

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A ) RESOLUTION NO. 08-3989  
VARIANCE REQUEST SUBMITTED BY )  
WASTE MANAGEMENT OF OREGON FOR )  
THE HILLSBORO LANDFILL ) Introduced by Chief Operating Officer  
) Michael J. Jordan, with the concurrence of  
) Council President David Bragdon

WHEREAS, on September 3, 2008, Metro received a request for a variance from Waste Management of Oregon ("WMO") for Hillsboro Landfill, a facility located outside the Metro Region, in which WMO seeks a variance from Metro Code Sections 5.05.030 (f) and (g);

WHEREAS, the Metro Council may apply Metro Code Section 5.01.110 to respond to a variance request made by a facility located outside the Metro Region;

WHEREAS, under Metro Code Section 5.01.110 the Metro Council may, upon recommendation by the Chief Operating Officer ("COO") within 60 days after the receipt of the variance request, grant a variance from specific requirements of the Metro Code if the Council finds that the purpose and intent of the particular requirement can be achieved without compliance and that compliance with the particular requirement (1) is inappropriate because of conditions beyond the control of the applicant; or (2) due to special physical conditions or causes, will be rendered extremely burdensome or highly impractical;

WHEREAS, on October 9, 2008, the COO submitted to the Metro Council a timely recommendation to grant WMO's request for a variance with conditions;

WHEREAS, based on the COO's investigation and recommendation, the Metro Council finds that the purpose and intent of Metro Code Sections 5.05.030(f) and (g) can be achieved if the Council grants WMO's request for a variance;

WHEREAS, based on the COO's investigation and recommendation, the Metro Council finds that compliance with Metro Code Sections 5.05.030(f) and (g) is inappropriate because of conditions beyond the control of WMO;

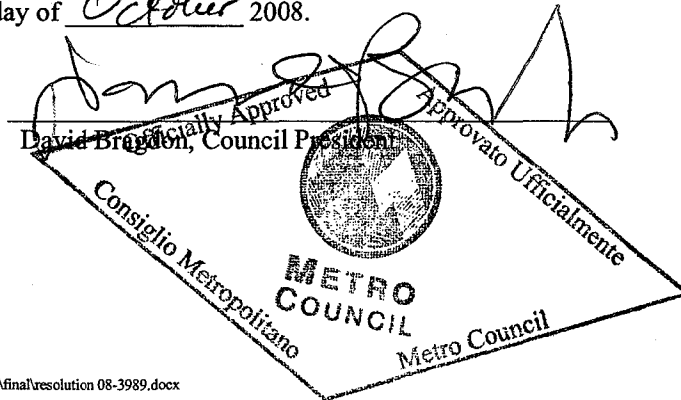
WHEREAS, based on the COO's investigation and recommendation, the Metro Council finds that the conditions recommended by the COO are necessary to protect public health, safety, and welfare; now therefore

BE IT RESOLVED that the Metro Council hereby grants Hillsboro's request for a variance from Metro Code Sections 5.05.030(f) and (g) based on the conditions recommended by the COO as referred to in Exhibit A attached hereto to this resolution.

ADOPTED by the Metro Council this 3rd day of October 2008.

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



Resolution No. 08-3989

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OMA/DBC/MAB/sm 10/9/08

## M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
 TEL 503 797 1530 | FAX 503 797 1792



TO: Metro Council President David Bragdon  
 Metro Councilors:  
     Carl Hosticka      Carlotta Collette      Kathryn Harrington  
     Rex Burkholder      Robert Liberty      Rod Park

FROM: Michael J. Jordan, Chief Operating Officer

DATE: October 9, 2008

RE: Recommendation for Resolution No. 08-3989, For the Purpose of Granting a  
 Variance to Waste Management of Oregon for the Hillsboro Landfill

To Metro Council President and Councilors:

In Resolution No. 08-3989, the Metro Council will decide whether to grant to Waste Management of Oregon (“WMO”) a variance from certain provisions of the Metro Code for the Hillsboro Landfill, a designated facility of the system located outside the Metro Region. For the reasons set forth below, I recommend that the Metro Council grant WMO’s request for variance for the time period beginning January 1, 2009 through June 30, 2009. I further recommend that the Metro Council include conditions in granting the variance. I base my recommendation on the staff report for Resolution No. 08-3989 and all attachments to that document.

## I. Background

The Metro Code describes the designated facilities of the system.<sup>1</sup> The Hillsboro Landfill, a limited purpose landfill located outside the Metro Region in Hillsboro, Oregon and owned by WMO, is a designated facility of the system.<sup>2</sup> Metro and WMO have entered into a designated facility agreement (“DFA”) in which the Hillsboro Landfill receives certain types of solid waste generated in the Metro Region and agrees to collect and remit Regional System Fee and Excise Tax on that waste.<sup>3</sup>

In 2007, the Metro Council amended the Metro Code to require existing designated facilities, including the Hillsboro Landfill, to notify Metro of its intent to seek an agreement to recover non-putrescible waste from the Metro Region or to take only processed non-putrescible waste from authorized facilities. The Chief Operating Officer (“COO”) must modify existing DFAs to ensure substantial compliance with these requirements by December 31, 2008. If the COO and a designated facility are unable to reach an agreement by November 1, 2008, the COO must terminate the existing DFA no later than December 31, 2008.<sup>4</sup>

In June 2008, WMO certified its intent to operate Tualatin Valley Waste Recovery (“TVWR”), a new material recovery facility (“MRF”) that is not yet constructed, at the location of the Hillsboro Landfill.<sup>5</sup>

<sup>1</sup> Metro Code Section 5.05.030.

<sup>2</sup> Metro Code Section 5.05.030(a)(5).

<sup>3</sup> Metro Code Section 5.05.030(a)(5) & (c); Metro Contract No. 902858.

<sup>4</sup> Metro Code Section 5.05.030(c). This code change is part of the Enhanced Dry Waste Recovery Program (“EDWRP”). See Ordinance No. 07-1147B.

<sup>5</sup> WMO Certificate of Intent.

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WMO also certified that the Hillsboro Landfill, operating as an entity separate from TVWR, would accept only processing residual. On September 25, 2008, the Metro Council adopted Ordinance No. 08-1195, For the Purpose of Amending Metro Code Chapter 5.05 to Include Tualatin Valley Waste Recovery on the List of Designated Facilities. On the effective date of the ordinance, TVWR will become a designated facility of the system.

On September 3, 2008, Metro received WMO's request for a variance. According to the request, WMO seeks a six-month variance from (1) Metro Code Section 5.01.125(c), which includes a requirement for processing of dry waste to a 15 percent performance standard beginning January 1, 2009; and (2) Metro Code Section 5.05.030(g), which provides that a DFA authorizing a facility to accept unprocessed dry waste shall require material recovery that substantially complies with the performance standards applicable to facilities located in the Metro Region.<sup>6</sup> Granting this variance would allow WMO to receive unprocessed dry waste at the Hillsboro Landfill and would relieve WMO of the requirement to perform material recovery on that waste.

## **II. Variance Analysis**

### **A. Introduction**

The Metro Code does not contain a provision for a facility located outside of the Metro Region to seek a variance from the requirements of Metro Code Chapter 5.05. This analysis therefore is based on the provisions of Metro Code Chapter 5.01, which provides a procedure for facilities inside the Metro Region to seek such a variance.<sup>7</sup> As set forth below, I recommend granting WMO's request for a variance because (1) the purpose and intent of the Metro Code requirements can be achieved if the Metro Council grants the variance; and (2) WMO's immediate compliance with the Metro Code is inappropriate because of conditions beyond WMO's control. I further recommend that the Metro Council place conditions on the granting of the variance to protect the public health, safety, and welfare.

### **B. Variance Request**

WMO seeks a variance from Metro Code Sections 5.01.125(c) and 5.05.030(g). Based on what WMO is asking the Metro Council to do, however, WMO is in fact seeking a variance from Metro Code Sections 5.05.030(f) and (g). An analysis of compliance with Metro Code Section 5.01.125 is necessary to determine whether WMO can meet the purpose and intent of Metro Code Section 5.05.030(g). Accordingly, while the specific variance will be from Metro Code Sections 5.05.030(f) and (g), this memorandum includes references to Metro Code Section 5.01.125.

### **C. Description of Relevant Code Provisions**

#### **(1) Metro Code Section 5.01.110 - Variances**

As set forth above, because the Metro Code does not include a process for facilities outside of the Metro Region to seek a variance from the Metro Code, interested facilities were advised that the Metro Council would apply the variance test set forth in Metro Code Section 5.01.110. That Section provides that the Metro Council, upon recommendation from the COO, may grant specific variances from particular requirements of the Metro Code.<sup>8</sup> A variance applicant must state in writing the facts in a concise manner

<sup>6</sup> Variance Request, p. 2.

<sup>7</sup> Metro Code Section 5.01.110.

<sup>8</sup> Metro Code Section 5.01.110(a). The specific code language refers to variances from the requirements of Metro Code Chapter 5.01 but the Metro Council will consider WMO's request for a variance from certain sections of Chapter 5.05.

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to establish why the Metro Council should grant the variance. The COO may investigate as necessary and shall make a recommendation to the Metro Council to approve or deny the request within 60 days after the receipt of the variance.<sup>9</sup> Metro received WMO's request for variance on September 3, 2008; accordingly, this recommendation is timely.

The Metro Council may grant a variance if (1) the Metro Council finds that the purpose and intent of the requirement can be achieved without compliance; and (2) compliance with the particular requirement (a) is inappropriate because of conditions beyond the control of the applicant or (b) is extremely burdensome or highly impractical because of special conditions or causes.<sup>10</sup> The Metro Council may grant the request subject to any conditions necessary to protect public health, safety, and welfare.<sup>11</sup>

## **(2) Metro Code Section 5.05.030 – Designated Facilities of the System**

Metro Code Section 5.05.030 contains provisions relevant to the designated facilities of the system, including those located outside the Metro Region. Most relevant to this analysis are Metro Code Sections 5.05.030 (f) and (g) because these are the provisions from which WMO seeks a variance. As set forth in more detail below, Metro Code Section 5.05.030(f) contains requirements for material recovery on non-putrescible waste that must be included in DFAs after December 31, 2008. Metro Code Section 5.05.030(g) contains requirements for out-of-region designated facilities authorized to accept unprocessed non-putrescible waste.

Under Metro Code Section 5.05.030(f), a DFA between Metro and an out-of-region facility shall not authorize the facility to accept non-putrescible waste generated within the Metro Region after December 31, 2008 unless (1) the waste is received from a Metro Region licensee or franchisee authorized to perform material recovery on non-putrescible waste; (2) the waste is received from a facility outside the Metro Region that is authorized, under a DFA with Metro, to perform material recovery on non-putrescible waste; or (3) the facility has entered into an agreement with Metro authorizing the facility to perform material recovery on non-putrescible waste.

Under Metro Code Section 5.05.030(g), a DFA between Metro and an out-of-region facility that, after December 31, 2008, authorizes the facility to accept unprocessed non-putrescible waste from the Metro Region shall (1) require the facility to perform material recovery on the waste; (2) demonstrate that the material processing achieves material recovery substantially comparable to that required of in-region material recovery facilities; and (3) demonstrate that the facility substantially complies with the performance standards contained in Metro Code Sections 5.05.067(i) and 5.01.075(c) and the performance standards, design requirements, and operating requirements applicable to in-region facilities and adopted by Metro as administrative procedures pursuant to Metro Code Section 5.01.132.

## **(3) Metro Code Section 5.01.125 – Obligations and Limits for Selected Types of Activities**

Metro Code Section 5.01.125 contains certain requirements for facilities located inside the Metro Region. This provision is relevant to WMO's request because Metro Code Section 5.05.030(g) requires substantial

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<sup>9</sup> Metro Code Section 5.01.110(b).

<sup>10</sup> Because the variance code language is directed at facilities inside the Metro Region, Metro Code Section 5.01.110(a) refers to the purpose and intent of a particular *license or franchise requirement*. The Metro Council is applying this language to an out-of-region facility; therefore the Metro Council will consider the purpose and intent of the particular *code requirement*.

<sup>11</sup> Metro Code Section 5.01.110(a).

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compliance with this section for out-of-region facilities, such as Hillsboro Landfill, that seek authorization to accept unprocessed non-putrescible waste. In particular, Metro Code Section 5.01.125 provides that effective January 1, 2009, facilities shall process non-putrescible waste and that the processing residual shall not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size and metal pieces greater than 8 inches.

**D. Analysis of Variance Request**

**(1) The Purpose and Intent of the Requirement Can be Achieved Without Timely Compliance with Metro Code Sections 5.05.030(f) and (g).**

The Metro Council first considers whether the purpose and intent of the requirement can be achieved if the Metro Council grants the variance. I recommend that the Metro Council find that the purpose and intent of Metro Code Sections 5.05.030(f) and (g) can be achieved without compliance.

*a. The Purpose and Intent of Metro Code Sections 5.05.030(f) and (g) and the Enhanced Dry Waste Recovery Program*

A review of the plain language of the Metro Code requirements from which WMO seeks a variance is the first step in discerning the purpose and intent of the requirements. These code provisions are a part of the Enhanced Dry Waste Recovery Program (“EDWRP”).<sup>12</sup> Accordingly, when determining whether WMO can meet the purpose and intent factor, it is appropriate to consider both the individual code provisions for which a variance is sought, any related code provisions, and the EDWRP legislative history, including the ordinance recitals and staff report.

The plain language of the relevant code sections establishes that the purpose and intent of EDWRP is to increase recovery of dry waste beginning January 1, 2009.<sup>13</sup> As a general matter, one purpose of Metro Code Chapter 5.05 is “to reduce the volume of Solid Waste disposal through . . . resource recovery.”<sup>14</sup> More specifically, Metro Code Section 5.05.030(f) requires that after December 31, 2008, a DFA must either require the facility to accept processing residual or include provisions requiring material recovery.<sup>15</sup> Metro Code Section 5.05.030(g) also addresses material recovery. Similarly, Metro Code Section 5.01.125(c) (1) provides that effective January 1, 2009, certain types of non-putrescible waste must be processed to achieve a 15 percent performance standard.

The legislative history of EDWRP also includes relevant information on the purpose and intent of EDWRP.<sup>16</sup> The ordinance recitals include a goal for the Metro Region to recover 33,000 additional tons of dry waste per year from EDWRP’s processing requirement. The staff report refers to diversion of unprocessed dry waste currently disposed at Hillsboro and Lakeside Landfills as a method for increasing recovery. The recitals suggest, and the staff report states,<sup>17</sup> the intent to provide additional time after January 1, 2009, for facilities to meet the 15 percent performance standard. These recitals also suggest the intent to assure competition in the processing industry.

<sup>12</sup> Ordinance No. 07-1147B.

<sup>13</sup> Metro Code Sections 5.01.125(c)(1), 5.05.030(c), (f).

<sup>14</sup> Metro Code Section 5.05.015(c).

<sup>15</sup> Metro Code Section 5.05.030(g) contains the specific material recovery requirements.

<sup>16</sup> Ordinance No. 07-1147B.

<sup>17</sup> The staff report attached to Ordinance No. 07-1147B is dated April 26, 2007, and refers to the earlier version of the legislation. The Metro Council adopted the EDWRP legislation months later, with changes not noted in the staff report. While the staff report does not track the changes made to the final code language, it still provides some insight for the purpose and intent of the legislation.

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Based on the provisions above, the intent of EDWRP is to ensure processing of non-putrescible waste before disposal. While the Metro Code does not specify additional time to meet the performance standard, the ordinance recitals and staff report suggest the intent to require processing on January 1, 2009, and to allow facilities time to meet the 15 percent processing residual performance standard. This is consistent with the purpose of additional recovery.

*b. The Purpose and Intent of the Specific Code Provisions and EDWRP Can be Achieved if the Metro Council Grants the Variance*

WMO states that it is building a MRF at the site of the Hillsboro Landfill to meet EDWRP's processing requirement.<sup>18</sup> WMO contends generally that it can achieve the purpose and intent of EDWRP by July 1, 2009, when the MRF is scheduled for completion. Specifically, WMO maintains (1) the ordinance recitals reference compliance by July 1, 2009, as a goal of EDWRP and thus granting a variance until that date comports with this goal; (2) the ordinance recitals reference the intent for the processing of all dry waste from the Metro Region and the increase of competition in the processing industry as goals of EDWRP. WMO further maintains that TVWR will assist Metro in achieving those goals.<sup>19</sup>

As a preliminary matter, WMO's analysis of the timing of EDWRP is incorrect. The plain language of the code from which WMO seeks a variance requires processing of dry waste as of January 1, 2009. Nevertheless, I recommend that the Metro Council find that the purpose and intent of the specific code provisions and EDWRP, which in general is additional recovery of dry waste, can be achieved without compliance for the reasons set forth in the staff report, including without limitation:

- WMO is constructing a new LEED Certified 68,000 square foot MRF that will substantially comply with Metro's material recovery requirements, performance goals, and performance standards
- The operation of TVWR will increase recovery of non-putrescible waste from the Metro Region by 20,000 to 48,000 tons
- TVWR will help Metro move toward the goal of an additional 33,000 tons per year of recovered dry waste

If the Metro Council finds that the purpose and intent of code provisions cannot be achieved without compliance, it must deny WMO's request for a variance.<sup>20</sup> If the Metro Council finds that the purpose and intent can be achieved without compliance by WMO, the Metro Council must next consider whether timely compliance is inappropriate because of conditions beyond the control of WMO.

**(2) Timely Compliance with EDWRP is Inappropriate Because of Conditions Beyond the Control of WMO**

WMO maintains that timely compliance with Metro Code by January 1, 2009 is inappropriate because of conditions beyond its control. Those conditions include WMO's claim that it has "diligently pursued" the necessary land use and building permits for development of the MRF but, because of the complex nature of these matters, the authorization is taking longer than expected.<sup>21</sup> WMO included a timeline to support

<sup>18</sup> Variance Request p. 1.

<sup>19</sup> Variance Request p. 4.

<sup>20</sup> Metro Code Section 5.01.110 (a) (the Council may grant a variance if the Council finds that the purpose and intent of the requirement can be achieved without compliance).

<sup>21</sup> Variance request p. 4.

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its claim that matters beyond WMO's control have rendered compliance inappropriate.<sup>22</sup> I recommend that the Metro Council find that immediate compliance with Metro Code Sections 5.05.030(f) and (g) is inappropriate because of its conditions beyond WMO's control for the reasons set forth in the staff report, including without limitation that the delays in the land use approval process for TVWR are beyond the control of WMO.

### **(3) Conditions for the Approval of the Variance Request**

The Metro Council may include conditions on the approval of the request as necessary to protect the public health, safety, and welfare. I recommend that the Metro Council find that the following conditions to the variance are necessary:

- WMO shall present a plan to the COO by November 15, 2008, that describes how WMO will (1) identify loads that contain significant amounts of recoverable materials; and (2) describe how WMO will recover those materials
- Effective January 1, 2009, WMO shall conduct recovery on non-putrescible Metro Region waste loads that contain a significant amount of wood, metal, and cardboard
- WMO shall provide Metro with regular monthly progress reports on the construction of TVWR at the Hillsboro Landfill

### **III. Conclusion**

Pursuant to Metro Code Section 5.01.110, I recommend that the Metro Council grant WMO's request for variance from Metro Code Section 5.05.030(f) and (g) for the time period beginning January 1, 2009 through June 30, 2009. Beginning July 1, 2009, WMO shall comply with all applicable provisions of the Metro Code. I further recommend that the Metro Council include conditions in granting the variance. If Council adopts this recommendation and grants the variance, the terms of the variance will be incorporated into the DFA between Metro and WMO for the Hillsboro Landfill.

MJJ/MAB/DBC/sm

cc: Scott Robinson, Deputy Chief Operating Officer

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<sup>22</sup> Variance request p. 3.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 08-3989, FOR THE PURPOSE OF GRANTING A VARIANCE REQUEST SUBMITTED BY WASTE MANAGEMENT OF OREGON FOR THE HILLSBORO LANDFILL

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Date: October 9, 2008

Prepared by: Bill Metzler

If approved by the Metro Council, Resolution No. 08-3989, would grant a variance, with conditions, from the provisions of Metro Code Section 5.05.030(f) and (g) to Waste Management of Oregon (WMO) for the Metro Designated Facility Agreement (DFA) with the Hillsboro Landfill (Contract No. 902858). If approved, the variance would be granted for a six-month time period beginning January 1, 2009 through June 30, 2009.

In its variance application, WMO requests that the Metro Council allow Hillsboro Landfill to continue accepting unprocessed non-putrescible waste for disposal until on or about July 1, 2009, when a new material recovery facility (MRF) is constructed and operating at the Hillsboro Landfill.

## BACKGROUND

### Introduction

WMO is the owner and operator of the Hillsboro Landfill located at 3205 SE Minter Bridge Road, Oregon (Washington County). The Hillsboro Landfill has been a Metro designated facility with a DFA since 1993.<sup>1</sup> On September 2, 2008, WMO submitted a request for a variance (**Attachment 1**). In its variance request, WMO states that it is seeking a variance from specific provisions of the Enhanced Dry Waste Recovery Program (EDWRP) established in Metro Code, including Section 5.01.125(c)(1) requiring processing of dry waste to begin January 1, 2009, and Section 5.05.030(g) requiring DFAs for facilities accepting unprocessed non-putrescible waste to perform material recovery and meet certain standards after December 31, 2008.

As an initial matter, the variance request submitted by WMO cites a specific EDWRP related provision in Metro Code Chapter 5.01.<sup>2</sup> However, it is in fact, Chapter 5.05 – Solid Waste Flow Control, which governs the EDWRP related provisions applicable to designated facilities and DFAs. There are, however, specific EDWRP provisions in Metro Code Chapter 5.05 that make direct reference to the EDWRP specific MRF requirements in Chapter 5.01 (e.g., minimum material recovery requirements, MRF performance goals, and MRF performance standards and design requirements adopted by Metro as administrative procedures).

Consequently, the specific WMO variance request that references Metro Code Chapter 5.01 is understood by staff to express WMO's intent to seek a variance from the applicable EDWRP related provisions in Metro Code Chapter 5.05. More specifically, the provisions in Section 5.05.030(f) and (g) that require, after December 31, 2008, a DFA with the Hillsboro Landfill to either: 1) only take processed non-

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<sup>1</sup> Additionally, in 1978 Metro issued the Hillsboro Landfill, under different ownership, a Solid Waste Disposal Site Certificate (Certificate No. DS-007).

<sup>2</sup> Metro Code Chapter 5.01- Solid Waste Facility Regulation governs the regulation of solid waste disposal sites and solid waste facilities within Metro.



putrescible waste from authorized facilities, or 2) perform material recovery on unprocessed non-putrescible waste from the Metro region and meet all applicable recovery standards and MRF facility requirements in Chapter 5.01.<sup>3</sup>

The EDWRP provisions, established in Metro Code Chapter 5.05, require existing DFAs for facilities accepting non-putrescible waste, such as the Hillsboro Landfill, be amended so that they are in substantial compliance with all applicable EDWRP provisions after December 31, 2008. Further, Chapter 5.05 requires the Chief Operating Officer (COO) to establish such a DFA by November 1, 2008, or the COO will begin procedures to terminate the agreement.<sup>4</sup>

#### Summary of EDWRP-Specific Provisions in Metro Code Chapter 5.05

On August 16, 2007, in an effort to increase the recovery of solid waste, the Metro Council approved Ordinance No. 07-1147B adopting the Enhanced Dry Waste Recovery Program (EDWRP) (**Attachment 2**). The EDWRP provisions that are applicable to DFAs are established in Metro Code Chapter 5.05. In summary, these key EDWRP provisions are as follows:

- ❑ Effective July 1, 2008, an existing designated facility authorized to receive non-putrescible waste shall notify Metro of its intent to seek an agreement to recover non-putrescible waste from the Metro region or to only take processed non-putrescible waste from authorized facilities. The COO must modify existing DFAs to ensure substantial compliance with these requirements by December 31, 2008. If the COO and a designated facility are unable to reach an agreement by November 1, 2008, the COO must terminate the existing DFA no later than December 31, 2008.<sup>5</sup>
- ❑ After December 31, 2008, a DFA shall not authorize a facility to accept non-putrescible waste generated in the Metro region unless it is received from a facility authorized to perform material recovery.<sup>6</sup>
- ❑ After December 31, 2008, a DFA authorizing a facility to accept non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries must<sup>7</sup>:
  - 1) Require the facility to perform material recovery,
  - 2) Demonstrate that it can substantially achieve the minimum material recovery rate specified in Metro Code Section 5.01.125, and
  - 3) Demonstrate that it complies with the performance goals in Metro Code Section 5.01.067(i) and 5.01.075(c), and the performance standards, design requirements and operating requirements set forth in administrative procedures pursuant to Metro Code Section 5.01.132 (i.e., the “MRF standards”).

On June 23, 2008, in accordance with Metro Code Section 5.05.030(c), WMO certified its intent to process non-putrescible waste prior to disposal at Hillsboro Landfill and seek a DFA for the proposed MRF, also located at the Hillsboro Landfill (**Attachment 3**). The Hillsboro Landfill MRF is also known as Tualatin Valley Waste Recovery (TVWR). The Metro Council listed TVWR as a designated facility

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<sup>3</sup> Metro Code Section 5.05.030(f), and (g).

<sup>4</sup> Metro Code Section 5.05.030(c).

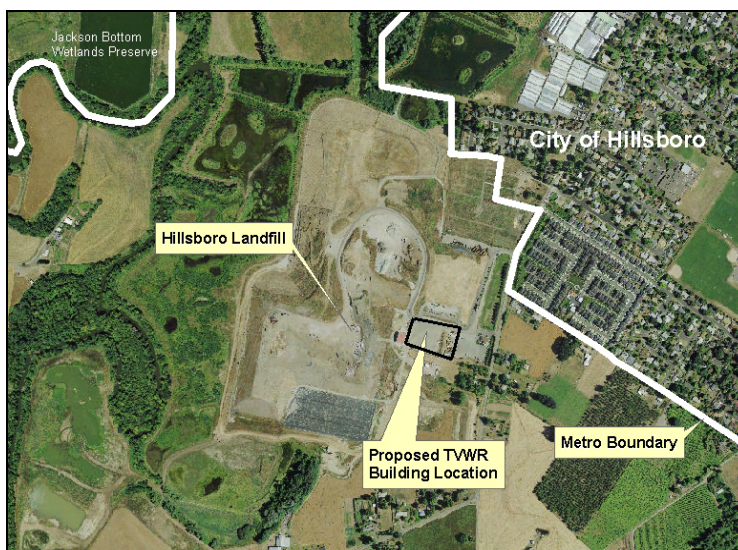
<sup>5</sup> Ibid.

<sup>6</sup> Metro Code Section 5.05.030(f).

<sup>7</sup> Metro Code Section 5.05.030(g).

on September 25, 2008 via Ordinance No. 08-1195 (**Attachment 4**). The COO will enter into a DFA with WMO for both TVWR and the Hillsboro Landfill.

WMO is seeking a variance beginning January 1, 2009 and ending July 1, 2009, from the EDWRP-specific provisions in Metro Code Section 5.05.030(f) and (g) that, after December 31, 2008, requires the DFA with the Hillsboro Landfill to either: 1) only take processed non-putrescible waste from authorized facilities, or 2) perform material recovery on non-putrescible waste from the Metro region and meet the applicable facility standards.<sup>8</sup>



The Hillsboro Landfill, the proposed TVWR building site location, and the Metro Boundary (air photo).

The Hillsboro Landfill accepts non-putrescible waste, and other specified wastes, from the Metro region under authority of its Metro DFA (Contract No. 902858). In 2007, the Hillsboro Landfill received approximately 279,000 tons of waste from the Metro region.<sup>9</sup>

#### Brief Description of the Variance Request

On September 2, 2008, Waste Management of Oregon, Inc. (WMO) submitted a request for a variance for the Hillsboro Landfill that seeks to temporarily delay, until July 1, 2009, implementation of EDWRP until its proposed MRF is built and operational by July 1, 2009. The variance request would allow the Hillsboro Landfill to continue to accept unprocessed dry waste from the Metro area for this additional period of time.

WMO states that shortly after Council adoption of the EDWRP ordinance it began the process of budget approval, designing and permitting for a new 68,000 square foot MRF at its Hillsboro Landfill to meet the EDWRP requirements. In addition, WMO states that the proposed MRF will be certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standards as a gold certified building.

<sup>8</sup> Metro Code Section 5.05.030(f) and (g).

<sup>9</sup> Of the 279,000 tons received in 2007 from the Metro region, 83,000 tons were unprocessed dry waste, 11,000 tons were dry processing residual, 128,000 tons were PCS/EUC waste, 54,000 tons were Special waste, and 3,000 tons were tire residual waste.

WMO states that the complex nature of the proposed MRF and land use process has resulted in a lengthy and unanticipated permit authorization timeframe. The Washington County Department of Land Use & Transportation issued approval of a Type I procedure on August 19, 2008 (**Attachment 5**). According to the permit, the purpose of the Type I procedure was for a “Commencement of Development.” On October 28, 2003 Washington County approved the expansion of the landfill as a Special Use and Development Review, which included the enlargement of the landfill area, and the addition of a MRF to sort recyclables. However, WMO claims that in order to meet Metro’s adopted EDWRP provisions, the MRF design that was submitted changed from a 22,000 square foot<sup>10</sup> covered open-sided metal building to a fully enclosed 64,800 square foot covered and enclosed building. According to the Type I decision staff report, due to the modifications of the building size and design by WMO, a “Modification of Condition” was required, and that application was processed by Washington County as a Type II procedure.

According to the Washington County decision, the MRF is considered an accessory use to the solid waste landfill. Development review of an accessory use is a Type II decision, and discretion is involved in determining compliance with the approval criteria. The Washington County Department of Land Use & Transportation issued WMO an approval with conditions for a Type II procedure on September 4, 2008 (**Attachment 6**). The purpose of the Type II procedure was for a “Request for a Modification / Removal of Conditions.” According to the WMO variance request, as a result of the unanticipated delays, the proposed MRF will not likely be constructed and operational until about July 1, 2009.

WMO requests the Metro Council to approve its variance request because the purpose and intent of EDWRP can be achieved by WMO’s compliance with the EDWRP specific provisions in Metro Code Chapter 5.05 by July 1, 2009. WMO further states, that because of a protracted permit authorization process and the resulting delay in construction, compliance with EDWRP by January 1, 2009 is both: 1) inappropriate because of conditions beyond its control, and 2) such compliance would be rendered extremely burdensome due to special physical conditions or causes.

## **ANALYSIS OF VARIANCE REQUEST**

### Applicable Requirements for Granting a Variance

The conditions for granting a variance are set forth in Metro Code Section 5.01.110, with relevant sections replicated below in italics.

#### *5.01.110 Variances*

*a) The Council, upon recommendation of the Chief Operating Officer, may grant specific variances from particular requirements of this chapter to applicants for Licenses or Franchises or to Licensees or Franchisees upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular License or Franchise requirement can be achieved without compliance and that compliance with the particular requirement:*

- (1) Is inappropriate because of conditions beyond the control of the applicant, or licensee requesting the variance; or*
- (2) Due to special physical conditions or causes, will be rendered extremely burdensome or highly impractical.*

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<sup>10</sup> The Type II decision states the original building was a “16,000 square foot, three-sided pole building”.

*b) A variance must be requested by a License or Franchise applicant, or a Licensee or Franchisee, in writing and state in a concise manner facts to show cause why such variance should be granted. The Chief Operating Officer may make such investigation as the Chief Operating Officer deems necessary and shall make a recommendation to the Council to approve or deny the variance coincident with any recommendation made on approval or denial of any License or Franchise application; or, upon a request for variance from an existing Licensee or Franchisee, within 60 days after receipt of the variance request.*

**Required Findings.** The Council may grant a variance if it finds the applicant meets the factors described in Section 5.01.110(a). Section 5.01.110 sets forth a two-part test, with both parts of the test being necessary to grant a variance.

**Part 1 of the variance test is set forth in Section 5.01.110(a) of the Code and states that the Council may:**

*“...grant specific variances from particular requirements of this chapter...if the Council finds that the purpose and intent of the particular License or Franchise requirement can be achieved without compliance...”*

The applicant’s variance request meets this condition, because WMO will meet the purpose and intent of EDWRP starting January 1, 2009. Further, WMO will comply with EDWRP provisions set forth in Chapter 5.05 of the Metro Code by July 1, 2009.

As provided in Ordinance No. 07-1147B, the staff report and Metro Code Chapters 5.01 and 5.05, the purpose and intent of EDWRP is, starting on January 1, 2009, to begin achieving higher recovery levels. Such recovery should achieve at least 33,000 tons per year of new recovery from limited purpose landfills i.e. Hillsboro Landfill and Lakeside Landfill. Metro is accountable for meeting the state-mandated 2009 waste reduction goal for the tri-county region and recovery of additional non-putrescible waste is a key component of reaching the 64% goal.<sup>11</sup> The 33,000 tons per year of new recovery would come from the unprocessed non-putrescible waste currently being disposed at the Hillsboro and Lakeside Reclamation landfills. Further, EDWRP establishes a new standard for measuring material recovery that is based on the amount and size of recoverables remaining in the residual after processing has occurred.<sup>12</sup>

Notwithstanding, the EDWRP effective date of January 1, 2009 as set forth in Metro Code Chapter 5.05 for DFAs, in adopting EDWRP, the Metro Council stated the following goal: *“Whereas, by July 1, 2009 it is the intent of the Metro Council that all dry waste originating from the Metro region be subject to processing for material recovery and to ensure competition in the Metro region’s dry waste processing industry”* (Ordinance No. 07-1147B, recital number seven). This recital reflects a Council goal to provide a six-month period, from January 1, 2009 to July 1, 2009, in which the Metro region moves toward recovery of all dry waste with the expectation that between January and July facilities will work toward meeting the 15% performance standard.

In its variance request, WMO states that upon adoption of EDWRP by the Metro Council in August 2007, it has diligently pursued the necessary local land use and building permits so that it can construct its MRF at the Hillsboro Landfill. WMO contends that it will have its new TVWR Hillsboro Landfill MRF constructed and operating by about July 1, 2009 instead of January 1, 2009. Therefore, WMO argues that

<sup>11</sup> The Recovery Rate for the Metro Region in 2007, as reported by the DEQ, was 55.3%. According to the DEQ report, in 2006 it was 55.6%, in 2005 it was 58.6%, and in 2004 it was 57%.

<sup>12</sup> Metro Code Section 5.01.125(c)(1).

the non-putrescible waste delivered to the Hillsboro Landfill will go to the new TVWR MRF to be subjected to processing for material recovery, thereby ultimately meeting the July 1, 2009 goal as stated by the Council recital in adopting the EDWRP ordinance (recital number seven). Finally, the applicant states that its new MRF at the Hillsboro Landfill will help ensure competition in the dry waste processing industry, also a stated goal by the Council in adopting the EDWRP ordinance.

In accordance with the purpose and intent of EDWRP, the proposed new 68,000 square foot TVWR MRF at the Hillsboro Landfill will result in an increase of new recovery from non-putrescible waste that was previously landfilled. In its application seeking designated facility status, WMO has indicated that the proposed TVWR MRF will ultimately process approximately 160,000 tons per year of non-putrescible waste that will result in 48,000 tons per year of additional recovered material (equivalent to a 30% recovery rate). This exceeds the EDWRP goal to recover an additional 33,000 tons per year. Further, WMO states that the proposed MRF will be certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standards as a gold certified building – which exceeds Metro's current MRF facility standards.

The DFA with WMO for TVWR will contain terms and conditions that ensure compliance with the EDWRP provisions in Metro Code Chapter 5.05 on or before July 1, 2009. For example:

- The TVWR MRF will be required to perform recovery (processing) on non-putrescible waste.
- Such processing shall achieve a material recovery rate substantially comparable to that required of in-region material recovery facilities i.e., the processing residual standard for wood, cardboard and metal (Metro Code Section 5.01.125).
- The TVWR MRF will substantially comply with the performance goals in Metro Code Section 5.01.067(i) and 5.01.075(c). These performance goals address: 1) environment, 2) health and safety, 3) nuisances, 4) material recovery, 5) reloading, and 6) record keeping.
- The TVWR MRF will substantially comply with the performance standards, design requirements, and operating requirements applicable to licensed and franchised MRFs operating within the Metro region. On May 9, 2007 these standards were adopted as administrative procedures pursuant to Metro Code Section 5.01.132.

Based on the information contained in the record, staff finds that WMO will be meeting the purpose and intent of EDWRP, by January 1, 2009 and WMO will meet the Chapter 5.05 Code requirements for EDWRP by July 1, 2009. Therefore, the Metro Council should find that WMO has met Part 1 of the variance test.

**Part 2 of the variance test requires the applicant to meet only one of the two conditions as set forth in Section 5.01.110(a)(1) and (2):**

*“...and that compliance with the particular requirement:*

- (1) Is inappropriate because of conditions beyond the control of the applicant, or licensee requesting the variance; or*
- (2) Due to special physical conditions or causes, will be rendered extremely burdensome or highly impractical.”*

The applicant has provided evidence that compliance with the EDWRP provisions set forth in Metro Code Section 5.05.030(f) and (g) on January 1, 2009 is inappropriate because of conditions beyond its

control. WMO maintains that it has diligently pursued the development of its new TVWR MRF at the Hillsboro Landfill. In brief summary, WMO's variance request states:

- It received initial land use approval to build a MRF at the Hillsboro Landfill in October 2003. WMO states that immediately following the adoption of EDWRP, WMO engaged in a budgeting process in the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2007 with its corporate parent in Houston, Texas to obtain authorization and capitol to develop the MRF.
- In early 2008, WMO states that it was engaged in the process of coordination with local permitting agencies, architects, and contractors to build the MRF.
- In April 2008, WMO states that Washington County planning staff indicated to WMO that a Type I land use permit would be needed to build the MRF. That same month, WMO states it submitted a Type I land use permit to Washington County, as requested. The Type I procedure was approved on August 19, 2008 (see Attachment 5).
- In June 2008, WMO states that Washington County required a Type II land use permit in order to obtain authorization for the MRF development.
- In July 2008, WMO states that it submitted the Type II application as required.
- In July 2008 WMO states that it submitted the final building plans to Washington County building department to support issuance of a building permit.
- On September 4, 2008, the Washington County Department of Land Use & Transportation issued WMO an approval with conditions for a Type II procedure to develop its MRF (see Attachment 6).

As a result of the land use development review and approval process, as summarized above from the WMO variance request, WMO contends that it will have its new TVWR Hillsboro Landfill MRF constructed and operating by about July 1, 2009 instead of January 1, 2009.

The applicant has diligently pursued the required building and land use permits from Washington County for development of the proposed MRF necessary to be in compliance with the EDWRP provisions. Further, the required land use decisions were issued by Washington County on August 19, 2008 and September 4, 2008, and as a result, such circumstances have presented conditions that are beyond the control of the applicant. Therefore, staff finds the first condition has been met by the applicant.

Although the applicant argues that compliance will be rendered extremely burdensome or highly impractical due to special physical conditions or causes, the applicant has not met this condition. In its variance request application, WMO states that to complete the construction of the proposed MRF by the required EDWRP timeline of January 1, 2009, WMO would need to have started construction prior to obtaining the required permits. Taking this action would be inappropriate because of conditions beyond the control of the applicant, and not due to any special *physical* conditions or causes.

### Conclusion

The Council, upon recommendation by the COO, may grant variances to applicants if the Council find that the purpose and intent of the particular requirement can be achieved without compliance, and that compliance is either inappropriate because of conditions beyond the control of the applicant, or due to special physical conditions or causes, will be rendered extremely burdensome or highly impractical. Therefore, staff recommends that the Metro Council grant a variance, with conditions, to WMO for the

Hillsboro Landfill from Metro Code Section 5.05.030(f) and (g) from January 1, 2009 through June 30, 2009.

#### Recommended Conditions of Approval

Metro Code Section 5.01.110(a) also provides that the Council may grant a variance “...upon such conditions as the Council may deem necessary to protect the public health, safety and welfare...”

Starting on January 1, 2009, all other facilities (MRFs and landfills) will begin implementing the EDWRP provisions without a variance from the Metro Council at some level. Metro is prepared to provide technical assistance and protocol for sampling, reporting and achieving the new recovery level. However, it is recognized that Council intended for these facilities to have a transition period before Metro expects a facility to meet the performance standard. One of the main purposes of EDWRP is to stem the flow of recoverable material, such as wood, metal and cardboard, into land disposal starting on January 1, 2009. Therefore, Council may find that it is incumbent on any landfill seeking to continue to dispose of these targeted materials to propose some level of high-grade recovery, load diversion or other recovery option on January 1, 2009 until such time as the full EDWRP levels can be achieved.

To meet the purpose and intent of EDWRP and thereby protecting the public health, safety, and welfare, the variance approval should contain the following conditions of approval, which will be implemented through the DFA:

#### **Recommended Conditions:**

1. WMO to provide Metro with regular monthly progress reports on the construction of the new TVWR MRF at the Hillsboro Landfill.
2. Effective January 1, 2009, WMO must start conducting a minimum level of material recovery on certain non-putrescible waste loads that contain significant amounts of recoverable materials (wood, metal, and cardboard) that are received by Hillsboro Landfill from the Metro region. By November 15, 2008, WMO should develop and present a plan to the COO that describes how WMO will identify loads that contain significant amounts of recoverable targeted materials and describe how WMO will recover those materials prior to disposal of those loads in the landfill until such time as the TVWR MRF is operational.

#### Variance with conditions to be established in DFA

The proposed resolution, if approved by Council, will approve the WMO request for a variance from January 1, 2009 through June 30, 2009, and impose conditions on the Hillsboro Landfill. The terms of the variance and conditions will be implemented through the Metro DFA with WMO for the Hillsboro Landfill. The DFA with the Hillsboro Landfill will stipulate that, after June 30, 2009, only processing residual will be disposed at the Hillsboro Landfill. The COO will negotiate a DFA with WMO for the Hillsboro Landfill and a separate agreement with TVWR – both agreements will take into account the variance decision by Council.

#### Other Considerations

- Record of regulatory compliance with the DEQ. In a memo to Metro dated September 24, 2008, the DEQ (Audrey O’Brien, DEQ Northwest Regional Manager for Solid Waste) has reported that the Hillsboro Landfill “is in compliance with state environmental requirements without any compliance issues for the past five years.”

- **Regional System Fee Credit Program.** The Regional System Fee Credit program<sup>13</sup> (RSFC) will continue in effect through June 30, 2009, as was provided in Ordinance No. 07-1147B adopting the EDWRP provisions. The RSFC program provides financial incentives to MRFs that achieve high recovery rates (i.e., 30% and higher).

## ANALYSIS/INFORMATION

1. **Known Opposition.** At this time, staff are unaware of any formal opposition to this specific variance request, however, it is likely that one or more in-region or out-of-region facilities intending to comply with EDWRP on January 1, 2009 may oppose granting a variance to the Hillsboro Landfill. In addition, WMO may oppose one or more of the conditions presented for Council consideration.
2. **Legal Antecedents.** Chapter 5.01 and Chapter 5.05 of the Metro Code. Metro Contract No. 902858. Ordinance No. 07-1147B.
3. **Anticipated Effects.** Adoption of Resolution No. 08-3989 will approve the WMO request for a six-month variance to the EDWRP-specific provisions in Metro Code Section 5.05.030(f) and (g), and authorize the Hillsboro Landfill to accept unprocessed non-putrescible waste from the Metro region through June 30, 2009. The terms of the variance and conditions will be implemented through the Metro DFA with WMO for the Hillsboro Landfill. The COO will negotiate a DFA with WMO for the Hillsboro Landfill.
4. **Budget Impacts.** Adopting this Resolution will help enable implementation of EDWRP, whose budget impacts have already been considered by the Metro Council in its adoption of Ordinance 07-1147B and is not expected to alter the budget impact projection contained in the EDWRP Ordinance staff report.

## RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3989.

## LIST OF ATTACHMENTS TO STAFF REPORT

- Attachment 1** Waste Management of Oregon Request for Variance dated September 2, 2008.
- Attachment 2** Metro Ordinance No. 07-1147B and the Staff Report dated April 26, 2007. Amending Metro Code Chapters 5.01, 5.02, 5.05, And 5.07 to Ensure That All of the Region's Non-Putrescible Waste Undergoes Material Recovery Prior to Disposal, to Eliminate the Regional System Fee and Excise Tax Credit Program, And to Make Related Changes.
- Attachment 3** Waste Management Certification of Intent to Seek a DFA with Metro for Non-Putrescible Waste.
- Attachment 4** Metro Ordinance No. 08-1195 and the Staff Report dated August 29, 2008. For The Purpose Of Amending Metro Code Chapter 5.05 To Include Tualatin Valley Waste Recovery On The List Of Designated Facilities.
- Attachment 5** Washington County Department of Land Use & Transportation, Notice of Decision & Staff Report. Type I Procedure, dated August 19, 2008.

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<sup>13</sup> Metro Code Section 5.02.047.



**Attachment 6** Washington County Department of Land Use & Transportation, Notice of Decision & Staff Report. Type II Procedure, dated September 4, 2008.

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**HILLSBORO LANDFILL**

3205 SE Minter Bridge Rd.  
Hillsboro, OR 97123  
(503) 640-9427  
(503) 648-3942 Fax

September 2, 2008

Michael Jordan  
Chief Operating Officer  
Metro  
600 NE Grand Avenue  
Portland, OR 97232-2736

Re: Request for Variance under Metro Code (MC) 5.01.110  
Enhanced Dry Waste Recovery Program Requirements  
Waste Management of Oregon, Inc.

Dear Mr. Jordan:

**Introduction**

Waste Management of Oregon, Inc. (WMO) is the owner and operator of the Hillsboro Landfill located at 3205 S.E. Minter Bridge Road, Washington County, Oregon. The Metro Council has recognized the Hillsboro Landfill as a designated facility for the receipt of solid waste generated within Metro's jurisdiction. MC 5.05.030(a)(5).

WMO is in the process of designing, permitting and constructing a 68,000 square foot Material Recovery Facility (MRF) at its Hillsboro Landfill to meet the requirements in Metro's Enhanced Dry Waste Recovery Program (EDWRP). WMO requests a six-month variance for its Hillsboro Landfill from the EDWRP requirements that go into effect on January 1, 2009 so that the Hillsboro Landfill can achieve compliance with those requirements by July 1, 2009.

**Background**

WMO, through the operations at its Hillsboro Landfill and other waste disposal sites, has strongly supported and continues to support Metro's programs aimed at meeting solid waste and recycling recovery goals. WMO's involvement has included participating in a Metro stakeholder group, participating in numerous meetings of the Solid Waste Advisory Committee and, in general, providing as much information and feedback as possible to help create workable solutions.

*From everyday collection to environmental protection, Think Green® Think Waste Management.*

Since Metro established the MRF standards and adopted EDWRP, WMO has moved quickly to develop a MRF facility at its Hillsboro Landfill to support implementation of these important Metro programs. WMO is developing a MRF that will be certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standards.

WMO began a planning and design process aimed at developing a MRF at its Hillsboro Landfill as quickly as possible. Due to conditions beyond WMO's control, the planned MRF will not be fully authorized and constructed until after January 1, 2009 and closer to July 1, 2009.

If Metro grants WMO a variance to have its MRF operational by July 1, 2009, WMO believes its planned MRF will support the goals of EDWRP. That date is a suitable target date for meeting EDWRP as evidenced by July 1, 2009 being the date certain EDWRP requirements go into effect (e.g., the reporting requirements in MC 5.01.125(c)(2)). That date also conforms to Metro Council's acknowledgement of the significance of that date when it adopted EDWRP, as well as to various statements that were made during adoption of the program.

The Hillsboro Landfill has historically been a disposal facility of choice for disposal of significant amounts of non-putrescible (dry) waste generated within Metro's jurisdiction. WMO plans to continue using the Hillsboro Landfill as a disposal destination for dry waste while assisting in meeting Metro's recovery goals. Because WMO does not wish to abandon its plans to develop a MRF at the Hillsboro Landfill, there is no option for moving forward other than by requesting from Metro a variance from the EDWRP-specific provisions of Metro's solid waste code implementing the EDWRP, including Section 5.01.125(c)(1) requiring processing of dry waste to begin January 1, 2009, and Section 5.05.030(g) mandating designated facility agreements to require, after December 31, 2008, material recovery on dry waste that has not yet undergone material recovery. Pursuant to MC 5.01.110, this letter serves as a written request for such a variance.

### **Variances**

Metro's solid waste code authorizes the Council to grant a variance upon recommendation of the Chief Operating Officer. MC 5.01.110(a). A variance request must be made in writing and state in a concise manner the facts to show cause why a variance should be granted. MC 5.01.110(b).

The Metro Council can grant the variance if it finds that the purpose and intent of the Metro Code requirements can be achieved without compliance, and: (1) that the Metro Code requirements are inappropriate because of conditions beyond the control of the applicant, licensee or franchisee requesting the variance, or (2) that compliance will be extremely burdensome or highly impractical due to special physical conditions or causes.

### **Facts Supporting the Variance**

MC 5.01.110 does not appear to require a specific format for stating the facts to support a variance in a concise manner. In the absence of any definitive guidance, WMO states those facts below. If Metro should require the facts to appear in a different format, such as by affidavit or declaration, WMO will immediately accommodate a request to do so.

1. In October 2003, WMO received an initial land use approval from Washington County for expansion of the landfill and development of a MRF at the Hillsboro facility.
2. In October 2006, Metro finalized its MRF standards.
3. In August 2007, Metro adopted EDWRP.
4. Immediately following the adoption of EDWRP, WMO went through a budgeting process in the 3rd and 4th quarters of 2007 with its corporate parent for the purpose of obtaining the necessary authorization and funding to develop the MRF.
5. During that same time period, WMO met with various permitting agencies to discuss whether further land use authorizations were necessary.
6. In early 2008, WMO issued a request for proposals for design of the MRF.
7. In March 2008, WMO hired an architect to design the facility and began the process of obtaining a general contractor to build the facility.
8. In April 2008, WMO and its architect completed the conceptual design and a MRF pilot demonstration project.
9. In April 2008, Washington County's planning staff indicated WMO would need to apply for a Type I land use permit to authorize development of the MRF.
10. That same month, WMO finished the hiring process for a general contractor and, shortly thereafter, submitted the Type I land use application to Washington County.
11. In May 2008, WMO placed an order for the metal building that makes up the structure of the MRF.
12. In June 2008, WMO hired Green Building Services to ensure the MRF would be LEED certified.
13. Also in June 2008, WMO continued to provide supporting land use information to Washington County. During this process, the county's planning staff indicated WMO would need to apply for a Type II land use permit in order to obtain authorization for the MRF development.
14. In July 2008, WMO submitted the Type II land use application.
15. In July 2008, WMO completed the final design for the facility and submitted plans to the Washington County building department to support issuance of a building permit.
16. In August 2008, WMO held an open house as part of the ongoing Type II land use authorization process.

### **Analysis Supporting the Variance**

Based on the above facts, the Chief Operating Officer can recommend and the Metro Council can find that the purpose and intent of EDWRP can be achieved by WMO's compliance with the

EDWRP-specific provisions in the Metro Code by July 1, 2009. The Metro Council in establishing EDWRP, explained the purpose and intent of the program.

First, in adopting the EDWRP requirements, Metro stated as a goal: "by July 1, 2009 it is the intent of the Metro Council that all dry waste from the Metro region be subject to processing for material recovery." Granting a variance for the Hillsboro Landfill MRF until July 1, 2009 is consistent with this Metro goal.

Second, Metro also stated in adopting the requirements its intent that all dry waste originating in the Metro region be subject to processing for material recovery, and that there be competition in the processing industry. The Hillsboro Landfill MRF will help Metro achieve this goal by creating a place for the processing of dry waste in Washington County that would not otherwise exist. The operation of WMO's MRF, if completed by July 1, 2009, will contribute to competition in the processing industry.

The Metro Council can also find that compliance with EDWRP by January 1, 2009 is inappropriate because of conditions beyond WMO's control. WMO has diligently pursued the necessary land use and building permits for development of the MRF. Because of the complex nature of the MRF, and the complex nature of Oregon land use and building permit authorizations in general, the authorization process has taken longer than anticipated. WMO and Washington County have attempted to do everything in their control to complete that process in a timely fashion.

Finally, the Metro Council can find that compliance with EDWRP would be rendered extremely burdensome or highly impractical due to special physical conditions or causes. At this stage in the process, to complete the MRF by January 1, 2009 would be nearly impossible. The burden of doing so would require great expense well beyond any reasonable expense for such a development. Further, it would be unacceptable to commence building the MRF without first having obtained the necessary authorizations from Washington County. Although WMO has diligently pursued those authorizations, they have not yet been received.

#### **Potential Conditions for the Variance**

WMO is not seeking a variance from the Metro Code EDWRP in perpetuity. Rather, WMO's variance request amounts to a request to extend temporarily the commencement of the EDWRP-specific provisions in the Metro Code for WMO's MRF, and to require WMO to have the MRF at its Hillsboro Landfill in operation by at least July 1, 2009. WMO is willing to place the Hillsboro Landfill MRF in operation as soon as it is completed which could occur prior to July 1, 2009. To recognize these circumstances, WMO is open to conditions accompanying the grant of a variance. Such conditions could ensure Metro that development of the MRF continues on as short a time frame as reasonably possible. For example, WMO would support a condition that WMO coordinate with Metro staff to develop a process by which WMO would provide updates on the progress of the MRF's development.

September 2, 2008

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### **Conclusion**

WMO is committed to developing a LEED-certified MRF at the Hillsboro Landfill and is pursuing that process in earnest. Because of conditions outside of WMO's control, the MRF will not be complete prior to January 1, 2009. To require the facility to be completed before that time would be extremely burdensome and highly impractical. WMO therefore requests a variance from the EDWRP-specific provisions of Metro's solid waste code, MC Chapter 5, until July 1, 2009 so that its Hillsboro Landfill MRF can obtain the necessary land use and building permit authorizations, and the MRF can be constructed and placed in operation. Thank you for consideration of this request.

Respectfully Submitted,

Waste Management of Oregon, Inc.



Dan Wilson, District Manager

cc: Roy Brower, Metro  
Scott Robinson, Metro  
Dean Kampfer  
Cal Palmer  
Mike Dewey

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTERS ) ORDINANCE NO. 07-1147B (including  
5.01, 5.02, 5.05, AND 7.01 TO ENSURE ) technical amendments)  
THAT ALL OF THE REGION’S NON- )  
PUTRESCIBLE WASTE UNDERGOES ) Introduced by Michael Jordan, Chief  
MATERIAL RECOVERY PRIOR TO ) Operating Officer, with the concurrence of  
DISPOSAL, TO ELIMINATE THE ) David Bragdon, Council President  
REGIONAL SYSTEM FEE AND EXCISE )  
TAX CREDIT PROGRAM, AND TO MAKE )  
RELATED CHANGES )

WHEREAS, Metro is accountable for meeting the state-mandated 2009 waste reduction goal for the tri-county region, and the recovery of additional “dry waste” material generated by the building industry is a key component of reaching the 64% goal; and

WHEREAS, dry waste consists primarily of wood, metal, corrugated cardboard, concrete, drywall and roofing; and

WHEREAS, over 90% of this material is reusable or recoverable with current technology and markets; and

WHEREAS, a minimum of 33,000 additional tons of dry waste per year could be recovered by a regional program to require the processing of all dry waste before disposal; and

WHEREAS, such a program was recommended by a stakeholder group in 2003 as the option most likely to help the region attain its recovery goal for the building industry sector; and

WHEREAS, this recommendation was subsequently incorporated in the region’s interim waste reduction plan approved by Council in 2006; and

WHEREAS, by July 1, 2009 it is the intent of the Metro Council that all dry waste originating from the Metro region be subject to processing for material recovery ~~or subject to a landfill surcharge intended to discourage unprocessed dry waste from going directly to a landfill and to ensure competition in the Metro region’s dry waste processing industry~~; and

WHEREAS, the Chief Operating Officer recommends approval of this ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

**SECTION 1.** Metro Code section 5.01.010 is amended as follows:

5.01.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Activity" means a primary operation or function that is performed in a Solid Waste Facility or at a Disposal Site, including but not limited to Resource Recovery, Composting, Energy Recovery, and other types of Processing; Recycling; Transfer; incineration; and disposal of Solid Waste; but excluding operations or functions such as Segregation that serve to support the primary Activity.

(b) "Agronomic application rate" has the meaning provided in OAR 340-093-0030(4).

(c) "Chief Operating Officer" means the Metro Chief Operating Officer or the Chief Operating Officer's designee.

(d) "Cleanup Material Contaminated By Hazardous Substances" means solid waste resulting from the cleanup of releases of hazardous substances into the environment, including petroleum contaminated soils and sandbags from chemical spills. Cleanup Material Contaminated By Hazardous Substances does not mean solid waste generated by manufacturing or industrial processes.

(e) "Closure" means the restoration of a Solid Waste Facility or a Disposal Site to its condition prior to the commencement of licensed or franchised Solid Waste activities at the site. Closure includes, but is not limited to, the removal of all accumulations of Solid Waste and Recyclable Materials from the site.

(f) "Code" means the Metro Code.

(g) "Compost" means the stabilized product of composting.

(h) "Composting" means the controlled biological decomposition of organic material.

(i) "Composting Facility" means a site or facility which utilizes organic material to produce a useful product through the process of composting.

(j) "Council" means the Metro Council.

(k) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(l) "Direct haul" means the delivery of Putrescible Waste from a Solid Waste Facility directly to Metro's contract operator for disposal of Putrescible Waste. Direct Haul is an Activity under this chapter.



(m) "Disposal site" means the land and facilities used for the disposal of Solid Wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(n) "District" has the same meaning as in Code Section 1.01.040.

(o) "Energy recovery" means a type of Resource Recovery that is limited to methods in which all or a part of Solid Waste materials are processed to use the heat content, or other forms of energy, of or from the material.

(p) "Franchise" means the grant of authority or privilege given by the Council to operate a Disposal Site, Transfer Station, or an Energy Recovery facility, or to conduct any activity specified in Section 5.01.045(b) of this chapter.

(q) "Franchisee" means the person to whom a Franchise is granted by the Council under this chapter.

(r) "Franchise fee" means the fee charged by Metro to the Franchisee for the administration of the Franchise.

(s) "Hazardous waste" has the meaning provided in ORS 466.005.

(t) "Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. "Household hazardous waste" may include but is not limited to some cleaners, solvents, pesticides, and automotive and paint products.

(u) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

(v) "License" means the permission given by the Council or Chief Operating Officer to operate a Solid Waste Facility not exempted or requiring a Franchise under this chapter that Transfers, and Processes Solid Waste, and may perform other authorized Activities.

(w) "Licensee" means the person to whom a License is granted by the Council or Chief Operating Officer under this chapter.

(x) "Local Transfer Station" means a Transfer Station that serves the demand for disposal of Putrescible Waste that is generated within a single Service Area, and may provide fewer disposal services than are provided by a Regional Transfer Station.

(y) "Material recovery" means a type of Resource Recovery that is limited to mechanical methods of obtaining from Solid Waste materials which still have useful physical or chemical properties and can be reused, recycled, or composted for some purpose. Material

Recovery includes obtaining from Solid Waste materials used in the preparation of fuel, but excludes the extraction of heat content or other forms of energy from the material.

(z) "Metro Designated Facility" means a facility in the system of transfer stations, Metro Franchised facilities and landfills authorized under Chapter 5.05 of this Title to accept waste generated in the area within the jurisdiction of Metro.

(aa) "Non-putrescible waste" means any Waste that contains no more than trivial amounts of Putrescible materials or minor amounts of Putrescible materials contained in such a way that they can be easily separated from the remainder of the load without causing contamination of the load. This category includes construction waste, and demolition waste debris, and land clearing debris; but excludes Cleanup Materials Contaminated by Hazardous Substances, and Source-Separated Recyclable Material, whether or not sorted into individual material categories by the generator special waste, land clearing debris and yard debris.

(bb) "Person" has the same meaning as in Code Section 1.01.040.

(cc) "Petroleum contaminated soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

(dd) "Process," "Processing" or "Processed" means a method or system of altering the form, condition or content of Wastes, including but not limited to composting, vermiprocessing and other controlled methods of biological decomposition; classifying; separating; shredding, milling, pulverizing, or hydropulping; but excluding incineration or mechanical volume reduction techniques such as baling and compaction.

(ee) "Processing facility" means a place or piece of equipment where or by which Solid Wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerators, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

(ff) "Processing residual" means the Solid Waste destined for disposal which remains after Resource Recovery has taken place.

(gg) "Putrescible" means rapidly decomposable by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(hh) "Putrescible waste" means Waste containing Putrescible material.

(ii) "Rate" means the amount approved by Metro and charged by the Franchisee, excluding the Regional System Fee as established in Chapter 5.02 of this Title and franchise fee.

(jj) "Recyclable material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled, or composted for the same or other purpose(s).

(kk) "Recycle" or "Recycling" means any process by which Waste materials are transformed into new products in such a manner that the original products may lose their identity.

(ll) "Recycling drop center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

(mm) "Regional Solid Waste Management Plan" means the Regional Solid Waste Management Plan adopted as a functional plan by Council and approved by DEQ.

(nn) "Regional Transfer Station" means a Transfer Station that may serve the disposal needs of more than one Service Area and is required to accept solid waste from any person who delivers authorized solid waste to the Regional Transfer Station.

(oo) "Reload" or "Reload facility" means a facility that performs only Transfer and delivers all solid waste received at the facility to by means of a fixed or mobile facilities including but not limited to drop boxes and gondola cars, but excluding solid waste collection vehicles, normally used as an adjunct of a solid waste collection and disposal system, between a collection route and another Solid Waste facility or a disposal site after it receives such solid waste, generally within 24 hours of receipt.

(pp) "Resource recovery " means a process by which useful material or energy resources are obtained from Solid Waste.

(qq) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(rr) "Segregation" means the removal of prohibited wastes, unauthorized wastes, bulky material (such as but not limited to white goods and metals) incidental to the Transfer of Solid Waste. Segregation does not include Resource Recovery or other Processing of Solid Waste. The sole intent of segregation is not to separate Useful Material from the Solid Waste but to remove prohibited, unauthorized waste or bulky materials that could be hard to handle by either the facility personnel or operation equipment.

(ss) "Service Area" means the geographic locale around a solid waste facility that is defined by the characteristic that every point within such area is closer in distance to the solid waste facility contained in such area than to any other solid waste facility or disposal site. As used in this definition, "distance" shall be measured over improved roads in public rights-of-way.

(tt) "Solid waste" means all Putrescible and Non-Putrescible Wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-Solid Wastes, dead animals; ~~infectious waste as defined in ORS 459.386; petroleum contaminated soils~~ and other such wastes, including without limitation, cleanup materials contaminated with hazardous substances, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or
- (4) Explosives.

(uu) "Solid waste facility" means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery, and/or Processing but excludes disposal.

(vv) "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste.

(ww) "Source-separated recyclable material" or "Source-separated recyclables" means ~~material-solid waste~~ that has been Source Separated by the waste generator for the purpose of Reuse, Recycling, or Composting. This term includes (1) all homogenous loads of Recyclable Materials that are has been Source Separated by material type for the purpose of recycling (i.e., source-sorted) and (2) Residential and commercial commingled Recyclable Materials, which includes only those recyclable material types that the local jurisdiction, where the materials were collected, permits to be mixed together in a single container as part of its residential curbside recyclable material collection program. This term does not include any other commingled recyclable materials, that are mixed together in one container (i.e., commingled).

(xx) "Special waste" means any waste (even though it may be part of a delivered load of waste) which one or more of the following categories describes:

- 1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below.

- (2) Waste transported in a bulk tanker.
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals, unless the containers (or drums) are empty. A container is empty when:
  - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
  - (B) One end has been removed (for containers in excess of 25 gallons); and
    - (i) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
    - (ii) No more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
    - (iii) No more than 0.3 percent by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.
  - (C) Containers that once held acutely hazardous wastes must be triple-rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers that once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple-rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that hold any regulated waste must be cut in half or punctured, and be dry and free of contamination to be accepted as refuse.
- (5) Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, Laundromats or car washes.
- (6) Waste from an industrial process.
- (7) Waste from a pollution control process.

- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition.
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition.
- (10) Chemical-containing equipment removed from service (for example: filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical containing equipment).
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty containers so marked.
- (12) Any waste that requires extraordinary management or special handling.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

- (13) Radioactive waste.
- (14) Medical waste.

(~~xx~~yy) “Transfer” means the Activity of receiving Solid Waste for purposes of transferring the Solid Waste from one vehicle or container to another vehicle or container for transport. Transfer may include segregation, temporary storage, consolidation of Solid Waste from more than one vehicle, and compaction, but does not include Resource Recovery or other Processing of Solid Waste.

(yyzz) "Transfer station" means a Solid Waste Facility whose primary Activities include, but are not limited to, the Transfer of Solid Waste.

(zzaaa) “Useful material” means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from Solid Waste, is suitable for use in the same or other purpose(s). Types of Useful Materials are: material that can be Reused; Recyclable Material; organic material(s) suitable for controlled biological decomposition such as for making Compost; material used in the preparation of fuel; material intended to be used, and which is in fact used, for construction or land reclamation such as Inert material for fill; and material intended to be used, and which is in fact used, productively in the operation of landfills such as roadbeds or alternative daily cover.

For purposes of this Code, Cleanup Material Contaminated By Hazardous Substances are not Useful Materials.

(~~aaa~~bbb) "Vermiprocessing" means a controlled method or system of biological Processing that utilizes worms to consume and digest organic materials, and that produces worm castings for productive uses.

(~~bbb~~ccc) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

(~~eee~~ddd) "Waste hauler" means any person who is franchised, licensed or permitted by a local government unit pursuant to state law to collect and haul Solid Waste.

(~~ddd~~eee) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other vegetative waste having similar properties, but does not include demolition debris, painted or treated wood.

(~~eee~~fff) "Yard debris facility" means a yard debris processing facility or a yard debris reload facility.

(~~fff~~ggg) "Yard debris reload facility" means an operation or facility that receives yard debris for temporary storage, awaiting transport to a processing facility.

**SECTION 2.** Metro Code section 5.01.040 is amended as follows:

5.01.040 Exemptions

(a) In furtherance of the purposes set forth in this chapter, except as provided in Sections 5.01.040(b) through (d) below, the Metro Council declares the provisions of this chapter shall not apply to:

- (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal Sites, Transfer Stations, or Solid Waste Facilities owned or operated by Metro.
- (3) Facilities that (A) exclusively receive non-Putrescible Source-Separated Recyclable Materials, and (B) reuse or recycle such materials, or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.
- (4) Facilities that exclusively receive, process, transfer or dispose of Inert Wastes.

- (5) The following operations, which do not constitute Yard Debris Facilities:
- (A) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
  - (B) Residences, parks, community gardens and homeowner associations.
  - (C) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
  - (D) Operations or facilities that chip or grind wood wastes, unless:
    - (i) such chipped or ground wood wastes are processed for composting; or
    - (ii) such operations or facilities are otherwise regulated under Metro Code Section 5.01.045.
- (6) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process Solid Waste if Metro finds an emergency situation exists.
- (7) Any Reload facility that:
- (A) Accepts Solid Waste collected under the authority of a single solid waste collection franchise granted by a local government unit, or from multiple solid waste collection franchises so long as the area encompassed by the franchises is
  - (B) Is owned or controlled by the same person granted franchise authority ascribed in subsection (A); and
  - (C) Delivers any Putrescible Waste accepted at the operation or facility to a Transfer Station owned, operated, Licensed or Franchised by Metro; and
  - (D) Delivers all other Solid Waste accepted at the facility except Inert Wastes to a Metro Designated Facility authorized to accept said Solid Waste, or to another solid waste facility ~~or Disposal Site~~ under authority of a Metro Non-System License issued pursuant to Chapter 5.05.



- (8) Persons who own or operate a mobile facility that processes Petroleum Contaminated Soil at the site of origin and retains any treated Petroleum Contaminated Soil on the site of origin.

(b) Notwithstanding Section 5.01.040(a), all persons shall comply with Sections 5.01.030(a), (b), (d) and (f).

(c) Notwithstanding Section 5.01.040(a)(2) of this chapter, Metro shall comply with Section 5.01.150 of this chapter.

(d) Notwithstanding Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter, the provisions of Section 5.01.135 of this chapter shall apply to operations and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter.

**SECTION 3.** Metro Code section 5.01.125 is amended as follows:

5.01.125 Obligations and Limits for Selected Types of Activities

(a) A holder of a License or Franchise for a Material Recovery facility, ~~Reload~~ or ~~Local Transfer Station~~, ~~or a holder of a Franchise issued after July 1, 2000, for a Regional Transfer Station~~ shall perform Material Recovery from Non-Putrescible Waste accepted at the facility as specified in this section or as otherwise specified in its license or franchise, or shall deliver such Non-Putrescible Waste to a Solid Waste facility ~~whose primary purpose is authorized by Metro~~ to recover useful materials from Solid Waste.

(b) ~~A holder of a License or Franchise for a Material Recovery facility or Local Transfer Station, or a holder of a Franchise issued after July 1, 2000 for a Regional Transfer Station; A licensee or franchisee subject to subsection (a) of this section~~ shall recover at least 25% by weight of Non-Putrescible waste accepted at the facility and waste delivered by public customers. For the purposes of calculating the amount of recovery required by this subsection, recovered waste shall exclude both waste from industrial processes and ash, inert rock, concrete, concrete block, foundry brick, asphalt, dirt, and sand. Failure to maintain the minimum recovery rate specified in this section shall constitute a violation enforceable under Metro Code Sections 5.01.180 and 5.01.200. After January 1, 2009, December 31, 2008 the requirements of this subsection will not be applicable to licensees or franchisees unless Metro Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.125(c).

~~(c)~~ (e) — Effective January 1, 2009, a licensee or franchisee subject to subsection (a) of this section shall:

- (1) At a minimum, Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, (including aluminum). Processing residual from such a facility shall not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12

inches in size in any dimension and metal pieces greater than eight inches in size in any dimension

- (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of such sampling to Metro in the monthly report due the month following the end of that quarter.
- (3) Based on observation, audits, inspections and reports, Metro inspectors shall conduct or require additional analysis of waste residual at the facility in accordance with section 5.01.135(c). Failure to maintain the recovery level specified in subsection (c)(1) of this section shall constitute a violation enforceable under Metro Code. The first two violations of this subsection by a single licensee or franchisee shall not result in the imposition of a civil penalty.
- (4) Failure to meet the reporting requirements in subsection (c)(2) of this section shall constitute a violation enforceable under Metro Code after ~~July 1,~~ June 30, 2009.

(d) ~~In addition to the requirements of (a) and (b) in this section,~~ A holders of a Franchise for a Local Transfer Station:

- (1) Shall accept Putrescible Waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul Putrescible Waste.
- (2) Shall not accept hazardous waste.
- (3) Shall be limited in accepting Putrescible Waste during any fiscal year to an amount of Putrescible Waste equal to the demand for disposal of Putrescible Waste generated within a Service Area as specified in accordance with this chapter.
- (4) Shall accept Solid Waste from any Waste Hauler who operates to serve a substantial portion of the demand for disposal of Solid Waste within the Service Area of the Local Transfer Station.

(d)(c) ~~In addition to the requirements of (a) and (b) in this section,~~ A holders of a Franchise for a Regional Transfer Station, in accordance with its franchise issued after July 1, 2000:

- (1) Shall accept authorized Solid Waste originating within the Metro boundary from any person who delivers authorized waste to the facility, on the days and at the times established by Metro in approving the Franchise application.

- (2) Shall provide an area for collecting Household Hazardous Waste from residential generators at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.
- (3) Shall provide an area for collecting source separated recyclable materials without charge at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.

(f) A holder of a license for a reload facility shall deliver all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.

(g) A holder of a license or franchise for a solid waste facility shall not crush, grind or otherwise reduce the size of non-putrescible waste except when such size reduction constitutes a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and such size reduction is described and approved by Metro in an operating plan.

**SECTION 4.** Metro Code section is amended as follows:

5.01.135 Inspections and Audits of Solid Waste Facilities

(a) The Chief Operating Officer shall be authorized to make such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of a licensed or franchised facility, and all other Solid Waste Facilities, at all reasonable times during business hours with or without notice or at such other times with 24 hours notice after the Franchise or License is granted to assure compliance with this chapter, the Code, the Franchise or License, and administrative procedures and performance standards adopted pursuant to Section 5.01.132 of this chapter.

(b) Inspections or audits authorized under subsection (a) of this section shall occur regularly and as determined necessary by the Chief Operating Officer. Results of each inspection shall be reported on a standard form specified by the Chief Operating Officer.

(c) The Chief Operating Officer shall have access to and may examine during such inspections or audits any records pertinent in the opinion of the Chief Operating Officer to the License or Franchise, or to the provisions of this chapter, including but not limited to the books, papers, records, equipment, blueprints, operation and maintenance records and logs and operating rules and procedures of the Licensee, Franchisee or Solid Waste Facility operator. Such inspections or audits may include taking samples and conducting analysis of any waste or

other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer shall coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to prevent the imposition of redundant requirements on operations.

(d) Any violations discovered by the inspection or audit shall be subject to the penalties provided in Section 5.01.200.

**SECTION 5.** The definition of “special waste” in Metro Code section 5.02.015(hh) shall be amended as follows:

(hh) "Special waste" ~~means any waste (even though it may be part of a delivered load of waste) which one or more of the following categories describes:~~shall have the meaning assigned thereto in Metro Code section 5.01.010.

- ~~(1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below.~~
- ~~(2) Waste transported in a bulk tanker.~~
- ~~(3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW 846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive.~~
- ~~(4) Containers (or drums) which once held commercial products or chemicals, unless the containers (or drums) are empty. A container is empty when:~~
  - ~~(A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.~~
  - ~~(B) One end has been removed (for containers in excess of 25 gallons); and~~
    - ~~(i) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or~~
    - ~~(ii) No more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or~~
    - ~~(iii) No more than 0.3 percent by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.~~

- ~~(C) Containers that once held acutely hazardous wastes must be triple-rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers that once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple-rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that hold any regulated waste must be cut in half or punctured, and be dry and free of contamination to be accepted as refuse.~~
- ~~(5) Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, Laundromats or car washes.~~
- ~~(6) Waste from an industrial process.~~
- ~~(7) Waste from a pollution control process.~~
- ~~(8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition.~~
- ~~(9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition.~~
- ~~(10) Chemical containing equipment removed from service (for example: filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical containing equipment).~~
- ~~(11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty containers so marked.~~
- ~~(12) Any waste that requires extraordinary management or special handling.~~

~~Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by products.~~
- ~~(13) Radioactive waste.~~
- ~~(14) Medical waste.~~

**SECTION 6.** Effective July 1, 2009, Metro Code Section 5.02.046 is repealed.

**SECTION 7. Effective July 1, 2009,** Metro Code Section 5.02.047 as amended by Ordinance No. 07-1146 is amended to read:

5.02.047 Regional System Fee Credits

~~(a) — A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 or a Designated Facility regulated by Metro under the terms of an intergovernmental agreement shall be allowed a credit against the Regional System Fee otherwise due each month under Section 5.02.045 for disposal of Processing Residuals from the facility. The Facility Recovery Rate shall be calculated for each twelve-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:~~

~~System Fee Credit Schedule~~

<del>Facility Recovery Rate</del>		<del>System Fee Credit of no more than</del>
<del>From Above</del>	<del>Up To &amp; Including</del>	
<del>0%</del>	<del>30%</del>	<del>0.00</del>
<del>30%</del>	<del>35%</del>	<del>9.92</del>
<del>35%</del>	<del>40%</del>	<del>11.46</del>
<del>40%</del>	<del>45%</del>	<del>13.28</del>
<del>45%</del>	<del>100%</del>	<del>14.00</del>

~~(b) — The Chief Operating Officer:~~

~~(1) — Shall establish administrative procedures to implement subsections (b) and (c) of Metro Code Section 5.02.046; and~~

~~(2) — May establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.~~

~~(e) — Any person delivering Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any Solid Waste System Facility authorized to accept such substances shall be allowed a credit in the amount of \$11.58 against the Regional System Fee otherwise due under Section 5.02.045(a) of this Chapter.~~

~~(d) — During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount budget without the prior review and authorization of the Metro Council.~~

~~(e) The Director of the Solid Waste and Recycling Department shall make a semi-annual report to the Council on the status of the credit program. The report shall include that aggregate amount of all credits paid during the preceding six months and the amount paid to each facility eligible for the credit program. The report shall also project whether the appropriation for the credit program will be sufficient to meet anticipated credit payment requests and maintain existing contingency funding.~~

**SECTION 8.** The definition of “Special waste” in Metro Code section 5.05.010 shall be amended as follows:

(v) “Special waste” shall have the meaning assigned thereto in Metro Code Section ~~5.02.0155.01.010~~.

**SECTION 9.** The following definitions of “Material Recovery,” “Processing Residual,” and “Recyclable Material,” shall be added to Metro Code section 5.05.010, other Code subsections in that section shall be renumbered accordingly, and other Code references to such subsection shall be amended accordingly:

“Material recovery “ shall have the meaning assigned thereto in Metro Code section 5.01.010.

“Processing residual” shall have the meaning assigned thereto in Metro Code section 5.01.010.

“Recyclable material” shall have the meaning assigned thereto in Metro Code section 5.01.010.

**SECTION 10.** Metro Code section 5.05.030 shall be amended as follows:

5.05.030 Designated Facilities of the System

(a) Designated Facilities. The following described facilities constitute the designated facilities of the system, the Metro Council having found that said facilities meet the criteria set forth in Metro Code Section 5.05.030(b):

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) Metro Central Station. The Metro Central Station located at 6161 N.W. 61<sup>st</sup> Avenue, Portland, Oregon 97210.
- (3) Facilities Subject to Metro Regulatory Authority. All disposal sites and solid waste facilities within Metro which are subject to Metro regulatory authority under Chapter 5.01 of the Metro Code.

~~(4)~~ Lakeside Reclamation (limited purpose landfill).  
The Lakeside Reclamation limited purpose landfill, Route 1, Box 849,





- (A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or
  - (B) Subject to a non-system license issued to a person transporting to the facility special-solid waste not specified in the agreement.
- (8) Finley Buttes Regional Landfill. The Finley Buttes Regional Landfill, located in Morrow County, Oregon. Finley Buttes Regional Landfill may accept special-solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
  - (B) Subject to a non-system license issued to a person transporting to the facility special-solid waste not specified in the agreement.
- (9) Coffin Butte Landfill. The Coffin Butte Landfill, located in Benton County, Oregon, which may accept solid waste generated within ~~the District-Metro~~ only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Coffin Butte Landfill authorizing receipt of such waste; or
  - (B) Subject to a non-system license issued to a person transporting to the facility solidspecial wastes not specified in the agreement.
- (10) Wasco County Landfill. The Wasco County Landfill, located in The Dalles, Oregon, which may accept solid waste generated within ~~the District-Metro~~ only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Wasco County Landfill authorizing receipt of such waste; or
  - (B) Subject to a non-system license issued to a person transporting to the facility solid wastes not specified in the agreement.
- (11) Cedar Grove Composting, Inc. The Cedar Grove Composting, Inc., facilities located in Maple Valley, Washington, and Everett, Washington. Cedar Grove Composting, Inc., may accept solid waste generated within ~~the District-Metro~~ only as follows:

(A) As specified in an agreement entered into between Metro and Cedar Grove composting, Inc., authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to Cedar Grove Composting, Inc., solid wastes not specified in the agreement.

(12) Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill, located in Castle Rock, Washington, and the Weyerhaeuser Material Recovery Facility, located in Longview, Washington. The Weyerhaeuser Material Recovery Facility is hereby designated only for the purpose of accepting solid waste for transfer to the Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill and the Weyerhaeuser Material Recovery Facility may accept solid waste generated within ~~the District~~Metro only as follows:

(A) As specified in an agreement entered into between Metro and Weyerhaeuser, Inc., authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the Weyerhaeuser Regional Landfill or the Weyerhaeuser Material Recovery Facility solid wastes not specified in the agreement.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;

- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
- (7) Other benefits or detriments accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) The Chief Operating Officer is authorized to execute an agreement, or an amendment to an agreement, between Metro and a designated facility for non-putrescible waste. Effective July 1, 2008, an existing designated facility authorized to receive non-putrescible waste shall notify Metro of ~~their~~ its intent to seek an agreement to recover non-putrescible waste from the Metro region in accordance with subsection (g), or to only take processed non-putrescible waste from authorized facilities included in subsection (f), ~~or to take unprocessed dry waste from the Metro region subject to the fee or surcharge as determined by Metro Council in accordance with Section 11 of the Ordinance.~~ No later than December 31, 2008, the Chief Operating Officer shall modify existing agreements to ensure substantial compliance with either subsection (f) or (g) of this section ~~or Section 11 of this Ordinance~~ as appropriate. If the Chief Operating Officer and a designated facility are not able to establish an agreement by November 1, 2008, then the Chief Operating Officer shall terminate the existing agreement following termination procedures described in the existing agreement, but no later than December 31, 2008.

(d) An agreement, or amendment to an agreement between Metro and a designated facility for Putrescible waste shall be subject to approval by the Metro Council prior to execution by the Chief Operating Officer.

(d)(e) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

(f) ~~(e)~~ An agreement between Metro and a designated facility ~~that authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries shall demonstrate substantial compliance with facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01.132 for non-putrescible waste material recovery facilities.~~ shall not authorize the facility to accept non-putrescible waste originating or generated within Metro boundaries after December 31, 2008, unless:

- (1) Such non-putrescible waste is received from a facility that has been issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;

(2) Such non-putrescible waste is received from a designated facility that has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing such designated facility to perform material recovery on non-putrescible waste; or

(3) The facility has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing the facility to perform material recovery on non-putrescible waste that has not yet undergone material recovery.

(g) An agreement between Metro and a designated facility that, after December 31, 2008, authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not comprised of processing residual, and originated or was generated within Metro boundaries shall:

(1) Require such designated facility to perform material recovery on such waste; and

(2) Demonstrate, in a manner that can be verified and audited, that such processing achieves material recovery substantially comparable to that required of in-region material recovery facilities by Metro Code subsections 5.01.125(a) and (b) by either:

(A) Meeting such material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or

(B) Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.

(3) Demonstrate, in a manner that can be verified and audited, that such facility substantially complies with (A) the performance goals described in Metro Code sections 5.01.067(i) (as amended by Section 1 of Metro Ordinance No. 07-1138) and 5.01.075(c) (as amended by Section 2 of Metro Ordinance No. 07-1138), and (B) the performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative procedures pursuant to Metro Code section

5.01.132 (as amended by Section 3 of Metro Ordinance No. 07-1138).

~~SECTION 11.~~ Not later than March 1, 2008, the Chief Operating Officer shall provide the Metro Council with a recommendation for a form of additional solid waste fee or surcharge to be imposed on designated facilities seeking to dispose of unprocessed, non-putrescible waste from within the Metro region. The recommended fee or surcharge shall be applied as to provide substantially equivalent disposal rates among material recovery facilities and designated facilities for disposal of unprocessed non-putrescible wastes. The recommendation of the Chief Operating Officer shall also include an amount for the proposed additional solid waste fee or surcharge, a proposal for the administrative procedures required to implement the imposition and collection of such fee or surcharge, the effective dates, and a recommendation on the uses to which the revenues generated by such fee or surcharge may be put.

**SECTION 12. 11.** Metro Code section 5.05.035(a), as amended by Ordinance No. 07-1138, shall be further amended as follows:

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.035. Applications for non-system licenses for Non-putrescible waste, Special waste and Cleanup Material Contaminated By Hazardous Substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for Putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;

- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:
  - (A) The total tonnage if the application is for a limited duration non-system license; or
  - (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license;
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed; and
- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries shall provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01.132 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-system facility after ~~January 1, 2009~~ December 31, 2008, must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code section 5.01.125.

**SECTION 13.12.** Metro Code section 7.01.020 shall be amended as follows:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by Metro, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or Metro for such use unless a lower rate has been established as provided in subsection 7.01.020(b). The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator

keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The Council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by Metro. If the Council so establishes a lower rate of tax, the Chief Operating Officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the Council as provided for herein.

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, licensed, franchised, or provided by Metro, each user of solid waste system facilities and each solid waste facility licensed or franchised under Chapter 5.01 of this Code to deliver putrescible waste directly to Metro's contractor for disposal of putrescible waste shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. In addition, each user of solid waste system facilities and each solid waste facility licensed or franchised under Chapter 5.01 of this Code to deliver putrescible waste directly to Metro's contractor for disposal of putrescible waste shall also pay the additional tax in the amount set forth under Section 7.01.023 for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2002, the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue of \$6,050,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter. For each Metro fiscal year thereafter the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue equal to the net excise tax revenue authorization in the previous fiscal year as adjusted in accordance with Section 7.01.022.

(e) (1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste system facilities, (ii) inert materials, (iii) Cleanup Materials Contaminated by Hazardous Substances, and (iv) compostable organic waste delivered to Metro

Central or Metro South stations, shall be the amount that results from dividing the net excise tax revenue amount set forth in subsection (d) by the amount of solid waste tonnage which the Chief Operating Officer reports to the Council under subsection (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be Metro's excise tax rate on solid waste during the subsequent Metro fiscal year. Commencing with Metro fiscal year 2006-07, and each fiscal year thereafter, the rate determined by this subsection shall be effective as of September 1st unless another effective date is adopted by the Metro Council.

- (2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By March 1st of each year, the Chief Operating Officer shall provide a written report to the Metro Council stating the following:

- (1) For the twelve (12) month period ending the previous December 31; the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to Section 7.01.050(a) of this chapter, and
- (2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if the Regional Recovery Rates corresponding to each calendar year set forth on the following schedule had been achieved:

<b>Year</b>	<b>Regional Recovery Rate</b>
2005	56%
2006	56.5%
2007	57%
2008	57.5%
2009	58%

The result of such calculation by the Chief Operating Officer shall be used to determine the excise tax rate under sub-section (e)(1).

~~(g) (1) A solid waste facility which is licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each twelve (12) month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be no greater than as provided on the following table:~~



Excise Tax Credit Schedule		
Facility Recovery Rate		Excise Tax
From	Up To & Above Including	Credit of no more than
0%	30%	0.00
30%	35%	1.92
35%	40%	2.75
40%	100%	3.51

- ~~(2) During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose without the prior review and authorization of the Metro Council.~~
- ~~(3) The Chief Operating Officer may establish procedures for administering the Excise Tax Credits set forth in subsection (g)(1), including, but not limited to, establishing eligibility requirements for such credits and establishing incremental Excise Tax Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (g)(1).~~

**SECTION 14.13.** Metro Code section 7.01.028 shall be amended as follows:

7.01.028 Budgeting of Excess Revenue

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020(e) exceed the net excise tax revenue amount set forth in Section 7.01.020(d) as adjusted by Section 7.01.022, such ~~additional revenue shall be apportioned as follows:~~

~~(a) Such excess net excise tax revenue shall first be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The amount of excess net excise tax revenues in such account shall not exceed an amount equal to 10 percent of the total amount of excise tax collected under Metro Code Chapter 7.01 during the period of the two (2) most recent Metro fiscal years. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.~~

~~(b) If at the end of any fiscal year the maximum permitted balance for the Recovery Rate Stabilization Account has been reached, during the following fiscal year any additional excess net excise tax revenues shall be used to increase the tax credit provided under Metro Code Section 7.01.020(g) for any solid waste facility that has achieved a Facility Recovery Rate greater than 45%. Such excess revenue shall be used on a dollar for dollar basis to reduce the tax liability of all such qualifying facilities. The amount of the additional tax credit shall not exceed the total excise tax otherwise due from the facility under this chapter.~~

~~(c) Any remaining excess revenue over the amounts apportioned in subsections (a) and (b) of this section shall be placed in the account established in subsection(a).~~

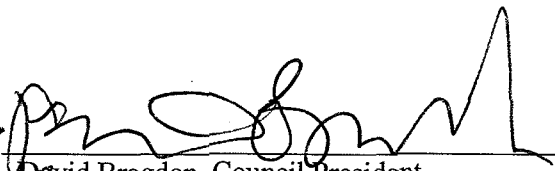
**SECTION 15.14.** Metro Code sections 7.01.160 and 7.01.170, and Section 4 of Metro Ordinance No. 07-1138 (Metro Code section 5.05.030(e)) are repealed.

**SECTION 16. 15** Metro Code sections 7.01.180 and 7.01.190 are repealed.

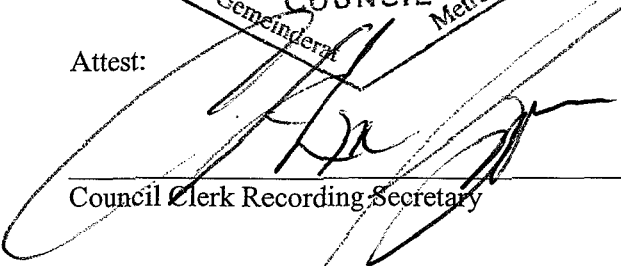
**SECTION 17. 16** Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, ~~12~~ and ~~15~~ 14 of this ordinance shall be effective 90 days after the adoption of this ordinance. Sections 6, 7, 12, 13, ~~14~~, and ~~16~~ 15 of this ordinance shall be effective on ~~January~~ July 1, 2009.

ADOPTED by the Metro Council this 16<sup>th</sup> day of August 2007.

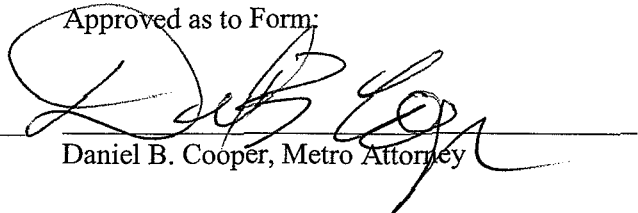


  
\_\_\_\_\_  
David Bragdon, Council President

Attest:

  
\_\_\_\_\_  
Council Clerk Recording Secretary

Approved as to Form:

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

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 07-1147, FOR THE PURPOSE OF ADOPTING LEGISLATION TO ENSURE THAT ALL OF THE REGION'S NON-PUTRESCIBLE WASTE UNDERGOES MATERIAL RECOVERY PRIOR TO DISPOSAL, TO ELIMINATE THE REGIONAL SYSTEM FEE AND EXCISE TAX CREDIT PROGRAM, AND TO MAKE RELATED CHANGES

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Date: April 26, 2007

Prepared by: Bryce Jacobson

### **BACKGROUND**

Higher levels of material recovery from commercial sources are essential to achieving the region's 64% state-mandated waste reduction goal. Greater recovery of building industry waste is a key component of the region's efforts.

In 2003, a stakeholder study group examining options for increasing recovery from this sector recommended that Metro should require processing of all construction and demolition debris loads before landfilling. Metro Council then directed staff to develop a program that would require all dry waste to be processed prior to landfill disposal.

C&D (also referred to as dry waste) consists primarily of six types of material: wood, metal, corrugated cardboard, concrete, drywall and roofing. On a typical construction or demolition project, over 90% of the waste materials are reusable or recoverable with current technology and markets.

The region's building industry has a well-developed system of over 90 source-separated recyclers and salvagers, seven facilities that recover recyclable material from mixed dry waste, and two dry waste landfills.

- **Building material reuse facilities** accept and resell used building materials (salvage) taken out of buildings during demolition or remodeling. *Salvaged materials have a positive value, with most salvage retailers paying for materials or providing a tax-deductible receipt.*
- **Source-separated recyclers** accept loads of already sorted materials, which are essentially 100% recyclable. *These facilities pay for materials like cardboard and metal or charge between \$5/ton - \$25/ton for materials that have well-developed local markets (wood, land clearing debris and rubble).*
- **Dry waste facilities** accept mixed loads of debris that are free of food waste and that meet their particular standards for minimum recovery content. *Tip fees at dry waste recovery facilities vary, but are usually \$65-70/ton. These facilities typically achieve a 25-50% material recovery rate.*
- **Transfer stations** process mixed dry loads for recovery and achieve an 18-35% recovery rate. *The Metro tip fee for all waste is \$70/ton; private transfer stations generally charge a slightly lower rate to attract dry waste flow.*

- **Dry waste landfills** accept loads of mixed dry waste and dispose of the debris without doing any type of post collection recovery/sorting. *Landfilling of dry waste costs \$50 to \$61/ton.*

For many generators of mixed dry waste, particularly on the west side, two dry waste landfills, Hillsboro and Lakeside, are the facilities of choice because they are the lowest cost options. Landfilling waste material is simply less costly than processing it for recovery.

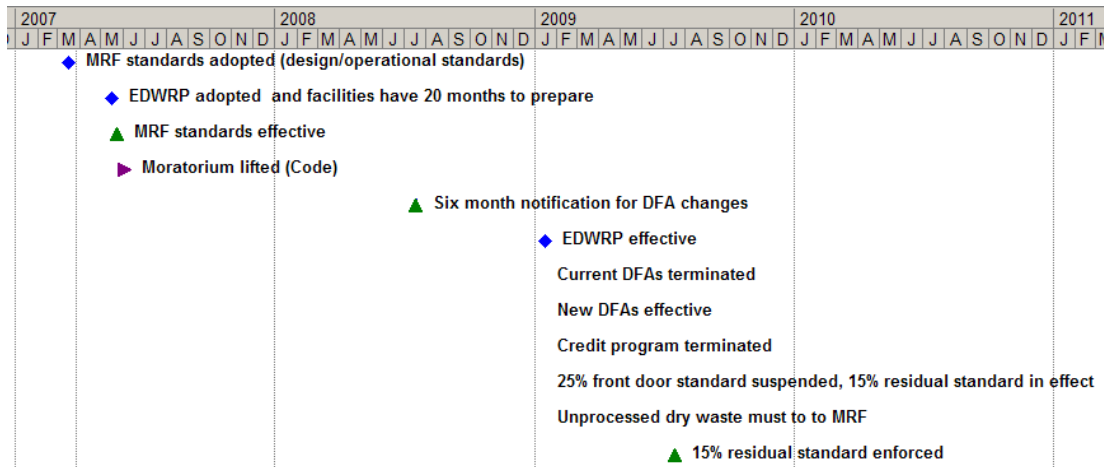
Hillsboro and Lakeside landfills collectively dispose of 125,000 tons of dry waste each year. The intent of this ordinance before Council is to spur at least 33,000 tons per year of new recovery by requiring the processing of dry waste for material recovery before landfilling.

The ordinance would affect all private facilities accepting Metro region mixed dry waste. Major provisions are as follows:

- All mixed dry waste generated in the Metro region would be required to be processed for material recovery prior to landfill disposal by January 1, 2009.
- Materials specified for recovery are those with steady markets: wood, metal and corrugated cardboard.
- The current “front door” 25% recovery requirement for dry waste facilities would be replaced by a new “back door residual” standard that would measure how effective a facility is at recovering wood, corrugated cardboard and metal. This standard would require that no more than 15% (by weight) of wood, cardboard and metal pieces (size specified) be present in the processing residual.
- The controversial Regional System Fee Credit program would end when this program takes full effect in January 2009.
- Facilities will have approximately 18 months before the required processing provision takes effect, but will have 25 months to meet the new performance requirement of this ordinance (15% “back door” residual standard) before it is enforced, beginning July 1, 2009.
- By March 1<sup>st</sup>, 2008, the Chief Operating Officer of Metro will recommend to Metro Council an additional per ton solid waste fee or surcharge that could be imposed on any designated facility (i.e., area landfill) still seeking to dispose of mixed dry waste after the program becomes effective. The recommended fee or surcharge would provide substantially equivalent disposal rates among material recovery facilities and designated facilities, eliminating current economic uncertainties for recovery and disposal facilities in Washington County.

The following timeline displays key dates in the program’s implementation and enforcement.

Figure 1  
Key Dates for Dry Waste Recovery and MRF Standards



## ANALYSIS/INFORMATION

1. **Known Opposition:** Lakeside landfill owner Howard Grabhorn, Washington county officials, and SWAC (most of the 9-6 majority opposing cited implementation uncertainties relative to Lakeside as the basis for their opposition).
2. **Legal Antecedents:** ORS 268.317, Metro Code Chapters 5.01, 5.05, and the Metro Charter
3. **Anticipated Effects:**

### *Economic Effects*

EDWRP is likely to increase posted tip fees for mixed dry waste at private facilities throughout the region. The policy is to allow more operating costs to be covered by gate revenue (especially the cost of processing more material with potentially lower recovery content), and to replace revenue lost to the planned elimination of the Metro fee and tax credit programs.

The increase in recovery facility gate rate will incent additional source separated recycling as generators seek to avoid the now higher gate rate for dry waste. This increase in source separated recycling is estimated to be in the range of 5,000-10,000 additional tons per year.

Metro staff studied six types of “typical” construction projects to estimate the likely disposal cost increases for generators as a result of EDWRP:

- Residential kitchen remodel with small addition
- New single-family house
- Complete demolition of a single-family house
- Residential re-roofing job
- Commercial remodeling project

- New “big-box” commercial retail space

Cost increases in the residential sector construction projects should be well under \$100 per project; as a function of total project cost they were well under ½ of one percent increase. Residential single-family demolition costs increased more than any other project type. Total disposal costs there should increase from \$100 to over \$700 or less than 1% to almost 5% of the total job cost.

Commercial construction project costs for an office remodel should increase from \$20 to over \$200. A large “big-box” retail store should increase between \$200 and \$1,800. Because of the higher overall costs for these commercial projects, the cost increases as a percent of total project cost were small, mostly under .05%.

***Environmental Effects***

Enhanced Dry Waste Recovery will increase recovery in the region by a minimum of 33,000 tons of new dry waste recovery each year. This newly recovered material will serve as manufacturing feedstock in some instances, alternative fuel sources in others. In each case, the material recovered reduces the need to extract raw materials, eliminating attendant energy use and pollution associated with virgin material extraction.

As shown in Figure 2, the dry waste diverted from landfill disposal and recovered in some fashion will result in a reduction in greenhouse gases, energy consumption and airborne wastes.

Figure 2

Environmental Effects of EDWRP\*

Action	Quantity	Equivalent to...
Reduce greenhouse gases by	25,931 MTCE (Metric tons of carbon equivalent)	keeping 19,567 cars off the road for a year
Reduce energy consumption by	733,971 Million BTU (British thermal units)	the energy used by 6,977 average households during a year
Reduce airborne wastes by	35,000 tons	21.8 million miles of heavy truck travel

\*These benefits are projected by the National Recycling Coalition Environmental Benefits Calculator.

**4. Budget impacts:** Effect on the General Fund is in two parts: the base excise tax and the additional tax. The contribution to the Recovery Rate Stabilization Reserve would be reduced by about \$20,000 per year. Revenue from the additional tax (for Parks, MERC and the Zoo) would be reduced by about \$115,000 per year. Effect on the Solid Waste Fund is essentially fiscally neutral.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends Metro Council approve Ordinance 07-1147.



**METRO**

600 NE Grand Ave.  
Portland, OR 97232-2736

## **Certification of Intent To Seek a DFA with Metro for Non-Putrescible Waste**

On August 16, 2007, the Metro Council adopted amendments to the Metro Code requiring that all Designated Facility Agreements (DFAs) for non-putrescible waste comply with the new Code requirements or be terminated (Ordinance No.07-1147B).

After December 31, 2008, the Metro Code (Section 5.05.030) will require all non-putrescible waste generated in the region be delivered to a material recovery facility and meet specific standards for processing prior to landfilling. Therefore, by July 1, 2008, you must notify Metro of your intent to seek a new DFA to either:

- 1) conduct material recovery on non-putrescible waste, or
- 2) only accept processed non-putrescible waste from authorized facilities.

### **Instructions**

Please review each of the options below and check a corresponding box (yes or no) to indicate your intent for a future agreement with Metro (after December 31, 2008). When you are done, please sign and date this form and return it to Metro in the enclosed self-addressed envelope before July 1, 2008. Based on your responses, Metro will work with you to develop a new draft DFA for your facility after July 1, 2008 and prior to November 1, 2008.

### **Options for a Metro Non-Putrescible Waste DFA**

After December 31, 2008, the agreement between Metro and your facility will authorize your facility to accept non-putrescible waste generated in the Metro region only if:

#### **OPTION 1 – Accept only Processing Residual**

Yes

No

My facility agrees to accept only non-putrescible waste “processing residual” from a Metro licensed or franchised facility authorized to perform material recovery, or from a designated facility that has an agreement with Metro to perform material recovery after December 31, 2008.

#### **OPTION 2 – Operate a Material Recovery Facility**

Yes

No

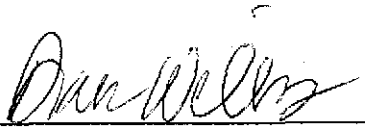
My facility agrees to perform material recovery on non-putrescible waste that has not yet undergone material recovery. My facility will operate the facility and perform material recovery in accordance with the standards as prescribed by Metro after December 31, 2008.

- If you check the "yes" box for option #1, then a DFA will be developed for acceptance of processing residual for landfilling.
- If you check the "yes" box for option #2, then an application for a MRF DFA must be submitted to Metro no later than August 1, 2008.
- If you check "yes" boxes for both options, then a single DFA will be developed that provides for two separate activities at your facility: 1) acceptance of processing residual for landfilling, and 2) processing non-putrescible waste at your MRF. You must submit a completed Metro MRF DFA application form by August 1, 2008.
- If you check the "no" boxes for both options, then you are certifying that you do not intend to seek a new DFA with Metro for accepting non-putrescible waste generated in the Metro region, and you acknowledge that your current DFA with Metro will be terminated no later than December 31, 2008.

If you have questions about the information in this form, or to request an application form for a MRF DFA, please contact Bill Metzler, Senior Solid Waste Planner at (503) 797-1666.

<b>Certification of Intent</b>	<b>This form cannot be processed without a signature</b>
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*The undersigned is authorized to sign this Certification of Intent on behalf of the facility.*

<u>TUALATIN VALLEY WASTE REC /</u> <u>HILLSBORO LANDFILL</u> Name of Facility	 Signature of Authorized Representative
<u>23 June 2008</u> Date	<u>DAN WILSON, DISTRICT MNGR</u> Print name and title





METRO  
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**HILLSBORO LANDFILL**

3205 SE Minter Bridge Rd.  
Hillsboro, OR 97123  
(503) 640-9427  
(503) 648-3942 Fax

23 June 2008

Mr. Roy Brower  
Regulatory Affairs Manager  
Metro  
600 NE Grand Ave.  
Portland, OR 97232-2736

Subject: Certification of Intent to Seek DFA for MRF

Dear Roy:

Enclosed in our signed Certification of Intent to seek a designated facility agreement (DFA) with Metro to operate a non-putrescible material recovery facility (MRF) at our Hillsboro location.

Please forward an application for a MRF DFA to my attention. I look forward to working with you and your staff on this project. Should you have any questions or need additional information, please do not hesitate to contact me at (503) 640-9427 ext.227.

Sincerely,  
Hillsboro Landfill/Tualatin Valley Waste Recovery

Dan Wilson  
District Manager

Enclosure: Certification of Intent

Copy: Bill Metzler, Metro  
Dean Kampfer, WM  
Mark Reeves, WM

*From everyday collection to environmental protection, Think Green® Think Waste Management.*

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO ) ORDINANCE NO. 08-1195
CODE CHAPTER 5.05 TO INCLUDE )
TUALATIN VALLEY WASTE RECOVERY ON ) Introduced by Michael J. Jordan, Chief
THE LIST OF DESIGNATED FACILITIES ) Operating Officer, with the concurrence of
David Bragdon, Metro Council President

WHEREAS, Metro Code Section 5.05.030 authorizes the Metro Council to add and delete facilities from the list of designated facilities set forth in that Section; and

WHEREAS, Waste Management, Inc., has made application to Metro seeking designated facility status for Tualatin Valley Waste Recovery by requesting that Metro add Tualatin Valley Waste Recovery to the list of designated facilities set forth in Metro Code Section 5.05.030; and

WHEREAS, as set forth in the staff report accompanying this Ordinance, the Chief Operating Officer analyzed the criteria set forth in Metro Code section 5.05.030(b) that the Metro Council must consider when it determines whether to add a facility to the list of designated facilities in Section 5.05.030(a); and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Metro Code Section 5.05.030(a) is amended to add the following provision as subsection 13:

(13) Tualatin Valley Waste Recovery. The Tualatin Valley Waste Recovery facility, 3205 SE Minter Bridge Road, Hillsboro, Oregon, subject to the terms of an agreement between Metro and the owner of the Tualatin Valley Waste Recovery facility authorizing receipt of solid waste generated within Metro only as follows:

- (A) As specified in an agreement entered into between Metro and the owner of the Tualatin Valley Waste Recovery facility authorizing receipt of such waste; or
(B) Subject to a non-system license issued to a person transporting to the facility solid wastes not specified in the agreement.

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

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

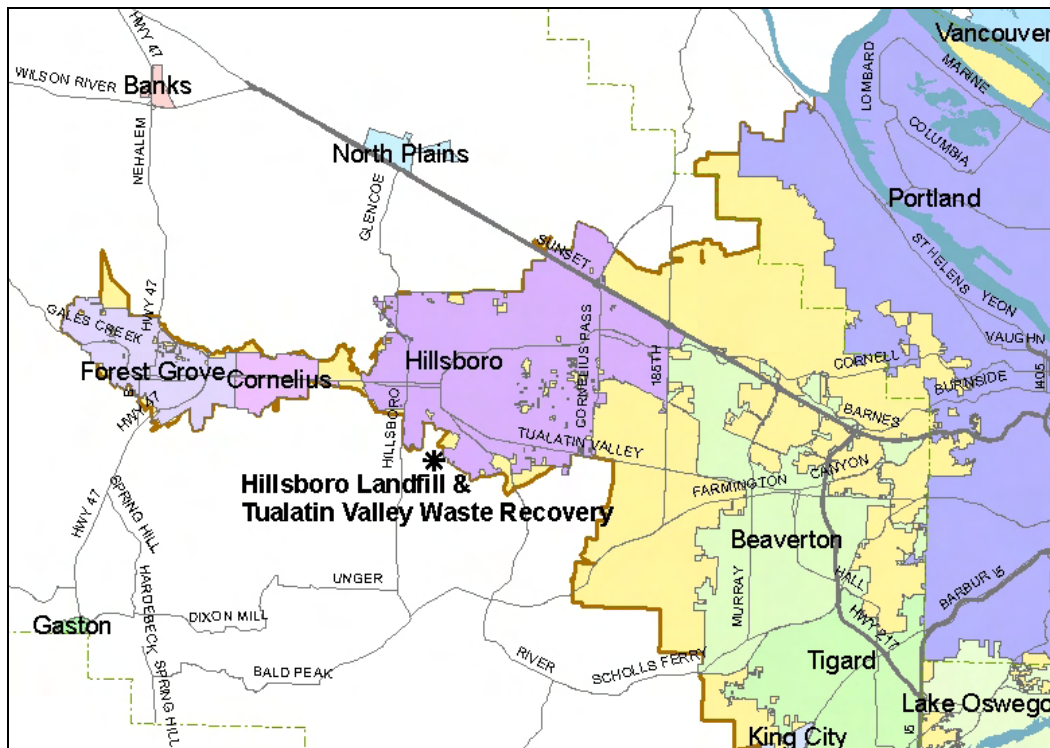
## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 08-1195, AMENDING METRO CODE CHAPTER 5.05 TO INCLUDE TUALATIN VALLEY WASTE RECOVERY ON THE LIST OF METRO DESIGNATED FACILITIES

August 20, 2008

Prepared by: Bill Metzler

The proposed Ordinance, if approved by Council, will list the Tualatin Valley Waste Recovery (“TVWR”) facility in Code as a designated facility authorized to receive non-putrescible waste generated from within the Metro boundary for the purpose of conducting material recovery. Upon listing, the Chief Operating Officer (COO) may then enter into a formal Designated Facility Agreement (“DFA”) with the facility on behalf of Metro. TVWR is located adjacent to the Hillsboro Landfill and is just outside the Metro boundary



Site location map of Tualatin Valley Waste Recovery and Hillsboro Landfill

## BACKGROUND

Tualatin Valley Waste Recovery (“TVWR”) is a Waste Management, Inc. owned material recovery facility located at 3205 SE Minter Bridge Road, Hillsboro, Oregon and borders the Metro jurisdictional boundary. TVWR is located adjacent to the Hillsboro Landfill, also owned by Waste Management, Inc.

TVWR currently operates only as a source-separated recycling depot accepting primarily source-separated loads of glass, metal, yard debris, wood waste and concrete. In 2004 TVWR was

issued a DEQ solid waste permit as a material recovery facility (Permit No. 1280) authorized to accept only select mixed loads of “dry” (non-putrescible) wastes generated at commercial, industrial, construction and demolition sites, and from the public, source-separated recyclable materials, and limited amounts of tires. However, TVWR has not operated as a mixed non-putrescible waste material recovery facility. TVWR currently operates only as a source-separated recycling depot.



Proposed TVWR building site location, Hillsboro Landfill and Metro Boundary (airphoto)

### Proposed improvements at TVWR

According to information provided by Waste Management, Inc., TVWR is currently obtaining permits to undertake a substantial facility expansion with an estimated date of completion of April 22, 2009 (Earth Day). The proposed facility will be authorized by the DEQ to accept mixed non-putrescible waste and recyclables for the purpose of conducting material recovery. However, Waste Management, Inc. representatives have indicated to Metro that the proposed facility may not be finished until July 2009 or later pending issuance of local permits and availability of construction materials.

The proposed facility will include construction of a new, fully enclosed 65,000 square foot metal building with a translucent roof to lower energy consumption. In addition, the facility will collect rainwater from the roof to be stored for operational and fire suppression needs, and will be partially powered by solar cells. The proposed facility will be built following the guidelines from the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, and intends to be certified under the “Gold Standard” for LEED rating.



Waste Management, Inc. illustration of proposed TVWR facility

### Designated Facility Agreement to establish consistency with EDWRP

On August 16, 2007, in an effort to increase the recovery of solid waste, the Metro Council approved Ordinance No. 07-1147B adopting the Enhanced Dry Waste Recovery Program (EDWRP). The ordinance requires that by January 1, 2009 all mixed non-putrescible waste generated in the Metro region be delivered to a material recovery facility (“MRF”) for processing before disposal. In order to ensure compliance with EDWRP requirements, the residual from such processing must be delivered for disposal to landfills designated by Metro to only accept processing residual, which includes the Hillsboro Landfill. Upon entering into a DFA with Metro, NSLs will not be issued for non-putrescible waste deliveries to the TVWR facility.

In response to these changes, TVWR has requested designated facility status as a MRF so that it may accept and process non-putrescible waste generated from within the Metro region after December 31, 2008. The proposed ordinance, if approved by Council, will list TVWR in the Code as a designated facility authorized to accept non-putrescible waste for the purpose of conducting material recovery, along with other designated facilities already listed. If the Council lists TVWR as a designated facility, the COO will negotiate a DFA with Waste Management, Inc.

The DFA for the TVWR facility will include standard provisions included in other DFAs, and will also include provisions that ensure non-putrescible waste generated from the Metro region is managed in accordance with applicable EDWRP requirements established in Metro Code Section 5.05.030(g) for the operation of a material recovery facility as follows:

*(g) An agreement between Metro and a designated facility that, after December 31, 2008, authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not comprised of processing residual, and originated or was generated within Metro boundaries shall:*

- (1) Require such designated facility to perform material recovery on such waste; and*

- (2) *Demonstrate, in a manner that can be verified and audited, that such processing achieves material recovery substantially comparable to that required of in-region material recovery facilities by Metro Code subsections 5.01.125(a) and (b) by either:*
  - (A) *Meeting such material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or*
  - (B) *Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.*
- (3) *Demonstrate, in a manner that can be verified and audited, that such facility substantially complies with (A) the performance goals described in Metro Code Sections 5.01.067(i) (as amended by Section 1 of Metro Ordinance No. 07-1138) and 5.01.075(c) (as amended by Section 2 of Metro Ordinance No. 07-1138), and (B) the performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative procedures pursuant to Metro Code Section 5.01.132 (as amended by Section 3 of Metro Ordinance No. 07-1138).*

#### Waste Management, Inc. to Seek a Variance

The Metro Code requirements in Chapter 5.05 implementing the EDWRP provisions go into effect on December 31, 2008. However, Waste Management, Inc. has indicated that the proposed TVWR facility will not likely be completed and fully operational until April 22, 2009 or perhaps even later in 2009 due to local permit timeframes and questionable availability of construction materials. Therefore, a DFA with Waste Management, Inc. cannot be developed that authorizes TVWR to accept non-putrescible waste from the Metro region until TVWR can either:

- 1) Meet the EDWRP requirements as specified in Metro Code Chapter 5.05, or
- 2) Obtain a variance from specific EDWRP Code provisions.

If Waste Management, Inc. pursues a variance request, then the Metro Council would decide whether or not to grant a variance, and a DFA would be developed by the COO to reflect the decision of the Council.

## TVWR and the Hillsboro Landfill

TVWR is located adjacent to the Hillsboro Landfill, also owned by Waste Management, Inc. The Hillsboro Landfill operates under a DEQ Solid Waste Disposal Site Permit (No. 112) and was listed in Metro Code Chapter 5.05 as a designated facility of the system in 1993. Correspondingly, Metro and the Hillsboro Landfill entered in to a DFA on April 20, 1993 (Metro Contract No. 902858), and the COO is currently negotiating a new DFA with Waste Management, Inc. in compliance with EDWRP requirements.

In accordance with EDWRP requirements established in Metro Code Section 5.05.030(c), Metro's existing DFA with the Hillsboro Landfill will be amended by December 31, 2008 to ensure that all non-putrescible waste undergoes material recovery prior to disposal. In particular, the Hillsboro Landfill DFA will stipulate that after December 31, 2008, the Hillsboro Landfill can only accept processed non-putrescible waste (processing residual from a MRF) from authorized facilities for disposal in the landfill.

If TVWR is approved by the Council as a designated facility, then TVWR, in accordance with the provisions of its Metro DFA, will be able to accept unprocessed non-putrescible waste from the Metro region, where dry waste will be recovered at TVWR prior to disposal of the residual at the Hillsboro Landfill. The practical effect will be that some 80,000 tons of unprocessed non-putrescible waste delivered to the Hillsboro Landfill (based on tons reported for 2007), coming from the Metro region, must be diverted to one or more MRFs for processing. As a result of the waste recovery at TVWR, Waste Management, Inc. has indicated that the life of the Hillsboro Landfill could be extended by an additional 25-30 years.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

Staff is not aware of any opposition to the proposed ordinance. Waste Management, Inc. held a public information meeting for neighbors to discuss the proposed new MRF on August 7, 2008 and received generally positive comments from the public that attended.

### **2. Legal Antecedents**

Metro Code Section 5.05.030(a) contains a list of designated facilities. Metro Code Section 5.05.030(b) states that, pursuant to a duly enacted ordinance, the Metro Council may add facilities to the list. In deciding whether to designate an additional facility, the Council shall consider several factors listed in the Code. Below are the factors that must be considered, with each factor followed by a brief analysis.

- (1) *The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination (Metro Code Section 5.05.030(b)(1));*

Metro staff have not found any evidence that TVWR has accepted wastes that were not permitted by the DEQ to accept, therefore the potential for future risk of environmental contamination at TVWR appears to be minimal. TVWR currently accepts source-separated loads of glass, metal, yard debris, wood waste and concrete, and operates under a DEQ solid waste permit. As a source separated material recovery facility accepting only limited types of non-putrescible and source-separated wastes, the facility has no known history of accepting wastes that pose a future risk of environmental contamination.

- (2) *The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations (Metro Code Section 5.05.030(b)(2));*

The DEQ considers the current source-separated recycling depot operation to be well run, and in compliance with federal and state requirements. The facility is also reported to have a good compliance record with local (Washington County) public health, safety and environmental rules and regulations. TVWR is permitted by the DEQ, however, the current permit will need to be modified for the new facility.

Waste Management, Inc. also owns and operates the adjacent Hillsboro Landfill, which has a DEQ permit and a Metro DFA for disposal of non-putrescible waste. Hillsboro Landfill also has a good record of regulatory compliance with Metro, Washington County and the DEQ. Other Waste Management, Inc. facilities that are franchised by Metro include the Troutdale Transfer Station (Metro Franchise No. F-001-03), and Forest Grove Transfer Station (Metro Franchise No. FR-004). Both transfer stations have good records of substantive regulatory compliance with Metro ordinances and generally cooperate with Metro in enforcement of such ordinances. Waste Management, Inc. also owns and operates the Columbia Ridge Landfill, which is permitted by the DEQ, and is a Metro designated facility for certain wastes generated in the Metro region. The Columbia Ridge Landfill is also Metro's waste disposal contractor. Both the Hillsboro Landfill and the Columbia Ridge Landfill have good records of regulatory compliance and cooperation with Metro and the DEQ. Additionally, Waste Management, Inc. owns and operates the Riverbend Landfill which is located in Yamhill County, outside the Metro region, and has a good record of regulatory compliance and cooperation with Metro, Yamhill County and the DEQ.

- (3) *The adequacy of operational practices and management controls at the facility (Metro Code Section 5.05.030(b)(3));*

TVWR plans to use operational practices and management controls that are typical of material recovery facilities and considered by the DEQ to be adequate for the protection of health, safety, and the environment. Metro will review and approve TVWR's operating plan prior to operational start-up. Moreover, the proposed improvements at the facility that include constructing a new fully enclosed 65,000 square foot LEED certified



building will result in significant operating improvements and management controls at the facility.

(4) *The expected impact on the region's recycling and waste reduction efforts (Metro Code Section 5.05.030(b)(4));*

Listing a new designated facility to conduct material recovery on unprocessed non-putrescible waste - that was previously landfilled - will result in additional processing capacity for the region and will have a positive impact on the region's recovery rate and waste reduction efforts.

Based on Hillsboro Landfill tonnage reports from 2007, staff estimates that the effect of approving TVWR as a designated facility will likely result in some 80,000 tons per year of unprocessed non-putrescible waste from the Metro region will be diverted from Hillsboro Landfill to TVWR for processing. If TVWR maintains a 25% recovery rate, then an additional 20,000 tons of material will be recovered from Metro area waste, which translates into adding about two-thirds (2/3) of an additional percentage point<sup>1</sup> toward the regional recovery goal of 64%. The Metro region is achieving a 55.5% recovery rate based on 2006 data from the DEQ.

However, in its application to be listed as a designated facility, Waste Management, Inc. has indicated that TVWR anticipates accepting 160,000 tons of non-putrescible waste from the Metro region annually, and plans to recover 48,000 tons from that waste, resulting in a 30% recovery rate. These higher recovery numbers could add 1.5 percentage points to the regional recovery rate.

(5) *The consistency of the designation with Metro's existing contractual arrangements (Metro Code Section 5.05.030(b)(5));*

Approval of the proposed DFA will not conflict with Metro's disposal contract or any other of its existing contractual arrangements. Waste Management, Inc. is Metro's disposal contractor for putrescible waste. The waste authorized under the proposed DFA for TVWR is non-putrescible and not subject to the contract provisions, and therefore delivery of non-putrescible Metro area waste to TVWR is consistent with the disposal agreement.

(6) *The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement (Metro Code Section 5.05.030(b)(6));*

As an out-of-region non-designated facility, TVWR has not previously been subject to Metro ordinances or agreements, as it is a proposed new facility. However, the Hillsboro Landfill, which is a Metro designated facility (Metro DFA Contract No. 902858), has been generally cooperative with Metro's Regulatory Affairs Division.

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<sup>1</sup> One additional percentage point would be the equivalent of an additional 22,000 tons of recovered material.

Waste Management, Inc. also owns and operates the adjacent Hillsboro Landfill, which has a DEQ permit and a Metro DFA for disposal of non-putrescible waste. Hillsboro Landfill also has a good record of regulatory compliance with Metro, Washington County and the DEQ. Other Waste Management, Inc. facilities that are franchised by Metro include the Troutdale Transfer Station (Metro Franchise No. F-001-03), and Forest Grove Transfer Station (Metro Franchise No. FR-004). Both transfer stations have good records of substantive regulatory compliance with Metro ordinances and generally cooperate with Metro in enforcement of Metro ordinances. Waste Management, Inc. also owns and operates the Columbia Ridge Landfill, which is permitted by the DEQ, and is a Metro designated facility for certain wastes generated in the Metro region. The Columbia Ridge Landfill is also Metro's waste disposal contractor. Both the Hillsboro Landfill and the Columbia Ridge Landfill have good records of regulatory compliance and cooperation with Metro and the DEQ. Additionally, Waste Management, Inc. owns and operates the Riverbend Landfill which is located in Yamhill County, outside the Metro region, and has a good record of regulatory compliance and cooperation with Metro, Yamhill County and the DEQ.

(7) *Other benefits or detriments accruing to residents of the region from Council action in designating a facility (Metro Code Section 5.05.030(b)(7));*

The potential benefits of listing TVWR as a designated facility are listed below under Anticipated Effects. Staff does not anticipate that any detriments will accrue to residents of the region as a result of the proposed listing.

### **3. Anticipated Effects**

- Collection of Metro regional system fees and excise tax on processing residual that is landfilled.
- Enhanced implementation of EDWRP provisions and more efficient administration through a DFA.
- Significant additional material recovery from wastes previously landfilled - estimated to be between 20,000 tons per year to 40,000 tons per year, depending on operating capacity.
- Extend the life of the Hillsboro Landfill by 25-30 years.
- A "Gold Standard" LEED certified MRF. According to information provided by Waste Management, Inc., the proposed TVWR facility is designed to be certified by the Leadership in Energy and Environmental Design (LEED) Green Building Rating System to the Gold Standard. The facility will be built with minimal amounts of waste, energy efficiency, water savings and several other criteria in order to achieve LEED certification.

#### **4. Budget impacts**

Adopting this Ordinance will help enable implementation of EDWRP, whose budget impacts have already been considered by the Metro Council in its adoption of Ordinance 07-1147B. Designation of TVWR is consistent with EDWRP and is not expected to alter the budget impact projection contained in the EDWRP Ordinance staff report.

TVWR will receive only unprocessed non-putrescible waste for the purpose of conducting material recovery on waste generated in the Metro region under the authority of the proposed DFA. This wastestream is unlikely to be diverted from Metro transfer stations or other MRFs since it has typically been delivered to the Hillsboro Landfill. The processing residual resulting from material recovery at TVWR will be delivered to a designated facility (the Hillsboro Landfill) where regional system fees and excise tax will be collected and remitted to Metro.

#### **RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of Ordinance No. 08-1195.

BM:bjl  
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Queue



WASHINGTON COUNTY  
 Department of Land Use & Transportation  
 Current Planning Services Division  
 155 North First Avenue, Suite 350-13  
 Hillsboro, OR 97124  
 (503) 846-8761 fax: (503) 846-2908  
 http://www.co.washington.or.us/

**NOTICE OF DECISION  
 & STAFF REPORT**

**CASEFILE: 08-243-COD**

**APPLICANT:**

Hillsboro Landfill Inc/Waste Management  
ATTN: Dan Wilson, District Manager  
3205 SE Minter Bridge Road  
Hillsboro, OR 97123

**APPLICANT'S REPRESENTATIVE:**

none

**OWNER(S):**

Waste Management-Hillsboro Landfill Inc.  
PO Box 1450  
Chicago, IL 60690

**PROPERTY LOCATION:**

On the west side of SE Minter Bridge Road at its  
 intersection with SE Noland Street.

**PROCEDURE TYPE:** 1  
**CPO:** 9  
**COMMUNITY PLAN:** Rural/Natural Resource  
 Plan/East Hillsboro Community Plan

**ASSESSOR MAP NO.:** 1S2 07/1S2 18  
**TAX LOT NO.:** 1200,1400,1500,1600,1700,1701/  
 100,200,300,400,401,500,1000,1091  
**ADDRESS:** 3205 SE Minter Bridge Road  
**SITE SIZE:** 192.16 acres  
**LAND USE DISTRICT(S):** Exclusive Farm  
 Use District (EFU) R9 (Urban Residential) & R15  
 (Urban Residential)

**PROPOSED DEVELOPMENT ACTION:** Commencement of Development for Casefile 03-229-SU/D

**DECISION:**

Approval ✓ Denial \_\_\_\_\_

Signature Mark Brown Date 8/19/08

Mark Brown, Land Development Services Manager

- Attachments:**
- A. Summary of Code Requirements
  - B. Staff Report
  - C. Site Plan

**Appeal Information:** Approval or denial of this request or any conditions may be appealed if a written appeal is filed with the Washington County Department of Land Use and Transportation within twelve (12) days of the date this notice is provided. A motion for reconsideration may be filed within seven (7) days of the date this notice was provided. This decision will be final if no appeal is filed by the due date and a motion for reconsideration is not granted by the review authority. For further information about an appeal, contact the Appeal Secretary at 503-846-8134.

**APPEAL PERIOD:** Date mailed: 8/20/08 to 5:00 pm on 9/2/08 (Appeal Due Date).

## **Attachment A SUMMARY OF CODE REQUIREMENTS**

- I. THE CONDITIONS OF CASEFILE NO. 03-229-SU/D CONTINUE TO APPLY. ANY SUBMITTED PLANS DETERMINED TO HAVE EXPIRED BY OTHER COUNTY DEPARTMENTS SHALL BE UPDATED AND/OR RESUBMITTED AS REQUIRED.**
  
- II. THIS DEVELOPMENT PERMIT MAY BE REVOKED PURSUANT TO SECTION 201-7.1. THIS INCLUDES FAILURE TO MAKE REASONABLE PROGRESS TOWARDS COMPLETION OF A COMMENCED PROGRESS FOR A CONTINUOUS PERIOD OF ONE (1) YEAR.**

## Attachment B STAFF REPORT

### I. APPLICABLE STANDARDS:

- A. Washington County Comprehensive Framework Plan (Rural/Natural Resource Plan Element), (East Hillsboro Community Plan)
- B. Washington County Community Development Code
  - 1. Article II, Procedures:
    - Section 201-6 When a Development has Commenced
    - Section 202-1 Type I Procedure
    - Section 207-5 Conditions of Approval

### II. AFFECTED JURISDICTIONS:

None

#### A. Background

1. On October 28, 2003, the Hearings Officer approved Casefile 03-229-SU/D, authorizing the expansion of the Hillsboro Landfill as a Special Use and Development Review, including an enlargement of the landfill area, and the addition of a Material Recovery Facility to sort recyclables. Additional background findings regarding the history of this landfill's development and previous land use reviews are detailed in that Casefile. This landfill disposes of dry waste, for example construction and demolition debris, and special waste, for example petroleum contaminated soils. The landfill does not accept putrescible waste, such as garbage.

Casefile 03-229-SU/D described the Material Recovery Facility (MRF, hereafter) functioning as a recovery and separating area for wood, metals, and other recyclables from dry wastes, such as construction and demolition debris. The MRF design submitted in the 2003 Casefile changed from a smaller (22.5K square foot), covered open-sided metal building proposed to be placed within a 130K square foot sorting area to a fully enclosed 64.8K square foot sorting space within an adjoining three story bump-out with locker rooms, lunchrooms and conference rooms comprising each level of the "bump-out". Because conditions were included in the decision on Casefile 03-229-SU/D pertaining to the size and design of the building, and those characteristics have been changed by the applicant, a Modification of Condition (MOD, hereafter) application is pending (Casefile 08- 264-MOD) to authorize these changes to conditions of approval. Additionally, Casefile 03-229-SU/D included a condition to construct a berm to screen the open-sided building from off-site properties. The building design submitted with this COD casefile illustrates the revised building alterations noted above. The MOD

application is being processed as a Type II, so that decision will be issued at a later date.

2. The applicant has provided copies of invoices and check receipts totaling over \$100,000 dollars as evidence that sufficient funds have been expended as part of the requirements for a Type I review pursuant to Section 201-6.2 (3). Relevant payments were associated with work conducted on the subject parcel in early 2004 to address a series of conditions to be satisfied within 90-days of the decision. Evidence in Casefile 03-229-SU/D indicates these conditions were satisfied. A second series of conditions were required prior to any ground-disturbing activities. Most of the evidence on monetary expenditures received herein to illustrate commencement is directed towards completion of this series of conditions. Receipts for berm construction during 2006 exceed \$250K. Specific work conducted on the site is noted below under Staff comments for this section.
3. All potential impacts from the development were reviewed under Casefile 03-229-SU/D. This request is for additional time to continue development of the building. This application does not include any modifications to the original request and conditions of approval for that decision still apply.
4. Access to the landfill is from SE Minter Bridge Road, a county arterial road.

**B. 2005 Comprehensive Framework Plan (Rural/Natural Resource Plan Element):**

The goals and policies that relate to the development of land are implemented by the Code. The applicant is not required to address, consider, or implement any goal, policy or strategy of the Plan except where required by the Code.

Development requests on land with designated Significant Natural Resources are subject to Code Section 422, which requires the application of Plan Policy 10, Implementing Strategy E. More than 80% of the subject parcels are within the Tualatin River Floodplain and are designated as Water Area and Wetlands Significant Natural Resource on the Rural/Natural Resource Plan. This was addressed in the background findings of the original report (Casefile 03-229-SU/D), which noted that the proposed building will be located outside of the floodplain/resource area. Further consideration of Section 422 is therefore unnecessary.

**C. Washington County Community Development Code:**

**2. Article II, Procedure:**

**Section 201-6 When a Development has Commenced**

- 201-6.1 This provision applies to authorized projects that are initiated prior to the expiration of the development permit, but are not completed before the expiration date. Once development has commenced, the holder of the Development Permit is allowed to complete the development. After development has commenced, the Development Permit does not expire unless it is revoked pursuant to Section 201-7.

There are two processes for making decisions to determine whether or not development has commenced. The Type I process can be summarized as expending a minimum dollar amount of money physically altering the land or structure, or changing the use thereof or, in the case of development requiring a building permit, issuance of the building permit. The Type II process can be summarized as expending any combination of time, labor, or money physically altering the land or structure, or changing the use thereof; or expending a combination of time, labor, or money toward completion of a development project without physically altering the land or structure or changing the use thereof for reasons beyond reasonable control of the Permit holder.

**STAFF:** The applicant has submitted a request for Commencement of Casefile 03-229-SU/D as a Type I.

**201-6.2 Type I decision:**

The authorized development has commenced when the holder of the Permit has:

- (1) Physically altered the land or structure or changed the use thereof. Examples include one or more of the following: preliminary grading for roads, driveways, building sites or installation of utilities; interior remodeling of a structure; required off-site improvements; and
- (2) Such alteration or change is directed toward completion of applicable Code standards or Conditions of Approval for the development; and
- (3) Is sufficient in terms of money expended to demonstrate a good faith effort to complete the development. Sufficient means spending at least: \$5,000 for projects involving one dwelling on an existing lot or parcel, \$10,000 for partitions and subdivisions with four (4) lots, and \$25,000 for all other projects. The expenditures must be related to completion of the development; this money must have been spent on physically altering the property. Expenditures that could apply to various other uses of the land or structure shall be excluded including the cost of purchasing land; or
- (4) In the case of development requiring a building permit for a dwelling or commercial building permit, the land use sign-off for the permit or issuance of the building permit shall be conclusive evidence of commencing development. A Development Permit



which otherwise would have expired [development has not commenced in accordance with (1), (2) and (3) above], but for issuance of a building permit, shall expire automatically upon expiration of the building permit. Nothing herein, however, shall be deemed to extend the life of said building permit as provided by law.

**STAFF:**

The applicant has submitted receipts for payment of materials and/or services that have been applied toward implementing conditions applied as part of Casefile 03-229-SU/D. Because the development involved a landfill, monetary expenditures must equal or exceed \$25K according to (3) above. The expenditures included construction of a wheel wash for trucks leaving the site, and a landscape screening berm on the perimeter of the waste cell sites, both which involved physically altering the land. The wheel wash was completed in 2004 and the landscape berm inspected in November of 2006. This work preceded the request for a building permit for the MRF requested in the original application. Specifically, the applicant has included receipts to NW Environmental Equipment and L&H Grading for work on the wheel wash and berm, respectively, which well exceed the \$25,000 expenditure required for Type I reviews. A Grading Permit for the berm was finalized in November of 2006.

Subsequent to these expenditures the applicant continued to work with METRO on their evolving rules for waste recovery facilities (verbal conversation with applicant, May, 2008). A revised architectural plan on the MRF was prepared in May and revised in June of 2008, so expenditures for architectural services occurred subsequent to the earlier amounts noted above. It is a Building Permit for this structure that will be authorized upon approval of this commencement of development, pending completion of the Conditions of Approval.

Section 201-6 states that once a development has commenced, the development permit does not expire unless it is revoked pursuant to Section 201-7.

**Section 201-7 Revocation of Development Permit**

201-7.1 Revocation shall be processed as a Type I action. A Development Permit may be revoked upon a finding of:

- A. Noncompliance with the standards or conditions set forth in this Code, or any special conditions imposed upon the permit;
- B. Intentional fraud, misrepresentation or deceit upon the part of the applicant as to an issue material to the issuance of the Development Permit;
- C. Abandonment or discontinuance as determined by failure to make reasonable progress toward

completion of a commenced development for a continuous period of one (1) year. Bona fide good faith efforts to market the development shall not constitute abandonment or discontinuance; or

D. A change in this Code, the Comprehensive Plan or State law which would make the approved development unlawful or not permitted, prior to the development obtaining a vested right or nonconforming use status.

201-7.2 Revocation shall be effective immediately upon the County providing written notice thereof to the holder of the Permit. Unless provided otherwise by the revoking authority, revocation terminates the authority to continue the use. Continued use without a current valid development permit shall be a violation of this Code.

201-7.3 The holder of a revoked Permit may reapply for a new Permit at any time as an entirely new application.

201-7.4 Revocation is available in addition to and not in lieu of any other remedy provided by law and is not a condition precedent to any such remedy.

**STAFF:**

Although the applicant has shown development has commenced on Casefile 03-229-SU/D, the Director may revoke a Development Permit for any of the reasons listed above. According to Section 201-7.1C, if more than a year passes and abandonment or discontinuance as determined by failure to make reasonable progress toward completion of the building has occurred, the Director shall revoke the Development Permit. Sufficient evidence was included in the Casefile for staff to conclude that the MRF project has not been abandoned. Such evidence includes the revised architectural designs submitted for the MRF building permit consideration which prompted this application. The permit continues to be subject to revocation and this standard has been included in the summary found in Attachment A.

**Section 202-1 Type I**

202-1.1 Type I development actions involve permitted uses or development governed by clear and objective review criteria. Type I actions do not encompass discretionary land use decisions. Impacts have been recognized by the development and public facility standards. The intent and purpose of the District is not a consideration of approval in Type I uses.

**STAFF:**

This application is being processed as a Type I procedure of the Community Development Code, as required via Section 201-6.2, above.

**Section 207-5 Conditions of Approval**

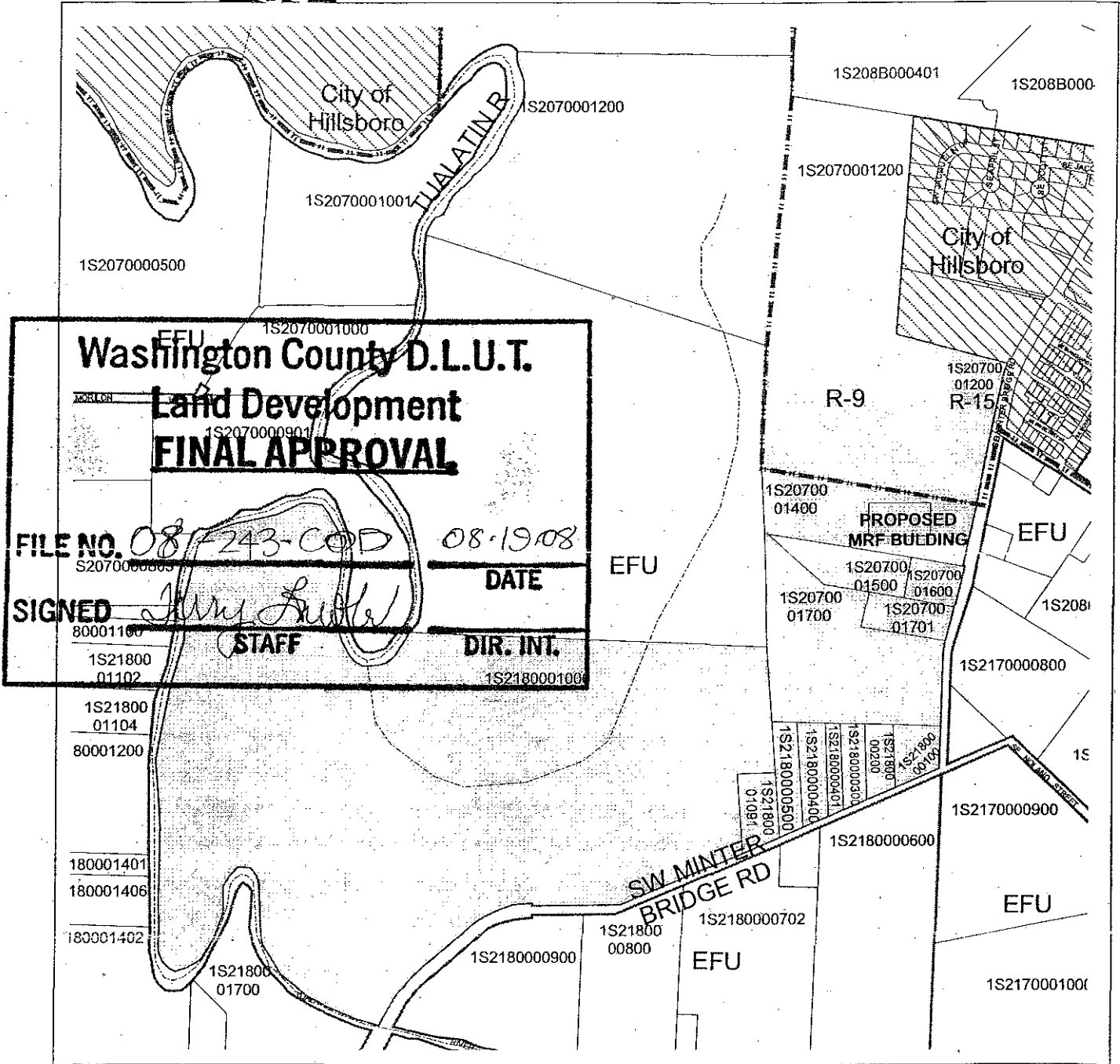
207-5.1 The Review Authority may impose conditions on any Type II or III development approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict densities to less than that authorized by the development standards of this Code.

**STAFF:** All conditions of approval of the original Casefile 03-229-SU/D continue to apply. This 2003 Casefile directed the applicant to comply with precedent conditions, which the applicant is seeking to change via Casefile 08-264-MOD.

## II. SUMMARY

The applicant has provided sufficient information to demonstrate Commencement of Development on the improvements for a single family dwelling approved via Casefile 03-229-SU/D, according to the standards set forth in Code Section 201-6. The request conforms to the approval standards as outlined in Section II of this report provided that the Code requirements summarized in Attachment A are implemented.

- TAX MAP/LOT NO. 1S2070001200, 01400 - 01700, 01701; 1S21800100 - 00400, 00401, 00500, 01000, & 01091  
 CASE FILE NO. 08-243-COD



**Washington County D.L.U.T.**  
**Land Development**  
**FINAL APPROVAL**

FILE NO. 08-243-COD DATE 08-19-08

SIGNED [Signature] STAFF DIR. INT.



AREA OF CONSIDERATION

SCALE: 1" TO 800'

**SITE & SURROUNDING LAND USE DISTRICTS:**

- EFU District (Exclusive Farm Use)
- Urban Growth Boundary
- R9 (Residential 7-9 units/acre)
- R15 (Residential 12-15 units/acre)

**REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN**

- A. WASHINGTON COUNTY COMPREHENSIVE PLAN
- B. RURAL/NATURAL RESOURCE ELEMENT
- C. TRANSPORTATION PLAN
- D. WASHINGTON COUNTY COMMUNITY DEVELOPMENT CODE:
  - ARTICLE I, INTRODUCTION & GENERAL PROVISIONS
  - ARTICLE II, PROCEDURES
  - ARTICLE III, LAND USE DISTRICTS
  - ARTICLE IV, DEVELOPMENT STANDARDS
  - ARTICLE V, PUBLIC FACILITIES AND SERVICES
  - ARTICLE VI, LAND DIV. & LOT LINE ADJUSTMENTS
  - ARTICLE VII, PUBLIC TRANSPORTATION FACILITIES
- E. R & O 86-95 TRAFFIC SAFETY IMPROVEMENTS
- F. ORD. NO. 524 UNIFORM ROAD IMPROVEMENT STANDARDS
- G. ORD. NO. 379 TRAFFIC IMPACT FEE



WASHINGTON COUNTY  
 Department of Land Use & Transportation  
 Current Planning Services Division  
 155 North First Avenue, Suite 350-13  
 Hillsboro, OR 97124  
 (503) 846-8761 fax: (503) 846-2908  
 http://www.co.washington.or.us/

## NOTICE OF DECISION & STAFF REPORT

PROCEDURE TYPE: II  
 CPO: 9  
 COMMUNITY PLAN: Rural/Natural Resource  
Plan/East Hillsboro Community Plan

ASSESSOR MAP NO.: 1S2 07/1S2 18  
 TAX LOT NO: 1200,1400,1500,1600,1700,1701/  
100,200,300,400,401,500,1000,1091  
 ADDRESS: 3205 SE Minter Bridge Road  
 SITE SIZE: 192.16 acres  
 LAND USE DISTRICT(S): Exclusive Farm  
Use District (EFU) R9 (Urban Residential) & R15  
(Urban Residential)

CASEFILE: 08-264-MOD

APPLICANT:  
Hillsboro Landfill Inc/Waste Management  
 ATTN: Dan Wilson, District Manager  
3205 SE Minter Bridge Road  
Hillsboro, OR 97123

APPLICANT'S REPRESENTATIVE:  
none

OWNER(S):  
Waste Management-Hillsboro Landfill Inc.  
PO Box 1450  
Chicago, IL 60690

PROPERTY LOCATION:  
On the west side of SE Minter Bridge Road at its  
intersection with SE Noland Street.

PROPOSED DEVELOPMENT ACTION: Request for a Modification/Removal of Conditions of  
Casefile 03-229-SU/D

September 3, 2008

### DECISION:

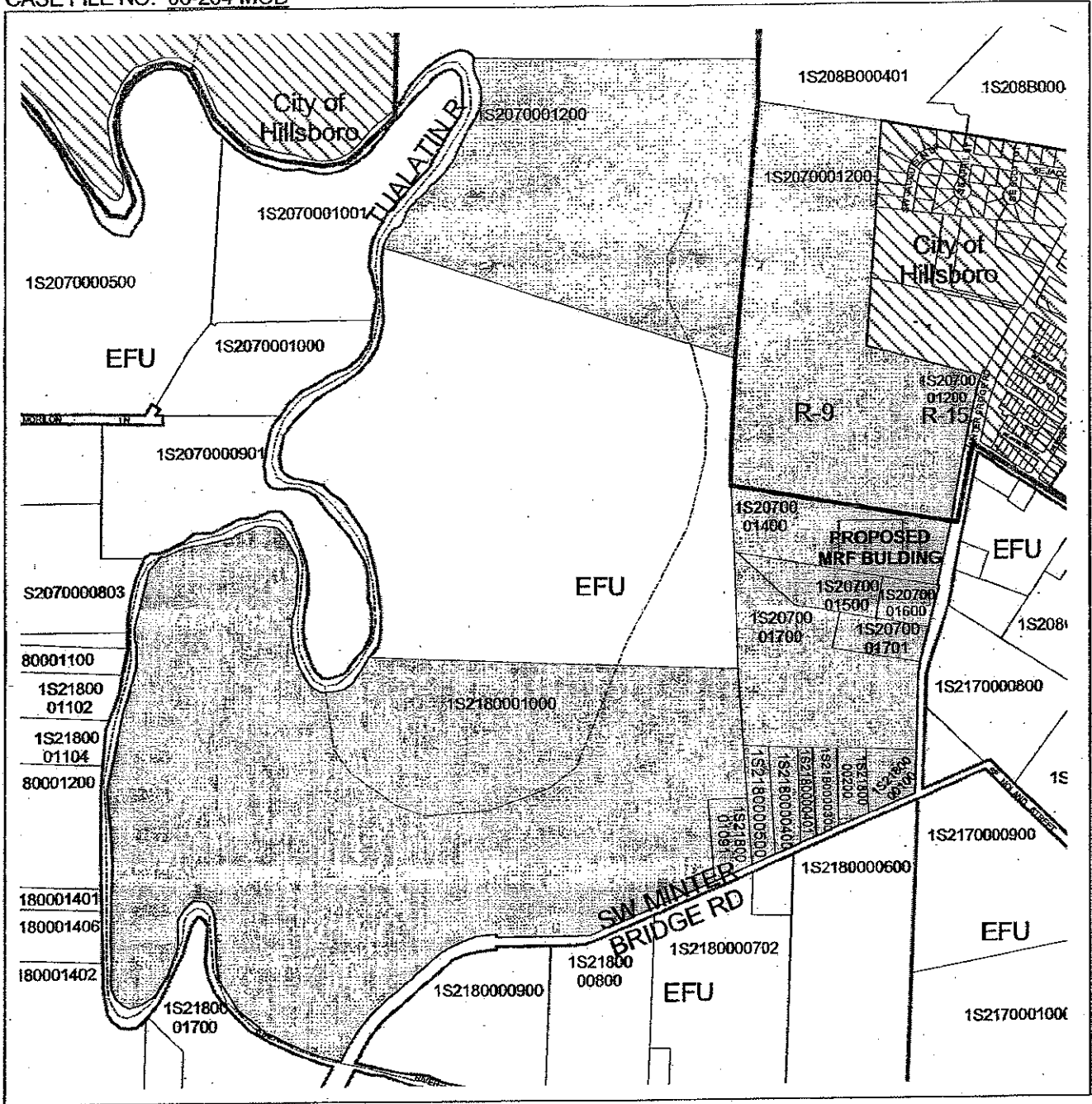
Approval \_\_\_\_\_ Approval with Conditions  Denial \_\_\_\_\_

Signature Mark Brown Date 9/4/08  
 Mark Brown, Land Development Manager

- Attachments
- A. -- Vicinity Map
  - B. -- **CONDITIONS OF APPROVAL**
  - C. -- Staff Report
  - D. -- Appeal Information

# ATTACHMENT A VICINITY MAP

TAX MAP/LOT NO. 1S2070001200, 01400, 01700, 01701, 1S21800100 - 00400, 00401, 00500, 01000, & 01091  
 CASE FILE NO. 08-264-MOD



**NORTH**



**AREA OF CONSIDERATION**

**SCALE: 1" TO 800'**

**SITE & SURROUNDING LAND USE DISTRICTS:**

- EFU District (Exclusive Farm Use)
- Urban Growth Boundary
- R9 (Residential 7-9 units/acre)
- R15 (Residential 12-15 units/acre)

**REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN**

- A. WASHINGTON COUNTY COMPREHENSIVE PLAN
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- E. R & O 86-95 TRAFFIC SAFETY IMPROVEMENTS
- F. ORD. NO. 524 UNIFORM ROAD IMPROVEMENT STANDARDS
- G. ORD. NO. 379 TRAFFIC IMPACT FEE

## CONDITIONS OF APPROVAL

I. In accordance with Section 201-4, a Building Permit for the Material Recovery Facility shall be obtained consistent with the findings of Casefile 08-243-COD, unless the permit is revoked as provided by Section 201-7.

II. All Conditions of Approval from Casefile 03-229-SU/D (Conditions under I, II, IV [IV, sic], and V) shall continue to apply except for the following:

Conditions III. A.1, 2 & 3

These shall be replaced by the following conditions:

III. Prior to the issuance of any building permit the applicant/property owner shall:

A. Submit the Current Planning Division (503-846-8761)

1. A copy of the building site plans and elevations consistent with the location, size and maximum height of the MRF building (of 35 feet) as shown on the plans included in this Casefile 08-264-MOD, stamped "Final Approval"
2. Any required building/grading plans to illustrate compliance with the pertinent Oregon Building Specialty Codes and the Washington County Grading Code. (Section 207-5)
3. Submit dimensioned building plans which show the 10-foot side yard setback is met on the northwest side. Alternatively, the applicant can provide evidence tax lots 1400 and 1200 of 1S2 0700 have been consolidated by Department of Assessment & Taxation, thus eliminating this property line, and the accompanying close setback. (Section 340)

IV. Conditions in IIV, Miscellaneous Conditions, shall be amended with the addition of the following condition:

E. The applicant shall maintain/upgrade the landscaped perimeter adjacent to SE Minter Bridge Road to the north, east, and south of the MRF.

## STAFF REPORT

### I. APPLICABLE STANDARDS

- A. Washington County Comprehensive Framework Plan (Rural/Natural Resources Plan Element)
- B. Washington County Community Development Code:
  - 1. Article II, Procedures:
    - Section 202-2 Type II Procedure
    - Section 207-5 Conditions of Approval
  - 2. Article III, Land Use Districts:
    - Section 340 EFU (Exclusive Farm Use District)
  - 3. Article IV, Development Standards:
    - Section 406 Building, Siting and Architectural Design
    - Section 407 Landscape Design
    - Section 410 Slopes and Grading
    - Section 411 Screening and Buffering

### II. AFFECTED JURISDICTIONS

none

### III. FINDINGS

#### A. Background Information:

1. The applicant requests a modification to conditions as approved within Casefile 03-229-SU/D to locate a different size and type of building for the Material Recovery Facility (MRF, hereafter), and to delete the requirement to construct a landscaped berm adjacent to the building pad. Casefile 03-229-SU/D was approved as a Type III decision. However the Type III decision primarily dealt with the expansion of the solid waste disposal site onto additional properties. No conditions concerning the disposal site are proposed for modification or removal in this casefile. The MRF is an accessory use to the solid waste landfill in this case. Development Review of an accessory use is a Type II use, because discretion is involved in determining compliance with the approval criteria. Therefore, modification of conditions via the Type II procedure is allowed in this case. The original building plan comprised a 16,000 square foot three-sided pole building adjacent to a 58,000 square foot pad for sorting recyclables. This building is proposed on Tax Lot 1S2070001400. A 270-foot long landscaped berm was proposed immediately adjacent to the east side of the building to screen it from Minter Bridge Road and the dwellings beyond. In the opinion of the applicant, the berm is no longer needed for screening/buffering because the revised building, approximately 65,000 square feet in size will have the tipping/sorting floor fully enclosed. Building designs are included in the Casefile.
2. Casefile 03-229-SU/D addressed Sections 202-3 (Type III Uses), 423 (Environmental Performance Standards), and 501-9 (Limited Application of Public Facility Standards and Services Outside of the UGB). Since this Modification does not modify any condition implementing these Sections of the Community Development Code, they will not be addressed in this staff report. Conversely, Sections 406, 407, 410 and 411 were addressed in the previous casefile, but need to be readdressed due to the revised building location and design. This review will only address the criteria that are impacted by the changes proposed herein.
3. The subject property contains lands both inside the urban growth boundary (designated R-9 and R-15), as well as lands located outside the urban growth boundary in the Exclusive Farm Use District (EFU). The conditions proposed for modification pertain to a building to be sited on the EFU designated lands.



Accordingly, staff will limit their findings to compliance with uses authorized within this land use district.

4. The Building Division issues permits consistent with land use approvals based on the Oregon Specialty Code and the Washington County Grading Code, at their discretion.
5. A public notice was issued for this casefile. The comment period opened on August 6, 2008 and closed on August 20, 2008. No letters of comment were received in response to the request for public comment regarding this casefile.

**B. Washington County Comprehensive Framework Plan (Rural/Natural Resource Plan):**

The goals and policies which relate to the development of land are implemented by the Code. The applicant is not required to address, consider, or implement any goal, policy, or strategy of the Plan except where required by the Code. The Tualatin River comprises the western boundary of a large portion of the landfill. The Plan designates the river channel as Water Areas, Wetlands, Fish & Wildlife Habitat and areas within the 100-year flood plain Water Areas & Wetlands; both are Significant Natural Resources in the Rural/Natural Resource Plan Element. Development requests on land with designated Significant Natural Resources are subject to Section 422, which requires the application of Plan Policy 10, Implementing Strategy E. Section 422 was not applicable to Casefile 03-229-SU/D because it was determined that the improvements (including the MRF) are located on portions of the site (Tax Lot 1400) outside of Significant Natural Resource Areas located elsewhere on the site. Therefore all plan policies are implemented by the Code.

**C. Washington County Community Development Code:**

**1. Article II, Procedures:**

**Section 202-2 Type II Procedures**

*202-2.1 Type II land use actions are presumed to be appropriate in the District. They generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with these uses which may necessitate imposition of specific conditions of approval to minimize those impacts or ensure compliance with this Code.*

**STAFF:** This application is being processed through the Type II procedure of the Community Development Code. Public notice was sent to surrounding property owners and a public notice sign was posted on the site. No letters of comment were received in response to the public notice. Where appropriate, conditions of approval will be imposed to ensure compliance with the standards of the Code and other County regulations, and to minimize identified impacts upon surrounding properties. Casefile 03-229-SU/D was approved as a Type III decision. However the Type III decision primarily dealt with the expansion of the solid waste disposal site onto additional properties. The MRF is an accessory use to the solid waste landfill in this case. Development Review of an accessory use is a Type II use, because discretion is involved in determining compliance with the approval criteria. Therefore, modification of conditions via the Type II procedure is allowed in this case.

**Section 207-5 Conditions of Approval**

*207-5.1 The Review Authority may impose conditions on any Type II or III development approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict densities to less than that authorized by the development standards of this Code.*

**STAFF:**

The applicant is required within Attachment B of this report to comply with all the Conditions previously assigned within Casefile 03-229-SU/D, except as modified herein. As an example of the former, Casefile 03-229-SU/D contains a series of conditions to implement prior to commencing activities associated with Cell VI. These conditions require submittal of evidence of compliance with this set of conditions via submittal and review of a Final Approval application. This Casefile does not change any other conditions than those specifically mentioned. Also, the applicant shall comply with all Code regulations in addition to assigned conditions.

*207-5.7 Modification or removal of condition of approval may be sought on appeal or as a new development action. A new development action shall be processed through the same procedure as was used to impose the conditions. Modification or removal of conditions of approval shall only be granted if the Review authority determines that:*

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modifications or removal of conditions to correct the mistake; or*
- B. The condition(s) could not be implemented for reasons beyond reasonable control of the permit holder and the modifications will not require a significant modification of the original decision; or*

**STAFF:**

Three land use conditions influence construction of the MRF, and are the subject of this application. Under III.A. of Casefile 03-229-SU/D to be submitted prior to issuance of a building permit for the MRF, the applicant must complete the following for Land Development Services:

1. Submit a copy of the building site plans and elevations submitted to the Building Division. The location, size, and height of the MRF building as shown on these plans shall be consistent with Exhibits 9a through 9b of the land use application submittal.
2. Evidence that approval of a grading permit has been obtained from the Building Division for the proposed screening berm on the east side of the Materials Recovery Facility, and evidence that the berm has been constructed.
3. Evidence that the plant materials have been installed on the screening berm per the approved landscape plan required by Condition I.A. 5.

The applicant's request includes modification of the first condition, and removal of conditions two and three. All three modifications are prompted by changes in METRO's rules for waste facilities subject to their regulatory oversight. A MRF has been proposed at the Hillsboro Landfill since Special Use approval was granted in 1993. When plans were drawn in 2003, they met the METRO rules at the time. However in an effort to control the quality of the storm water runoff from the waste recovery work area, the revised METRO rules mandated a different building design than proposed in 2003. Consistent with the current METRO rules for enhanced dry waste recovery, in addition to storm water discharge permit obligations administered by Clean Water Services, the building was enlarged and fully enclosed to house the entire recovery work area under cover. Formerly the working footprint of the waste recovery area consisted of a smaller (16K sq ft.) pole building covering a portion of a large hard-surfaced pad; the majority of which was open to the elements. The working footprint of the waste recovery area has changed only slightly in the 2008 plans.

The applicant requested removal of conditions two and three pertaining to a screening berm between the MRF and SE Minter Bridge Road. They state that the landscaped berm was needed when the MRF activities were proposed out of doors because visual and audible intrusions emanating from the MRF activities would impact neighbors across SE Minter Bridge Road, as well as the traveling public. Now that METRO rules for MRF's have changed to require all activities under cover, staff's recommended conditions to

mitigate the impacts from the former building proposal are no longer warranted. Staff concurs that the circumstances requiring the changes (METRO rule changes) were beyond the control of the applicant and will not require significant modifications to the original decision.

- C. *The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or*

**STAFF:**

Staff concurs with the applicant that METRO's rule changes, requiring full enclosure of the MRF activities resulted in a better design for the number of reasons already articulated—water quality benefits, better aesthetics, and less off-site sound impacts experienced by the public from, and across from SE Minter Bridge Road. The proposed MRF building will look like other buildings on the landfill site (for example, the maintenance building and the scale house) as evidenced by a rendering included in a brochure provided by the applicant. A row of plum trees lines SE Minter Bridge to the north of the MRF and a berm densely planted with deciduous and evergreen trees exists directly east and southward from the MRF site. This visual barrier effectively renders the interior landscaped berm unnecessary.

- D. *The different condition(s) would better accomplish the purpose of the original conditions.*

**STAFF:**

For all the reasons noted above, the change in the MRF building and elimination of the landscaped berm will result in a Material Recovery Facility that is at least as successful, if not more successful in managing water quality, and visual and noise impacts on the neighbors and community at large than the old plan approved in 2003. Therefore, staff agrees that the modified condition and removed conditions would provide sufficient screening and buffering, and continues to meet the purpose of the original conditions.

**2. Article III, Land Use Districts**

**Section 340 Exclusive Farm Use District (EFU)**

**STAFF:**

The MRF building has been approved as an accessory use/building to the solid waste landfill approved as a Special Use on the site in 1993. Within the previous casefile 03-229-SU/D, staff found that the proposed MRF building met the required setbacks for the District: 30-foot front (SE Minter Bridge Road), 10-foot each side (north and south sides of building) and 20-foot rear yard setback (west side of building). All setbacks except the north side yard setback well exceed these minimums. However, the covered ramp located on the north side of the building is located very close to the minimum setback, and staff cannot determine whether the 10-foot setback is met. Accordingly, a condition in Attachment B has been added that requires submittal of evidence that this 10-foot side yard setback is met, as shown on the dimensioned building plans. Alternatively, the applicant could file a request with the Department of Assessment & Taxation to consolidate tax lot 1400 and 1200 of 1S2 0700 to eliminate this property line, and the accompanying close setback.

The maximum height of buildings in EFU District is 35-feet, except for normal building appurtenances, as specified in Section 340-8.3. Submitted building plans did not specify the MRF building height, so a condition in Attachment B requires the maximum building height to be shown on submitted plans to comply with the District standard.

**3. Article IV, Development Standards:**

**Section 406 Building, Siting and Architectural Design**

**STAFF:**

The applicant submitted building elevations for all sides of the proposed structure, as required by Section 406-7. The landfill adjoins residential to the north and east; this building is sited approximately 280-feet from the residences across SE Minter Bridge Road to the east, and approximately 1200-feet from residences within Hillsboro to the north. The landfill is screened along SE Minter Bridge Road by a line of trees and by a landscaped

berm (refer to Exhibits in Casefile.) The MRF's primary access doors are located on the west side of the building, away from residential uses. Staff concludes that the location of this building consistent with the previous approval, and with a revised design of a fully enclosed building make this modified building remain compatible with the neighborhood.

#### **Section 407, Landscape Design**

#### **Section 411, Screening and Buffering**

**STAFF:** Within the previous casefile, staff found that the open collection area of the MRF building should be screened by an interior landscaped berm from the single family dwellings across SE Minter Bridge Road from the subject property. In the current Casefile the applicant argues that a fully enclosed collection and sorting building will be less visually intrusive, and that the current perimeter landscaping will adequately screen and buffer the MRF. However these screening and buffering findings are dependent upon the applicant/owner maintaining the current perimeter landscaped buffer. Accordingly, a Condition in Attachment B requires continued maintenance/upgrading of the landscaped perimeter adjacent to SE Minter Bridge Road to the north, east, and south of the MRF. Staff concurs that with these plantings, and considering the revised building design, the uses in the area will be adequately buffered and no additional landscaping or screening is needed.

#### **Section 410, Grading and Drainage**

**STAFF:** In Casefile 03-229-SU/D a condition required the applicant to obtain a grading permit for the berm adjacent to the proposed MRF building. With the revised building design, staff found that this interior landscaped berm was no longer needed to screen the MRF building. Accordingly, all grading with the current MRF will be associated with construction of the MRF. Conditions in Attachment B reflect this change. Storm water runoff at the MRF site will be handled by the existing storm water management program (NPDES 1200-Z permit) in place at the landfill. Clean Water Services administers this permit. Because of this arrangement, the applicant does not need to provide the DEQ non-point water quality control calculations otherwise required by OAR 340-041-0345 when development is proposed within the Tualatin River basin.

#### **IV. SUMMARY**

Findings have been made which demonstrate that the proposed modification to the building size and configuration, and elimination of the landscaped earthen berm conform to the approval standards of the Washington County Community Development Code and other County Regulation as outlined within Section III of this report. Therefore, Conditions III.A.1, 2, & 3 of Casefile 03-229-SU/D are modified/removed to allow the applicant to place the resized and redesigned MRF building within the proposed footprint, without reconstructing the earthen berm on the building's east side. The modified plan for the property is in compliance with the standards of the Washington County Community Development Code subject to completion of and adherence to the conditions of approval within Attachment B of this report.



**WASHINGTON COUNTY**  
Dept. of Land Use & Transportation  
155 N. 1<sup>st</sup> Avenue, #350-13  
Hillsboro, OR 97124  
Ph. (503) 846-8761 Fax (503) 846-2908  
www.co.washington.or.us

ATTACHMENT "D"  
TYPE (II)

CASEFILE # 08-264-MOD

## **APPEAL INFORMATION**

Attached is a copy of the Land Use and Transportation Department's Review Authority decision on this request for a Development Action.

Any person who is adversely affected or aggrieved, or who is entitled to written notice pursuant to ORS 215.416(11) may appeal the decision by filing a written appeal.

**Failure to file a petition for review with the Department of Land Use and Transportation by 5:00 p.m. on the due date, with the fee specified in the Notice of Decision, shall be a jurisdictional defect.**

The decision, including conditions of approval, may be appealed and a public hearing held by filing a signed petition for review (appeal) within twelve (12) calendar days of date written notice is provided (date mailed).

**APPEAL PERIOD: 09/05/08 (Date Mailed) to 5:00 p.m. on 09/17/08 (Appeal Due Date)**

This decision will be final if an appeal is not filed by the due date.

The complete file is available at the County Department of Land Use and Transportation for review.

A petition for review (appeal) must contain the following:

1. The name of the applicant and the County case file number;
2. The name and signature of each petitioner filing the petition for review (appeal). If a group consisting of more than one person is filing a single petition for review, one individual shall be designated as the group's representative for all contact with the Department. All Department communications regarding the petition, including correspondence, shall be with this representative;
3. A statement of the interest of each petitioner;
4. The date the Notice of Decision was sent as specified in the notice (date mailed);
5. The nature of the decision and the specific ground for appeal. For applications with multiple requests, specify the particular request(s) and/or specific conditions of approval being appealed;
6. A statement listing the number of pages of the petition and that all pages are present;
7. A statement setting forth the appeal fee as specified in the Notice of Decision; and
8. The appropriate appeal fee of \$250.<sup>00</sup>

For further appeal information, contact the Appeal Secretary at the Washington County Department of Land Use and Transportation. Phone 503-846-8134.