participation. (Ordinance No. 83-165, Sec. 8, amended by Ordinance No. 84-181, Sec. 4)

(h) Distribution of lists to potential DBE/WBE [vendors] contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to [acceptable certifying agencies] ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may

waive this requirement if he/she determines that there are no DBEs or WBES on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBES in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBES in Metro contracting activities.

2.04.[190] 140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a [disadvantaged or women-owned business] DBE or WBE, contractors, subcontractors and joint ventures must have been certified [pursuant to 49 CFR §23.51 through §23.55] by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather[, pursuant to 49 CFR §23.45(f) and 49 CFR §23.51(c)(2) and (3),] Metro will rely upon the certification and recertification processes of [~~the City of Portland, Oregon, the State of Oregon (ODOT), the metropolitan area transit district (Tri-Met), and the Small Business Administration (SBA)~~] and will ~~utilize [the] ODOT's certification list[s] until December 31, 1987,~~ and, thereafter, the Executive Department's list [of said agencies] in determining whether a prospective contractor or subcontractor is certified as a [disadvantaged business] DBE or WBE. A prospective contractor or subcontractor must be certified as a [disadvantaged or women-owned business] DBE or WBE by [any] one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the award of a contract [in order] to be considered by Metro to be an eligible [disadvantaged or women-owned business] DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to [49 CFR §23.55 and applicable agency regulations or they may file appeals directly to the U. S. Department of Transportation] applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for DOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the DOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

"(1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the [recipient] [certifying agency] as a disadvantaged business. The challenge shall be made in writing to the recipient.

"(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

"(3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

"(i) If the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.

"(ii) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.

"(4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.

"(5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall

provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

"(6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

"(7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.

"(8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69. (Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5)

2.04.[200] 145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each [September] June, establish annual [disadvantaged business] DBE goals, and separate WBE goals, for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and DOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) projection of the number and types of contracts to be awarded by Metro;
- (2) projection of the number, expertise and types of [disadvantaged businesses] DBEs and WBEs likely to be available to compete for the contracts;
- (3) past results of Metro's efforts under the Program; and
- (4) for DOT-assisted contract goals, existing goals of other local DOT recipients and their experience in meeting these goals.
- (5) for locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Annual goals for DOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g) (3).

(d) Metro will publish notice that the [overall] DOT-assisted contract goals are available for inspection when they are submitted to DOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice. (Ordinance No. 83-165, Sec. 10)

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

2.04.[210] 150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000 and shall be met pursuant to [Section 2.04.210(b) of this chapter] the following subsections.

(b) Contract goals for construction contracts over \$50,000 may be complied with by prime contractors only by subcontracting a percentage of the contract work, equal to or exceeding the contract goal, to one or more [disadvantaged business] DBE or WBE subcontractors or by a showing of good faith efforts to comply pursuant to Section 2.04.[230] 160 of this chapter.

(c) The Liaison Officer may set a contract goal for any contract other than construction contracts over [\$50,000] \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type. Contract goals for such contracts may be complied with pursuant to Section 2.04.[260] 175 (a)(2) or Section 2.04.[230] 160 of this chapter. (Ordinance No. 83-165, Sec. 11)

(d) Even though no DBE/WBE subcontracting opportunities appear likely at the time of contract award, the Liaison Officer may direct the inclusion of a clause in any contract described in this section which requires the prime contractor to meet DBE/WBE goals established by the Liaison Officer or make good faith efforts to do so in the event such subcontracting opportunities arise during the performance of the contract.

*see new lang. -
11/12/85 memo.*

2.04.[220] 155 Contract Award Criteria:

(2) (3) (a) ~~[Efforts will be made to assure that prime contracts are awarded to competitors that meet applicable disadvantaged and women-owned business goals. In order] To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for [disadvantaged and women-owned businesses] DBE and WBE participation, or prove that they have made good faith efforts to meet the goal.~~

(4) (b) ~~All [solicitations] invitations to bids or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Utilization form and a Women Business Utilization form and include said forms with bid or proposal documents. The forms shall be provided by Metro with bid/proposal solicitations.~~

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(5) (d) ~~Apparent low bidders/proposers who indicate compliance with the goal shall, within [five (5)] two (2) working days of bid opening (or [bid] proposal submission date when no public opening is had), submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A [form] sample Letter of Agreement will be provided by Metro.~~

(6) (e) ~~An apparent low bidder/proposer who states in its bid that the goal will be met but who fails to meet the goal or fails to provide Letters of Agreement with DBE/WBE firms in a timely manner, [may] shall, in lieu thereof, submit written evidence of good faith efforts to meet the goal [as provided in paragraph (f) of this section] within two (2) working days of bid opening or proposal submission in accordance with Section 2.04.160.~~

~~[(f) Apparent low bidders who will not meet the goal but who state in their bid that they have made good faith efforts to meet the goal shall within five (5) working days of bid opening (or bid submission date when no public opening is had) submit to Metro evidence of such good faith efforts. Evidence of good faith efforts, and Metro's determination of the sufficiency of such efforts, shall be in accordance with Section 2.04.230 of this chapter.]~~

~~[(g)] (f) In very limited situations and for DOT-assisted contracts only the Liaison Officer may in writing, at his/her discretion, extend the [five] two working day deadline noted in~~

delete new (f)

~~paragraphs (d) and [(f)] (e) above to allow for additional positive efforts to utilize [certified disadvantaged or women-owned businesses] DBEs or WBEs prior to contract award. Such extensions shall not exceed a total of ten (10) additional working days.~~

(f)
[(h)] (g) Except as provided in paragraph [(i)] (h) this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (f) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within [five] two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g)
[(i)] (h) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law. (Ordinance No. 83-165, Sec. 12)

2.04.160 Determination of Good Faith Efforts:

(a) [Pursuant to Section 2.04.220 of this chapter,] Bidders or Proposers on DOT-assisted contracts to which DBE/WBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. [(b)] A showing of good faith efforts must include written evidence of at least the following:

- (1) [Advertisement in a trade association newsletter or general circulation newspaper and through a minority-owned newspaper or minority-owned trade publication at least 10 days before bids or proposals are due.] Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) [Written notification to no less than three (3) DBE/WBE firms that their interest in the contract is

solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE/WBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE/WBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE/WBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE/WBE sufficient opportunity to develop quotes or proposals for the work described.] Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.

- (3) [Evidence of follow-up to initial soliciations of interest, including the following:
- [A. the names, addresses, telephone numbers of all DBE/WBE contacted;
 - [B. a description of the information provided to DBE/WBE firms regarding the plans and specifications for portions of the work to be performed; and
 - [C. a statement of the reasons for non-utilization of DBE/WBE firms, if needed to meet the goal.

[(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6, and Ordinance No. 86-197, Sec. 1)]

Written notification to a reasonable number but no less than five (5) DBE/WBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE/WBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE/WBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for

which quotes or proposals are solicited from DBE/WBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE/WBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial soliciations of interest, including the following:
 - A. the names, addresses, telephone numbers of all DBE/WBE contacted;
 - B. a description of the information provided to DBE/WBE firms regarding the plans and specifications for portions of the work to be performed; and
 - C. a statement of the reasons for non-utilization of DBE/WBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE/WBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE/WBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE/WBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE/WBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of mnority community organizations, minority contractor groups, local, state and frederal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBES.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBES of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBES to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade-oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBES for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are ^{or supply} less than five certified DBEs/WBES ^{listed} for that work specialty then the solicitation must be mailed to ^{or supply} at least the number of DBEs/WBES listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all of the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

- (5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBES who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

2.04.165 Replacement of [Disadvantaged Business] DBE or WBE Subcontractors:

Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a [disadvantaged business] DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so. (Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess [disadvantaged and women-owned business] DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to [disadvantaged or women-owned businesses] DBEs and WBES by number, percentage and dollar amount. [Specifically the percentage of dollar value of all contracts awarded to D/WBE and total dollar value of all contracts D/WBE.]
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All [disadvantaged and women-owned business] DBE and WBE records will be separately maintained. Required [disadvantaged and women-owned business] DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare [semiannual] reports, at least semiannually, on [disadvantaged and women-owned business] DBE and WBE participation to include the following:

- (1) the number of contracts awarded;
- (2) categories of contracts awarded;
- (3) dollar value of contracts awarded;
- (4) percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
- (5) the extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1)

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a contract to be performed by [disadvantaged and women-owned businesses] DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.
- (4) Metro shall count toward its goals only expenditures to [disadvantaged businesses and women-owned] DBEs and WBEs that perform a commercially useful function in the work of a contract. A [disadvantaged and women-owned business] DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a [disadvantaged and women-owned business] DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a [disadvantaged and women-owned business] DBE or WBE may enter into subcontracts. If a [disadvantaged business] DBE or WBE contractor subcontracts a significantly greater portion of the work of the

contract than would be expected on the basis of normal industry practices, the [disadvantaged business] DBE or WBE shall be presumed not to be performing a commercially useful function. The [disadvantaged and women-owned business] DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by DOT for DOT-assisted contracts.

- (6) A [disadvantaged and women-owned business] DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than [disadvantaged and women-owned business] DBE or WBE suppliers and manufacturers, provided that the [disadvantaged and women-owned business] DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.

- (7) Metro shall count its entire expenditure to a [disadvantaged and women-owned business] DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

- (8) Metro shall count against the goals 20 percent of its expenditures to [disadvantaged and women-owned business] DBE or WBE suppliers that are not manufacturers, provided that the [disadvantaged and women-owned business] DBE or WBE supplier performs a commercially useful function in the supply process.

- (9) When DOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any [disadvantaged or women-owned business] DBE or WBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any DOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:

"(a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

"(b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the

maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts."

(b) [Disadvantaged or women-owned business] DBE or WBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a [disadvantaged or women-owned businesses] DBE or WBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to [disadvantaged business] DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual

[disadvantaged business] DBE and WBE participation. (Ordinance No. 83-165, Sec. 17)

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

ATTEST:

Clerk of the Council

YS/gl/8206C/514
10/12/87



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

(Others attached)

Gloria One more change

Date: November 10, 1987
To: Metro Council
From: Rena Cusma, Executive Officer *RC*
Regarding: ORDINANCE NO. 87-231 (DISADVANTAGED BUSINESS PROGRAM)

In addition to those amendments to Ordinance No. 87-231 which are referenced in my November 9 memorandum, the following revision is also recommended:

On page 7, re-phrase the amended language of paragraph (e) to read as follows:

(e) Periodic reviews with department heads [in order] to ensure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department contracts shall be factors considered during annual performance evaluations of the department heads.

Councilor Kelley requested that the wording of this section be amended to make it clear that department heads would not be receiving bonuses based solely upon meeting DBE/WBE goals but that the department head's success in reaching the goals would be but one of many factors considered during the annual performance evaluation. The recommended amendment clarifies this point.

YS/gl
8512C/D2



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Agenda Item No. 9.2

Meeting Date Nov. 12, 1987

Date: November 9, 1987

To: Metro Councilors

From: Rena Cusma, Executive Officer *R. Cusma*

Regarding: PROPOSED AMENDMENTS TO ORDINANCE NO. 87-231

Enclosed is a memorandum discussing several amendments to Ordinance No. 87-231. These amendments were prepared in response to the issues raised on October 22, 1987, during the first reading of this ordinance. I recommend adoption of these amendments when Ordinance No. 87-231 is read for the second time on November 12, 1987.

I would like to take this opportunity to thank the members of our Disadvantaged Business Program Review Task Force and the many individuals who helped the Task Force revise Metro's Program. In addition, I want to acknowledge the efforts of our Contracts Officer, Yvonne Sherlock, for all the assistance she provided the Task Force with legal opinions and the preparation of the amendments to implement the revisions to the Program developed by the Task Force.

RC/RP/gl
8504C/D2

Enclosure

cc: Council Staff
Members of the Task Force and
Attendees



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Amendments

Date: November 5, 1987
To: Rena Cusma, Executive Officer
From: Ray A. Phelps, *Ray* J., Director of Finance & Administration
Regarding: PROPOSED AMENDMENTS TO ORDINANCE NO. 87-231
(DISADVANTAGED BUSINESS PROGRAM)

At the Council's October 22, 1987, meeting a first reading of Ordinance No. 87-231 was held. During the public hearing on the ordinance, several issues were raised concerning provisions of the ordinance. Staff was asked to respond to those concerns raised. A memorandum which was prepared in response to Councilor Kelley's questions is attached.

Additional concerns raised by the public were in need of resolution. In an effort to receive comments from all interested individuals, another gathering of the Disadvantaged Business Program Review "task force" was held Monday, November 3. A list of those in attendance is attached. All of the issues raised were discussed. The participants of the November 3 meeting and staff are recommending that the following changes be made to the proposed ordinance:

- ✓ 1. All references to DOT should be changed to USDOT to avoid confusing the U.S. Department of Transportation with Oregon's Department of Transportation (ODOT).
2. On page 11 of the ordinance, amend paragraph (d) of Section 2.04.150 as follows:

(d) Even though no DBE/WBE subcontracting opportunities appear likely at the time of contract award, the Liaison Officer may direct the inclusion of a clause in any contract described in this section which requires the prime contractor to meet DBE/WBE goals established by the Liaison Officer or make good faith efforts to do so in the event such subcontracting opportunities arise during the performance of the contract.

see ①
11/12/87
memo
(attached)

This subsection shall apply only to those contracts for which no DBE/WBE goals were established prior to contract award.

(over)

~~The addition of this sentence makes it clear that contractors will not be required to make additional good faith efforts or meet additional DBE/WBE goals when they have already satisfied the requirements of the program.~~

3. On page 12, amend paragraph (a) of Section 2.04.155 as follows:

② (a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due.

The addition emphasizes the requirement that bidders make all good faith efforts prior to bid opening.

4. On page 12, add the following sentences to the end of Section 2.04.155(a):

③ Bidders/Proposers are required to utilize the most current list of DBEs and WBEs certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

Bidders are directed by these sentences to use only the state's official certification list.

5. On page 12, amend paragraph (b) as follows:

4 (b) All [solicitations] invitations to bids or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business [Utilization] Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

6. On page 12, amend paragraph (d) as follows:

5 (d) Apparent low bidders/proposers [who indicate compliance with the goal] shall [within five working days

(over)

5 of] by the close of the next working day following bid opening, (or [bid] proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A [form] sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

Proposed changes 5 and 6 change the current process by requiring a Compliance Form at bid opening followed by more detailed information. This change was requested by prime contractors to allow them sufficient time to submit the more detailed information.

7. On page 12, replace existing paragraph (e) with the following:

6 (e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right determine the sufficiency of such efforts.

The new language clarifies the bidder's responsibilities which are unclear under the existing paragraph.

8. On page 12, delete paragraph (f) entirely.

This section allowed bidders, in certain situations, to perform good faith efforts after the bid opening. This provision was unacceptable because of the unfairness of allowing the low bidder to perform actions after the bid opening rather than before bid opening.

Staff recommends that Ordinance No. 87-231 be amended to reflect the above described changes. It is the consensus of staff and the participants of the review process that the revised Program will result in increased contracting opportunities for minorities and women.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 12, 1987

To: Metro Council

From: Rena Cusma, Executive Officer *RC*

Regarding: ORDINANCE NO. 87-231 (Disadvantaged Business Program)

Two final amendments to Ordinance No. 87-231 are recommended.

1. On page 11, rephrase the language of new paragraph (d) of Section 2.04.150 to read as follows:

(d) Even though no DBE/WBE ~~subcontracting opportunities appear likely~~ at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type. ~~This section shall apply only to those contracts for which no DBE/WBE goals were established at the time that bid/proposal documents were drafted.~~

1

goals are established at the time

New paragraph (d) was added to cover those situations where staff has determined that no subcontracting opportunities exist for the anticipated contract but because of the size, length or complexity of the contract, the possibility of future subcontracting opportunities does exist and a DBE/WBE requirement should be included for those future opportunities. The rephrased language makes it clear that the Liaison Officer must act to include this "future" DBE/WBE subcontracting goal in the bid documents or RFP.

2. On page 12, amend paragraph (d) of Section 2.04.155 by deleting the phrase "who indicate compliance with the goal."

As it currently reads, paragraph (d) directs apparent low bidders to submit DBE and WBE Utilization forms on the day following the bid

(over for doc. #)

opening date. If the paragraph is left as is, apparent low bidders who have not met the goals or who have only partially met the goals would not be required to submit these forms. The intent is for all apparent low bidders to submit these forms so that staff can determine to what extent they have achieved the goals.

YS/gl
8525C/D2

STAFF REPORT

Agenda Item No. 9.3, 9.4

Meeting Date Nov. 12, 1987

CONSIDERATION OF ORDINANCE NOS. 87-232 and 87-233
RELATING TO CONTRACTING AND PERSONNEL RULES FOR
THE METROPOLITAN EXPOSITION-RECREATION COMMISSION
IN CREATING AN EXEMPTION FOR AGREEMENTS FOR THE
LEASE OR USE OF THE OREGON CONVENTION CENTER FROM
PUBLIC BIDDING REQUIREMENTS.

Date: October 19, 1987

Presented by: Donald E. Carlson
Daniel B. Cooper

FACTUAL BACKGROUND AND ANALYSIS

The Council is considering Ordinance No. 87-225 creating the Metropolitan Exposition-Recreation Commission. The Council Task Force on the Convention Center Commission has recommended to the Council that ordinances be prepared to amend the relevant provisions of the Metro Code to clearly provide that the new Metropolitan Exposition-Recreation Commission would be empowered to hire personnel and enter into contract agreements subject to the policies and procedures set forth in the Metro Code. The Task Force recommends that the Commission be able to operate independently from the Metro Executive or the Metro Council in carrying out these functions. In addition, the Council Task Force has recommended that the Metro Council provide that any agreements for the lease or use of the Oregon Convention Center be exempt from any applicable Oregon Public Contract Law/Public Bidding Requirements.

Ordinance No. 87-232 amends Section 2.02.010 of the Metro Code to provide that the new Metropolitan Exposition-Recreation Commission shall have authority to hire and fire employees subject to the personnel rules established in the Metro Code.

Ordinance No. 87-232 also creates a new Code Section 2.04.035 to provide that the Commission shall have the authority to enter into contracts without the prior approval of either the Executive Officer, the Council Management Committee, or the Council.

Ordinance No. 87-233 is an ordinance to be considered by the Council sitting in its capacity as the Metropolitan Service District Contract Review Board. This ordinance creates an additional exemption from competitive bidding requirements for "contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission."

DBC/gl
8377C/517
10/19/87

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 87-232
SECTION 2.02.010 AND ADDING A)	
NEW SECTION 2.04.035 TO THE CODE)	
OF METROPOLITAN SERVICE DISTRICT)	
RELATING TO PERSONNEL AND CON-)	
TRACTING RULES FOR THE METROPOLITAN))	
EXPOSITION-RECREATION COMMISSION)	

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

1. Section 2.02.010 of the Code of the Metropolitan Service District is amended to read as follows:

"Section 2.02.010 Administration of the Rules: Except as provided in subsection (d) below the Executive Officer shall be responsible for: (a) administering or delegating the administration of all the provisions of this chapter; and (b) reviewing and recommending to the Council necessary changes to this chapter; (c) publishing a Personnel Procedures Manual to implement the provisions of this chapter; (d) the Metropolitan Exposition-Recreation Commission shall be responsible for the administration of these Personnel Rules for employees of the Commission. For this purpose the authority and duties of the Executive Officer referred to in this chapter shall reside with the Commission.

Subsection 2 of the Ordinance. A new Code Section 2.04.035 titled Metropolitan Exposition-Recreation Commission shall be added to Chapter 2.04 Metro Contract Procedures to be numbered and titled and to read as follows:

"2.04.035 Metropolitan Exposition-Recreation Commission. The Metropolitan Exposition-Recreation Commission shall have authority to enter into contracts pursuant to the procedures and policies set forth in this chapter. For this purpose the Metropolitan Exposition-Recreation Commission may without the prior approval of either the Executive Officer, the Council Management Committee or the Council enter into contracts in any amount. The Metropolitan Exposition-Recreation Commission shall

file copies of all contracts and amendments
thereto with the Department of Finance &
Administration. The Metropolitan Service
District Contract Review Board created pursuant
to Section 2.04.020 of this Code shall be the
local Contract Review Board for the Metropolitan
Exposition-Recreation Commission.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

NOT VETOED by the Executive Officer of the Metropolitan Service
District this _____ day of _____, 1987.

Rena Cusma, Executive Officer

VETOED by the Executive Officer of the Metropolitan Service
District this _____ day of _____, 1987.

Rena Cusma, Executive Officer

The Executive Officer's veto was overridden by the Council
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

ATTEST:

Clerk of the Council

DBC/sm
8362C/517
10/26/87

BEFORE THE METROPOLITAN SERVICE DISTRICT
CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 87-233
CODE SECTION 2.04.041 CREATING)	
AN EXEMPTION FOR AGREEMENTS FOR)	
THE LEASE OR USE OF THE OREGON)	
CONVENTION CENTER FROM PUBLIC)	
BIDDING REQUIREMENTS)	

THE METROPOLITAN SERVICE DISTRICT CONTRACT REVIEW BOARD ORDAINS
AS FOLLOWS:

Section 1. The Metropolitan Service District Contract Review Board finds that the operation of the Oregon Convention Center and other facilities to be operated by the Metropolitan Exposition-Recreation Commission requires that contracts for lease or use of such facilities be exempted from any competitive bidding requirements because such facilities are operated in competition with similar facilities located elsewhere and that exempting such agreements from competitive bidding requirements will not encourage favoritism or diminish competition and is in the public interest because exempting such agreements will make it possible to realize greater revenues.

Section 2. Section 2.04.041 of the Code of the Metropolitan Service District is amended to read as follows:

2.04.041 Requirement of Competitive Bidding, Exemptions:

(a) State Law: The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

(1) Contracts with other public agencies or the federal government.

(2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.

(3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

(4) Contracts for supplies estimated to be less than \$500.

(b) Board Rule: The following classes of public contracts are exempt from the competitive bidding process based on the findings by the Contract Review Board that the exemption will not encourage favoritism or substantially diminishing competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) Purchase and sale of Zoo animals.
- (2) Purchase and sale of Zoo gift shop retail inventory and resale items.
- (3) All contracts estimated to be less than \$15,000 provided that the selection process described in the appropriate Code sections is followed.
- (4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.
- (5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension.
- (6) Purchase of food items pursuant to Section 2.04.090.
- (7) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (8) Contracts for computer equipment. These contracts must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."
- (9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.
- (10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.

(c) Board Resolution: Specific contracts, not within the classes exempted in subsection (b) above, may be exempted by the Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

STAFF REPORT

Agenda Item No. 9.5, 10.1

Meeting Date Nov. 12, 1987

CONSIDERATION OF ORDINANCE NO. 87-234, ADOPTING A FINAL ORDER AND AMENDING THE METRO URBAN GROWTH BOUNDARY IN CONTESTED CASE NO. 87-1 FOR THE CHICKEN CREEK, HARBORTON AND BULL MOUNTAIN SITES (FIRST READING), AND CONSIDERATION OF RESOLUTION NO. 87-~~222~~⁸⁷, FOR THE PURPOSE OF INITIATING ANNEXATION TO METRO AND EXPRESSING COUNCIL INTENT TO AMEND THE URBAN GROWTH BOUNDARY IN CONTESTED CASE NO. 87-1 FOR THE EDY ROAD, HIGHWAY 99W, MIDDLETON AND SUBSTATION SITES

Date: November 2, 1987

Presented by: Jill Hinckley

FACTUAL BACKGROUND AND ANALYSIS

Contested Case No. 87-1 is a petition from Columbia-Willamette Development Company and others to add four sites to the regional UGB in "trade" for the removal of three other sites. The location of all sites are shown in the maps attached as Exhibit A. Three of the sites proposed for addition and two of those proposed for removal are located near the city of Sherwood, who is a co-petitioner. The remaining site proposed for addition is at S.W. 131st and Beef Bend Road south of Bull Mountain in Washington County; for removal, at Harborton in the City of Portland. Columbia-Willamette is the development subsidiary of Portland General Electric (PGE), which owns a portion of the Beef Bend Road site, the Harborton site, and one of the sites proposed for removal near Sherwood.

The Beef Bend Road site alone was previously considered for addition as Contested Case No. 84-2. Order No. 86-5, adopted January 9, 1986, by the Council of the Metropolitan Service District (Metro), accepted the Hearings Officer's findings that the petitioners had not presented sufficient justification for so large an addition, but encouraged refileing of the petition as a part of a trade under 3.01.040(c), as petitioners have done. It should be noted, however, that Order No. 86-5 merely indicated the Council's judgment at that time that there was nothing in its adopted findings to preclude future approval of an amendment to include the Beef Bend Road site as part of a trade if the applicable standards were met. It is now up to the Council to determine whether those standards have indeed been met.

Washington County supports approval of this petition. The City of Portland adopted a neutral position.

A hearing on this petition was held before Metro Hearings Officer Chris Thomas on July 20, 1987. The record was closed September 2, 1987, upon receipt of a slightly revised proposal regarding land to be added and removed. The Hearings Officer's Report was issued on September 28, 1987, and parties given until October 19, 1987, to file any exceptions to that report.

In a trade, the main issue is whether the properties proposed to be added are more suitable for urbanization than those proposed for removal, based upon consideration of the standards listed in Metro Code Section 3.01.040(a). The Hearings Officer finds that this is the case, and accordingly recommends that the petition be approved. Although several individuals testified in opposition to the petition or expressed concern about it, no exceptions were filed. Metro Code Section 2.05.035 allows the Council to hear oral argument only when exceptions have been filed. Since none were in this case, no public testimony will be taken.

One unusual feature of the case should be noted. A special standard (Metro Code Section 3.01.040(c)(1)) applies to land with Class I-IV soil that is not "irrevocably committed to non-farm use." Metro Code Section 3.01.010(i) defines this last phrase as "in the case of a plan acknowledged by LCDC, any land for which a Goal No. 3 exception has been approved by LCDC...." All but one of the proposed additions had previously had an approved Goal No. 3 exception taken for them. The Edy Road site, however, is part of a large area zoned for Exclusive Farm Use. Although the local jurisdiction -- in this case Washington County -- is usually responsible for adopting any Goal No. 3 exceptions, this was not practicable in this case. Instead, Metro itself provided LCDC staff notice of the proposed exception (see pp. 38-39 of the Hearings Officer's Report for a summary of the process). Under post-acknowledgment procedures, as provided for in OAR 600 Division 18, LCDC must be considered to have "approved" the exception whenever DLCD does not testify in opposition at the exceptions hearing, whether the hearing is before Metro or Washington County. Accordingly, staff believes that Metro can fulfill the terms of Metro Code Section 3.01.010 by itself adopting the Goal No. 3 exception for the Edy Road site, as provided in Resolution No. 87-222.

Of the seven sites affected, one of the proposed additions (Bull Mountain) and two of the proposed removals (the Chicken Creek Floodplain and Harborton) are within the Metro boundary and so can be approved by ordinance. The remaining sites require Metro annexation prior to adoption of a final order effecting the proposed changes. In consequence, initial action by the Council on these properties would be by Resolution of Intent to approve the proposed changes once the land annexes to Metro. Because the findings the Council is asked to adopt address the entire petition as a whole, action on all sites included in the petition is included in this agenda item. However, because it is the ordinance that will adopt the findings for all sites, the resolution should not be acted upon until the Council has first acted on adoption of the ordinance, scheduled for November 24.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ADOPTING A FINAL ORDER)
AND AMENDING THE METRO URBAN GROWTH)
BOUNDARY FOR CONTESTED CASE NO. 87-1:)
BULL MOUNTAIN, CHICKEN CREEK AND)
HARBORTON SITES)

ORDINANCE NO. 87-234

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Council of the Metropolitan Service District hereby accepts the Hearings Officer's Report and Recommendations in Contested Case No. 87-1 attached as Exhibit B of this Ordinance, which is incorporated by this reference.

Section 2. The District Urban Growth Boundary, as adopted by Ordinance No. 79-77, is hereby amended to remove the areas referred to as the Chicken Creek and Harborton sites and add the area referred to as the Bull Mountain site as shown in Exhibit A of this Ordinance, which is incorporated by this reference.

Section 3. This Ordinance is the Final Order in Contested Case No. 87-1 for the Chicken Creek, Harborton and Bull Mountain sites shown in Exhibit A.

Section 4. Parties to Contested Case No. 87-1 may appeal this Ordinance under Metropolitan Service District Code Section 2.05.050 and ORS Chapter 197.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

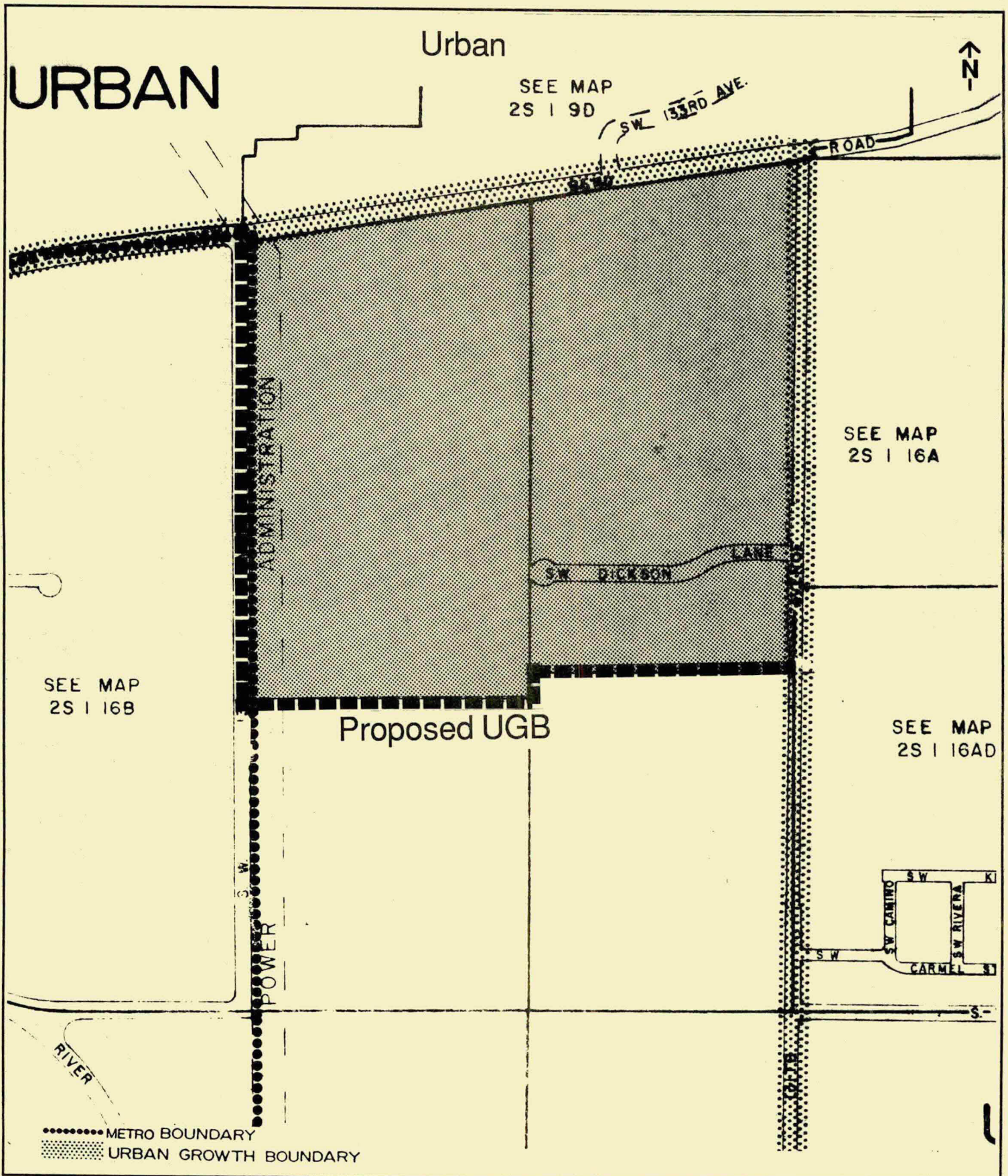
ATTEST:

Clerk of the Council

JH/sm/8360C/517-11/02/87

Urban Growth Boundary
Contested Case
87 – 1: Exhibit A

Urban Growth Boundary
Contested Case
87 – 1: Exhibit A



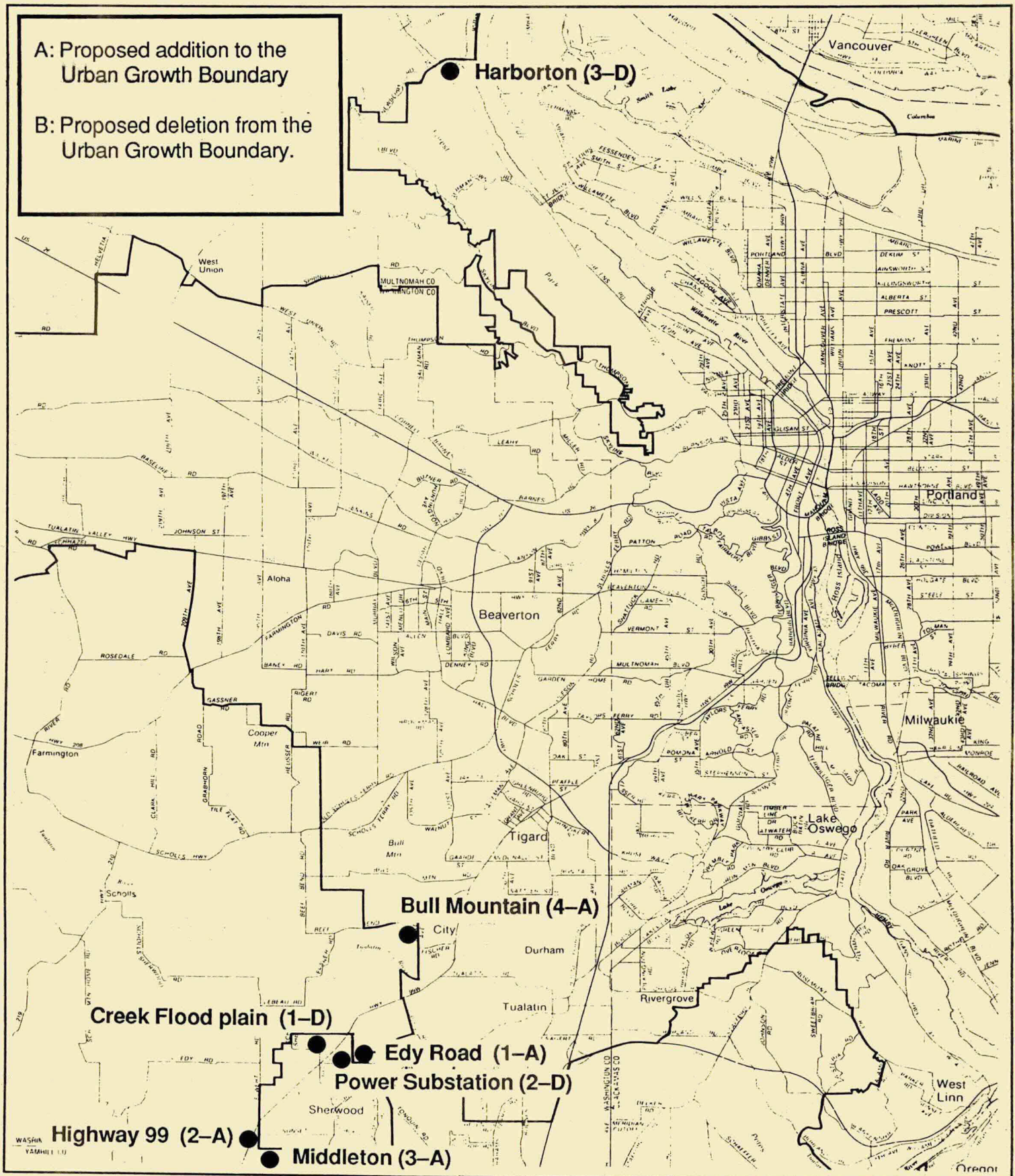


Vicinity Map

Urban Growth Boundary
Contested Case
87 - 1: Exhibit A

A: Proposed addition to the
Urban Growth Boundary

B: Proposed deletion from the
Urban Growth Boundary.

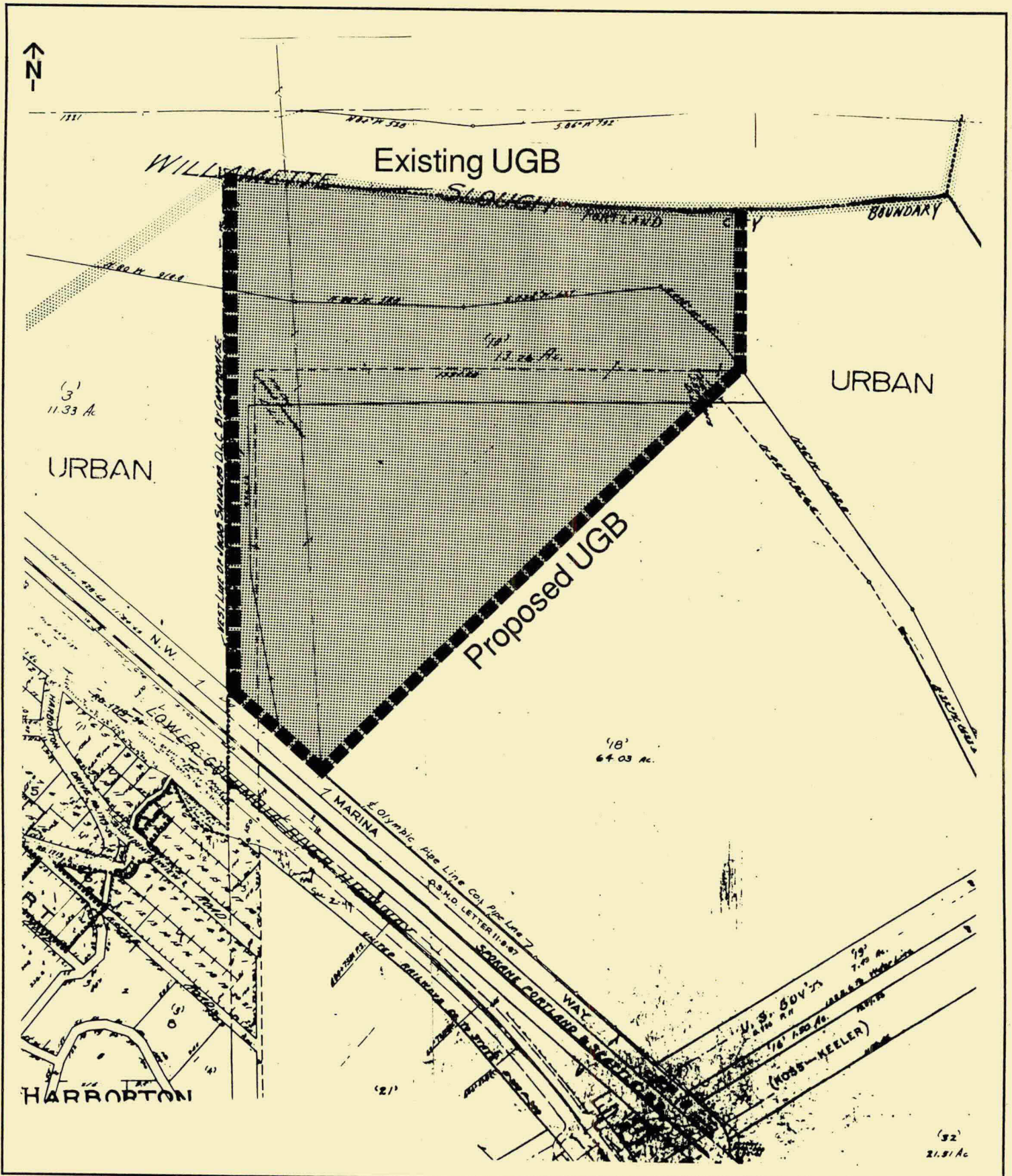


Harborton (3-D)

Urban Growth Boundary

Contested Case

87 - 1: Exhibit A



Urban Growth Boundary
Contested Case
87 – 1: Exhibit A

[illegible]

WHEREAS, The Council of the Metropolitan Service District is authorized by ORS 199.490(2)(B) to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, The Council of the Metropolitan Service District has received the necessary "consents" in sufficient numbers to meet so-called "double majority" annexation requirements listed above and has set the boundary of the territory proposed for annexation as authorized by ORS 199.490(2)(B); and

WHEREAS, The Metropolitan Service District Code Section 3.01.070(c)(i) provides that action to approve a petition including land outside the District shall be by resolution expressing intent to amend the Urban Growth Boundary when the property is annexed to the Metropolitan Service District; and

WHEREAS, The Department of Land Conservation and Development was notified of the petitioners' request that the Metropolitan Service District adopt a Goal No. 3 exception for the Edy Road site on the grounds that it was irrevocably committed to non-farm use and Department of Land Conservation and Development did not file an objection to this proposal; and

WHEREAS, The Edy Road site, as shown on Exhibit A, contains Class I-IV Soils which the Hearings Officer has found to be irrevocably committed to non-farm use; now, therefore,

BE IT RESOLVED,

1. That the petition for annexation to the Metropolitan Service District of the properties shown on Exhibit A and described

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF INITIATING	)	RESOLUTION NO. 87-222
ANNEXATION TO METRO AND EXPRESSING)	
COUNCIL INTENT TO AMEND THE URBAN	)	Introduced by the
GROWTH BOUNDARY FOR EDY ROAD,	)	Executive Officer
HIGHWAY 99W, MIDDLETON AND SUB-)	
STATION SITES IN CONTESTED)	
CASE NO. 87-1)	

WHEREAS, Contested Case No. 87-1 is a petition from Columbia-Willamette, the city of Sherwood and others to the Metropolitan Service District for an amendment of the regional Urban Growth Boundary to include land in four locations and remove land in three; and

WHEREAS, A hearing on this petition was held before a Metropolitan Service District Hearings Officer on July 20, 1987; and

WHEREAS, The Hearings Officer has issued his report on this case (Exhibit B), which finds that all applicable requirements have been met and recommends that the petition be approved; and

WHEREAS, Ordinance No. 87-234, adopted by the Council of the Metropolitan Service District on November 24, 1987, accepted the Hearings Officer's Report and Recommendations in Contested Case No. 87-1 and amended the Urban Growth Boundary for the three of the sites currently within the Metropolitan Service District; and

WHEREAS, The four remaining sites at Edy Road, Highway 99W, Middleton and the Portland General Electric Substation as shown in Exhibit A, are currently outside, but contiguous to, the Metropolitan Service District's boundary; and

in Exhibit B is hereby approved and the petitioners directed to file the necessary fee and forms, including this resolution, with the Portland Metropolitan Area Local Government Boundary Commission.

2. That the Council of the Metropolitan Service District expresses its intent to adopt an ordinance amending the Urban Growth Boundary as shown in Exhibit A and to adopt a Goal No. 3 exception for the site labeled "Edy Road" on Exhibit A within thirty (30) days of receiving notification that the property has been annexed to the Metropolitan Service District, provided such ratification is received within six (6) months of the date on which this resolution is adopted.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987

Richard Waker, Presiding Officer

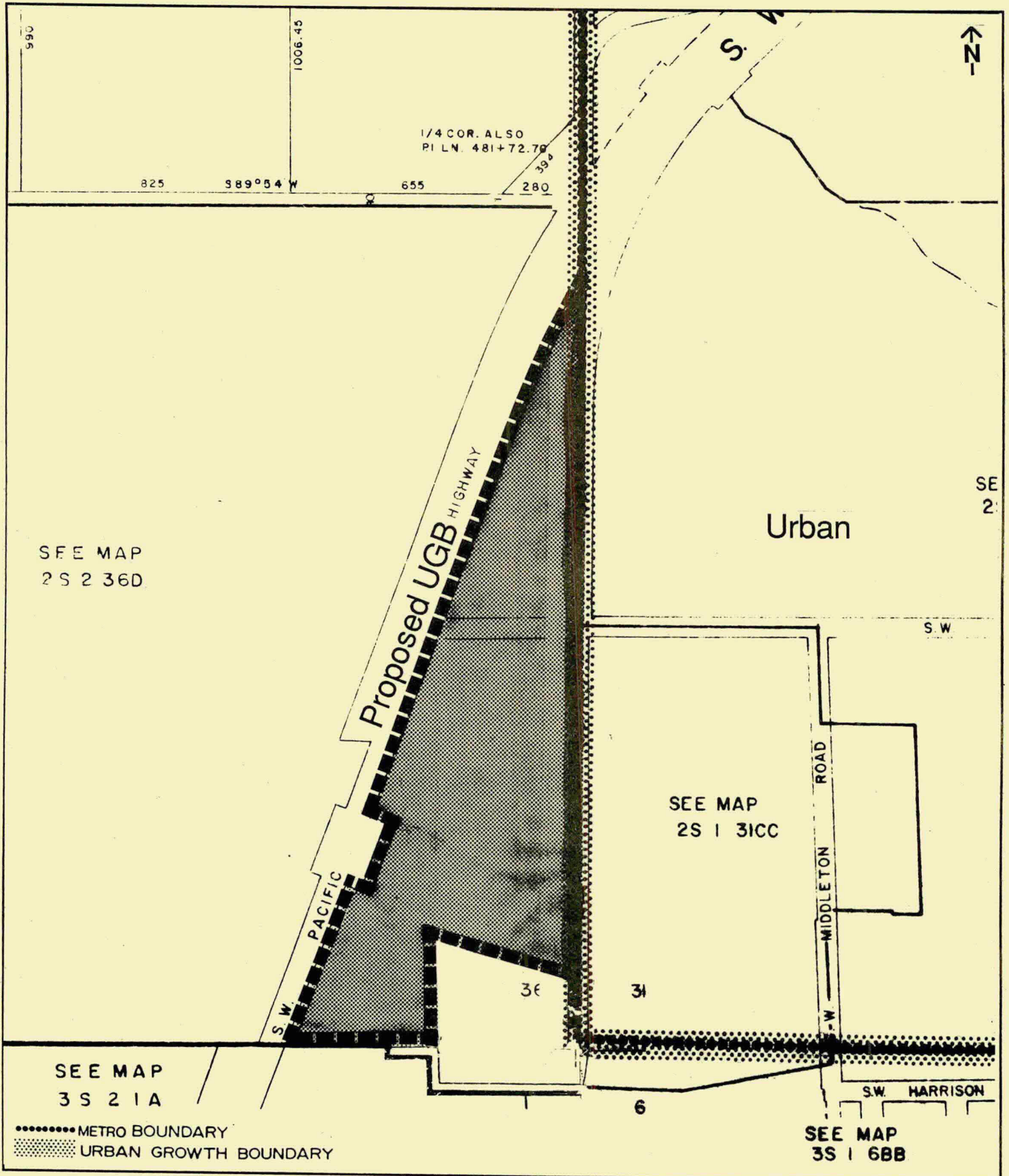
JH/sm
8359C/517
11/02/87

Highway 99 (2-A)

Urban Growth Boundary

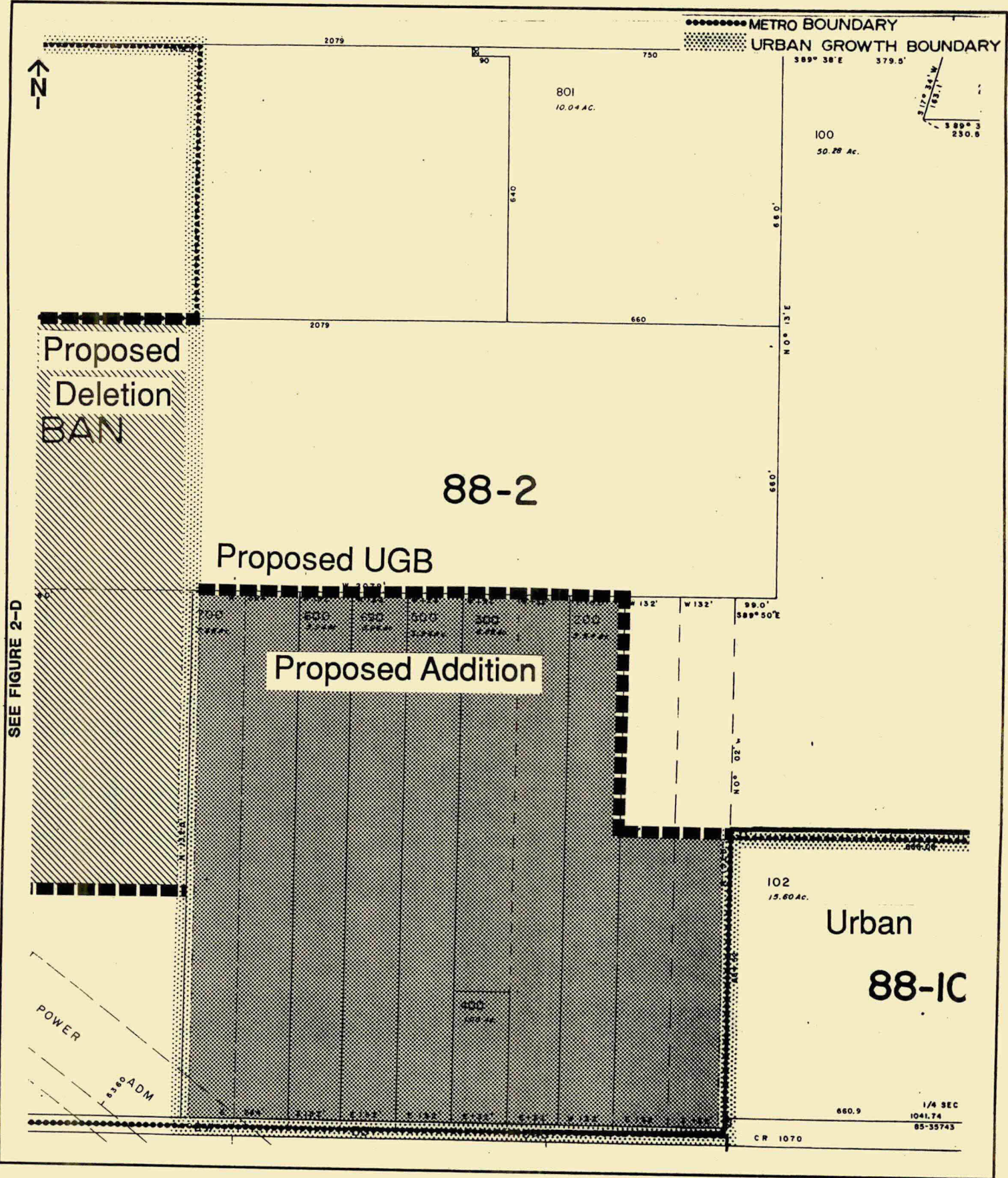
Contested Case

87 - 1: Exhibit A



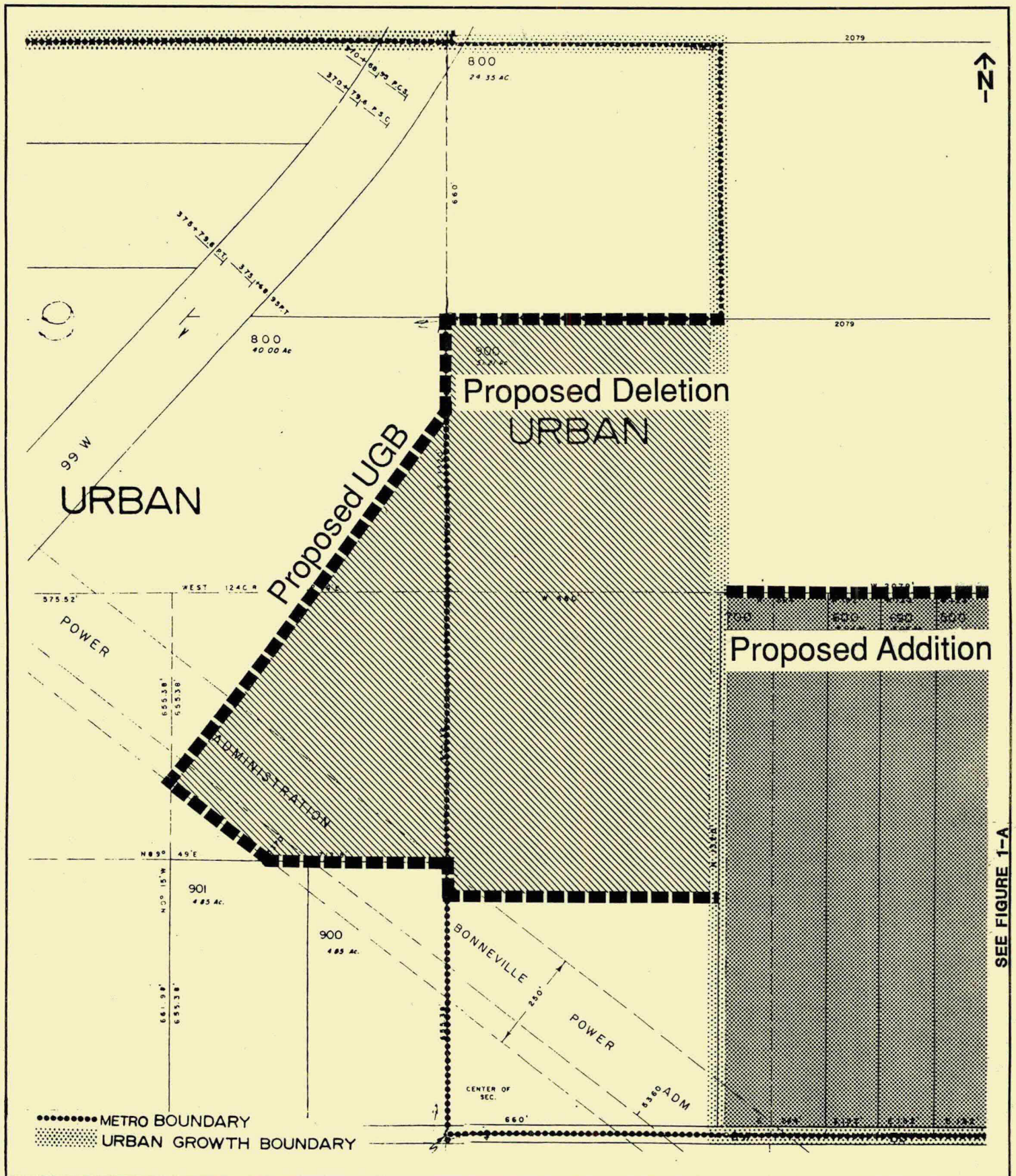
Edy Road (1-A)

Urban Growth Boundary
Contested Case
87 - 1: Exhibit A



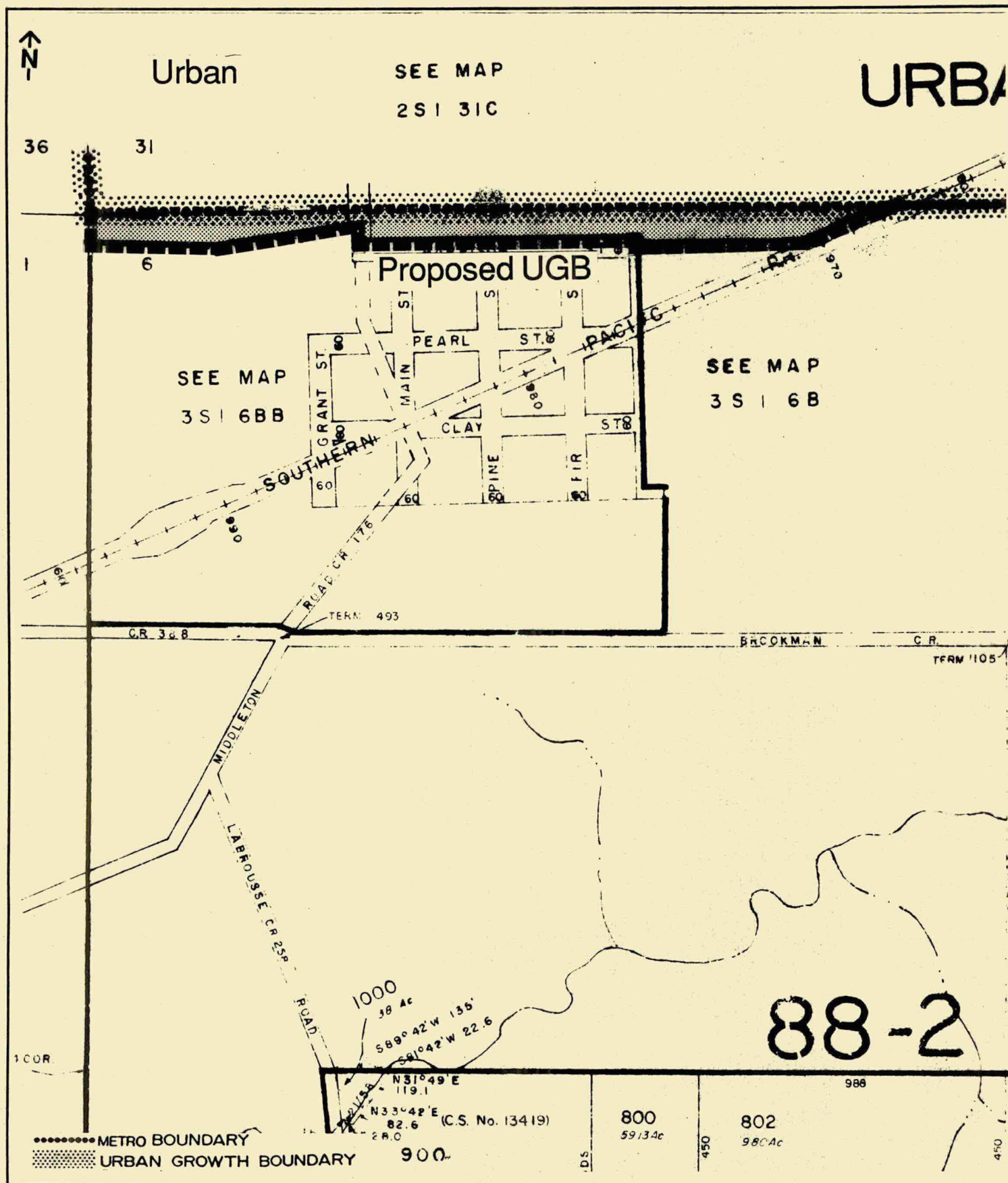
Urban Growth Boundary
Contested Case
87 – 1: Exhibit A

Urban Growth Boundary
Contested Case
87 – 1: Exhibit A



Urban Growth Boundary
Contested Case
87 – 1: Exhibit A

Urban Growth Boundary
Contested Case
87 – 1: Exhibit A



NOTE: Exhibit B, "Contested Case No. 87-1:
Report and Recommendation of the Hearings Officer,"
has been distributed to Councilors. Other parties
can arrange to pick up a copy of the report by
calling Marie Nelson, Metro Council Clerk, 221-1646,
extension 206.

Agenda Item No. 9.5, 10.1

Meeting Date Nov. 12, 1987

SUPPLEMENTAL MATERIALS

EXHIBIT B: CONTESTED CASE NO. 87-1:

REPORT AND RECOMMENDATION OF THE HEARINGS OFFICER

CONTESTED CASE NO. 87-1:
REPORT AND RECOMMENDATION OF THE HEARINGS OFFICER

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ATTACHMENT A: PARCEL DESCRIPTIONS

Parcel 3-A: This parcel is at the southern edge of the Sherwood UGB immediately north of the Southern Pacific Railroad tracks and Harrison Street, an unimproved road.

Parcel 4-A: This parcel is near King City south of SW Beef Bend Road and west of SW 131st Avenue.

PROPOSED UGB DELETIONS ("D" PARCELS)

Parcel 1-D: This parcel in the Sherwood area is northwest of Highway 99W and approximately 1/4 mile north of the "Six Corners" intersection. The southern boundary of the parcel is the southern edge of a Bonneville Power Administration right-of-way.

Parcel 2-D: This parcel in the Sherwood area is east of Highway 99W and north of Edy Road.

Parcel 3-D: This parcel in the City of Portland is bounded to the north and east by the Willamette Slough and the Willamette River, and to the south by Portland General Electric's Harborton Plant.

The parcel legal descriptions are attached hereto as Attachment A.

The total acreage and the amount of vacant and unimproved acreage for each parcel is as follows:

PROPOSED UGB ADDITIONS

<u>Parcel</u>	<u>Total Acreage</u>	<u>Vacant/Unimproved Acreage</u>
1-A (Edy Rd.)	36.6	30.7
2-A (99W)	22.5	16.5
3-A (Middleton)	5.2	5.2
4-A (Bull Mtn.)	<u>52.9</u>	<u>52.6</u>
Subtotal	117.2	105.0

PROPOSED UGB DELETIONS

<u>Parcel</u>	<u>Total Acreage</u>	<u>Vacant/Unimproved Acreage</u>
1-D (Floodplain)	45.7	45.7
2-D (Substation)	33.4	24.5
3-D (Harborton)	<u>36.6</u>	<u>24.9</u>
Subtotal	115.7	95.1
Net Change	+1.5	+9.9

BEFORE THE METROPOLITAN SERVICE DISTRICT

In the Matter of the Application)	
of COLUMBIA-WILLAMETTE DEVELOPMENT)	
COMPANY, agent for PORTLAND GENERAL)	Contested Case No. 87-1
ELECTRIC, TIGARD SCHOOL DISTRICT,)	
HILLMAN PROPERTIES NORTHWEST, and)	REPORT AND RECOMMENDATION
THE CITY OF SHERWOOD for an Amend-)	OF HEARINGS OFFICER
ment to the District Urban Growth)	
Boundary)	

I. Nature of Case

This is an application by three property owners and The City of Sherwood for approval of a trade under which certain land would be brought within the regional urban growth boundary and other land would be moved outside the regional urban growth boundary. The trade involves seven parcels.

The parcels are as follows:

PROPOSED UGB ADDITIONS ("A" PARCELS)

- Parcel 1-A: This parcel is on the north side of Edy Road along the northern edge of the City of Sherwood's UGB. The parcel is approximately 2/3 of a mile east of the "Six Corners" intersection where Edy Road meets Highway 99W.
- Parcel 2-A: This parcel in the Sherwood vicinity is between Highway 99W and Old Highway 99W approximately 1-1/2 miles southwest of the "Six Corners" intersection. The parcel is immediately west of the terminus of SW Wilsonville Road at Old Highway 99W.

representing Rivermead Community Club, and Helen Henderson testified regarding parcel 4-A (Bull Mountain). Alexander E. Frederick testified regarding parcel 3-D (Harborton).

After the hearing, the record was left open for 7 days pending site visits, submittal by applicants of certain site descriptions, and submittal by applicants, at the request of Metro staff, of a petition by Parcel 1-D property owners to deannex the parcel from the Unified Sewerage Agency if the parcel is moved outside the UGB. Following the hearing, the hearings officer conducted site visits. In addition, Metro staff withdrew its request for a deannexation petition.

Also following the hearing, the applicants discovered certain insubstantial variations between the acreages and parcel descriptions contained in their application and other materials and the true acreages and parcel descriptions. The hearings officer therefore reopened the hearing to receive corrected acreages and site descriptions, on two separate occasions. On the first occasion, the hearings officer notified persons who had appeared at the hearing of the revisions and provided them with an opportunity to comment. No one submitted comments. On the second occasion, due to the insubstantial nature of the revisions, the hearings officer elected not to provide an opportunity for further comment. The acreages and site descriptions set out in part I, above, are the final acreages and descriptions covered by applicants' request.

The applicant's ownership interests in the parcels are as follows:

<u>Parcel</u>	<u>Name</u>	<u>Ownership (Acres)</u>
4-A	Columbia-Willamette Development Company, as agent for Portland General Electric	25.3
	Tigard School District	18.4
	Hillman Properties Northwest	7.9
2-D	Columbia-Willamette	33.4
3-D	Columbia-Willamette	33.1

The City of Sherwood is acting as the petitioner for parcels 1-A, 2-A, 3-A, and 1-D and has recommended approval of the proposed UGB amendment.

Six of the parcels (1-A, 2-A, 3-A, 4-A, 1-D, and 2-D) are in unincorporated Washington County. The seventh parcel (3-D) is in the City of Portland. Washington County has recommended approval of the proposed UGB amendment. The City of Portland has chosen to express no opinion on the proposed amendment.

II. Proceedings and Record

On July 20, 1987, following publication and notice to property owners who were identified by applicants or the hearings officer as living within 250 feet of the seven parcels, the hearings officer held a hearing on the application at Metro's office. City Manager James Rapp of the City of Sherwood and planning consultant Mary Dorman testified on behalf of applicants. Mayor Jean K. Young of King City, Beverly Froude, representing C.P.O. No. 4-Bull Mountain, Phyllis Etling,

- Exhibit 22 - Metro Memorandum, dated July 14, 1987
- Exhibit 23 - Notice of Proposed Action
- Exhibit 24 - Beverly Froude letter, dated July 20, 1987
- Exhibit 25 - Legislative History of Metro Locational Adjustment Procedures
- Exhibit 26 - Legal Description Maps
- Exhibit 27 - Metro Memorandum, dated July 21, 1987
- Exhibit 28 - Notice to Interested Parties
- Exhibit 29 - Benkendorf Associates letter, dated August 11, 1987
- Exhibit 30 - Legal Descriptions
- Exhibit 31 - Benkendorf Associates letter, dated September 2, 1987

III. The Parcels and the Surrounding Areas

Sherwood Parcels. Three of the parcels proposed to be brought within and two of the parcels proposed to be moved outside the UGB are in the vicinity of the City of Sherwood.

(a) Parcel 1-A. This parcel is located on the north side of SW Edy Road and is bounded on three sides (east, south, west) by the UGB and on two sides (east, south) by the City of Sherwood. The area is approximately two-thirds of a mile to the east of the "Six Corners" intersection of Edy Road and State Highway 99W.

The area is parceled out into eight tax lots in seven separate ownerships. The area is zoned Exclusive Farm Use (EFU) in the Washington County Comprehensive Plan. The land slopes downward at an average grade of seven percent from west and southwest to northeast towards Rock Creek. Rock Creek flows

The following documents were either introduced during the course of the hearing or appeared in Metro's file in this matter. Together with the oral testimony at the hearing, they constitute the record upon which this report and recommendation is based:

- Exhibit 2 - - Report, UGB Amendment (Trade), prepared by Benkendorf Associates
- Exhibit 3 - - Letter from City of Sherwood, dated May 13, 1987
- Exhibit 4 - - Request for Exception to State Land Use Goals
- Exhibit 5 - - Notice of Public Hearing
- Exhibit 6 - - Letter from City of Sherwood, dated May 14, 1987
- Exhibit 7 - - UGB Amendment (Trade) signature sheet
- Exhibit 8 - - City of Sherwood Comment
- Exhibit 9 - - Sherwood Police Department Comment
- Exhibit 10 - - Washington County letter, dated June 4, 1987
- Exhibit 11 - - Tigard Water District Comment
- Exhibit 12 - - Benkendorf Associates letter, dated June 9, 1987
- Exhibit 13 - - Portland Fire Bureau Comment
- Exhibit 14 - - Sherwood School District Comment
- Exhibit 15 - - Portland Planning Bureau Report
- Exhibit 16 - - Tigard School District Comment
- Exhibit 17 - - Portland Environmental Services Bureau Comment
- Exhibit 18 - - City of Sherwood Application for Annexation
- Exhibit 19 - - Notice of Public Hearing
- Exhibit 20 - - City of Portland Resolution No. 34312
- Exhibit 21 - - Metro Memorandum, dated July 13, 1987

are substantially identical to those in properties within the UGB to the west, south, and east.

Property to the east of the parcel is zoned General Industrial (GI) under the Sherwood Zoning Code. Property due south is zoned Light Industrial (LI). Property to the west and southwest is zoned either General Commercial (GC) or in one of two classifications of higher density residential.

The areas to the south, and east of the parcel contain substantial development. To the northwest is a PGE power substation (proposed for removal from the UGB as parcel 2-D), and to the west and south is a BPA power transmission line and 250 foot power right-of-way. The area not occupied by the substations is under cultivation or vacant. To the immediate east is a 15.6 acre automobile auction yard, with open storage of several hundred vehicles. To the southeast is a large automobile repair building and yard, an 85 employee manufacturing plant, and a 20 employee frozen food distribution facility. Two residential homes are immediately south of the parcel.

Further to the east on SW Edy Road are a wood products manufacturer, a trucking company, and an industrial office building under construction. Further to the west are five single family homes and the Sherwood Plaza Shopping Center.

Edy Road presently is a two-lane facility. Edy Road carries substantial volumes of local traffic between the Sherwood area and Interstate Highway 5 (I-5), which is five miles to the east. Edy Road and Tualatin-Sherwood Road also form a major regional

northward along the eastern edge of the area into the "Onion Flats" floodplain and agricultural area, and eventually into the Tualatin River.

The eight tax lots generally are 1320 feet deep and vary from 132 feet to 264 feet in width. One of the lots is only 330 feet deep. Of the easternmost tax lot, only the southern part is proposed for inclusion within the UGB. Since two of the tax lots are under a common ownership, there are seven separate ownerships. Each ownership area has a single family house except for the easternmost tax lot, most of which is within the Rock Creek floodplain. All homes are close to Edy Road except that the westernmost home is set back from the roadway.

The balance of the eight tax lots is either vacant, used for random storage of personal vehicles and household goods, used for gardening or low intensity "home" farming, or, in the case of the two westernmost lots, occupied by a filbert orchard. The easternmost lot contains riparian vegetation and a stand of Douglas fir. No active commercial farming, with the possible exception of the older filbert orchard, is now underway or has been undertaken in the recent past. Land ownership, parcel size and shape, and use patterns strongly work against any significant active commercial farming now or in the future.

The parcel's 1320 feet of Edy Road frontage is the only section of Edy Road, out of a total of 15,600 front feet (both sides of road), that is not within the UGB. Soils and topography

to the east as property develops. The City of Sherwood has an existing water supply that is sufficient to supply the parcel for the foreseeable future.

The parcel is within the Tualatin Rural Fire Protection District. The Washington County Sheriff has primary police protection responsibility for the area and for patrolling SW Edy Road. The City of Sherwood Police Department also routinely patrols Edy Road.

The area presently is served by PGE for electrical power and GTE for telephone.

Sherwood School District 88J serves the area. The District operates three schools:

<u>School</u>	<u>1987 Enrollment</u>	<u>School Capacity</u>
Elementary	578	600
Junior High	328	400
High School	416	500

The District plans to add new modular classrooms as needed.

To the north of the parcel is a large resource area known as the "Onion Flats", an active onion farming area. The Onion Flats floodplain is drained by Rock Creek. Within the parcel, the Rock Creek floodplain is relatively narrow and contained primarily within the westernmost tax lot. As Rock Creek flows north, the floodplain fans out to form the Onion Flats. The rear portions of the tax lots within the parcel gradually slope down toward, but are not within, the broad Onion Flats floodplain. Portions

through route for truck traffic moving between State Highway 99W and I-5. SW Edy Road is designated a Major Arterial in both the Washington County and City of Sherwood Comprehensive Plans. In 1985, Average Daily Traffic (ADT) counts, and PM peak hour counts were:

Westbound - 3957 (ADT)/496 (PM)
Eastbound - 3626 (ADT)/247 (PM)

SW Edy Road is scheduled for reconstruction to 3-5 lanes by 1989-90. Washington County has committed \$4.1 million to this project. The reconstruction will require approximately 25 feet of widening off the frontage of each lot within the subject area. This may require the moving of some residences farther back onto their lots.

The Metro Regional Transportation Plan projects year 2000 PM peak hour traffic counts as:

Westbound - 1239 (PM)
Eastbound - 1054 (PM)

The parcel currently is not served by water or sanitary sewer service, but they are available at the parcel's borders. A 15-inch sewer trunk line, built in 1981, traverses the easternmost portion of the parcel within the general drainage course of Rock Creek. The parcel easily could be served by a lateral sewer extending west from this trunk line. A 12-inch City of Sherwood waterline is presently constructed along the SW Edy Road right-of-way from the east, up to Rock Creek, coincident with the southeast corner of the parcel. A 10-inch waterline is located approximately 1900 feet west of the parcel and will be extended

on the fourth lot with a portion of the lot remaining vacant. The fifth lot, at the northern end of the parcel, is vacant except for a grove of deciduous trees.

Property to the east of the parcel is within the UGB. The portion north of Wilsonville Road is designated for low density residential development and is currently vacant except for one single family residence. The portion south of SW Wilsonville Road is a filbert orchard occupying land which is planned for industrial use. To the south of the site is the Middleton Pioneer Cemetery and Goose Creek. To the southeast is a single family residence and vacant land. Across Highway 99W to the north and west of the site are two single family houses and a grove of fir trees.

The parcel is covered by a variety of vegetation. The area along Goose Creek supports Douglas Fir. The hillside that drains toward the creek is covered by raspberry bushes and scrub brush. The extreme northern portion of the site is occupied by a grove of deciduous trees.

The northern portion of the parcel drains to the east toward Old Highway 99W and SW Wilsonville Road. The remainder of the parcel drains toward Goose Creek to the southeast. Goose Creek drains into Cedar Creek which flows north through the City of Sherwood to the Tualatin River. No portion of the parcel is located in a designated floodplain.

The parcel has excellent highway access and abuts State Highway 99W on the west and Old Highway 99W on the east. The

of the Rock Creek floodplain are included in the parcel but are not a substantial part of the parcel (4.3 acres).

The broadening of Rock Creek into the Onion Flats floodplain forms a distinct transition from, and natural boundary to, urban development in the Sherwood area. Parcel 1-A is on the Sherwood side of this natural boundary.

The assessed improvement values for buildings on the parcel range from \$18,300 to \$67,600. Washington County, in approving its Exceptions Statement Document in its 1983 Comprehensive Plan Update, identified \$5,000 in improvement value as a threshold by which to distinguish developed land.

(b) Parcel 2-A. This parcel, consisting of five tax lots, is a triangular shaped parcel located between Highway 99W and Old Highway 99W, west of the intersection of Wilsonville Road and Old Highway 99W.

The northern 8.4 acres of the parcel slopes slightly to the south and east at an average slope of approximately 2.6 percent. The southern 14.1 acres slope toward Goose Creek which crosses the site in a southeasterly direction and feeds Cedar Creek. The southwestern corner of the site forms a level shelf that overlooks Goose Creek.

The parcel is occupied by seven structures. One lot includes two houses and a stockman's supply store. A second lot is occupied by a storage building, with the southern portion of the lot traversed by Goose Creek. A house and garage occupy a third lot. A second hand merchandise dealer occupies a structure

serve this area with sewer, either a pump station will need to be installed or a new line will need to be extended from a main line that is planned for southern Cedar Creek.

The parcel currently is not served by water service, but can be served by an existing 12-inch water main located within the SW Wilsonville Road right-of-way. Although the line currently ends at the Southern Pacific Railroad Line to the east, the City of Sherwood plans to extend the line to the west towards the parcel as property develops along the SW Wilsonville Road.

The Tualatin Fire District currently serves the parcel and also protects the City of Sherwood and the surrounding area. The District maintains a station at 655 N. Oregon St., in Sherwood. Parcel 2-A is located approximately 1-3/4 miles west of the station.

The Washington County Department of Public Safety has primary responsibility to serve the parcel and the surrounding unincorporated area. The Oregon State Police patrol Highway 99W which is adjacent to the parcel. City of Sherwood Police also serve the area.

The area is within Sherwood School District 88J.

The entire parcel is zoned AF-5. Washington County's Rural Natural Resource Plan states that all property that is zoned AF-5 has been granted an exception to LCDC Goals 3 and 4 and thus can be converted to non-resource uses.

(c) Parcel 3-A. This parcel consists of a narrow strip of land containing parts of four tax lots that presently are

County Comprehensive Plan designates 99W as a Principal Arterial and Old Highway 99W as a Major Collector. SW Wilsonville Road extends up to the eastern boundary of the parcel. SW Wilsonville Road is designated as a Major Collector on the County Plan and as a Minor Arterial on the City of Sherwood Comprehensive Plan. Year 2000 PM peak hour projections for the roads in the vicinity of the parcel are as follows:

State Highway 99W

Westbound	2355 vehicles per hour
Eastbound	1181 vehicles per hour

Old Highway 99W

Westbound	251 vehicles per hour
Eastbound	261 vehicles per hour

SW Wilsonville Road

Northbound	284 vehicles per hour
Southbound	369 vehicles per hour

Sanitary sewers currently do not serve Parcel 2-A. The parcel is outside the boundaries of the Unified Sewerage Agency and will need to be annexed to be served by sewer. Because of topography, the northern portion of the parcel can be served by gravity flow to a proposed sewer line that eventually will extend through a drainage swale to the north of SW Wilsonville Road. This line will extend from an existing 8-inch sewer main which currently ends at Cedar Creek near railroad tracks to the east of the parcel. The southern portion of the parcel drains to the southeast into Goose Creek which flows into Cedar Creek. To

Street to the south. Both SW Middleton Road and Harrison Street are designated local streets. Middleton is improved with an asphalt surface and connects the Middleton area with SW Wilsonville Road, which leads to Sherwood. Harrison is unimproved and serves as a driveway to two houses. Because it is under the same ownership, the partial tax lot in the eastern portion of Parcel 3-A most likely will develop at the same time that the 54-acre industrial portion of the same tax lot (which is within the UGB) develops. With this assumption, access to this portion of Parcel 3-A will be through the 54 acre parcel from SW Wilsonville Road.

Parcel 3-A is located outside and adjacent to the current boundaries of the Unified Sewerage Agency. The parcel will need to be annexed to be served by sewer. The parcel drains to the southeast and southwest and will be served by a proposed sewer line that will follow the Cedar Creek drainage to the south of SW Wilsonville Road. Most likely the parcel will be served along with the 54-acre industrial property to the north.

Parcel 3-A currently is not served by water service. An existing 12-inch water main is located within the SW Wilsonville Road right-of-way and ends at the Southern Pacific Railroad line. The main would need to be extended south to the parcel for water service.

The Tualatin Fire District serves the parcel and also protects the City of Sherwood and the surrounding area. The

bisected by the UGB. The northern, substantially large, portion of each tax lot is inside the UGB. The southern portion is outside the UGB. The parcel is a narrow strip of land located at the southern edge of the Sherwood UGB immediately north and west of Southern Pacific Railroad tracks and immediately north of Harrison Street, which is an unimproved road.

The eastern portion of the parcel generally is level with a slight grade to the south and east. The surrounding property gently slopes to the south toward Cedar Creek. The western portion of the parcel slopes to the southwest toward Goose Creek.

The parcel consists of yard, pasture, and wooded land.

To the north and northeast of the parcel is farmland located inside the current UGB. Cropland is north of the eastern portion of the parcel to the west of SW Middleton Road. Pasture land is located to the north and south. The western boundary of the parcel is formed by Old Highway 99W. Harrison Street forms the southern boundary. To the south, between Harrison Street and the Southern Pacific Railroad tracks, are four single family residences.

The parcel drains to the south toward Cedar Creek and to the southwest toward Goose Creek. Goose Creek is a tributary of Cedar Creek. Cedar Creek flows east and north through the City of Sherwood to the Tualatin River. No portion of the parcel is within a floodplain.

SW Middleton Road bisects the parcel, running north to south. The parcel abuts Old Highway 99W to the west and Harrison

elevation of 80 feet. The slope along the bluff varies from an average of 8.5 percent to 40 percent. Along the bluff there is visual evidence of soil instability and slumping.

Except for the steeply sloped area within the BPA right-of-way, the parcel is used for farming. Transmission lines cross the parcel within the BPA right-of-way. The ravine areas are wooded.

The parcel is surrounded by farmland. To the north is floodplain used as farmland. To the east, south, and west are cropland. Single family houses are located on three of the tax lots to the south of the parcel.

Vegetation on the parcel is varied. The floodplain area is planted in crops. The steeply sloped areas are covered in wild raspberries and scrub brush. The ravines include groves of trees including deciduous trees and some cedars.

Access to the parcel is difficult. The bluff along the southern portion of the site effectively cuts it off from Highway 99W and Scholls-Sherwood Road. The only feasible way to access the parcel is from the north through the floodplain.

Sanitary sewers are not currently available to the parcel although it is located within the Unified Sewerage Agency. The closest sewer line is at Six Corners, 1500 feet to the south. To serve the parcel, sewerage would need to be pumped from the low lying floodplain area to the Six Corners area.

An 8-inch water line currently is located in the Scholls-Sherwood Road right-of-way approximately 1000 feet to the

Sherwood station is located immediately to the east of downtown Sherwood approximately one mile northeast of the parcel.

The Washington County Department of Public Safety has primary responsibility to serve the parcel and the surrounding unincorporated area. The Oregon State Police patrol Highway 99W and will respond if called for assistance by the County Sheriff. City of Sherwood Police also patrol the area.

The parcel is within Sherwood School District 88J.

The parcel is zoned in part as a Special Industrial District (SID) and in part as R-6. The area immediately north of the parcel is zoned as an SID and as an Area of Special Concern. Both SID and R-6 zones are urban development type zones.

(d) Parcel 1-D. This parcel consists of the northern portions of four tax lots. The parcel currently is within the Sherwood UGB and will be deleted with the requested amendment. The parcel is located to the northwest of Highway 99W and approximately 1/4 mile north of Six Corners. The southern boundary of the site is the southern edge of the Bonneville Power Administration power line right-of-way.

The parcel generally is level floodplain (approximately 77 percent) except for the southern portion within the BPA right-of-way which is primarily a steep bluff cut by three ravines. The site drains to the north into Chicken Creek which flows into the Tualatin River. Immediately south of the site on the bluff, the elevation is 200 feet MSL (USGS Sherwood Quadrangle). The floodplain area is 120 feet MSL which represents a drop in

Growth Boundary. A portion of the eastern boundary also abuts a portion of the western boundary of Parcel 1-A.

The parcel generally is level farmland except for the northeastern portion which slopes to the north and east toward Onion Flats at a grade of approximately 6%. The elevation of the parcel ranges from 195 feet MSL in the southwest to approximately 160 feet MSL in the northeast (USGS Sherwood Quadrangle).

The electrical power substation occupies the central portion of the parcel. The substation is surrounded by farmland that is being cultivated. PGE leases unused portions of its property to adjacent farmers for agricultural production. Power lines cross the southwest and northeast portions of the site.

The parcel is surrounded by farmland, except that to the east of the southerly portion of the parcel is the divided ownership area included in Parcel 1-A. To the south of Parcel 2-D is cropland which is crossed by power lines. West of the parcel is additional farmland and a row of pine trees which serve to buffer the substation from Highway 99W. Cropland is located north of the parcel and east of the northerly portion of the parcel.

The parcel drains to the northeast toward Rock Creek. No portion of the parcel is within the 100 year floodplain.

Access to the parcel is provided by a gravel road that extends north from Edy Road. The gravel road is used by PGE employees to service the power substation. A second access road

southwest of the parcel. The line would need to be extended to serve the parcel.

The Tualatin Fire District serves the parcel.

The Washington County Department of Public Safety has primary responsibility to serve the parcel and the surrounding unincorporated area.

The area is within Sherwood School District 88J.

The parcel is located inside the Sherwood UGB but outside the current city limits. On the Washington County Community Plan, two of the tax lots are designated R-9. The Community Plan addresses the following natural resources factors: (1) the floodplain area is identified as a "Water Area and Wetland & Fish and Wildlife Habitat"; (2) the ravines are identified as "Wildlife Habitat"; and (3) the power line right-of-way is identified as "Open Space". The parcel also is subject to District B overlay requirements regarding impacts from quarry operations.

On the Sherwood Comprehensive Plan, the parcel is designated for Low Density Residential use (LDR) which, in Sherwood, equates to a proposed density of three to five dwelling units per acre.

(e) Parcel 2-D. This parcel consists of portions of two tax lots under common ownership. A PGE substation is located on the parcel. The parcel currently is within the Sherwood UGB and will be deleted with the requested amendment. The parcel is located to the east of Highway 99W and north of Edy Road. The eastern boundary of the parcel is the eastern edge of the Sherwood Urban

lines is designated General Commercial; and (3) the remainder of the site to the north and south of the substation is designated Medium-High Density Residential (8-11 dwelling units per acre).

Bull Mountain Parcel. One of the parcels proposed to be brought within the UGB, Parcel 4-A, is in the Bull Mountain/King City vicinity. Most of this parcel was the subject of Contested Case No. 84-2, in which Metro declined to bring the parcel within the UGB as a "stand alone" addition. Metro found that the UGB with the parcel added would be an improvement over the current UGB, but that under Metro Code Section 3.01.040(d), the extent of the improvement was not sufficient to justify a boundary adjustment. Metro suggested in that proceeding that the petitioners attempt to assemble a trade, which is what they have done here.

This parcel is located in southeastern Washington County at the southern base of Bull Mountain. King City adjoins the southeast corner of the parcel and downtown Portland is approximately 12 miles to the northeast. The parcel consists of four full tax lots and portions of two additional tax lots, and has four different owners.

The two partial tax lots, covering the western portion of the parcel, are owned by Portland General Electric. Large power transmission lines run the full length of one of these lots. For the past few years, the area adjacent to the power lines has been leased by PGE to Bischoff Farms of Sherwood. The land has been

extends east from Highway 99W to the substation. No direct access is available without crossing neighboring parcels.

Sanitary sewers are not available to the parcel. The closest sewer line is at Six Corners, 2000 feet to the southeast. The parcel is outside the Unified Sewerage Agency.

There is no city water available in the immediate vicinity of the parcel. The closest existing service is a 10-inch line within the Edy Road right-of-way which terminates approximately 1,500 feet southwest of the parcel. The parcel is outside the City of Sherwood, and the City does not extend water service outside its limits.

The parcel is located within the boundaries of the Tualatin Fire District. The parcel is served by the Washington County Department of Public Safety.

The area is within Sherwood School District 88J.

The parcel is located inside the Sherwood UGB but outside the current city limits. Only the western portion of the site is included on the Washington County Community Plan for the Sherwood area. The Community Plan designates the substation area as Institutional and the area under the power lines as General Commercial. The actual zoning for the parcel is Exclusive Farm Use (EFU), with a District B overlay regarding impacts from quarry operations.

The parcel is identified on the Sherwood Comprehensive Plan as follows: (1) the substation is designated Institutional/Public; (2) the southwest corner of the site under the power

development and mobile homes are concentrated south of Fischer Road, while single family detached dwellings are concentrated along the summit and upper west slopes of Bull Mountain.

Parcel 4-A abuts the existing UGB on the north at Beef Bend Road and on the east at SW 131st Avenue. On the west, the parcel abuts Bonneville Power Administration power transmission lines. On the south, the westerly half of the parcel abuts the portions of PGE's tax lots that are not included in the petition and the easterly half abuts an area that is divided into a number of relatively small lots.

Access to the parcel is by SW Beef Bend Road on the north, which runs from Highway 99W to Scholls Ferry Road; by SW 131st Avenue on the east, which runs from SW Beef Bend Road to the Tualatin River to the south, and which connects to Highway 99W by SW Fischer Road; and by SW 137th Avenue on the west, which runs from SW Beef Bend Road to the Tualatin River.

The abutting area north of the parcel is zoned R-6 with rural residential development. Most of the abutting area east of the parcel is zoned R-15. One area abutting east of the property, at the southeast corner of Beef Bend Road and 131st, is zoned neighborhood commercial, although development of that nature is unlikely. The areas abutting south and west of the parcel are zoned RR-5, with the west area developed with residences and the southeast area partially developed with residences. The parcel itself is zoned RR-5. These zonings are consistent with the County Comprehensive Plan. The existing RR-5

used to raise grains and red clover. The lack of drain tile has limited the types of crops grown on this site.

One of the tax lots, at the northeast corner of the parcel, is owned by Tigard Public Schools and is undeveloped. The Tigard School District purchased this 18 acre lot in 1957 for an elementary school site. Because King City originally developed as a senior community, the school district thought the need for an elementary school at this particular location had been eliminated. However, the District now believes that there will be a need for a new elementary school to serve residential growth in the Bull Mountain area. The lot therefore is under consideration as a potential school site, but it must be included within the UGB to be developed. A stand of Douglas fir extends along the southern and western boundaries of this lot.

Two of the tax lots, at the southeast corner of the parcel, are owned by Hillman Properties Northwest. These tax lots were platted several years ago into a 13-lot Subdivision (Dickson Subdivision). A single family dwelling is located on Lot 12, adjacent to 131st Avenue. The balance of the subdivision is vacant and a road which appears on the plat never has been improved.

In recent years, the character of the Bull Mountain area has been evolving from a farming community to a residential community. Residential development in the unincorporated area of Bull Mountain has occurred in the form of subdivisions as well as on individual large lots. Multiple family residential

- (iii) Wells: The District receives water to meet peak demand and emergencies from 4 wells that it owns.
- (iv) City of Beaverton: The District also has the capability to receive water from the Upper Tualatin River delivered by the City of Beaverton.

The District's supply is sufficient to accommodate foreseeable development for the next 20 to 40 years.

The District has three reservoirs with a combined storage of 2.3 million gallons located within the Bull Mountain area. It also has 12-inch distribution mains coming from the east in Beef Bend Road ending at SW 128th and in SW Fischer Road ending at SW 131st. These storage and distribution facilities are sufficient to meet foreseeable consumption and need for fire flow until the year 2000.

The mains in SW Beef Bend Road and SW Fischer Road can be extended to serve the parcel.

The parcel is within the Unified Sewerage Agency's service area. Since the parcel is outside the UGB, however, it cannot connect to the USA system unless there is a declaration of a health hazard due to septic tanks.

The USA's collection and treatment system is designed to accommodate the expansion of sewer service into the Bull Mountain area. Treatment would be provided by the Durham Treatment Plant, which discharges into the Tualatin River.

The Bull Mountain area's past method for handling sewage has been the use of septic tanks. Some soils in the area are not

zoning ordinarily permits a minimum 5 acre lot size but this probably could be reduced as to applicants' parcel to a minimum 1 acre lot size due to specific conditions. The minimum density for property inside the UGB would be 2 to 6 residential units per acre. The parcel is part of a 349 acre area designated as Exception Subarea No. 101, which has been recognized as physically developed or irrevocably committed to non-farm uses. The 300 acres outside the applicant's property is divided among 112 lots with an average lot size under 3 acres per lot. Thus Parcel 4-A is a middle area bounded on the north and east by existing or planned urban level development and on the south and west by mid-density rural residential development.

The parcel is located within the Tigard Water District, as is the area within the UGB to the east and to the north and as is some of the area to the south. The District's present average daily demand is 3.2 million gallons per day, with peak demand being 7.5 mgd. The District relies for its water supply on the following sources:

- (i) City of Lake Oswego: The District receives 85 percent of its water from the City of Lake Oswego. The District has 6 years remaining on a 10 year contract with an option to renew for 10 years.
- (ii) City of Portland: The District receives 10% of its water from the City of Portland. The District has 20 years remaining on a 25 year contract.

thus may need drainage improvements to handle drainage from Bull Mountain. Any development on the parcel would be subject to County storm water retention standards, which are imposed on a case by case basis as developments are proposed.

There is transportation access to the parcel from two roads designated Major Collectors by Washington County plans, SW Beef Bend Road on the north and SW 131st Avenue on the east. The County standard for Major Collectors is a 70 foot right-of-way, with a 40 to 46 foot paved roadway of 2 to 3 lanes. A fully improved Major Collector accommodates 12,000 to 13,000 average daily trips.

SW Beef Bend Road runs from Highway 99W on the east past the parcel to SW Scholls Ferry Road on the west. It presently has a 60 foot right-of-way, with two paved traffic lanes, totaling 40 feet in width, and in 1984 carried 2400 average daily trips east of 131st and 1300 west of 131st. It carries little truck traffic. It has no shoulders, and is winding in some places. Fire trucks have slid off Beef Bend Road in bad weather.

SW 131st connects SW Fischer Road to SW Beef Bend Road. Fischer, in turn, connects to Highway 99W. SW 131st has a 40 foot right-of-way with two paved lanes and presently carries 50 average daily trips.

The County plans for SW Beef Bend Road by the year 2000 to handle 7000 average daily trips east of SW 131st and 4000 west of SW 131st. To accommodate the traffic volume generated by planned development within the present UGB, it will be necessary for the

suitable for septic tanks. This has limited development in some areas within the UGB to lower densities than authorized.

Sanitary sewers thus have been needed to support densities for which the area is zoned. Soil in Parcel 4-A is marginal for use of septic tanks.

To meet the need for sanitary sewers, a South Bull Mountain Local Improvement District was formed. As part of the LID, the USA constructed a sewer trunkline running from Fischer Road north along SW 131st, then along the southern boundary of the proposed new UGB, then north along the PGE transmission lines on the western border of its property, then west along SW Beef Bend Road. The trunk serves 343 acres within the UGB, containing 2,134 equivalent dwelling units.

Because the sewer trunkline crosses the parcel on the south, the parcel easily can be served by sanitary sewer. The parcel generally drains towards the line allowing service by gravity flow. The southern boundary of the parcel was drawn to allow one row of residential lots to the south of the sewer line.

The parcel slopes gently from north to south toward the Tualatin River floodplain. Elevations range from approximately 250 feet MSL adjacent to Beef Bend Road on the north to 190 feet MSL adjacent to the proposed UGB on the south. This represents an overall average slope of approximately 2.4 percent. The parcel is outside of the 100 year floodplain. Storm water runoff from southerly Bull Mountain, to the north of the parcel, drains into the Tualatin River, to the south of the parcel. The parcel

Fowler Intermediate School, and Tigard High School. Templeton had 535 students for the 1985-86 school year, with a capacity of 588. Durham Elementary School, also in the area, had 128 students for 1985-86 with a capacity of 147.

The School District is anticipating growth in its enrollment and expects to have to construct new school facilities to accommodate the growth. The northeast corner of the parcel is a possible school site.

Harborton Parcel. One of the parcels proposed to be moved outside the UGB, Parcel 3-D, is in the vicinity of PGE's Harborton plant in Northwest Portland. This parcel consists of two tax lots and a portion of the Willamette Slough. The parcel is bounded to the north and east by the Willamette Slough and the Willamette River, to the south by the Harborton plant, and to the west by farm and forest land. The parcel is bounded by the UGB and the Portland city limits on the north (in the center of the Willamette Slough) and by the Portland city limits on the west.

The parcel consists of a low wetland area and slough. Portions of the parcel often are inundated with water from the Willamette Slough. The parcel is vacant and is within the floodplain.

The parcel represents a logical separation between urban industrial uses, which predominate to the south and east of the site, and farm and forest uses, which predominate to the north and west of the site. A variety of heavy industrial uses, including PGE's Harborton plant, Linnton Lumber Mill, and oil and

County fully to develop SW Beef Bend Road and SW 131st to Major Collector standards. Otherwise, transportation in the area will not be adequate.

If the proposed UGB amendment is approved, then development on Parcel 4-A, assuming a density of 6 dwelling units per acre, will generate approximately 3000 average daily trips. SW Beef Bend Road and SW 131st, fully developed to Major Collector standards, will be adequate to handle this and other foreseeable UGB traffic.

Washington County's Department of Public Safety has primary responsibility for police protection in the Bull Mountain community. The Oregon State Police patrol state owned highways in the area and will respond if called upon for assistance by the County Sheriff. Periodic patrols cover the area, and assistance is available for specific purposes on a call basis.

The parcel is served by the Tualatin Rural Fire Protection District. The District's station on Highway 99W south of Fischer Road is half a mile from the property. The station has an engine and a rescue vehicle. The response time is 3 minutes. The District, as backup, has two engines and a truck at its Commercial Street Station in Tigard. The District also has a mutual aid agreement with Washington County Fire District No. 1, whose Reusser Street Station can provide an engine as additional backup.

The parcel is within the Tigard School District. Students from the area presently attend James Templeton Elementary School,

The parcel has significant scenic value because of its location at the junction of the Willamette River and the Willamette Slough. Development of the parcel could not occur without extensive fill and associated degradation of the natural and habitat values of the site. Fill of this wetland area could not occur without an Army Corps of Engineers permit. To gain a permit, an applicant must prove "need" for use of the site. Given the availability of other sites along the river, it would be improbable that "need" could be proved.

The parcel is accessible to transportation via NW Marina Way, a City of Portland street which terminates a short distance west of the parcel. The parcel is separated from St. Helens Road, a 4-lane state highway, by tracks of the Burlington Northern Railroad.

There is no sanitary sewer available to the parcel. A City of Portland 8-inch combined storm/sanitary sewer line is located adjacent to St. Helens Road and extends north only to NW 112th Avenue. There are two shortcomings to this service. First, the line terminates approximately one (1) mile southeast of the parcel. Second, the existing line is a combined system. Combined storm/sanitary sewer lines are not an efficient system for urban development.

An 8-inch water line extends along NW Marina Way, just south of the parcel.

The Portland Fire Bureau's Engine Company 22, located in St.

gas tank farms, are located in the area between St. Helens Road and the Willamette River to the south and east of the parcel. The Port of Portland's Terminal 4 is located east of the parcel on the opposite side of the Willamette River.

The eastern edge of Sauvie Island, a productive agricultural and habitat area, is located directly across the Willamette Slough from the parcel. Sauvie Island lies outside the Regional UGB and is zoned for Exclusive Farm Use.

A small marina is located on the Willamette Slough to the west of the parcel. Forest Park, a large wilderness park, extends down to St. Helens Road to the south and west of the parcel.

Vegetation on the parcel consists of scrub trees and grasses characteristic of wetland areas. Soils consist of poorly drained soil that is typical of the broad floodplains of the Columbia River.

The parcel is identified as a high value habitat area (95 points) in the City of Portland's recently completed wildlife habitat inventory. The site is targeted for acquisition in the February 27, 1987 draft of the Willamette Greenway Update to ensure the preservation of this area as a wildlife refuge. The intent of the Greenway acquisition policy is to acquire land within the Greenway which has significant value in terms of scenic quality, wildlife habitat, or recreational use, and which would be better protected, conserved, enhanced, or maintained by being in public ownership.

4. Annexation. A request to extend the UGB to include land outside the Metro District must be accompanied by (1) a copy of a petition for annexation to the District to be submitted to the Portland Metropolitan Area Local Government Boundary Commission, and (2) a statement of intent to file the petition within 90 days of Metro action approving the request for UGB amendment. MC Section 3.01.035(b).
5. Non-Farm Use. The parcels proposed to be brought within the UGB must be irrevocably committed to non farm use. MC Section 3.01.040(c)(1).
6. Suitability. The land proposed to be brought within the UGB must be more suitable for urbanization than the land proposed to be removed, based on consideration of the following factors (MC Section 3.01.040(c)(3)):
 - (a) Public Facilities and Services. The trade must result in a net improvement in the efficiency of public improvements and services, including without limitation water, sewerage, storm drainage, transportation, fire protection, and schools in the adjoining areas within the UGB. Any parcel to be added must be capable of being served in an orderly and economical fashion. MC Section 3.01.040(a)(1).
 - (b) Land Use Efficiency. The trade should promote land use efficiency, taking into consideration

Johns, serves the parcel. A response time to an emergency at this location would be approximately four (4) minutes.

The parcel is within the North Portland Police Precinct. Response time for a high-priority call would be approximately 5-6 minutes from dispatch to arrival. Other calls would have a response time of approximately 15 minutes.

The site is within Portland School District 1-J.

IV. Standards

The standards applicable to this UGB adjustment request are set out in Chapter 3.01 of the Metro Code. The standards are as follows:

1. Net Change. Requests for trades of land cannot result in a net change of more than 10 acres of vacant land added to or 50 acres of vacant land removed from the UGB. MC Sections 3.01.020(e), 3.01.040(c)(2).
2. Local Action. Each city or county with jurisdiction over areas included in the request must take a written action recommending approval or denial of the request or declining to express an opinion. MC Section 3.01.025(a).
3. Applicants. A request must be filed by a group of more than 50 percent of the property owners who own more than 50 percent of the land area in each area included in the petition (Parcels 4-A, 2-D, and 3-D). MC Section 3.01.035(a).

- (1) A lot of one acre or less with a dwelling unit contains no vacant land;
- (2) A lot of one acre or less with no dwelling unit contains entirely vacant land;
- (3) A lot in excess of one acre with dwelling units contains vacant acreage equal to the lot size less one acre for each dwelling unit.

The section does not address the question of how to treat partly developed lots where the development is non-residential. Reading the language of Section 3.01.010(j) literally, all non-residential land is vacant. Clearly, this does not make sense. Rather, the intention appears to be that if less than one acre of a parcel is developed, then the parcel should be treated as having one developed acre; and if more than one acre is developed, then the parcel should be treated as being developed to the extent of the actual developed acreage. The 9.9 acre calculation is based on this interpretation.

In calculating amounts of vacant land, it also was necessary to determine whether water areas should be treated as vacant. At the time of adoption of Metro Code Chapter 3.01, the Metro (then CRAG) staff compiled an inventory of land in 14 land use categories. These categories separated water areas from vacant land. See Exhibit 25. Thus the intention of the Metro Code appears to be that water land not be treated as vacant land. The 9.9 acre calculation is based on this interpretation.

existing development densities on the trade parcels and whether the trade will facilitate development consistent with the local comprehensive or regional plans for adjacent urban land. MC Section 3.01.040(a)(2).

(c) Impact Consequences. Any impact on regional transit corridor development must be positive. Any limitations imposed by the presence of hazard or resource lands must be addressed. MC Section 3.01.040(a)(3).

(d). Nearby Agricultural Uses. The justification under (a) through (c), above, must clearly outweigh any adverse impact on nearby agricultural activities. MC Section 3.01.040(a)(5).

V. Application of Standards

1. Net Change. As stated in Part I, above, the net change in vacant land from the proposed trade is an addition of 9.9 acres. This is within the maximum permissible limit of 10 acres. Therefore the requirement of MC Sections 3.01.020(e) and 3.01.040(c)(2) is satisfied.

In calculating amounts of vacant land, it was necessary to decide how to treat tax lots that are partly developed and partly vacant. Metro Code Section 3.01.010(j) defines vacant land, but only addresses the question of how to treat partly developed lots in terms of residential property. The section states that:

must be a determination that it "is not possible to preserve [the land] for farm use, within the meaning of Goal No. 2, Part II."

Other than Parcel 1-A, all land proposed for addition to the UGB is irrevocably committed to non-farm use based on a Goal No. 3 exception approved by LCDC. Parcel 1-A, at Edy Road, is part of a larger area designated for Exclusive Farm Use.

The ordinary process to have Parcel 1-A declared "irrevocably committed to non-farm use" would be for the applicants to seek a plan amendment from Washington County and a subsequent acknowledgement from LCDC. Washington County, however, has a case overload and is declining to entertain such requests. Due to this administrative bottleneck, Metro staff, the Department of Land Conservation and Development (DLCD), Washington County, and 1000 Friends of Oregon reached the following agreement:

- (1) Metro would issue a 45-day notice to DLCD on the proposed determination of irrevocable commitment to non-farm use, citing Washington County's hearing on the matter as well as Metro's;
- (2) Washington County would send notices to property owners within 250 feet of Parcel 1-A, and Washington County staff would comment on proposed findings regarding commitment to non-farm use;
- (3) The Washington County Commission would adopt a position on the adequacy of the proposed findings; and
- (4) Metro would take the final action on the findings.

2. Local Action. As stated in Part I, the City of Sherwood is one of the petitioners in this proceeding and has recommended approval of the proposed UGB amendment. Washington County has recommended approval. The City of Portland has chosen to express no opinion. Each jurisdiction's action was in writing. These are the only cities and county with jurisdiction over the trade parcels. Therefore the requirement of MC Section 3.01.025(a) is satisfied.

3. Applicants. For parcels 4-A, 2-D, and 3-D, the petitioners included more than 50 percent of the property owners owning more than 50 percent of the land area. For parcels 1-A, 2-A, 3-A, and 1-D, the petitioners included a city with a planning area that includes or is contiguous to the land area. Therefore the requirement of MC Section 3.01.035(a) is satisfied.

4. Annexation. The request to amend the UGB in this case included a copy of a petition to the Boundary Commission to annex parcels 2-A and 3-A to the Metro District, and the City of Sherwood has stated its intention to file the petition within 90 days of Metro action approving the request for UGB amendment. Therefore, the requirement of MC Section 3.01.035(b) is satisfied.

5. Non-Farm Use. Metro Code Section 3.01.010(1) defines land "irrevocably committed to non-farm use," in the case of land covered by a plan acknowledged by LCDC, which is the case here, as "any land for which a Goal No. 3 exception has been approved by LCDC." If a plan has not yet been acknowledged by LCDC, there

- (b) Urban services either are or will be available to Parcel 1-A as the surrounding area develops;
- (c) Parcel size and ownership patterns of Parcel 1-A are incompatible with significant commercial farming activity;
- (d) Based on neighborhood and regional characteristics, the most compatible development of Parcel 1-A will be as urban land;
- (e) There is a natural boundary that separates Parcel 1-A from the principal abutting farmland and that makes Parcel 1-A more logically a part of the abutting urbanizable land; and
- (f) Existing improvements are of sufficient value and density to be inconsistent with farm use.

Based on all of these factors, Parcel 1-A is irrevocably committed to non-farm use. In addition, under OAR 660-04-025, Parcel 1-A is physically developed to the extent it no longer is available for farm use. Therefore, the requirement of MC Section 3.01.035(b) is satisfied.

6. Suitability.

(a). Public Facilities and Services.

(i) Water. Parcels 1-A, 2-A, 3-A, and 4-A all could be served with water by the extension of existing water lines. The City of Sherwood presently has a sufficient water supply and facilities to serve Parcels 1-A, 2-A, and 3-A for the foreseeable future. The same is true for the Tigard Water District as to

Steps (1) through (3) have been taken. See Exhibits 4, 5, 10, and 23. Part of Metro's function in this proceeding is to make the final determination on whether the standards have been met for a determination that Parcel 1-A is irrevocably committed to non-farm use.

Oregon Administrative Rule 660-04-028 sets out the standards that must be met. In general, a determination that land is irrevocably committed to non-farm use must be based on a determination that "existing adjacent uses and other relevant factors make [farm] uses...impracticable." The determination must address the following factors:

- (a) Existing adjacent uses;
- (b) Public facilities and services;
- (c) Parcel size and ownership patterns of the irrevocably committed area and adjacent lands;
- (d) Neighborhood and regional characteristics;
- (e) Natural boundaries or other buffers separating the area from the adjacent resource land;
- (f) Existing physical development that is inconsistent with farm use;
- (g) Other relevant factors.

Based on the findings set out in Parts I and III above regarding Parcel 1-A, it is apparent that:

- (a) There is significant development on three sides of Parcel 1-A and there will be in the future significant further urban development on two sides of the parcel;

Parcel 4-A. These parcels thus can be served in an orderly and economical fashion, and their addition to the UGB will result in an improvement in the efficiency of public water facilities.

Parcels 1-D and 3-D could be served with water by the extension of existing water lines. Parcel 2-D, outside the Sherwood City limits, could not. Since none of these parcels is likely to develop significantly, their deletion from the UGB will not result in a decrease in the efficiency of public water facilities.

Overall, the proposed trade will result in a net improvement in the efficiency of public water facilities.

(ii) Sewerage. Parcels 1-A, 2-A, and 3-A all could be served with sewerage service by the extension of existing lines. Parcels 2-A and 3-A will need to annex to the Unified Sewerage Agency. Parcel 4-A actually has a line on site but cannot receive service because it is outside the UGB. The USA has sufficient treatment facilities to serve Parcel 4-A. There is no indication in the record as to facilities to serve the other parcels, although the USA has not expressed any concern about serving the parcels. All parcels can be served by gravity flow except possibly a portion of Parcel 2-A. These parcels thus can be served in an orderly and economical fashion, and their addition to the UGB will result in some improvement in the efficiency of public sewerage facilities.

Parcels 1-D, 2-D, and 3-D all could be served with line extensions. Parcel 1-D, however, would require pumping. Parcel

3-D would be served by a combined storm and sanitary sewer, which is not desirable for urban development. Parcel 2-D would need to annex to the USA. Since none of these parcels is likely to develop significantly, their deletion from the UGB will not result in a decrease in the efficiency of public sewerage facilities.

Overall, the proposed trade will result in a net improvement in the efficiency of public sewerage facilities.

(iii) Storm Drainage. None of Parcels 1-A, 2-A, 3-A, and 4-A will require public storm drainage facilities. Onsite drainage facilities to accompany development will not be unusual. These parcels therefore can handle storm drainage in an orderly and economical fashion.

Parcels 1-D and 3-D both raise drainage concerns, Parcel 1-D being within the floodplain and Parcel 3-D being frequently inundated. This is one of the main reasons why these sites are largely undevelopable.

The proposed trade will not affect the efficiency of public storm drainage facilities.

(iv) Transportation. Parcels 1-A, 2-A, 3-A, and 4-A all have good road access. In addition, Edy Road at Parcel 1-A is scheduled for widening and SW 131st and Beef Bend Road at Parcel 4-A will need to be developed to Major Collector standards regardless of whether Parcel 4-A is developed. These parcels thus will be able to receive transportation service in an orderly and economic fashion. Furthermore, it appears that the

development of these parcels can be accommodated either by existing or already planned or needed transportation facilities, so that their addition to the UGB will result in a net improvement in the efficiency of public transportation facilities.

Witnesses who testified regarding Parcel 4-A (Bull Mountain) expressed concerns about the present condition of Beef Bend Road and the question whether Beef Bend Road really will be improved to Major Collector standards and when. In considering UGB amendments, however, the important consideration is planned public facilities and services that will serve the area rather than the existing level of services. Whether the timing of development should wait for the construction of planned facilities is a matter to be determined by city or county regulations as part of the zoning and building regulation process.

Transportation access to Parcels 1-D and 2-D is poor. Since these parcels and Parcel 3-D are unlikely to develop significantly, their deletion from the UGB will not result in a decrease in the efficiency of public transportation facilities.

Overall, the proposed trade will result in a net improvement in the efficiency of public transportation facilities.

(v) Fire and Police Protection. Parcels 1-A, 2-A, 3-A, and 4-A all will be able to receive fire and police protection in an orderly and economic fashion, from existing facilities.

Since these parcels are more likely to develop than are Parcels 1-D, 2-D, and 3-D, the proposed trade will result in a small improvement in the efficiency of public fire and police facilities.

(vi) Schools. The Sherwood School District has some excess capacity to serve Parcels 1-A, 2-A, and 3-A but probably will have to build modular classrooms to accommodate enrollment growth in the future. The Tigard School District will need to construct new school facilities to accommodate growth regardless of the development of Parcel 4-A and, in fact, a portion of Parcel 4-A is a possible site for a new school. It will be possible for the Districts to provide school services to these parcels in an orderly and economic fashion. In addition, since there is a slight excess present capacity, the addition of these parcels to the UGB may result in a slight improvement in the efficiency of public school facilities and services.

Since Parcels 1-D, 2-D, and 3-D are unlikely to develop significantly, their deletion from the UGB will not result in a decrease in the efficiency of public school facilities and services.

Overall, the proposed trade may result in a slight improvement in the efficiency of public school facilities and services.

(vii) Summary. Based on the above analysis, the parcels to be brought inside the UGB under the proposed trade will be able to be served with public services in an orderly and

economic fashion. Furthermore, the proposed trade will result in a net improvement in the efficiency of public facilities and services. Therefore the requirement of MC Section 3.01.040(a)(1) is satisfied.

(b) Land Use Efficiency. Parcels 1-A, 2-A, and 3-A already are partially developed sites, and their urbanization would be consistent with and supportive of development of adjacent urbanized land. There is virtually no development on Parcel 4-A so that if brought within the UGB, it would be possible to make the most efficient possible use of the land.

Parcels 1-D, 2-D, and 3-D, although within the UGB, are not likely to have significant development.

Overall, the trade, by bringing partially developed or highly developable land within the UGB while removing undevelopable land, will promote land use efficiency and will facilitate development consistent with plans for adjacent urban land. Therefore the requirement of MC Section 3.01.040(a)(2) is satisfied.

(c) Impact Consequences. There will be no impact on regional transit corridor development. There will be no limitations imposed by the presence of hazard or resource lands. Therefore the requirement of MC Section 3.01.040(a)(3) is satisfied.

(d) Nearby Agricultural Uses. There will be no adverse impact on nearby agricultural activities. Therefore the requirement of MC Section 3.01.040(a)(5) is satisfied.

(e) Conclusion. For the reasons stated above, the land proposed to be brought within the UGB is more suitable for urbanization than the land proposed to be removed. Therefore the requirement of MC Section 3.01.040(c)(3) is satisfied.

VI. Recommendation

For the foregoing reasons, the petition satisfies the requirements of Metro Code Chapter 3.01 and should be approved. Parts I and III of this report and recommendation should be treated as findings of fact, and Part V should be treated as conclusions.

Dated: September 28, 1987

Respectfully submitted,

Ch P. Thomas
Christopher P. Thomas
Hearings Officer

ATTACHMENT A

PARCEL DESCRIPTIONS

PARCEL 1-A:

A parcel of land situated in the northeast one-quarter of Section 29, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, more particularly described as follows:

Beginning at the center of said Section 29, said point being on the centerline of SW Edy Road (County Road 1070); thence East 660 feet to the TRUE POINT OF BEGINNING; thence leaving the said centerline North 1320 feet to a point; thence East 1056 feet to a point; thence South 565 feet, more or less, to a point; thence East 264 feet, to a point; thence South 755 feet, more or less, to a point on the said centerline of SW Edy Road; thence West along the said centerline 1320 feet to the TRUE POINT OF BEGINNING.

Containing 36.6 acres, more or less.

PARCEL 2-A:

Tax Lots 200, 1600, 1700, 1701, and 1800, 2S2-36D.

Containing 22.5 acres, more or less.

PARCEL 3-A:

Tax Lot 300, 2S1-31C, and Tax Lots 400, 800, and 900, 2S1-31CC.

Containing 5.2 acres, more or less.

PARCEL 4-A:

A parcel of land situated in the north half of Section 16, Township 2 South, Range 1 West, of the Willamette Meridian, County of Washington, State of Oregon, more particularly described as follows:

BEGINNING AT the point of intersection of the south right-of-way line of SW BEEF BEND ROAD, a 50-foot-wide public road, and the west right-of-way line of SW 131st AVENUE, a variable-width public road; THENCE, South, along the right-of-way of said SW 131st AVENUE, 1,502 feet, more or less, to the southeast corner of "DICKSON", a duly recorded plat in said county; THENCE, West, 805.05 feet to the southwest corner thereof; THENCE South 101.39 feet; THENCE, West, 786.68 feet to the easterly line of the Bonneville Power Administration 100-foot-wide right-of-way;

THENCE, N. 0 degrees 06'W., along said easterly line, 1,394.46 feet to the southerly line of said SW BEEF BEND ROAD; THENCE, N. 82 degrees 32'E., along said southerly line, 1,607.8 feet to the point of beginning.

Containing 52.9 acres, more or less.

PARCEL 1-D:

A parcel of land situated in the northwest one-quarter of Section 29, and the Northeast one-quarter of Section 30, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, more particularly described as follows:

Beginning at the northwest corner of said Section 29; thence East along the north line of said Section 29, 1320 feet, more or less, to a point; thence South 1275 feet, more or less, to a point on the southerly line of the Bonneville Power Administration, Oregon City - Keeler Section transmission easement (being 250 feet in width); thence North 52 degrees West 410 feet, more or less, to an angle point on the said southerly line; thence North 86 degrees West 1010 feet, more or less, to a point on the west line of said Section 29; thence continuing along the said southerly line of said easement North 86 degrees West 125 feet, more or less, to an angle point; thence North 53 degrees West 1480 feet, more or less, to the intersection of the said southerly line of said easement with the westerly line of that tract of land described by Deed, recorded in Book 1102, page 643, Washington County Deed Records; thence North along said westerly line 40 feet, more or less, to a point on the north line of said Section 30; thence East 1320 feet, more or less, to the northeast corner of said Section 30 and the said northwest corner of Section 29, said point being the Point of Beginning.

Containing 45.7 acres, more or less.

PARCEL 2-D:

A parcel of land situated in the north half (N1/2) of Section 29, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, more particularly described as follows:

BEGINNING AT a point that bears South 660.0 feet from the north quarter corner of said Section 29; THENCE, East 660.0 feet; THENCE South, 660.0 feet to the northwest corner of that tract of land conveyed to Richard Cereghino, by deed recorded, December 9, 1947, in Book 281, Page 85, Deed Records; THENCE, South, 760.0 feet; THENCE, West 662.4 feet to a point on the North-South centerline of said Section 29; THENCE, N. 0 degrees 15'W., 105.38 feet along said North-South centerline to a point on the North-South centerline of said Section 29 that bears N. 0 degrees 15'W., 655.38 feet from the center quarter corner (center 1/4

corner) of said Section 29; THENCE, S. 89 degrees 49'W., 440.0 feet to the southwest line of a 250.0-foot-wide right-of-way granted to the Bonneville Power Administration; THENCE, N. 50 degrees 34'W., 398.0 feet along said right-of-way line to a point on the southwesterly extension of the northwest chain-link fence line of the enclosure fence of PGE Company's Sherwood Substation; THENCE, N. 38 degrees E., 535.0 feet along said extension to the most westerly corner of said enclosure fence; THENCE, continuing, N. 38 degrees E., 683.6 feet along said northwest fence line and its northeasterly extension to said North-South centerline of Section 29; THENCE, North 112.9 feet to the point of beginning.

Containing 33.4 acres, more or less.

PARCEL 3-D:

A parcel of land situated in the northwest quarter of Section 34, Township 2 North, Range 1 West, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

BEGINNING AT the intersection of the west line of the Jacob Sanders D.L.C. by compromise and the northeast right-of-way line of Marina Way; THENCE, S. 47 degrees 13' 15"E., 437.04 feet along said right-of-way line; THENCE, N. 40 degrees 37' 32"E., 1,839.86 feet to the easterly extension of the centerline of the Willamette Slough; THENCE, N. 62 degrees 00' W., 474.27 feet along said easterly extension to the centerline of the Willamette Slough; THENCE, N. 83 degrees 57'W., 800.00 feet along said centerline; THENCE, N. 76 degrees 27'W., 230.00 feet along said centerline to the northerly extension of said compromise line; THENCE, S. 0 degrees 03'W., 1,468.89 feet along said compromise line and its northerly extension to the point of beginning.

Containing 36.6 acres, more or less.

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 1987, I served a true copy of the foregoing Report and Recommendation of Hearings Officer on each of the persons listed below by depositing an envelope containing the copies in the U.S. Mail at Portland, Oregon, with first class postage prepaid thereon, addressed, respectively, as follows:

Mrs. Beverly Froude
12200 S.W. Bull Mountain Rd.
Tigard, OR 97224

Mr. Alexander F. Fredrick
12800 N.W. Marina Way
Portland, OR 97231

Ms. Jean K. Young
15300 S.W. 116th
King City, OR 97224

Mr. James Rapp
City of Sherwood
90 N.W. Park Street
Sherwood, OR 97140

Ms. Phyllis Erling
13970 S.W. Beef Bend Rd.
Tigard, OR 97224

Ms. Helen Henderson
13750 S.W. Beef Bend Road
Tigard, OR 97224

Ms. Mary Dorman
Benkendorf Associates
Suite 1406
522 S.W. Fifth Avenue
Portland, OR 97204

Dated this 29th day of September, 1987.

Darlene Badrick
Darlene Badrick
Administrative Assistant
Research & Development

STAFF REPORT

Agenda Item No. 10.2

Meeting Date Nov. 12, 1987

CONSIDERATION OF RESOLUTION NO. 87-820 FOR THE
PURPOSE OF COMPLYING WITH THE CLACKAMAS TRANSFER
& RECYCLING CENTER (CTRC) CONDITIONAL USE PERMIT

Date: October 13, 1987

Presented by: Jim Gardner

FACTUAL BACKGROUND AND ANALYSIS

On September 15, 1987, the Council Solid Waste Committee received a status report from the Solid Waste Director regarding CTRC. The Committee moved to recommend to Council that Metro abide by the requirements of the Conditional Use permit imposed on the CTRC by Oregon City.

The CTRC was issued a Conditional Use permit in 1981. In July 1986, Oregon City imposed a 700 ton per day limit on solid waste delivered to the CTRC. Since that time, Metro has been unable to meet the 700 ton per day limit. Solid Waste staff has made attempts to mitigate the situation.

In the spring of 1987, Oregon City initiated legal action to force Metro to comply with the 700 ton per day limit in the Conditional Use permit. The Solid Waste staff has considered several possible actions that may achieve compliance with the 700 ton per day limit.

Possible Solutions

Solid Waste staff has suggested the following alternatives to meet the CTRC Conditional Use permit limitations:

1. Close the facility when the maximum daily total limit is reached.
2. Ban all dry drop boxes from CTRC through a method of permitting and verifying certain boxes that are high-grade corrugated or paper loads.
3. Geographical restrictions to CTRC usage. Develop contours that reflect tonnage generation, restrict commercial haulers outside that area.

See Exhibit A for further details regarding the above. In addition to the above alternatives, the Solid Waste staff has done additional work regarding the suggestion of the Tri-County Collectors Organization that heavy trucks going to the CTRC be

curtailed (loads over 18,000 pounds [nine tons]). See Exhibit B for additional information on this suggestion.

Recommended Action

The Council Solid Waste Committee recommended that Metro comply with all the requirements of the CTRC Conditional Use permit. Resolution No. 87-820 instructs the Executive Officer to take whatever steps are necessary to meet all the conditions of the CTRC permit. On October 20 the Solid Waste Committee will again consider the CTRC and may have a recommendation for the October 22 Council meeting regarding a specific approach for achieving compliance with the Conditional Use permit.

EXECUTIVE OFFICER'S RECOMMENDATION

No recommendation from the Executive Officer at this time.

RB/sm
8343C/517
10/14/87

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF COMPLYING WITH)	RESOLUTION NO. 87-820
THE CLACKAMAS TRANSFER & RECYCLING)	
CENTER CONDITIONAL USE PERMIT)	Introduced by the Council
)	Solid Waste Committee

WHEREAS, The Metropolitan Service District operates the Clackamas Transfer & Recycling Center in Oregon City under a Conditional Use permit which, among other things, limits the amount of solid waste delivered to the Clackamas Transfer & Recycling Center to 700 tons per day; and

WHEREAS, The Metropolitan Service District wishes to be a good neighbor and meet conditions imposed upon the District by any host community; and

WHEREAS, Metro wishes to meet the requirements of the Conditional Use permit imposed by Oregon City upon the Clackamas Transfer & Recycling Center; now, therefore,

BE IT RESOLVED,

1. That the Metropolitan Service District shall attempt to meet all the requirements of the Conditional Use permit for the Clackamas Transfer & Recycling Center including the 700 tons per day limitation.

2. That the Executive Officer of the Metropolitan Service District is instructed by the Council of the Metropolitan Service District to take whatever steps are necessary to comply with all the conditions of the Clackamas Transfer & Recycling Center permit.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1987.

Richard Waker, Presiding Officer

Date: August 20, 1987
To: Rich Owings, Solid Waste Director
From: Jim Shoemake, Facilities Manager
Regarding: CTRC CONTINGENCY PLAN FOR 700 TON LIMIT

The Clackamas Transfer & Recycling Center (CTRC) was issued a conditional use permit in 1981 to handle 400 tons of solid waste per day in conjunction with the resource recovery facility that was to be built on the adjacent property. When the resource recovery center was defeated by initiative petition, the transfer center was permitted (temporarily) for not more than 800 tons per day.

Background

In July 1986 the city of Oregon City imposed a 700-ton per day limit on waste going into CTRC. Since that time, Metro has not achieved the limit based on daily averages calculated at Metro. In the spring of 1987, the city of Oregon City initiated legal action to force Metro to comply with the 700-ton per day limit in the conditional use permit. In view of the possibility of court action requiring that Metro not exceed this limit, this report was prepared to offer solutions to that requirement.

Conclusions

Set forth in this report are three basic solutions to the need to reduce volume entering CTRC. The options address two basic ideas:

1. Close the facility when the maximum limit is reached;
2. Restrict disposal of material based on type or location of waste generator.

The preferred solution is to establish a geographical boundary that would limit the amount of waste into CTRC at approximately 900 tons per day on weekdays and 200 tons per day on weekends. This method is the most defensible position politically and the least harmful to those in the hauling industry. It also has the least impact on the public customer.

The following are reasons that if the third proposed solution is the one selected, and has the least potential effects on solid waste management in the Metro region.

SOLUTION #1: CLOSE THE FACILITY WHEN THE MAXIMUM DAILY TOTAL LIMIT IS REACHED.

- Assumptions:
- a. The average daily total for weekend tonnage is approximately 200 ton per day;
 - b. The average is four full weekends per month (eight days);
 - c. All calculations based on August 1986 to July 1987 tonnages;
 - d. A maximum of 900 tons per weekday would be allowed; and
 - e. Maximum monthly tonnage no greater than 21,400.

Using these assumptions the gatehouse would close when the weekday total reached 900 tons or the weekend total reaches 200 tons. This method should be further broken into two sub-options:

Option 1: Establish a time (based on past records) when the daily maximum ~~are~~ most likely to be reached, and set that time as a firm closing time.

Advantages:

- a. This will allow enough certainty of closure time that Metro and its contractor can schedule personnel effectively.
- b. This would give the hauler and public customer firm hours of operations.
- c. Metro currently has enough data to determine the hours of operations.

Disadvantages:

- a. It is conceivable that many commercial haulers would adjust pick-up times to put more material into CTSC quicker and/or earlier.
- b. Lines could form in the early morning from haulers ensuring that they get in early.
- c. There would be an increased workload on employees to process nearly the same transactions in a shorter period of time.
- d. Certain months contain more weekends than others and would actually be well under the maximum allowable daily average, while others would be over.
- e. It could reduce recycling opportunities.

Option #2: Have a running total that would be checked every half-hour and when the maximum daily tonnage is reached close the gatehouse.

Advantages:

- a. This would be quite accurate and the maximum could be adjusted to make up for extra weekends and other variables.
- b. It would allow for absolute compliance.
- c. Computer could be programmed not to accept transactions after limit is reached.

Disadvantages:

- a. It would reduce ability to schedule personnel.
- b. Could cause haulers and public to use alternate site after driving to CTRC.
- c. This option would require major software changes in scalehouse program.
- d. It would most seriously affect public that arrives late in the afternoon.
- e. It could cause serious traffic problems if haulers line up prior to opening.

Institution of Option #1 could be accomplished upon notification whereas Option #2 would require at least two weeks for software changes. The public would be the loser in both of these options unless modified to exempt public needs.

SOLUTION #2: BAN ALL DRY DROP BOXES FROM CTRC THROUGH A METHOD OF PERMITTING AND VERIFYING CERTAIN BOXES THAT ARE HIGH-GRADE CORRUGATED OR PAPER LOADS

Advantages:

- this would cause the greatest reduction in total weight into CTRC
- easy to identify unallowable vehicles
- follows the waste reduction goals and would tend to push more material to limited use sites
- ensures that overweight drop boxes do not enter CTRC

Disadvantages:

- forces southern haulers to travel long distances to dispose of loads (much higher haul costs)
- may cause high quantities of food wastes to be disposed of at limited use sites
- increases staff involvement in regulating and inspecting loads

Institution of this solution requires that haulers become more aware of drop box contents and have a closer relationship with generators. This solution could reduce the recycling opportunity ~~offer~~ for high-grade load separation at CTRC. This solution could be instituted within one week after notification.

SOLUTION #3: GEOGRAPHICAL RESTRICTIONS TO CTRC USAGE. DEVELOP CONTOURS THAT REFLECT TONNAGE GENERATION, RESTRICT COMMERCIAL HAULERS OUTSIDE OF THAT AREA

Advantages:

- causes least economical hardship on haulers
- allows local haulers to use close facility
- allows for easy identification of authorized haulers
- many customers (i.e., builders) don't have established areas of operation

Disadvantages:

- difficult determining exact routes of haulers
- Metro can't determine exactly where boxes come from
- route changes must be ^{taken} ~~tkane~~ into account
- doesn't reflect strict haul times for haulers
- puts increased burden on St. Johns _____ space

Institution of this solution would require extensive study of each affected hauler to determine whether or not they qualify for access into CTRC. Background data on haul volumes of each hauler would also be required. Some haulers that have routes throughout Metro area could still bring in loads from outside the set boundary. A map of the acceptable boundary could be prepared and this solution implemented within two weeks of notification.

**METRO**

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: October 8, 1987

To: Roosevelt Carter, Operations Manager

From: Jim Shoemake, Facilities Manager *[Signature]*

Regarding: Contingency Plans for CTRC 700 Ton per Day Limit

On August 20, 1987, the attached memo was sent to Rich Owings explaining the pros and cons of several alternatives that would ensure compliance with the 700 ton per day limit specified in the CTRC Conditional Use Permit. Since that time, additional work has been done to research the suggestion put forth by the Tri-County Collectors' organization. That particular suggestion stated that if the heavy trucks were curtailed, the limit could be met with the least impact to haulers.

A program was run using existing data for the month of May, 1987, in which all loads over 18,000 pounds (nine tons) net weight were categorized and compared with the base data.

Facts:

- 17 percent of waste is hauled by nine percent of vehicle trips by these heavy loads
- there are 24 companies that hauled these heavy loads; more than 140 companies haul to CTRC
- all trucks with loads in excess of nine tons net weight had a gross weight of more than 54,000 pounds (trucks over 54,000 pounds with dual axles are charged extra at St. Johns)
- the percentage of each company's overweight ranged from one percent to fifty percent of their hauls to CTRC

This option of restricting heavy loads from CTRC should be considered along with these other options discussed.

1. Establish a time (based on past records) when the daily maximum is most likely to be reached; set that time as a firm closing time.

2. Check a running total every half hour and close when the maximum is reached.
3. Ban all drop boxes (except those certified as high grade recyclables) from CTRC.
4. Place geographic restrictions on haulers. Develop contours that reflect tonnage generation and restrict those outside of the contours.

JES:mrs

Attachment



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Agenda Item No. 10.3

Date: **November 2, 1987**

Meeting Date Nov. 12, 1987

To: **Metro Council**

From: *Rich Owings*
Rich Owings, Solid Waste Director

Regarding: **K B Recycling Franchise Application Staff Report Changes**

The operator of K B Recycling is now ready to proceed with his franchise application. He requested the delay earlier because he was out of town and he wanted time to review the staff report. Attached is the application and staff report for the proposed franchise. This report is slightly different than the one sent out prior to the October 8 Council meeting.

The changes include statements requiring the franchisee to pay the District the Regional Transfer Charge and the User Fee for residual waste disposed outside the region. Those fees are collected for residual wastes at all processing centers. There is also added language regarding the effect the franchise would have on a CTRC high-grade operation.

The changes are located on:

page 3 of staff's Attachment (last complete paragraph of that page is different)

page 7 of staff's Attachment (first paragraph on that page is new)

page 2 of the Resolution (language added to Item 3)

title page of agreement (address updated and date changed)

page 8 of Franchise Conditions (SC-13 added)

all Franchise Conditions pages (dates updated)

RDO:mrs

Attachments

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 87-812, FOR THE PURPOSE OF GRANTING A PROCESSING FACILITY FRANCHISE TO K. B. RECYCLING, INC.

Date: September 25, 1987

Presented by: Richard Owings
Steve Rapp

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this staff report is to introduce Resolution No. 87-812, which grants a processing facility franchise to K. B. Recycling, Inc. (K.B.). More detailed information is provided in the attached staff report, and the operator's application. K.B., owned by Fred and Jerald Kahut, have applied to operate a processing facility near the intersection of 82nd Avenue and Highway 224. The primary considerations for issuance of a non-exclusive franchise (Metro Code Section 5.01.070) are as follows.

Qualifications of the Applicant: Fred and Jerald Kahut have operated a solid waste hauling company since 1968 and a buy-back center in Canby since 1978. Staff has viewed their facilities and considers the applicants qualified to operate their proposed processing facility.

Compliance with the Solid Waste Management Plan: Metro is currently in the process of updating its Solid Waste Management Plan, which includes the already adopted Solid Waste Reduction Program. K.B.'s franchise request conforms with the Reduction Program by promoting recycling by private owners and operators. The franchise term is five years, and tonnage processed is expected to be small, thus, not effect the long-term system design. Recently, the East County Recycling franchise was approved for a similar facility. The Solid Waste Reduction Program may be interpreted strictly to preclude more processing centers (Work Plan, pp. 19 and 45) until staff determines the need for such facilities with analysis of the Waste Composition Study. However, denial of the franchise would be contrary to the goals of the Reduction Program. Metro has recourse if the analysis indicates the franchise is not needed -- the District can restrict the flow to the operation by Metro Code Section 5.01.070(g), and the term is short. Therefore, staff finds no compelling reason to determine the proposal inconsistent with the Plan.

Need and Compatibility: K.B. will lower the volumes at CTRC and St. Johns. Also, the system design will take some time to develop. Although the applicant indicates the facility has a capacity of 17,000 tons annually, he expects to actually process 3,900 tons per year. Staff estimates the effect on other recycling facilities will be minimal.

Conformity with Regulatory Requirements: The applicant has complied with applicable regulatory requirements.

VARIANCE REQUESTS

Bond: The applicant has requested not to be required to secure a surety bond. Using the method stipulated in Resolution No. 86-672 for calculating the bond amount, no bond is required, and he need not pursue this request. If waste flows exceed projections, a bond or other coverage may be required.

Flow Authority: The applicant has requested the District relinquish its authority to direct waste to or from his facility. The purpose of flow authority is to assure adequate volumes at franchised facilities in the region. Staff recommends denial of this request.

Prior Notice: The applicant has requested he not be required to provide the District 90 days written notice prior to discontinuing service. Advance notice would be important if a program to curtail volumes at CTRC is implemented, since K.B. may then provide a vital service in the area. Staff recommends denial of this request.

Rates: The applicant is requesting a variance from the District's rate-setting authority. Other franchises have received similar variances. The franchise agreement specifies his rates shall not exceed those at CTRC without Metro approval. Metro reserves the right to impose rate regulation at any time. Staff recommends approval of this variance with the above-mentioned restrictions.

Franchisee Rights: If the franchise is revoked or not renewed, the District may require the owner sell his interest to allow the facility to continue operating. The applicant is requesting a variance from this provision. Staff recommends his request be denied.

Right to Condemn or Purchase: Metro reserves the right to purchase property of the franchisee in case the public is not being served adequately. The operator has requested an exemption from this section, but staff recommends the applicant's request be denied in order to preserve the District's power to use this remedy if needed.

RATE REVIEW COMMITTEE RECOMMENDATION

The Rate Review Committee recommends approval of the franchise agreement as written.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 87-812, and issuance of a franchise to K. B. Recycling, Inc.

SR/sm
7914C/513
09/25/87

ATTACHMENT

By Steve Rapp

K.B. Recycling Franchise September 4, 1987

K. B. Recycling, Inc. applied to Metro for a non-exclusive franchise to operate a solid waste processing facility at 8277 S. E. Deer Creek Lane, Milwaukie, Oregon, on February 24, 1987. The District has the authority by Metro Code Section 5.01.020 to grant such franchises, which are required for private facilities accepting mixed waste.

K.B. is owned by Fred A. Kahut and Jerald A. Kahut and currently operates a source-separated drop center for recyclable materials at the above-named location. According to information provided, the operator intends to accept loads of mixed waste which have been high-graded for corrugated and waste paper (at least 50 percent). Mixed loads will be placed on a tipping floor, then transferred to conveyors, where hand-sorters will pick out recyclables. The recyclable materials will then be warehoused for sale, and the residue will be taken to a disposal site. The operator intends to continue to function as a buy-back center for source-separated recyclables.

Although the residues may be disposed at CTRC, the increase in volume at K.B. will presumably reduce the flow at CTRC. The operator projects 3,900 tons per year of high-grade mixed waste will be processed initially, resulting in 1,365 tons recycled, and indicates he has 17,000 tons of processing capacity.

FRANCHISE

After receiving supporting information, the application was accepted as complete on April 23, 1987. Staff has drafted a franchise agreement which will be issued to the applicant within ten (10) days following Council approval of the franchise request.

Since the franchise will be non-exclusive, the primary considerations for issuance (Metro Code Section 5.01.070) are qualifications of the applicant, compliance with the District's Solid Waste Management Plan, compatibility and need in the region's disposal system, and conformity with applicable regulatory requirements. Appropriate operating restrictions necessary to protect the health, safety, and welfare of District residents have been included in the draft franchise agreement.

Qualifications of the Applicant

Fred and Jerald Kahut jointly operate the facility, which has been a buy-back center since October 1986. They have operated another buy-back center in Canby since 1978. They are owners of Canby Disposal, a hauling company outside Metro boundaries.

Canby Disposal was preceded by Kahut Brothers Sanitary, a Portland hauling company begun in 1968 and no longer in existence.

Compliance with the Solid Waste Management Plan

Although the Council authorized the development and establishment of interim franchising policies (Resolution No. 87-773), the Solid Waste Management Plan provides the guiding rules regarding granting KB a franchise since the operator applied before the resolution was passed. But the proposed franchise would not be in conflict with the yet-to-be-developed interim franchising policies anyway because 1) the proposal conforms with the Solid Waste Reduction Program by promoting waste processing and recycling, and 2) the volume would be a relatively small portion of the waste stream.

Denying the permit would be contrary to the Solid Waste Reduction Program goals. The Reduction Program, which is a part of the Solid Waste Management Plan, could be interpreted to say the District will strictly not grant more processing centers (Solid Waste Reduction Program, Work Plan, pp. 19 and 45) until staff determines the need for such facilities with the Waste Composition Study. But the proposal should not be viewed in conflict with the Reduction Program for three reasons. One is the facility will accomplish waste reduction by recovering materials otherwise bound for the landfill. Two is the facility will be owned and operated privately, a positive factor as stated on p. 22 of the Work Plan. Three, the term of the franchise is only five years, and the effect during that period is expected to be small, and thus is not expected to effect the system design. The East County Recycling franchise was approved on August 14, 1986, for largely the same reasons. The agency has recourse if the analysis of the Waste Composition Study indicates the franchise is in conflict with the Solid Waste Reduction Program -- the District can restrict the waste flow to the operation by Metro Code Section 5.01.070(g).

Need and Compatibility

The K.B. franchise will lower the volumes at CTRC and the St. Johns Landfill. Also, the system design called for in the Solid Waste Reduction Program will take some time to develop. Besides the time lost in waiting for the system design, this opportunity may be lost as well.

With the K.B. franchise and a high-grade modification of CTRC, two facilities would exist in the area to accept loads of predominantly fiber. The waste composition study indicates between 10,000 and 30,000 tons per year of cardboard and office paper are disposed from the region. If each facility can operate successfully, then the public will benefit by having two disposal locations in the region. In addition to paper and cardboard, K.B. will process other recyclables such as glass, metals, and plastic depending on markets. Presently there is no facility in the area providing full recycling services of mixed waste.

K.B. may be an important element in the solid waste disposal system if the Council adopts a policy of banning drop boxes at CTRC in order to reduce volumes at the transfer station and St. Johns. The facility would be an alternative disposal option for such loads, the waste composition study indicates. The study, performed by SCS Engineers, indicates nearly half of compacted drop box loads (44.7 percent at St. Johns and 49.4 percent at CTRC) and almost a third of loose drop box loads (35.5 percent at St. Johns and 27.2 percent at CTRC), based on the fall and winter sorts, are paper. If 50 percent of the paper is uncontaminated and can be high-graded, then a substantial portion of drop box loads may go to K.B. If K.B. receives 80 percent of processible paper formerly going to CTRC, and 5 percent formerly going to St. Johns, then the franchisee's expected tonnage increase will be:

	<u>Loose Drop Box</u>	<u>Compacted Drop Box</u>	<u>Total</u>
St. Johns	546	177	723
CTRC	<u>6,436</u>	<u>2,038</u>	<u>8,474</u>
Total	<u>6,982</u>	<u>2,215</u>	<u>9,197</u>

(If a partial ban is implemented, then the appropriate columns or rows should be considered rather than the total.)

Although the applicant projects processing 3,900 tons, he says his capacity is 17,000 tons per year based on 20 drop box loads per day, three tons per load.

At the 3,900 ton volume projected by the applicant and given the existing system of operating facilities, effects at other facilities will be minimal. The proposed franchise's service area is within the area served by CTRC. Staff projects the facility will reduce volumes at Metro's transfer station by roughly 3,900 tons per year, since the applicant will take waste formerly going almost exclusively to CTRC, and plans to take his residuals to the Riverbend Landfill in McMinnville. (Resolution No. 87-812 includes language, pursuant to Code Section 5.01.030(c), to allow the franchisee to dispose his residuals outside the District at his transfer facility in Canby or the Riverbend Landfill.) Other franchises in the region are not expected to be effected. OPRC attracts most of its loads from downtown, rather than the Clackamas area; East County Recycling and Killingsworth Fast Disposal service an overlap area where disposers might be attracted to K.B. also, but diversion to K.B. from those facilities is expected to be minimal because of K.B.'s focus on high-graded loads and the paucity of opportunity for collection of high-grade loads in that overlap area. The K.B. franchise could reduce volumes at the CTRC high-grade operation.

The term of the franchise is recommended to be five years. Metro Code Section 5.01.080 states the term of the franchise shall be the lesser of five years or the site longevity. The population served, existing franchise locations, probable use, and any other

since the area population is stable or increasing and no other franchises serve the immediate region.

Conformity with Regulatory Requirements

The operator understands the regulations imposed on franchises, and has been responsive in addressing all requirements. Neither owner is involved in the collection of solid waste in the District. The applicant secured public liability insurance, including automotive coverage, in the necessary amounts. The permit from DEQ has been approved and is included at the end of this report. A permit from the city of Milwaukie is unnecessary. Clackamas County has issued a permit with a condition limiting the volume at the facility. County personnel have indicated a condition limiting the maximum number of drop box loads is sufficient. The County restriction is higher than the operator's projected capacity and Metro staff's recommended limit before review, and thus is not itself binding on the operation.

The applicant has requested variances to several provisions of the franchising regulations, and those issues are discussed below.

VARIANCES

As indicated in the attached letter accompanying the franchise application, K.B. is requesting it be exempt from the following provisions of the Disposal Franchise Ordinance:

- | | | |
|---|----------------|-------------------------------------|
| - | 5.01.070(e)(2) | Corporate surety bond |
| - | 5.01.070(g) | Flow authority of solid waste |
| - | 5.01.120(b) | Prior notice to discontinue service |
| - | 5.01.180 | Rates |
| - | 5.01.190(e) | Divestiture of rights of franchisee |
| - | 5.01.200 | Right to condemn or purchase |

Code Section 5.01.110(a) allows variances if "strict compliance is inappropriate because of conditions beyond the control of person(s) requesting the variance;...or would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District." A discussion on each variance request follows.

Bond

The applicant has requested a variance from Metro Code Section 5.01.070(E2), which states a corporate surety bond is required. Resolution No. 86-672 adopts criteria for determining the amount of bond to be required, should Metro need to provide for continued operations or cleanup after closure, or in the event of failure to perform, by the franchisee. Using the method stipulated, no bond is required. The resolution details the calculation for funds needed to assure continued operation if needed and to provide for cleanup and maintenance. Continued operations would not be necessary. But Metro could conceivably be responsible for cleaning up a week's

worth of waste. The cost of projected cleanup is estimated to be \$7,500, including equipment rental, labor, haul and disposal of wastes, and administration. Since the figure is less than \$10,000, no bond is required and the franchisee need not pursue a variance request. If waste flows exceed projections though, a bond or other coverage may be required in the future.

Flow Authority

The applicant has requested a variance from Metro Code Section 5.01.070(g), which gives the Council the power to direct waste away from or to the franchisee. The purpose of the Metro flow authority is to assure adequate flows at franchised facilities throughout the region. It is thought unlikely that material would be diverted away from the facility since materials recovery is a high priority in the Solid Waste Management Plan. But staff recommends denial of this variance request to maintain its power to direct flows in the region.

Prior Notice

The franchisee has requested he be exempt from Metro Code Section 5.01.120(b), which states he may discontinue service only upon 90 days written notice to the District. The purpose of this requirement is to assure Metro that facilities providing service in areas where disposal options are limited will not be closed abruptly with little or no notice. Metro has the responsibility to assure all residents, businesses, and manufacturers have disposal options. Since Metro may implement a program to curtail the volume at the CTRC, K.B. may provide a vital service to the Clackamas area, a service which may require some time to replace if the franchisee were to halt or alter operations. Staff expects CTRC would absorb the flow from K.B. should K.B. interrupt operations, and prior notice would help the District minimize the impact on volume going to the landfill. Staff recommends denial of this request.

Rates

Although Metro Code Section 5.01.180 requires the Council to set rates for franchised facilities, the applicant is requesting a variance from that provision. He claims that his facility meets the variance guidelines because (1) he will be operating in a competitive environment; (2) disclosure of proprietary agreements as part of rate-setting would be detrimental to the business; and (3) the nature and complexity of the business makes rate-setting too inflexible. Detailed arguments are presented in the operator's attached application.

This variance has precedence with similar actions for Oregon Processing and Recovery Center, Sunflower Recycling, and East County Recycling franchises. A key factor in the applicant's successful operation will be to charge less than other disposal facilities in order to attract the volume he anticipates. The franchise agreement includes wording which requires the franchisee to charge no more than the fee at CTRC, unless he submits justification, and gains

Metro approval, for a higher fee. The District needs to ensure disposers are not required to pay inflated tipping fees if drop boxes are banned at CTRC and are forced to go to K.B. Staff recommends approval of this variance with the condition that the franchisee's rates will not exceed the rates at CTRC.

Staff proposes Metro reserve the right to impose rate authority at any time. There are two reasons for this recommendation. One, the District needs to ensure the public that franchisees don't disrupt the recycling or disposal systems by charging too much or too little. Two, information to be collected in the future from the applicant and other enterprises may indicate rate-setting should be considered.

Rights of Franchisee

Metro Code Section 5.01.190(e) states that if the franchise is revoked or not renewed, the District may require the owner to sell his interest to allow for the continued operation of the facility. The applicant requests a variance from this provision. This assurance has categorically been put into all franchise agreements, though for practical purposes it may never be exercised. Staff recommends this variance request be denied. The franchisee has the right, however, to a contested case hearing, as provided in Code Section 5.01.190(c), before any sale of property related to the franchise.

Right to Condemn or Purchase

Metro has the responsibility to the public to ensure adequate and reasonable disposal options exist in the region. If a facility is not serving the public adequately, one option Metro may exercise under Code Section 5.01.200, is to condemn or purchase property of the franchisee. The applicant is requesting Metro not retain the right of condemnation or purchase. But the District needs to protect itself against possible inadequacies of public service, and should keep its powers of remedy. Staff recommends denial of this variance request.

The applicants have the right to a contested case hearing pursuant to Metro Code Chapter 2.05 regarding any denied variance request.

Metro Fees

Processing centers formerly were required to pay User Fees and the Regional Transfer Charge, unless they were exempt by a variance. Ordinance No. 86-214 changed the Metro Code to exempt processing centers that accomplish materials recovery and recycling as a primary objective, from User Fees and the Regional Transfer Charge. K.B. fits those qualifications and would be exempt from such disposal charges.

Nevertheless, processing centers are not exempt from paying the User Fee, Regional Transfer Charge, or Landfill Siting Fee for residual wastes. The attached agreement contains language to require the operator to submit payment for the User Fee and Regional Transfer Charge. The Landfill Siting Fee is collected on waste disposed at Metro facilities, although the District is required to pay based on all waste in the region. But since the fee is not collected from disposers at non-Metro sites, staff recommends the operation be exempt from collecting the charge.

Recommendations

The Rate Review Committee recommends approval of the franchise request, and added that rates should be required to be less than or equal to the rates charged at CTRC. The Executive Officer recommends approval of the resolution.

SR/gl
7914C/513
10/26/87

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF GRANTING A	)	RESOLUTION NO. 87-812
FRANCHISE TO K. B. RECYCLING, INC.)	
FOR THE PURPOSE OF OPERATING A	)	Introduced by the
SOLID WASTE PROCESSING FACILITY	)	Executive Officer

WHEREAS, Section 5.01.030 of the Metropolitan Service District Code requires a Metro Franchise for any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility within the District; and

WHEREAS, K. B. Recycling, Inc. (K.B.) has applied for a non-exclusive franchise to operate a processing center at 8277 S. Deer Creek Lane, Milwaukie, Oregon; and

WHEREAS, K.B. has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans, except those relating to rate requests as discussed in the Staff Report; and

WHEREAS, K.B. has applied for a variance from Metro Code Section 5.01.080 relating to rate regulation pursuant to Metro Code Section 5.01.110; and

WHEREAS, K.B. has met the purpose and intent of Metro Code Section 5.01.180 and has met variance criterion (3) under Metro Code Section 5.01.110 as set out in its application for a variance from rate regulation; and

WHEREAS, The variance is granted subject to the District retaining the right to impose rate-setting authority at any time because the changeable nature of the proposed operation makes

impossible the determination that the criteria of the Metro Code will continue to be met; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District authorizes the District to enter into the attached Franchise Agreement with K. B. Recycling, Inc. within ten (10) days of the adoption of the Resolution.

2. That the requested rate regulation variance from the Metro Code is granted, but shall be reviewed by the Executive Officer one (1) year from the date of issuance of the Franchise. If, in the opinion of the Executive Officer, the variance warrants review it shall be reconsidered by the Council. The rates charged shall not exceed the rates at the Clackamas Transfer & Recycling Center without prior Metro approval.

3. That the franchisee be allowed to dispose of his residuals outside the District at the operator's transfer facility in Canby or the Riverbend Landfill. The franchisee agrees to pay the District the Metro User Fee and Regional Transfer Charge for all its residual waste disposed outside the District. Such fees are due with the required monthly disposal reports.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1987.

Richard Waker, Presiding Officer

SR/gl
7914C/513
10/26/87