

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: September 19, 2002
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the September 12, 2002 Metro Council Regular Meeting.

4. ORDINANCES - FIRST READING

4.1 **Ordinance No. 02-963**, For the purpose of Amending the Regional Framework Plan and the Metro Code in Order to Protect Residential Neighborhoods and Early Implementation of Measure 26-29.

4.2 **Ordinance No. 02-964**, For the Purpose of Amending Metro Code Sections 3.01.015, 3.01.025, 3.01.065 and 3.09.050 to Allow Expansion of the Urban Growth Boundary onto Land Outside the District Prior to Annexation on Condition that the Territory be Annexed Prior to Urbanization.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 02-947**, For the Purpose of Amending Metro Code Section 2.19.100 Concerning Metro's Committee on Citizen Involvement (MCCI). Gov't Affairs Committee

5.2 **Ordinance No. 02-962**, For the Purpose of Amending the FY 2002-03 Budget and Appropriations Schedule Transferring \$72,000 from the Planning Fund Contingency to Capital Outlay to Provide Appropriation Authority for the Carryover and completion of the Transims Computer Purchase; and Declaring an Emergency. Monroe

6. RESOLUTIONS

- 6.1 **Resolution No. 02-3219**, For the Purpose of Confirming Peggy Coats to the Metro 401(k) Employee Salary Savings Plan Advisory Committee. Gov't Affairs Committee
- 6.2 **Resolution No. 02-3220**, For the Purpose of Authorizing the Executive Officer to Establish the "Northern Willamette Valley Habitat Conservation Fund" in Partnership with the National Fish and Wildlife Foundation. Nat'l Resources Committee
- 6.3 **Resolution No. 02-3223**, For the Purpose of Authoring the Executive Officer to grant a Metro Solid Waste Facility License to Mt. Hood Metals, Inc., and American Compost and Recycling, LLC, jointly doing business as American Roof Recycling for the operation of a roofing recovery facility. Solid Waste & Recycling Com.
- 6.4 **Resolution No. 02-3224**, For the Purpose of Authorizing the Executive Officer to Renew a Metro Solid Waste Facility License to K.B. Recycling, Inc. for the operation of a materials recovery facility. Solid Waste & Recycling Com.
- 6.5 **Resolution No. 02-3225**, For the purpose of authorizing the Executive Officer to grant a Metro Solid Waste Facility License to Pacific Land Clearing Company, Inc., for the operation of a roofing recovery and yard debris processing and reload facility. Solid Waste & Recycling Com.

7. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.

- 7.1 **Resolution No. 02-3222**, For the Purpose of Authorizing the Executive Officer to Purchase a 31-acre parcel owned by Ramsey Family in the Forest Park Expansion Target Area Nat'l Resources Committee

8. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for Week of September 19, 2002 (TDTV)

	Sunday (9/22)	Monday (9/23)	Tuesday (9/24)	Wednesday (9/25)	Thursday (9/19)	Friday (9/20)	Saturday (9/21)
CHANNEL 11 (Community Access Network) (most of Portland area)						2:00 PM	
CHANNEL 21 (TDTV) (Washington Co., Lake Oswego, Wilsonville)	12:00 PM			7:00 PM 11:00 PM		7:00 PM 11:00PM	
CHANNEL 30 (TDTV) (NE Washington Co. - people in Wash. Co. who get Portland TCI)	12:00 PM			7:00 PM 11:00 PM		7:00PM 11:00PM	
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 PM (previous meeting)						
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
CHANNEL 33 (ATT Consumer Svcs.) (Milwaukie)		10:00 AM 2:00 PM 9:00 PM					

PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES. PLEASE CALL THEM OR CHECK THEIR WEB SITES TO CONFIRM SHOWING TIMES.

Portland Cable Access	www.pcatv.org	(503) 288-1515
Tualatin Valley Television	www.tvca.org	(503) 629-8534
West Linn Cable Access	www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm	(503) 722-3424
Milwaukie Cable Access		(503) 654-2266

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Consideration of the September 12, 2002 Regular Metro Council Meeting minutes.

**Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber**

Agenda Item Number 4.1

**Ordinance No. 02-963, For the purpose of Amending the Regional Framework
Plan and the Metro Code in Order to Protect Residential Neighborhoods and
Early Implementation of Measure 26-29.**

First Reading

Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE
REGIONAL FRAMEWORK PLAN AND THE
METRO CODE IN ORDER TO PROTECT
RESIDENTIAL NEIGHBORHOODS AND EARLY
IMPLEMENTATION OF MEASURE 26-29

ORDINANCE NO. 02-963

Introduced by the Community
Planning Committee

WHEREAS, voters of the Metropolitan Service District enacted Measure 26-29 on May 21, 2000, to amend the Metro Charter in order to protect the livability of existing neighborhoods; and

WHEREAS, Measure 26-29 requires Metro to include measures to protect the livability of existing neighborhoods and prohibits Metro from requiring local governments to increase density in Inner and Outer Neighborhoods; and

WHEREAS, Measure 26-29 call upon Metro to implement the measure by May 21, 2003, one year following enactment of the measure on May 21, 2002; and

WHEREAS, the Metro Council, given the central role of neighborhoods in the 2040 Growth Concept, chooses to take action to protect Inner and Outer Neighborhoods ahead of the schedule set forth in Measure 26-29; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. The Regional Framework Plan is hereby amended to include Policy 1.16, Residential Neighborhoods, attached and incorporated into this ordinance as Exhibit A.
2. The Metro Code is hereby amended to include Title 12, Protection of Residential Neighborhoods, attached and incorporated into this ordinance as Exhibit B.
3. The Findings of Fact and Conclusions of Law in Exhibit C, attached and incorporated into this ordinance, explain how the amendments to the Regional Framework Plan and the Metro Code comply with state law and the Regional Framework Plan.

ADOPTED by the Metro Council this ____ day of _____, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A to Ordinance No. 02-963

1.16 Residential Neighborhoods

Livable residential neighborhoods are essential to the success of the 2040 Growth Concept. In order to protect and improve the region's residential neighborhoods, Metro shall take measures to:

- Protect residential neighborhoods from air and water pollution, noise and crime.
- Make community services accessible to residents of neighborhoods by walking, bicycle and transit, where possible.
- Facilitate the provision of affordable government utilities and services to residential neighborhoods.

Metro shall not require local governments to increase the density of single-family neighborhoods identified on the 2040 Growth Concept Map solely as Inner or Outer Neighborhoods.

Exhibit B to Ordinance No. 02-963

Title 12: Protection of Residential Neighborhoods

3.07.1210 Purpose and Intent

Livable neighborhoods are essential to the success of the 2040 Growth Concept. The intent of Title 12 of the Urban Growth Management Functional Plan is to protect the region's residential neighborhoods. The purpose of Title 12 is to help implement the policy of the Regional Framework Plan to protect residential neighborhoods from air and water pollution, noise and crime and to provide adequate levels of public services.

3.07.1220 Residential Density

Metro shall not require any city or county to authorize an increase in the residential density of a single-family neighborhood in an area mapped solely as an Inner or Outer Neighborhood pursuant to Metro Code section 3.07.130.

3.07.1230 Access to Commercial Services

A. In order to reduce air pollution and traffic congestion, and to make commercial retail services more accessible to residents of Inner and Outer Neighborhoods, each city and county may designate in its comprehensive plan and land use regulations one or more Neighborhood Centers within or in close proximity to Inner and Outer Neighborhoods to serve as the central location of commercial services.

B. To ensure that commercial development principally serves the needs of the residents of Inner and Outer Neighborhoods, but does not generate excessive traffic, noise or air pollution, each city and county shall adopt limitations on the scale of commercial services in Neighborhood Centers. In a Neighborhood Center, a city or county shall not approve:

1. A commercial retail use with more than 20,000 square feet of gross leasable area in a single building; or

2. Office commercial uses with more than 20,000 square feet of gross leasable area in a single building or on a single lot or parcel.

3.07.1240 Access to Public Services

A. Each city and county shall, within two years following adoption by the Metro Council of a process and criteria for such standards, establish a level of service standard for parks and greenspaces that calls for a park facility within a specified distance of all residences.

B. To make parks and greenspaces more accessible to residents of Inner and Outer Neighborhoods and all residents of the region, each city and county shall provide for access to parks and greenspaces by walking, biking and transit, where transit is available or planned.

C. To make parks and schools more accessible to neighborhood residents, to reduce traffic, and to use land more efficiently, cities, counties, park providers and school

districts shall provide for shared use of school facilities for park purposes and of park facilities for school purposes.

D. To make public schools more accessible to neighborhood residents, cities, counties and school districts shall consider school sites that are near concentrations of population and are connected to those concentrations by safe and convenient walking, biking and, where transit is available or planned, transit facilities.

Exhibit C to Ordinance No. 02-963
Findings of Fact and Conclusions of Law
Available at a Future Date

Agenda Item Number 4.2

Ordinance No. 02-964, For the Purpose of Amending Metro Code Sections 3.01.015, 3.01.025, 3.01.065 and 3.09.050 to Allow Expansion of the Urban Growth Boundary onto Land Outside the District Prior to Annexation on Condition that the Territory be Annexed Prior to Urbanization.

First Reading

Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO
CODE SECTIONS 3.01.015, 3.01.025, 3.01.065
AND 3.09.050 TO ALLOW EXPANSION OF
THE URBAN GROWTH BOUNDARY ONTO
LAND OUTSIDE THE DISTRICT PRIOR TO
ANNEXATION ON CONDITION THAT THE
TERRITORY BE ANNEXED PRIOR TO
URBANIZATION

ORDINANCE NO. 02-964

Introduced by Councilor Park

WHEREAS, sections 3.01.015, 3.01.025, 3.01.065 and 3.09.050 of the Metro Code require annexation of territory to the Metropolitan Service District prior to its inclusion within the urban growth boundary; and

WHEREAS, this requirement causes Metro and the Metro Council to undertake a duplicative, time-consuming and expensive sequence of procedures in order to amend the urban growth boundary; and

WHEREAS, this requirement prevents the Metro Council from taking timely final action to amend the urban growth boundary in a legislative process, which may delay compliance with state planning laws; and

WHEREAS, the policy objective to ensure that urbanization does not precede annexation of territory to the district can be accomplished by conditioning urbanization of territory added to the urban growth boundary upon annexation to the district; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Section 3.01.015 of the Metro Code is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, to remove the requirement that the Metro Council annex territory to the district prior to inclusion of the territory in the urban growth boundary, and to establish a new requirement that the local government with land use jurisdiction over the territory agree to limit urbanization of the territory until the Council annexes it.
2. Section 3.01.025 of the Metro Code is hereby amended, as indicated in Exhibit B, attached and incorporated into this ordinance, to remove the requirement that any application for a major amendment to the urban growth boundary be accompanied by a petition for annexation to the district.
3. Section 3.01.065 of the Metro Code is hereby amended, as indicated in Exhibit C, attached and incorporated into this ordinance, to remove the requirement that the Council adopt a resolution expressing intent to include territory in the urban growth boundary prior to inclusion in the boundary by major amendment or minor adjustment.

4. Section 3.09.050 of the Metro Code is hereby amended, as indicated in Exhibit D, attached and incorporated into this ordinance, to conform it to amendments made by sections 1, 2 and 3 of this ordinance.

5. Section 3.07.1120 of the Metro Code is hereby amended, as indicated in Exhibit E, attached and incorporated in this ordinance, to ensure comprehensive plans provide for annexation of territory to the district prior to urbanization if the territory is not part of the district at the time it is added to the urban growth boundary.

6. The Findings of Fact and Conclusions of Law in Exhibit F, attached and incorporated into this ordinance, demonstrate that the ordinance complies with the Regional Framework Plan and the statewide planning goals.

7. This ordinance is necessary for the immediate preservation of public health, safety and welfare because Metro must, under ORS 197.296, 197.296(6) and 197.628 through 197.650, provide a 20-year supply of buildable land for needed housing within its urban growth boundary by December 20, 2002. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this ____ day of _____, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A to Ordinance No. 02-964

3.01.015 Legislative Amendment Procedures

- (a) The process for determination of need and location of lands for amendment of the UGB is provided in section 3.01.020.
- (b) Notice shall be provided as described in section 3.01.050.
- (c) The Council shall initiate Legislative Amendments when it determines pursuant to Goal 14 and section 3.01.020 that there is a need to add land to the Urban Growth Boundary.
- (d) Before adopting any legislative amendment, Metro shall consult with cities, counties and MPAC to determine which cities and counties, if any, are prepared to initiate comprehensive plan amendments for urban reserve areas, if they are included, within the Urban Growth Boundary.
- (e) Where a city or county has adopted comprehensive plan amendments for an urban reserve area pursuant to section 3.01.012(c), the Metro Council shall rely upon the planned status of that urban reserve in considering applicable criteria.
- (f) Legislative amendment decisions shall be based upon substantial evidence in the decision record which demonstrates how the amendment complies with applicable state and local law and statewide goals as interpreted by section 3.01.020.
- (g) The following public hearings process shall be followed for legislative amendments:
 - (1) The district council shall refer a proposed amendment to the appropriate council committee at the first council reading of the ordinance.
 - (2) The committee shall take public testimony at as many public hearings as necessary. At the conclusion of public testimony, the committee shall deliberate and make recommendations to the council.
 - (3) The council shall take public testimony at its second reading of the ordinance, discuss the proposed amendment, and approve the ordinance with or without revisions or conditions, or refer the proposed legislative amendment to the council committee for additional consideration.

- (4) Testimony before the council or the committee shall be directed to Goal 14 and Goal 2 considerations interpreted at section 3.01.020 of this chapter.
- [(5) Prior to the council acting to approve a legislative amendment, including land outside the district, the council shall annex the territory to the district. The annexation decision shall be consistent with the requirements of section 3.09.120 of this code. If the annexation decision becomes the subject of a contested case pursuant to chapter 3.09 of this code, the Legislative amendment to the Urban Growth Boundary shall not be approved until the contested case is either withdrawn or the annexation is approved by the Boundary Appeals Commission, whichever occurs first.]

(h) The council may approve expansion of the UGB to include land outside the district only upon a written agreement with the local government that exercises land use planning authority over the subject land that the county will apply the interim protection requirements set forth in section 3.07.1110 of the Metro Code to that land until Metro annexes the land to the district. A city or county may approve an amendment to its comprehensive plan, pursuant to section 3.07.1120 of the Metro Code so long as the amendment does not become applicable to the subject land until Metro annexes that land to the district.

Exhibit B to Ordinance No. 02-964

3.01.025 Major Amendment Procedures

(a) A city, a county, a special district or a property owner may file an application for a major amendment to the UGB on a form provided for that purpose. The Executive Officer will accept applications for major amendments between February 1 and March 15 of each calendar year except that calendar year in which the Metro Council is completing its five-year analysis of buildable land supply under ORS 197.299(1). After receipt of a complete application, the Executive Officer will set the matter for a public hearing and provide notice to the public in the manner set forth in sections 3.01.050 and 3.01.055.

(b) The Executive Officer will determine whether the application is complete and notify the applicant of its determination within seven working days after the filing of an application. If the application is not complete, the applicant shall revise it to be complete within 14 days of notice of incompleteness from the Executive Officer. The Executive Officer will dismiss an application and return application fees if it does not receive a complete application within 14 days of its notice.

(c) Upon a request by a Metro councilor and a finding of good cause, the Metro Council may, by a two-thirds vote of the full Council, waive the filing deadline for an application.

(d) Except for that calendar year in which the Metro Council is completing its five-year analysis of buildable land supply, the Executive Officer shall give notice of the March 15 deadline for acceptance of applications for major amendments not less than 120 calendar days before the deadline and again 90 calendar days before the deadline in a newspaper of general circulation in the district and in writing to each city and county in the district. A copy of the notice shall be mailed not less than 90 calendar days before the deadline to anyone who has requested notification. The notice shall explain the consequences of failure to file before the deadline and shall specify the Metro representative from whom additional information may be obtained.

(e) The Executive Officer shall submit a report and recommendation on the application to the hearings officer not less than 21 calendar days before the hearing. The Executive Officer shall send a copy of the report and recommendation simultaneously to the applicant and others who have requested copies. Any subsequent report by the Executive Officer to be used at the hearing shall be available at least seven days prior to the hearing.

(f) An applicant shall provide a list of names and addresses of property owners for notification purposes, consistent with section 3.01.055, when submitting an application. The list shall be certified in one of the following ways:

- (1) By a title company as a true and accurate list of property owners as of a specified date; or
- (2) By a county assessor, or designate, pledging that the list is a true and accurate list of property owners as of a specified date; or
- (3) By the applicant affirming that the list is a true and accurate list as of a specified date.

(g) An applicant may request postponement of the hearing to consider the application within 90 days after filing of the application. The Executive Officer may postpone the hearing for no more than 90 days. If the Executive Officer receives no request for rescheduling within 90 days after the request for postponement, the application shall be considered withdrawn and the Executive Officer shall return the portion of the fee deposit not required for costs assessed pursuant to 3.01.045.

(h) Position of City or County:

- (1) Except as provided in paragraph (4) of this section, an application shall not be considered complete unless it includes a written statement by the governing body of each city or county with land use jurisdiction over the area included in the application that:
 - (A) Recommends approval of the application;
 - (B) Recommends denial of the application; or
 - (C) Makes no recommendation on the application.
- (2) Except as provided in paragraph (4) of this subsection, an application shall not be considered complete unless it includes a written statement by any special district that has an agreement with the governing body of any city or county with land use jurisdiction over the area included in the application to provide an urban service to the area that:
 - (A) Recommends approval of the application;
 - (B) Recommends denial of the application; or
 - (C) Makes no recommendation on the application.
- (3) If a city, county or special district holds a public hearing to consider an application, it shall:

- (A) Provide notice of such hearing to the Executive Officer and any city or county whose municipal boundary or urban planning area boundary abuts the area; and
 - (B) Provide the Executive Officer with a list of the names and addresses of persons testifying at the hearing and copies of any exhibits or written testimony submitted for the hearing.
- (4) Upon request by an applicant, Executive Officer shall waive the requirements of subsections (1) and (2) of this section if the applicant shows that the local government has a policy not to comment on such applications or that a request for comment was filed with the local government or special district at least 120 calendar days before the request and the local government or special district has not yet adopted a position on the application. The governing body of a local government may delegate the decisions described in paragraphs (1) and (2) of this subsection to its staff.
- (i) Applications involving land outside district boundary:
- (1) An application to expand the UGB to include land outside the district shall not be accepted unless accompanied by a copy of a petition for annexation to the district.
 - (2) A city or county may approve a plan or zone change to implement the proposed amendment prior to a change in the district UGB if:
 - (A) The Executive Officer receives notice of the local action;
 - (B) The local action is contingent upon subsequent action by the Metro Council to amend its UGB; and
 - (C) The local action to amend the local plan or zoning map becomes effective only if the Metro Council amends the UGB consistent with the local action.
 - (3) If the Metro Council approves the application, the local government shall amend its plan or map within one year to be consistent with the amendment.]
- (i) The council may approve expansion of the UGB to include land outside the district only upon a written agreement with the local government that exercises land use planning authority over the subject land that the local government will apply the interim

protection requirements set forth in section 3.07.1110 of the Metro Code until Metro annexes the subject land to the district. A city or county may approve an amendment to its comprehensive plan, pursuant to section 3.07.1120 of the Metro Code so long as the amendment does not become effective until Metro annexes the subject land to the district.

(j) The proposed amendment to the UGB shall include the entire right-of-way of an adjacent street to ensure that public facilities and services can be provided to the subject property by the appropriate local government or service district in a timely and efficient manner.

Exhibit C to Ordinance No. 02-964

3.01.065 Council Action On Quasi-Judicial Amendments

(a) The council may act to approve, remand or deny an application in whole or in part. When the council renders a decision that reverses or modifies the proposed order of the hearings officer, then, in its order, it shall set forth its findings and state its reasons for taking the action.

(b) Parties to the case and the hearings officer shall be notified by mail at least 10 calendar days prior to council consideration of the case. Such notice shall include a brief summary of the proposed action, location of the hearings officer report, and the time, date, and location for council consideration.

(c) Final council action following the opportunity for parties to comment orally to council on the proposed order shall be as provided in Code section 2.05.045. Parties shall be notified of their right to review before the Land Use Board of Appeals pursuant to 1979 Oregon Laws, chapter 772.

(d) Comments before the council by parties must refer specifically to any arguments presented in exceptions filed according to the requirements of this chapter, and cannot introduce new evidence or arguments before the council. If no party to the case has filed an exception, then the council shall decide whether to entertain public comment at the time that it takes final action on an application.

(e) Within 20 days from the day that the proposed order and findings of the hearings officer are mailed to them, parties may file a motion to reopen the record to receive admissible evidence not available at the hearing. The motion shall show proof of service on all parties. The council shall rule on such motions with or without oral argument at the time of its consideration of the case. An order approving such a motion to reopen the record shall remand the case to the hearings officer for evidentiary hearing. When the council or the hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(f) When the council acts to approve an application [in whole or in part by requiring] with a condition that requires annexation to a city [and/or], a service district[(s) and] or Tri-Met [and whenever an application includes land outside the district]:

- (1) Such action shall be by resolution expressing intent to amend the UGB if and when the affected property is annexed to the city, the district or Tri-Met within six months of the date of adoption of the [R]resolution.

- (2) The council shall take final action, as provided for in paragraphs (c) and (d) of this section, within 30 calendar days of notice that all required annexations [to a city, service district(s) and the district] have been approved.

(g) When the council is considering an ordinance to approve an application, it shall take all public comment at its first reading of the ordinance, discuss the case, and then either pass the ordinance to second reading or remand the proposed order and findings of the hearings officer to the executive officer or the hearings officer for new or amended findings. If new or amended findings are prepared, parties to the case shall be provided a copy of the new order and findings by mail no less than seven calendar days prior to the date upon which the council will consider the new order and findings, and parties will be given the opportunity to provide the council with oral or written testimony regarding the new order and findings.

Exhibit D to Ordinance No. 02-964

3.09.050 Uniform Hearing and Decision Requirements for Final Decisions Other Than Expedited Decisions

(a) The following minimum requirements for hearings on boundary change decisions operate in addition to all procedural requirements for boundary changes provided for under ORS chapters 198, 221 and 222. Nothing in this chapter allows an approving entity to dispense with a public hearing on a proposed boundary change when the public hearing is required by applicable state statutes or is required by the approving entity's charter, ordinances or resolutions.

(b) Not later than 15 days prior to the date set for a boundary change decision, the approving entity shall make available to the public a report that addresses the criteria in subsections (d) and (g) below, and that includes at a minimum the following:

- (1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;
- (2) A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;
- (3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;
- (4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (5) The proposed effective date of the decision.

(c) In order to have standing to appeal a boundary change decision pursuant to section 3.09.070 a necessary party must appear at the hearing in person or in writing and state reasons why the necessary party believes the boundary change is inconsistent with the approval criteria. A necessary party may not contest a boundary change where the boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065. At any public hearing, the persons or entities proposing the boundary change shall have the burden to prove that the petition meets the criteria for a boundary change.

(d) An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:

Exhibit D
Ordinance No. 02-964

- (1) Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;
- (2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;
- (3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;
- (4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;
- (5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;
- (6) [If the proposed boundary change is for annexation of territory to Metro, a determination by the Metro Council that t]The territory [should be included in] lies within the Urban Growth Boundary [shall be the primary criterion for approval]; and
- (7) Consistency with other applicable criteria for the boundary change in question under state and local law.

(e) When there is no urban service agreement adopted pursuant to ORS 195.065 that is applicable, and a boundary change decision is contested by a necessary party, the approving entity shall also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of sections 3.09.050(d) and (g). The findings and conclusions adopted by the approving entity shall explain how these factors have been considered.

- (1) The relative financial, operational and managerial capacities of alternative providers of the disputed urban services to the affected area;
- (2) The quality and quantity of the urban services at issue with alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers;

- (3) Physical factors related to the provision of urban services by alternative providers;
- (4) For proposals to create a new entity the feasibility of creating the new entity.
- (5) The elimination or avoidance of unnecessary duplication of facilities;
- (6) Economic, demographic and sociological trends and projections relevant to the provision of the urban services;
- (7) Matching the recipients of tax supported urban services with the payers of the tax;
- (8) The equitable allocation of costs to alternative urban service providers between new development and prior development; and
- (9) Economies of scale.
- (10) Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria of section 3.09.050(d) considering factors (1) through (9) above.

(f) A final boundary change decision by an approving entity shall state the effective date, which date shall be no earlier than 10 days following the date that the decision is reduced to writing, and mailed to all necessary parties. However, a decision that has not been contested by any necessary party may become effective upon adoption.

(g) Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.

Exhibit E to Ordinance No. 02-964

3.07.1120 Urban Growth Boundary Amendment Urban Reserve Plan Requirements

All territory added to the Urban Growth Boundary as either a major amendment or a legislative amendment pursuant to Metro Code chapter 3.01 shall be subject to adopted comprehensive plan provisions consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan and in particular this Title 11. The comprehensive plan provisions shall be fully coordinated with all other applicable plans. The comprehensive plan provisions shall contain an urban growth plan diagram and policies that demonstrate compliance with the RUGGO, including the Metro Council adopted 2040 Growth Concept design types. Comprehensive plan amendments shall include:

- A. Provision for annexation to the district and to a city or any necessary service districts prior to urbanization of the territory or incorporation of a city or necessary service districts to provide all required urban services.
- B. Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities which conform to the 2040 Growth Concept Plan design type designation for the area.
- C. Demonstrable measures that will provide a diversity of housing stock that will fulfill needed housing requirements as defined by ORS 197.303. Measures may include, but are not limited to, implementation of recommendations in Title 7 of the Urban Growth Management Functional Plan.
- D. Demonstration of how residential developments will include, without public subsidy, housing affordable to households with incomes at or below area median incomes for home ownership and at or below 80 percent of area median incomes for rental as defined by U.S. Department of Housing and Urban Development for the adjacent urban jurisdiction. Public subsidies shall not be interpreted to mean the following: density bonuses, streamlined permitting processes, extensions to the time at which systems development charges (SDCs) and other fees are collected, and other exercises of the regulatory and zoning powers.
- E. Provision for sufficient commercial and industrial development for the needs of the area to be developed consistent with 2040 Growth Concept design types. Commercial and industrial designations in nearby areas inside the Urban Growth Boundary shall be considered in comprehensive plans to maintain design type consistency.
- F. A conceptual transportation plan consistent with the applicable provision of the Regional Transportation Plan, Title 6 of the Urban Growth Management Functional Plan, and that is also consistent with the protection of natural resources either identified in acknowledged comprehensive plan inventories or as required by Title 3 of the Urban Growth Management Functional Plan. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.

- G. Identification, mapping and a funding strategy for protecting areas from development due to fish and wildlife habitat protection, water quality enhancement and mitigation, and natural hazards mitigation. A natural resource protection plan to protect fish and wildlife habitat, water quality enhancement areas and natural hazard areas shall be completed as part of the comprehensive plan and zoning for lands added to the Urban Growth Boundary prior to urban development. The plan shall include a preliminary cost estimate and funding strategy, including likely financing approaches, for options such as mitigation, site acquisition, restoration, enhancement, or easement dedication to ensure that all significant natural resources are protected.
- H. A conceptual public facilities and services plan for the provision of sanitary sewer, water, storm drainage, transportation, parks and police and fire protection. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.
- I. A conceptual school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.
- J. An urban growth diagram for the designated planning area showing, at least, the following, when applicable:
 - 1. General locations of arterial, collector and essential local streets and connections and necessary public facilities such as sanitary sewer, storm sewer and water to demonstrate that the area can be served;
 - 2. Location of steep slopes and unbuildable lands including but not limited to wetlands, floodplains and riparian areas;
 - 3. General locations for mixed use areas, commercial and industrial lands;
 - 4. General locations for single and multi-family housing;
 - 5. General locations for public open space, plazas and neighborhood centers; and
 - 6. General locations or alternative locations for any needed school, park or fire hall sites.
- K. The plan amendments shall be coordinated among the city, county, school district and other service districts.

Exhibit F to Ordinance No. 02-964
Findings of Fact and Conclusions of Law
Available at a Future Date

Agenda Item Number 5.1

**Ordinance No. 02-947, For the Purpose of Amending Metro Code
Section 2.19.100 Concerning Metro's Committee on Citizen Involvement (MCCI).**

Second Reading

**Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 02-947
CODE SECTION 2.19.100 CONCERNING)
METRO'S COMMITTEE ON CITIZEN) Introduced by Councilor Rex Burkholder
INVOLVEMENT (MCCI))

WHEREAS, the Metro Office of Citizen Involvement was created in the Metro Charter adopted by the public in 1992; and

WHEREAS, a citizens' committee in the Office of Citizen Involvement was established by ordinance and is known as the Metro Committee for Citizen Involvement; and

WHEREAS, The Metro Council adopted Ordinance 00-860A and amended Metro Code section 2.19.100 and made changes to MCCI; and

WHEREAS, Metro is committed to citizen involvement as a major component of the agency's policy development and program implementation efforts; and

WHEREAS, to enhance the role of the Office of Citizen Involvement and to increase MCCI's effectiveness, a MCCI workgroup, consisting of MCCI members and Metro staff, met and created a list of recommendations to the Metro Council; and

WHEREAS, on January 14, 2002, the MCCI workgroup report was issued to Metro Council MCCI liaison, Councilor Rex Burkholder (labeled as Exhibit A); and

WHEREAS, on April 10, 2002, MCCI provided comment on the workgroup report and submitted it to the MCCI liaison (labeled as Exhibit B); and

WHEREAS, the Office of Citizen Involvement, in consultation with MCCI, will determine the adequacy of the Public Involvement Plans for the agency; and

WHEREAS, the Metro Council accepts the MCCI workgroup report and will enact its recommendations through this ordinance or a series of future ordinances;

WHEREAS, the effective date of the Metro Code changes will be January 6, 2003; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 2.19.100 is amended as follows

2.19.100 Metro Committee for Citizen Involvement (MCCI)

(a) Purpose. The purpose of the MCCI is to advise the Metro Council (through the Office of Citizen Involvement –OCI) on the development and maintenance of programs and procedures to aid communication between citizens and the Metro Council. MCCI will advise the OCI and perform the

duties assigned to it by the Metro Charter and to perform other related duties that the Metro Council shall may prescribe.

(b) Membership. The MCCI consists of ~~twenty-seven (27)~~ twenty (20) members. The members of MCCI shall be ~~appointed~~ nominated as follows and adhere to the nomination process outlined in Ordinance 00-860A:

- (1) ~~Three (3)~~ Two (2) representatives from each of the ~~seven (7)~~ six (6) Metro Council Districts and two (2) at large representatives from the region as nominated by the Council President (for a total of 21 14).
- (2) One (1) representative from each of the areas outside of the Metro boundaries of Clackamas, Multnomah, and Washington Counties (for a total of 3).
- (3) One (1) representative from each of Clackamas County's Committee for Citizen Involvement (CCI), Multnomah County Citizen Involvement Committee (CIC), and Washington County Committee for Citizen Involvement (CCI) (for a total of 3).

(c) Terms. Notwithstanding the provisions of Section 2.19.030(c), MCCI members may be appointed to fill up to three (3) consecutive two (2)-year terms.

(d) Current Membership: Current MCCI members may complete their current term. At the completion of their current term, the member may reapply for any open seats in the district or area they represent.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

MCCI WORKGROUP REPORT

January 14, 2002

EXECUTIVE SUMMARY

As set out in the 1992 Metro Charter, the Metro Office of Citizen Involvement (OCI) was created "to develop and maintain programs and procedures to aid communications between citizens and the council and executive officer." In addition, a citizens' committee in the Office of Citizen Involvement was to be established by ordinance – that committee is now known as the Metro Committee for Citizen Involvement (MCCI).

Metro's commitment to citizen involvement is a major component of the agency's efforts. It is the sole function of the OCI to maintain and renew this commitment, and to establish a structure within which citizens may provide valuable feedback and support. MCCI has been instrumental in advocating for a strong and successful office of citizen involvement, and its future contributions will be vital for the OCI's success.

To enhance the role of the OCI and to increase MCCI's effectiveness in the Metro agency, the MCCI Workgroup, consisting of MCCI members and Metro staff, met to explore opportunities for improvement. After three work sessions, the MCCI Workgroup is pleased to make the following recommendations.

MCCI will achieve a more influential and effective role by partnering with the newly formed Council Outreach Office. MCCI will support the OCI in its efforts to maintain and renew the citizen involvement goals of the agency. In turn, Outreach staff will consult with MCCI members on citizen involvement issues in key projects and provide staffing to MCCI. Outreach staff will support MCCI in forming strong relationships with Council members and agency staff, and will support efforts for improvement, such as the Public Involvement Planning Guide (PIPG) review. MCCI will streamline its membership structure and place a renewed focus on training and orientation.

APPROACH

2001 MCCI Retreat

In the September 8, 2001, MCCI Retreat, a number of critical issues were identified for resolution. Among those issues were: how MCCI could better monitor and advise Metro on citizen involvement; how MCCI could develop a better working relationship with the Metro Council; and how to create an environment where citizen involvement at Metro was considered necessary, and not just a requirement. A small workgroup was convened to focus on, and provide recommendations regarding the following topics: the OCI's function and role; MCCI's function and role; staffing; membership; and training.

MCCI Workgroup

The MCCI Workgroup, consisting of representatives from MCCI and Council, met October 30, November 21 and December 12, 2001 in one- to two-hour sessions. MCCI representatives were as follows: MCCI member Norm Andreen, MCCI Vice Chair Dennis Ganoe, MCCI Chair Ted Kyle and MCCI member Scott Seibert. Council Representatives were as follows: Communications Officer John Donovan, Outreach Assistant/MCCI Staff Cary Stacey and Legislative/Policy Development Officer Jeff Stone.

In addition, interviews were held by John Donovan and Cary Stacey with MCCI Subcommittee Liaisons Ron Klein, Jan O'Dell, Sherry Oeser and Gina Whitehill-Baziuk to assess departmental perceptions of MCCI's contributions and impediments and the functionality of the PIPG. Results from these interviews revealed some suggestions for improvement, including full support for a revision of the PIPG.

Interim Council Structure

In preparation for the larger transition at Metro, the Council office was restructured in October of 2001. This interim structure established a management team consisting of the Presiding Officer and key staff to oversee operations, legislative direction and public outreach. An Outreach Office was created within the Council Office, with Jeff Stone as Legislative/Policy Development Officer, John Donovan as Communications Officer, and Cary Stacey as one of two Outreach Assistants. Among other responsibilities, the Outreach staff will create and implement a comprehensive communication plan for all phases of the transition. The new structure allows for policy and outreach issues to be developed in tandem by Outreach staff, and presents a new opportunity for MCCI's role in the agency. John Donovan and Jeff Stone are committed to work towards the greater involvement of MCCI through this new structure, and are positioned to strongly advocate for the work done by MCCI.

Recommendation Process

Recommendations will be presented via written report to Councilor Rex Burkholder, MCCI liaison, in a meeting with representatives from the MCCI Workgroup. Following his acceptance of the report, recommendations will be presented to the MCCI Regular Committee. Upon acceptance of the recommendations by the MCCI Regular Committee, the following package will be presented to Council: an ordinance to finalize MCCI membership changes, an ordinance to establish the OCI's role and function, and the results from the PIPG Review Committee. In addition, MPAC should be briefed on these changes.

RECOMMENDATIONS

The OCI's Function and Role

The OCI, staffed by John Donovan and Cary Stacey, will provide resources and outreach in order to further citizen involvement in Metro's policy-making efforts and programs. The OCI is committed to making citizen involvement the cornerstone of the Council Communication Plan, and will identify projects needing citizen involvement and monitor and seek consistency in citizen outreach.

The OCI will determine the adequacy of PIPS, in consultation with MCCI, by assisting in and facilitating links with projects at the department head level. The OCI will follow up with these projects by providing input on departmental performance in regards to citizen involvement. In conjunction with the rest of the Outreach Office, the OCI will facilitate both Council and Council committee relations with MCCI.

MCCI's Function and Role

MCCI will assist the OCI and Metro Council Outreach Office in identifying projects needing citizen involvement and providing constructive feedback on agency PIPs. MCCI will assist the OCI in identifying those programs requiring critical citizen involvement efforts and setting priorities for review in the coming year. Selected projects will then be reviewed by MCCI members in subcommittee or in the committee as a whole.

MCCI will assist the OCI in verifying the execution of PIPs and assessing the processes, determining whether the results of a PIP affected the final decision or outcome, as well as assessing citizen perceptions of the effort. In addition, MCCI must be prepared to convene temporary task force committees to address immediate, short-term projects as they arise.

As per MCCI Resolution No. 01-001, a PIPG review committee, consisting of four MCCI members, two Metro staff members, and one member from the Metro Council Office staff, will review the PIPG. This step is acknowledged and supported by the MCCI Workgroup and the Council Outreach Office.

Staffing

In addition to advocating for citizen involvement within the agency, the OCI will provide clerical support to MCCI.

Membership

In the interest of establishing an effective and productive group, it is recommended that district representation on MCCI be lowered from three members per district to two members per district. In addition, an appointment by the Council President should be considered. Outstanding members shall leave the group through attrition. It is recommended that these changes to the MCCI membership be formalized through an Ordinance to the Metro Council.

Training

It is recommended that MCCI staff coordinate an orientation for new members on a quarterly basis. The orientation shall include viewing of the Metro orientation video and presentations from representatives of the Metro Council, the Executive Office and agency departments.

It is also recommended that members of the MCCI Regular Committee participate in a 5-minute training as a standing item on meeting agendas. The training will take place in the Regular Committee meeting, and will address issues such as Oregon's Open Meetings Law.

Long-Term Goals

The following long-term goals were identified for future exploration:

- Audit the level of citizen involvement in local governments
- Create programs to recognize governments, agencies and organizations for effective citizen involvement
- In the form of MCCI, establish a dynamic and effective committee that has an applicant waiting list

RESPONSE TO THE MCCI WORKGROUP REPORT

April 10, 2002

BACKGROUND

On January 17, 2002, the Metro Committee for Citizen Involvement (MCCI) received from the MCCI Workgroup a report that proposed to define the role of the Office of Citizen Involvement (OCI) and to increase MCCI's effectiveness within Metro. The MCCI Workgroup Report proposed a partnership between MCCI and the OCI in the newly formed Council Outreach Office and outlined ways in which this partnership would achieve the citizen involvement goals of both MCCI and Metro.

At the March 20, 2002 MCCI Regular Meeting, the MCCI Workgroup report was presented by MCCI Chair Ted Kyle, MCCI Workgroup members, Council Communications Officer John Donovan, and Councilor Rex Burkholder. During a period extending from this meeting to March 29, 2002, comments regarding the report were received from the following MCCI members: Kay Durtschi, Dennis Ganoe, Ted Kyle, Darren Pennington, Bob Pung, Pat Russell, Ray Sherwood and Elizabeth Tucker.

SUMMARY OF COMMENTS

General Comments

There were concerns that history, the Metro Charter and the RUGGOs were being ignored. There was also a concern that Council would still not listen to MCCI. There was a concern that the opinions in the proposal were misrepresented as belonging to MCCI.

OCI's Function and Role

There was a suggestion to establish alternative channels for communicating with the agency.

MCCI's Function and Role

There were some concerns that MCCI's proposed role would mean a loss of leadership, independence and responsibility, which could cause a decrease in the committee's effectiveness. There was a suggestion that MCCI's role include ensuring that all members were active and involved with their neighborhoods. There was a suggestion that a structure be recommended to evaluate MCCI's effectiveness.

Staffing

There was a suggestion that MCCI's administrative responsibilities, in conjunction with the OCI, be more clearly articulated.

Membership

There was a concern with the proposal to reduce the size of membership. There were some suggestions regarding recruitment for new members.

GENERAL COMMENTS

Kay Durtschi

Said the proposal ignored the initial intent for MCCI to be independent with the right to hire and fire its own staff. Believed the committee only became effective when it took charge of its own work, and was hesitant to turn that role over to staff. Had no objection to staff following MCCI's lead, but she had concerns with the reverse situation. Was concerned that MCCI would be a rubber stamp for the OCI's work. Believed leadership of citizen involvement at Metro should be contained within MCCI and that staff should carry out what MCCI wanted.

Response:

Metro Charter provisions establishing a citizen's committee to advise the Office of Citizen Involvement did not direct that the committee should be independent from Metro. In the interest of effective communication between the committee and the agency, the Workgroup believes that a closer working relationship will help both parties achieve mutual citizen involvement goals. MCCI is not expected to be a rubber stamp for OCI's work; rather, it is hoped that MCCI will work collaboratively with the OCI. Leadership of citizen involvement will be a shared responsibility, resulting in an increased potential for implementing citizen involvement throughout the region.

Dennis Ganoë

Suggested a wording change to the report on page 3, third paragraph to emphasize MCCI's role as follows:

MCCI will assist the OCI and Metro Council Outreach Office ~~in-by~~ identifying projects needing citizen involvement and providing constructive feedback on agency PIPs. MCCI will assist the OCI ~~in-by~~ identifying those programs requiring critical citizen involvement efforts and setting priorities for review in the coming year. Selected projects will ~~then-be~~ reviewed by MCCI members in subcommittee or in the committee as a whole.

Response:

The requested wording changes will be made to the MCCI Workgroup Report.

Ted Kyle

Said the proposal should articulate that MCCI would continue to set its work and would advise the Council and the Council President.

Response:

The MCCI Workgroup Report will articulate MCCI's administrative responsibilities as requested by Mr. Kyle and Mr. Pennington (see Mr. Pennington's comments below). MCCI's suggested advisory capacity is consistent with the recommendations from the Transition Advisory Task Force, and will be articulated in the MCCI Workgroup Report as requested.

Darren Pennington

Asked that the report articulate that MCCI's administrative responsibilities, in terms of setting agendas, work plans and work groups, would be carried out with the OCI's assistance. Asked for the report to recommend establishing a process for MCCI and the OCI to evaluate MCCI's effectiveness.

Response:

The MCCI Workgroup Report will articulate MCCI's administrative responsibilities as requested by Mr. Kyle and Mr. Pennington (see Mr. Kyle's comments above). The report will recommend an evaluation process as requested.

Bob Pung

Said the direction towards reduction was OK, but felt there should be representation for the disabled population. Said that MCCI's role should include ensuring that all members were active and involved with their neighborhoods. Was concerned that the proposal did not ensure that Council would listen to MCCI and that MCCI would be vulnerable to political influence.

Response:

It is agreed that MCCI should strive for as diverse a membership as possible and this recommendation will be included in the MCCI Workgroup Report. A recommendation that all MCCI members demonstrate an involvement with their local communities (to account for those who live in areas with defunct neighborhood groups) will be included in the MCCI Workgroup Report. Although the proposal does not guarantee that the relationship between MCCI and the Council will improve, the Workgroup believes that the new model in which MCCI collaborates with the OCI will greatly increase effective communication between MCCI and the Council.

Pat Russell

Agreed with Mr. Sherwood's written comments

Response:

See response to Mr. Sherwood's comments below.

Ray Sherwood

Was concerned that MCCI's role would become consultative and passive instead of independent and active. Was concerned that MCCI was not independently funded and operated, which went against the Metro Charter. Said that MCCI should be an independent body of citizens set apart from the Metro staff. Believed reducing membership would reduce citizen participation. Suggested increasing the number of citizens who serve by having Metro Councilors help to recruit new members. Was concerned that the Council might implement something similar to the workgroup report for ease of administration. Had a concern that the proposal was misrepresented as MCCI's opinion and that the proposal should not come from MCCI. Asked for a review of what would go before the Council.

Response:

Through partnering with the OCI, MCCI will continue to be responsible for assessing citizen involvement at Metro and, the Workgroup believes, the committee's role will be active rather than passive. While the Metro Charter did establish a citizen's committee within the Office of Citizen Involvement, it did not specify whether the committee should be completely independent from Metro. In the interest of fostering effective communication between the committee and the agency, the Workgroup believes that a closer working relationship will help better achieve citizen involvement goals. Reducing membership was proposed so that MCCI's size could become more cohesive, effective and stable. The proposal will be presented to the Metro Council as a product of the MCCI Workgroup, and will be accompanied by comments put forth by MCCI members. MCCI members will receive copies of this document and will also have the opportunity to review any legislation regarding the MCCI Workgroup Report.

Elizabeth Tucker

Suggested building in wording in that allowed for other channels in case liaisons were ineffective.

Response:

The requested wording changes will be made to the MCCI Workgroup Report.

DETAILED COMMENTS

Kay Durtschi

Ms. Durtschi commented verbally at the March 20, 2002 Regular Meeting as follows:

She didn't think the report addressed what MCCI was trying to do when it was established. Multnomah County helped write the first set of bylaws, intending that the committee be independent with the right to hire and fire its own staff. Her concern was that MCCI would be a rubber stamp for the OCI's work. She said that the committee only started to become effective when it took charge of its own destiny, and she hesitated to turn that role over to staff. She said she had no objection to staff following MCCI's lead, but she had concerns with the reverse situation. She said leadership of citizen involvement at Metro should be contained within MCCI and that staff should carry out what MCCI wanted.

Dennis Ganoë

Mr. Ganoë's comments were verbally given to MCCI staff directly after the March 20, 2002 Regular Committee Meeting.

Ted Kyle

Ted Kyle commented verbally at the March 20, 2002 Regular Meeting as follows:

Chair Kyle said the committee should continue to set its work, and that wasn't clear in the proposal. The document also did not clarify that MCCI would advise the Council and the Council President.

Darren Pennington

Mr. Pennington's comments, submitted via email, are attached to this document as part of Appendix A.

Bob Pung

Mr. Pung commented verbally at the March 20, 2002 Regular Meeting as follows:

He said the direction towards reduction was OK, but he felt there should be representation for the disabled population. He said that MCCI's role should include ensuring that all members were active and involved with their neighborhoods. He said he was concerned that MCCI would be vulnerable to the arrogance of politicians.

Mr. Pung's additional comments, submitted via email, are attached to this document as part of Appendix A.

Pat Russell

Mr. Russell commented verbally at the March 20, 2002 Regular Meeting as follows:

Mr. Russell spoke to Mr. Sherwood's written comments included in the March 20, 2002 Regular Meeting packet and said he supported them.

Ray Sherwood

Mr. Sherwood commented verbally at the March 20, 2002 Regular Meeting as follows:

He said he was concerned with some of the language in the recommendations. He said there was no guarantee that MCCI would always be accorded the type of respect the Charter required. He said the Council might implement something similar to the workgroup report for ease of administration. He said that MCCI should be an independent body of citizens set apart from the Metro staff, and that the proposal should not come from MCCI. He asked for a review of what would go before the Council.

Mr. Sherwood's additional comments, submitted via email, are attached to this document as part of Appendix A.

Elizabeth Tucker

Ms. Tucker commented verbally at the March 20, 2002 Regular Meeting as follows:

She referred to Ms. Durtschi's concern with ineffective liaisons and suggested building in wording in that allowed for other channels in case liaisons were ineffective.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-947, FOR THE PURPOSE OF AMENDING METRO CODE SECTION 2.19.100 CONCERNING METRO'S COMMITTEE ON CITIZEN INVOLVEMENT (MCCI)

Date: May 10, 2002

Prepared by: Jeff Stone, Cary Stacey

BACKGROUND

Executive Summary

As set out in the 1992 Metro Charter, the Metro Office of Citizen Involvement (OCI) was created "to develop and maintain programs and procedures to aid communications between citizens and the council and executive officer." In addition, a citizens' committee in the Office of Citizen Involvement was to be established by ordinance – that committee is now known as the Metro Committee for Citizen Involvement (MCCI).

Metro's commitment to citizen involvement is a major component of the agency's efforts. It is the sole function of the OCI to maintain and renew this commitment, and to establish a structure within which citizens may provide valuable feedback and support. MCCI has been instrumental in advocating for a strong and successful office of citizen involvement, and its future contributions will be vital for the OCI's success.

To enhance the role of the OCI and to increase MCCI's effectiveness with Metro, the MCCI Workgroup, consisting of MCCI members and Metro staff, met to explore opportunities for improvement, and concluded the following:

MCCI will achieve a more influential and effective role by partnering with the OCI in the newly formed Council Outreach Office. MCCI will support the OCI in its efforts to maintain and renew the citizen involvement goals of the agency. In turn, Outreach staff will consult with MCCI members on citizen involvement issues in key projects and provide staffing to MCCI. Outreach staff will support MCCI in forming strong relationships with Council members and agency staff, and will support efforts for improvement, such as the Public Involvement Planning Guide (PIPG) review. MCCI will streamline its membership structure and place a renewed focus on training and orientation.

Approach

The MCCI Workgroup, consisting of representatives from MCCI and Council, met October 30, November 21, and December 12, 2001 in one- to two-hour sessions. MCCI representatives included: member Norm Andreen, Vice Chair Dennis Ganoe, Chair Ted Kyle and member Scott Seibert. Council Representatives included: Communications Officer John Donovan, Outreach Assistant/MCCI Staff Cary Stacey, Legislative/Policy Development Officer Jeff Stone.

In addition, interviews were held by John Donovan and Cary Stacey with MCCI Subcommittee Liaisons Ron Klein, Jan O'Dell, Sherry Oeser, Gina Whitehill-Baziuk to assess departmental perceptions of MCCI's contributions and impediments, and the functionality of the PIPG. Results from these interviews revealed some suggestions for improvement, including full support for a revision of the PIPG.

RECOMMENDATIONS

The OCI's Function and Role

The OCI, staffed by John Donovan and Cary Stacey, will provide resources and outreach in order to further citizen involvement in Metro's policy-making efforts and programs. The OCI is committed to making citizen involvement the cornerstone of the Council Communication Plan, and will identify projects needing citizen involvement and monitor and seek consistency in citizen outreach.

The OCI will determine the adequacy of PIPs, in consultation with MCCI, and will facilitate links with projects at the department head level. The OCI will follow up with these projects by providing input on departmental performance in regards to citizen involvement. In conjunction with the rest of the Outreach Office, the OCI will facilitate both Council and Council committee relations with MCCI.

MCCI's Function and Role

MCCI will provide advice on citizen involvement to the Metro Council and Council President. MCCI will assist the OCI and Metro Council Outreach Office by identifying projects needing citizen involvement and providing constructive feedback on agency PIPs. MCCI will assist the OCI by identifying those programs requiring critical citizen involvement efforts and setting priorities for review in the coming year. Selected projects will be reviewed by MCCI members in subcommittee or in the committee as a whole. With the OCI's assistance, MCCI will continue to set its agendas and work plans and assign work groups as needed.

MCCI will assist the OCI in verifying the execution of PIPs and assessing the processes, determining whether the results of a PIP affected the final decision or outcome, as well as assessing citizen perceptions of the effort. In addition, MCCI must be prepared to convene temporary task force committees to address immediate, short-term projects as they arise.

As per a MCCI resolution, a PIPG review committee, consisting of four MCCI members, two Metro staff members, and one member from the Metro Council Office staff, will review the PIPG. This step is acknowledged and supported by the MCCI Workgroup and the Council Outreach Office.

It is recommended that a process be established for MCCI and the OCI to evaluate MCCI's effectiveness. This evaluation process should include an assessment of liaison effectiveness and provide for alternative communication channels, if needed.

Membership

In the interest of establishing an effective and productive group, it is recommended that district representation on MCCI be lowered from three members per district to two members per district. In addition, an appointment by the Council President should be considered. Outstanding members shall leave the group through attrition.

In terms of recruitment, MCCI should strive for as diverse a membership as possible. It is recommended that all MCCI members and considered applicants demonstrate an active involvement with their local communities.

ANALYSIS/INFORMATION

- 1. Known Opposition:** MCCI members are not unanimously in support of this ordinance.
- 2. Legal Antecedents:** Metro Code Chapter 2.19.100 outlines the purpose and membership of MCCI.
- 3. Anticipated Effects:** To promote greater effectiveness and coordination of efforts by MCCI through the Office of Citizen Involvement.
- 4. Budget Impacts:** No additional resources are required to enact this legislation.

RECOMMENDED ACTION

Staff recommends that the Metro Council approve Ordinance No. 02-947.

**Ordinance No. 02-962, For the Purpose of Amending the FY 2002-03 Budget and Appropriations Schedule
Transferring \$72,000 from the Planning Fund Contingency to Capital Outlay to Provide Appropriation
Authority for the Carryover and completion of the Transims Computer Purchase; and Declaring an Emergency**

Second Reading

**Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 2002-03)	ORDINANCE NO. 02-962
BUDGET AND APPROPRIATIONS SCHEDULE FOR)	
THE PURPOSE OF TRANSFERRING \$72,000 FROM)	
THE PLANNING FUND CONTINGENCY TO)	Introduced by Mike Burton,
CAPITAL OUTLAY TO PROVIDE APPROPRIATION)	Executive Officer
AUTHORITY FOR THE CARRYOVER AND)	
COMPLETION OF THE TRANSIMS COMPUTER)	
PURCHASE; AND DECLARING AN EMERGENCY)	

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations within the FY 2002-03 Budget; and

WHEREAS, the need for the transfer of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; now, therefore,

The Metro Council ordains as follows:

1. That the FY 2002-03 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$72,000 from the Planning Fund Contingency to Capital Outlay to provide appropriation authority for the carryover and completion of the Transportation Analysis Simulation (TRANSIMS) computer purchase.
2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

**Exhibit A
Ordinance No.02-962**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Planning Fund							
Planning Department							
Total Personal Services		79.00	\$6,677,575	0.00	\$0	79.00	\$6,677,575
Total Materials & Services			\$11,204,773		\$0		\$11,204,773
Total Debt Service			\$40,773		\$0		\$40,773
<i>Capital Outlay</i>							
<i>CAPCIP</i>	<i>Capital Outlay (CIP Projects)</i>						
5745	Equipment & Vehicles (CIP)		0		72,000		72,000
Total Capital Outlay			\$0		\$72,000		\$72,000
Total Interfund Transfers			\$2,711,625		\$0		\$2,711,625
<i>Contingency and Ending Balance</i>							
<i>CONT</i>	<i>Contingency</i>						
5999	Contingency		474,553		(72,000)		402,553
<i>UNAPP</i>	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance		0		0		0
Total Contingency and Ending Balance			\$474,553		(\$72,000)		\$402,553
TOTAL REQUIREMENTS		79.00	\$21,109,299	0.00	\$0	79.00	\$21,109,299

Exhibit B
Ordinance No. 02-962
FY 2002-03 SCHEDULE OF APPROPRIATIONS

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Amended</u> <u>Appropriation</u>
PLANNING FUND			
Operating Expenses (PS & M&S)	\$17,882,348	\$0	\$17,882,348
Debt Service	40,773	0	40,773
Capital Outlay	0	72,000	72,000
Interfund Transfers	2,711,625	0	2,711,625
Contingency	474,553	(72,000)	402,553
Unappropriated Balance	0	0	0
Total Fund Requirements	\$21,109,299	\$0	\$21,109,299

All Other Appropriations Remain as Previously Adopted

BUDGET AND FINANCE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 02-962, AN ORDINANCE AMENDING THE FY 02-03 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF TRANSFERRING \$72,000 FROM THE PLANNING FUND CONTINGENCY TO CAPITAL OUTLAY TO PROVIDE APPROPRIATION AUTHORITY FOR THE CARRYOVER AND COMPLETION OF THE TRANSIMS COMPUTER PURCHASE; AND DECLARING AN EMERGENCY

Date: September 11, 2002

Presented by: Councilor Monroe

Committee Recommendation: At its September 11, meeting, the Budget and Finance Committee voted 3-0 to recommend Council adoption of Ordinance No. 02-962. Voting in favor: Councilors McLain and Monroe and Chair Burkholder. Voting against: None. Absent: Councilors Atherton and Bragdon.

Background: The FY 01-02 budget included a \$300,000 interfund loan from the REM Department to the Planning Department to fund the purchase of various equipment and software to complete the initial development of the Transportation Analysis Simulation System (TRANSIMS). This system is a state-of-the-art forecasting model that Metro assisted in developing in partnership with the federal Los Alamos National Laboratory. A total of \$228,000 of the allocated loan funds were spent during FY 01-02. The remaining \$72,000 was carried over into FY 02-03 in the Planning Fund Beginning Fund Balance. The Planning Department is now ready to spend the remaining funds to purchase equipment related to the ancillary use of the system, backup systems, network editing and remote access capability.

The proposed ordinance would transfer \$72,000 from the Planning Fund Contingency to Capital Outlay to provide the necessary appropriation authority to expend these funds.

Committee Issues/Discussion: Kathy Rutkowski, Financial Planning Budget Coordinator, presented the staff report. She reviewed the background material summarized above. She noted that this was a simple housekeeping amendment designed to provide spending authority for specific carryover funds.

Committee members had no questions.

Key Public Testimony: None.

STAFF REPORT

Consideration of Ordinance 02-962 amending the FY 2002-03 budget and appropriations schedule for the purpose of transferring \$72,000 from the planning fund contingency to capital outlay to provide appropriation authority for the carryover and completion of the TRANSIMS computer purchase; and declaring an emergency

August 14, 2002

Presented by: David Biedermann
Kathy Rutkowski

Description

The purpose of this request is to amend the Planning Department budget, specifically, the Transportation Model Improvement Program within the Technical Services division to provide for the carryover and completion of the Transportation Model Improvement Program computer purchase.

Existing Law

ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.

Background

This request is to provide appropriation authority for the carryover and completion of the project to purchase computer equipment used by the Travel Forecasting Section of the Planning Department for development and application of travel demand forecasting models.

For several years, the Transportation Model Improvement Program has been working in partnership with the Los Alamos National Laboratory on the development of the Transportation Analysis Simulation System (TRANSIMS). This is a set of new transportation and air quality analysis and forecasting procedures developed to meet the Clean Air Act, the Intermodal Surface Transportation Efficiency Act, the Transportation Equity Act for the 21st Century, and other regulations.

In partnership with the Los Alamos National Laboratory and PricewaterhouseCoopers Consulting, Metro is hosting the next phase of the project to simulate the Portland metropolitan region with a model that contains 120,000 links and 1.5 million travelers, including mass transit studies.

The major system was purchased last year and came online in the early spring. On-going testing of the modeling capabilities and training is occurring at Metro as a result.

Last year the Council approved an amendment to the budget and Capital Improvement Plan to accomplish this project. Of the \$300,000 approved, approximately \$228,000 was expended in FY01-02. Items purchased included the Linux cluster servers that drives the modeling, workstations for "visualization" and network editing software, the archival system, and additional capacity for heating/cooling equipment.

Due to other work demands on the staff and additional requirements identified after the initial purchase, delays were encountered in purchasing the remaining components. While not critical to the processing,

they are important to ancillary use of the system: backup systems, additional network editing, and remote access capability.

This action requests that the remaining \$72,000 in appropriation authority from FY01-02 to FY02-03 be carried forward to purchase those remaining components.

Budget Impact

In FY 2001-02, the Council approved a \$300,000 interfund loan from the Regional Environmental Management Department to the Planning Department to provide financing for the project. The Planning Department has a balance of approximately \$72,000 of principal remaining on this interfund loan. This amount has been carried forward to FY 2002-03 in the Planning Fund as Beginning Fund Balance.

This action requests the transfer of \$72,000 from the Planning Fund Contingency to Capital Outlay to provide the appropriation authority for the carry forward and completion of the TRANSIMS computer purchase. The contingency transfer is being funded by the additional beginning fund balance from the carryover of the remaining principal on the interfund loan. The total cost of the project is still anticipated not to exceed \$300,000.

Outstanding Questions

None at this time.

Executive Officer's Recommendation

The Executive Officer recommends adoption of this ordinance.

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Agenda Item Number 6.1

**Resolution No. 02-3219, For the Purpose of Confirming Peggy Coats to
the Metro 401(k) Employee Salary Savings Plan Advisory Committee.**

Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING PEGGY)
COATS TO THE METRO 401 (k) EMPLOYEE)
SALARY SAVINGS PLAN ADVISORY COMMITTEE)

RESOLUTION NO. 02-3219
Introduced by Jennifer Sims
and Scott Moss

WHEREAS, Metro established an Employee Salary Savings Plan and Trust originally effective July 1, 1981; and

WHEREAS, the Metro Council adopted Resolution No. 92-1596 on March 26, 1992, authorizing the Executive Officer to appoint a five-person Advisory Committee to give instructions to the trustee with respect to all matters concerning the Plan; and

WHEREAS, the Metro Council adopted Resolution No. 96-2382 on September 12, 1996, making initial appointments to the 401(k) Advisory Committee; and subsequent appointments to the Committee through Resolutions No. 99-2784 adopted by the Council on May 20, 1999, Resolution No. 00-2964 adopted by the Council on June 29, 2000, Resolution No. 02-3145 adopted by the Council on January 31, 2002, and Resolution No. 02-3180 adopted by the Council on May 2, 2002;

WHEREAS, a Committee member has resigned from the Committee, creating a vacancy and requiring a new appointment;

WHEREAS, the 401(k) Advisory Committee Nominating Committee on behalf of the Executive Officer has requested that interested applicants submit their names for consideration; the applicant's requests were reviewed and interviews were conducted by the Nominating Committee; now, therefore,

BE IT RESOLVED,

That the Council confirms the following member of the Metro 401(k) Employee Salary Savings Plan Advisory Committee appointed by the Executive Officer:

Peggy Coats. Term to Expire: March 5, 2004

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hostika, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT

IN CONSIDERATION OF RESOLUTION 02-3219, FOR THE PURPOSE OF CONFIRMING PEGGY COATS TO THE METRO 401(K) EMPLOYEE SALARY SAVINGS PLAN ADVISORY COMMITTEE

Date: August 21, 2002

Presented by: Jennifer Sims and Scott Moss

PROPOSED ACTION

Confirm Peggy Coats to the Metro 401(k) Employee Salary Savings Plan Advisory Committee.

EXISTING LAW

Conforms with requirements established in Resolution No. 94-1985 regarding appointments to the Metro Employee Salary Savings Advisory Committee and conforms with requirements of the 401(k) Advisory Committee Mission, Goals, By-laws and Operating Procedures.

BACKGROUND AND ANALYSIS

Metro established an Employee Salary Savings Plan and Trust, which was originally effective on July 1, 1981. The Metro Council adopted Resolution No. 92-1956 on March 26, 1992, authorizing the Executive Officer to appoint a five-member advisory committee to give instructions to the trustee with respect to all matters concerning the Plan.

Initial appointments of the five-member committee were made through resolution on September 12, 1996. Committee members each serve two-year terms as employee representatives of the Metro 401(k) Employee Salary Savings Committee.

Matthew Rotchford advised the Committee Chair that he would be unable to continue serving as a member of the Committee. In order to fill the vacant Committee position of Matthew Rotchford and in accordance with the 401(k) Advisory Committee Mission, Goals, By-laws and Operating Procedures, a nominating committee was formed and applicants were asked to submit a letter of interest to the Committee.

After solicitation for nominations to the Committee, several other applicants applied and were interviewed. The Committee is suggesting Peggy Coats be appointed to fill the Metro 401(k) Employee Salary Savings Plan Committee vacancy. This appointment will expire on March 5, 2004.

FISCAL IMPACT: None

EXECUTIVE OFFICER RECOMMENDATION: The Executive Officer recommends Council confirmation of the Peggy Coats to the Metro 401(k) Employee Salary Savings Plan Advisory Committee.

August 7, 2002

TO: Mike Burton, Executive Officer, Metro
FROM: Lydia Neill, 401(k) Committee Chair
SUBJECT: Recommendation for Metro Employee Salary Savings Plan
Advisory Committee Appointee

The term of Matthew Rotchford, a Sales & Events Manager at the Expo Center, recently expired. Matthew advised the Committee that he would be unable to continue serving as a Committee member. A nominating committee was formed and several candidates were interviewed. Two potential members for the vacant position were interviewed. Both candidates were found to be excellent candidates for the position although Ms. Coats was found to have more experience relating to the business of the 401K Committee.

The Metro 401(k) Employee Salary Savings Plan Advisory Committee is pleased to recommend Peggy Coats as a new member of the Committee. Peggy Coats, Council Operations Officer, was selected as the nominee for the Committee because of her expertise in financial analysis and prior experience with retirement plans.

If you concur with this recommendation, please indicate so by your signature at the bottom of this memo. Once signed, please return to Nancy Meyer or me, and we will continue the process of preparing a resolution and staff report for the Council's consideration.

Mike Burton, Executive Officer

Date

Agenda Item Number 6.2

Resolution No. 02-3220, For the Purpose of Authorizing the Executive Officer to Establish the "Northern Willamette Valley Habitat Conservation Fund" in Partnership with the National Fish and Wildlife Foundation.

**Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION No. 02-3220
EXECUTIVE OFFICER TO ESTABLISH "THE)	
NORTHERN WILLAMETTE VALLEY HABITAT)	Introduced by Mike Burton,
CONSERVATION FUND" IN PARTNERSHIP)	Executive Officer
WITH THE NATIONAL FISH AND WILDLIFE)	
FOUNDATION)	

WHEREAS, Metro Council adopted the Metropolitan Greenspaces Master Plan in 1992 and the Regional Framework Plan in 1997 that envisioned a cooperative, interconnected regional system of parks, natural areas, trails and greenways for fish, wildlife and people (The Regional System); and

WHEREAS, achieving the vision of these plans will require a variety of funding strategies including donations from private citizens, foundations, and corporations; and

WHEREAS, successful fundraising efforts typically require the participation of a reputable 501(c)(3) organization; and

WHEREAS, the National Fish and Wildlife Foundation (The Foundation) is a nationally recognized 501(c)(3) non-profit organization with a long history of successful conservation projects and fundraising efforts; and

WHEREAS, the goals of the Foundation are consistent with and complementary to Metro's goals for The Regional System, creating a unique opportunity for a partnership; and

WHEREAS, a Memorandum of Agreement shown in Exhibit A details the partnership between The Foundation and Metro and establishes the "Northern Willamette Valley Habitat Conservation Fund" to benefit natural resource conservation and education activities on lands included in The Regional System; now therefore,

BE IT RESOLVED THAT

- 1) The Executive Officer is authorized to sign the Memorandum of Agreement shown in Exhibit A and to implement the provisions of the partnership agreement contained therein.
- 2) The use of Open Space, Parks and Streams bond funds in the amount of \$200,000 is authorized for eligible capital expenditures as set forth in the Memorandum of Agreement.

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

Exhibit A
Resolution 02-3220

**Memorandum of Agreement
Metro Regional Services
and
National Fish and Wildlife Foundation
to establish a
“Northern Willamette Valley Habitat Conservation Fund”**

1. Background–Purposes and Objectives

This Memorandum of Agreement (the "Agreement") memorializes the agreement between Metro and the National Fish and Wildlife Foundation (the "Foundation") to establish a joint grant-making "Northern Willamette Valley Habitat Conservation Fund" (the "Fund"), NFWF Project #2002-0008, as a special project of the Foundation. The Fund compliments and enhances the mutually compatible conservation objectives and goals of the Foundation and Metro ("the Partners"), with its primary purpose being to expand upon existing and on-going habitat protection, restoration and conservation education efforts in the metro area of Portland, and to offer a focal point for conservation donations from other private individuals, corporations and other parties with an interest in helping these conservation efforts.

2. Partner description

A. *The Foundation* - The Foundation is a private, 501 (c)(3) non-profit organization established by an Act of Congress in 1984 (P.L. 98-244, as amended, 16 U.S.C. 3701 et seq.), to encourage, accept and administer private gifts for the benefit of, or in conjunction with, various entities to undertake and conduct such activities as will further the conservation and management of fish, wildlife and plant resources for present and future generations through creative and respectful partnerships, sustainable solutions, and better education.

The Foundation has successfully forged on-the-ground public-private partnerships with many federal agencies, state, local, and private donors to implement innovative community-based projects. To date, the Foundation has received over \$150 million in Congressional appropriations and matched it with an additional \$400 million in non-federal funds to invest in over 5,000 conservation projects nationally. Last year, the Foundation received over \$30 million in federal funds matching them with over \$60 million of non-federal funds on a project-by-project basis. The Pacific Northwest Regional Office opened in Portland in fall 2000 to better administer local partnership programs throughout the region and currently manages over 300 active grants in Alaska, Oregon, Washington and Idaho, with over 100 of these projects in Oregon.

B. *Metro Regional Services and Metro Regional Parks and Greenspaces Department* - Metro is a Metropolitan Service District organized under Article 11, Section 14 of the Oregon Constitution, ORS Chapter 268, and the Home Rule Charter as approved by voters in 1992 and amended in 2000.

Metro's Regional Parks and Greenspaces Department was established in 1994 to pursue the creation of a cooperative, interconnected regional system of parks, natural areas, trails and greenways for fish, wildlife and people as envisioned in the Metropolitan Greenspaces Master Plan (1992) and Metro's Regional Framework Plan (1997) ("The Regional System").

The Regional Parks and Greenspaces Dept. owns and manages approximately 11,000 acres of open space and regional parks throughout the three (3) county Portland Metropolitan Area which provides critical habitat for a diversity of native species, contributes to the protection of air and water quality and provides,

primarily, natural resource dependent recreation and education opportunities to approximately 1.5 million visitors annually. The department provides a wide variety of environmental education programs and has developed an aggressive volunteer program to actively engage citizens of the region in the stewardship of the region's natural resources. Much of the land managed by the dept. (\pm 7,100 acres) has been acquired since 1996 with proceeds from a \$135.6 million bond measure approved by voters in 1995 ("Metro Open Spaces Bond Measure"). Acquired sites provide numerous opportunities to restore and enhance unique habitat types of the Northern Willamette Valley.

The department works closely with federal, state and local governments who own and manage components of The Regional System. Many of these sites offer unique opportunities to enhance natural resource values through cooperative restoration and enhancement projects.

C. *Benefit of Joint Venture* - The Foundation will assure that national and regional resources of the Foundation will be available to Metro, such as full accounting and auditing of funds received, a long track record and reputation of nationally successful conservation projects, and access to other national and local foundations/donors for funding that may not be easily accessible to Metro or its local government cooperators. Additional funds raised by the Foundation for Metro can be used to co-fund projects. The Foundation will have full responsibility for all office management/staff/and administrative aspects of grant-making, once the grants have been approved as set forth below. For the Foundation, this joint venture will assure that there is a strong local entity to assist with seeking good applicants, and conducting project reviews. By working together, both Metro and NFWF will realize many advantages not otherwise possible.

3. Funding; Projects; Joint Approval; Grants Manager

The Foundation's Board of Directors has approved the Fund for up to \$400,000 for joint grants (and up to an additional \$40,000 for grants administration) at its November 2001 meeting in Tucson, AZ for habitat restoration/protection and environmental/conservation education projects related to The Regional System.

Accordingly, the Foundation will contribute up to \$240,000 to the Fund in July 2002 (from U.S. Fish and Wildlife Service funds) and Metro agrees to contribute \$200,000 of non-federal funds to the Fund at the beginning of its FY 2003 upon receipt of an invoice (the "Metro Contribution"). The parties acknowledge that Metro's financial contribution is from the 1995 Open Space, Parks and Streams Bond Measure and as such is subject to the restrictions and limitations of said measure. The Metro Contribution shall be spent only on properties acquired by Metro with proceeds from the Metro Open Spaces Bond Measure or on acquisitions of properties within "target areas" as set forth in the bond measure and implementing regulations. The Foundation will provide a final programmatic and financial report that documents the expenditures of the Fund on an annual basis, including an accounting of the expenditures of the Metro Contribution. The parties acknowledge that not more than \$40,000 (10% of the total) will be used to administer the joint program. Additional funds may be contributed by the Foundation and/or Metro to the Fund as mutually agreed upon in the future.

A joint Metro/Foundation Grants Committee will be established to assure efficient and inclusive local decision-making regarding projects to be funded. The composition and duties of this committee will be mutually acceptable to the Partners. The Grants Committee shall make a recommendation to the Partners regarding each proposed grant. The Partners shall jointly review the committee recommendation, and no grant shall be awarded without the specific approval of both Partners. The Director for the Foundation's PNW Regional Office, Krystyna Wolniakowski, shall serve as the Partner representative for NFWF, and Charles Ciecko, Metro Regional Parks and Greenspaces Department Director, shall serve as the Partner representative for Metro, in evaluating and approving grants.

Specifically, the types of projects that will be considered for support from the Fund may include:

- A. Restoration and/or enhancement (including project monitoring and evaluation) of unique, rare or threatened habitats located on public or private lands (with protective covenants) that are included in The Regional System. Examples include (but are not limited to) Oregon white oak woodland and savanna, Geyer willow wetland, tidal freshwater wetland and riverine and stream riparian habitat;
- B. Acquisition of conservation easements, timber rights, water rights, fee simple title or other ownership interest when such acquisition is deemed to be directly related to the successful implementation of projects described in "A" above or the Metropolitan Greenspaces Master Plan;
- C. Reintroduction of extirpated species or the restoration of rare, endangered or sensitive species on components of The Regional System;
- D. Suppression, removal and/or eradication of non-native, invasive species on components of The Regional System;
- E. Environmental education which is intended to enhance public understanding and involvement in the stewardship and conservation of native fish and wildlife and the habitat which they require.

The Director for the Foundation's PNW Regional Office, Krystyna Wolniakowski, will serve as the grants manager for administering the grants, after joint approval by the Partners as set forth above.

4. Term of Agreement

This Agreement shall be effective as of the date of the last signature of the parties and shall remain in effect, except as modified or terminated in Section 68 hereof, for five (5) years if funding is available. This Agreement shall be reviewed on an annual basis, at which point the Agreement may be renewed, modified, or terminated according to the interests of the parties.

5. Specific Obligations of the Partners

The Foundation will be responsible for the following aspects of this Agreement:

- A. Establish a segregated interest bearing account within the Foundation to receive and hold the financial resources of the Fund.
- B. Serve as the fiscal agent/program manager for the Fund.
- C. Provide ongoing support and counsel for the development of projects to be funded.
- D. Fundraise and receive funds from federal, corporate, state, and private contributions in the Tri-County Metropolitan area and elsewhere, and manage these funds for the restoration and preservation of habitat and conservation education programs as described in Section 3.
- E. Participate in the establishment of a grants committee per Section 3.
- F. Assist Metro and the committee to develop proposal guidelines and requests for proposals for projects.
- G. Establish (1-2) deadlines per year for accepting proposals.

- H. Facilitate proposal review by the committee and other relevant scientific reviewers.
- I. Negotiate contracts, manage disbursements and other financial details with grantees.
- J. Provide semi-annual financial and programmatic reports to Metro and the committee.
- K. Appoint an individual, the Project Officer, who will represent the Foundation in carrying out its obligations under this Agreement.
- L. Provide funds as set forth above in Section 3, and make additional in-kind contributions of staff and marketing/promotional time as needed, consistent with the availability of staff and financial resources as determined by the Foundation.

Metro will be responsible for the following:

- A. Appoint an individual, the Project Officer, who will represent Metro Regional Parks and Greenspaces Dept., in carrying out its obligations under this Agreement.
- B. Contribute funds as set forth above in Section 3 and make additional in-kind contributions of staff and marketing/promotional time as needed, consistent with the availability of staff and financial resources as determined by Metro.
- C. Develop promotional materials for the public describing the joint program and include a link from Metro website to NFWF website.
- D. Refer other individuals, corporations, and other interested parties wishing to donate funds for urban conservation projects to the Fund.
- E. Identify key areas for project implementation.
- F. Participate in the establishment of a grants committee per Section 3.
- G. Keep the Metro Council informed of progress of the program and provide information on the Fund in its public outreach efforts to the general public as appropriate.
- H. Promote opportunities provided by the Fund to appropriate cooperators in The Regional System which may include federal, state and local governments, non-profit organizations, schools, community groups, watershed councils and private landowners.
- I. Assist with the generation of a prospective donor list and participate in the production of grant applications and donor development.
- J. Provide technical assistance, as staff resources allow, to assure the development and implementation of high quality projects.
- K. Conduct real estate negotiations and due diligence, in accordance with Metro guidelines, with respect to properties or rights to be purchased, if any, with funds from the Metro Contribution.

6. Names/Logos/Promotions

With prior written approval of the other party, Metro and the Foundation may utilize the name or logo of the other party in advertising or other forms of public communication to convey the support of the other party for the Fund. Each party agrees to reproduce the other party's logo accurately and in accordance with any specifications that may be required for the promotional purposes, in accordance with such terms as the parties may specify.

7. Workplan and Timelines

- September 30, 2002: Final MOA signed between Metro and the Foundation
Discussion to set up joint proposal review committee
Establish timelines for proposal review committee meetings
- October 30, 2002: Establish a segregated interest bearing account at the Foundation/finalize paperwork
Finalize criteria for proposal reviews with Metro
- December 2002: First round of proposal reviews.**
Draft a fund-raising plan to attract other donors to the Fund
Write contracts for projects approved**
Draft press releases and other promotional materials for the Fund
- January 2003: NFWF submits first quarterly report to Metro
- April 2003: Submit second quarterly report to Metro
- July 2003: Submit third quarterly report to Metro and submit request for renewal from Metro Council. Design new program for FY 2004.
- October 15, 2003 Submit final report to Metro.

**Remaining proposal review schedules will be determined by Metro/NFWF

8. Amendment and Termination

Amendments to this Agreement may be proposed by either party in writing and will become effective upon being reduced to a written instrument, approved by the Metro Council, and being signed by the duly authorized representative of both parties.

This Agreement may be terminated by any party upon 30 days written notice to the other party. If this Agreement is terminated, the Foundation shall return any unobligated funds donated by Metro to Metro and to any of the other donors to those donors.

9. Notices and Project Officers

For the purpose of this Agreement, the following individuals shall be the Project Officers. Notices to be given hereunder shall be made in writing and may be given by delivering the same in person, by mail, or by fax. Notices shall be effective only if and when received at the address of the party to be notified.

If to Metro Regional Parks and Greenspaces Dept.:

Charles Ciecko, Director
Metro Regional Greenspaces Parks and Greenspaces Dept.
600 Northeast Grand Avenue
Portland, OR 97232
tel: 503-797-1843 fax: 503-797-1849

If to the Foundation:

Krystyna Wolniakowski, Director, PNW
National Fish and Wildlife Foundation
806 Southwest Broadway, Suite 750
Portland, OR 97205
tel: 503-417-8700 fax: 503-417-8787

Please indicate your acceptance of the terms of this Agreement by signing two originals of this letter and returning one to the Foundation.

AGREED AND ACCEPTED:

Metro Regional Services, Regional Parks and Greenspaces Dept.

By: _____

Title: _____

Date: _____

National Fish and Wildlife Foundation

By: _____

Title: _____

Date: _____

Staff Report

CONSIDERATION OF RESOLUTION NO. 02-3220 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ESTABLISH THE "NORTHERN WILLAMETTE VALLEY HABITAT CONSERVATION FUND" IN PARTNERSHIP WITH THE NATIONAL FISH AND WILDLIFE FOUNDATION

Date: August 14, 2002

Presented by: Charles Cieccko

BACKGROUND

Resolution No. 02-3220 authorizes the Executive Officer to sign a Memorandum of Agreement (MOA) with the National Fish and Wildlife Foundation (the "Foundation").

The MOA will establish a joint grant establishing "Northern Willamette Valley Habitat Conservation Fund" (the "Fund") as a partnership project of the Foundation and Metro. Financial resources of the Fund will come from the Foundation, Metro, and future joint fundraising efforts. The term of the agreement is five years.

The Fund will be established to pursue specific objectives on public and/or private lands (with protective covenants) that are included in "The Regional System" as envisioned in the Greenspaces Master Plan and the Regional Framework Plan.

Specific projects that will be considered include:

1. Restoration and/or enhancement of unique rare or endangered habitats (including project monitoring and evaluation)
2. Acquisition of easements, timber rights, water rights, fee simple title, or other ownership interest when the acquisition is directly related to the success of a restoration project or the Greenspaces Master Plan
3. Reintroduction of extirpated or rare, endangered, or sensitive species
4. Suppression, removal or eradication of non-native invasive species
5. Environmental Education which enhances public understanding and involvement in the stewardship of native fish and wildlife and associated habitat

PARTNERSHIP ROLES

The National Fish and Wildlife Foundation will:

1. Establish a segregated interest bearing account with the Foundation to receive and hold financial resources.
2. Serve as fiscal agent and program manager for the Fund.
3. Assist with the development of appropriate projects.
4. Participate in fundraising activities.

5. Assist with the development of a grants committee, proposal guidelines, and grants schedule.
6. Negotiate contracts, make disbursements, and manage records.
7. Provide semi-annual reports on the activities and status of the Fund.
8. Provide initial funds in the amount of \$240,000 and additional funds in the future as deemed appropriate by the Foundation.
9. Provide in-kind contributions of staff and marketing/promotional time.
10. Assist with donor development and fundraising efforts.

Metro will:

1. Identify key areas for project implementation.
2. Assist with the development of a grants committee, proposal guidelines, and grants schedule.
3. Promote opportunities provided by the Fund to cooperators in The Regional System.
4. Assist with the generation of a prospective donor list and donor development.
5. Provide technical assistance for project development and implementation.
6. Develop appropriate marketing materials for the program.
7. Provide initial funds in the amount of \$200,000 and additional funds in the future as deemed appropriate by Metro.
8. Keep the Metro Council informed on the progress and activities of the Fund.
- 9.

Note: No grants will be awarded without the specific approval of both partners.

ANALYSIS/INFORMATION

1. Known opposition

None.

2. Legal Antecedents

A. Metropolitan Greenspaces Master Plan (1992)

The proposed MOA is consistent with, and complementary to, the following policies of the Greenspaces Master Plan:

- Policy 1.18 - "Acquire and/or protect land via purchase, gift, dedication or conservation agreement and pursue appropriate local, regional, state, federal, foundation and private funding sources in its acquisition and operations strategies."
- Policy 2.27 - "Facilitate establishment of a Greenspaces foundation, a separate, private non-profit organization dedicated to the support of Greenspaces programs and operations"
- Policy 2.33 - "Promote public appreciation and understanding of the relationship between a healthy environment and sustainable economy and encourage public involvement in natural resource management decisions."
- Policy 2.34 - "Provide mechanisms for the business community to be involved in protection of natural areas."

- Policy 2.36 - "Initiate education programs to inform the public about opportunities related to protection, restoration, or creation of greenspaces "

B. Regional Framework Plan (1997)

The proposed MOA is consistent with, and complementary to, the following policies of Chapter 3 of the Regional Framework Plan:

- Policy 3.6.3 - "Metro will provide and promote opportunities for the public to engage in stewardship activities or publicly owned natural resource lands. Cooperative efforts between Metro and private and non-profit groups, community groups, schools and other public agencies should be encouraged."
- Policy 3.6.5 - "Metro and local governments should work with state, federal, non-profit and private partners to facilitate stewardship and educational opportunities on publicly owned natural resource lands."

C. Open Space and Streams Bond Measure (1995)

Metro's contribution to the Fund will come from the 1995 bond measure proceeds. As such, expenditure of the funds is subject to the restrictions and limitations of the measure. The proposed MOA includes provisions which guarantee that bond funds will be expended in a manner consistent with bond measure restrictions. The use of Metro bond funds will be limited to capital expenditures consistent with the bond measure and the Open Spaces Implementation Work Plan as follows:

- The Work Plan, as amended (January 1997) provides in its definition of stabilization that "some stabilization measures will continue during the landbanking period, if initial stabilization assessment for the property purchased indicates that continued actions are necessary to prevent degradation or to avoid increased landbanking costs. Examples of such long-term stabilization measures include, but are not limited to, vegetation of the property or reforestation."
- It is anticipated that, pursuant to the MOA, Metro bond funds would be used to effect some long-term stabilization measures, such as vegetation of the property or reforestation, with the goal of improving the habitat value of certain sites acquired with Metro open space funds and in some cases recreating the more natural condition of the property that existed prior to its conversion to a more altered landscape for agricultural, housing, or other non-habitat purposes.
- Metro bond funds will not be spent for environmental education or other non-capital purposes that this partnership between Metro and the Foundation may otherwise support.

3. Anticipated Effects

Approval of the MOA will create a partnership between Metro and the National Fish and Wildlife Foundation to benefit the interconnected regional system of parks, natural areas, trails, and greenways envisioned in the Metropolitan Greenspaces Master Plan and Chapter 3 of the Regional Framework Plan.

The Foundation has a long track record and reputation of nationally successful conservation projects and fundraising. The Foundation will assure that the national and regional resources of the Foundation will be available to Metro, such as full accounting and auditing of funds received.

The affiliation of Metro's Regional Parks and Greenspaces program with a nationally known foundation will enhance fundraising opportunities and provide a non-government entity to receive and manage donations.

The partnership will enhance Metro's ability to further the goals and objectives of Regional Parks and Greenspaces programs on Metro owned properties as well as properties owned by local partners. The partnership will enhance stewardship opportunities for citizens of the region.

4. Budget Impacts

The adopted budget for FY02-03 includes the \$200,000 Metro contribution to the Fund. These resources come from the 1995 bond measure.

5. Outstanding Questions

None.

RECOMMENDED ACTION

The Executive Officer recommends passage of Resolution No. 02-3220.

Attachment No. 1
Resolution No. 02-3220

**Tentative Composition of Grants Committee
Northern Willamette Valley Habitat Conservation Fund**

1. Metro Council * (1)
2. U. S. Fish & Wildlife Service (1)
3. Oregon Department of Fish & Wildlife (1)
4. Metro Regional Parks & Greenspaces (1)
5. Local Government Natural Resources Managers (2)
6. The Nature Conservancy (1)
7. National Fish & Wildlife Foundation (Chair)
8. At Large (1)

* If grants committee is organized prior to the end of 2002, the Council Presiding Officer shall appoint this position. If the grants committee is organized after the end of 2002, the Council President shall appoint this position.

Total (9)

Agenda Item Number 6.3

Resolution No. 02-3223, For the Purpose of Authoring the Executive Officer to grant a Metro Solid Waste Facility License to Mt. Hood Metals, Inc., and American Compost and Recycling, LLC, jointly doing business as American Roof Recycling for the operation of a roofing recovery facility

Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 02-3223
EXECUTIVE OFFICER TO GRANT A METRO SOLID)
WASTE FACILITY LICENSE TO MT. HOOD) Introduced by Mike Burton,
METALS, INC., AND AMERICAN COMPOST &) Executive Officer
RECYCLING, LLC, JOINTLY DOING BUSINESS AS)
AMERICAN ROOF RECYCLING FOR THE)
OPERATION OF A ROOFING RECOVERY)
FACILITY)

WHEREAS, under the Metro Code, a roofing waste processing facility must obtain a Solid Waste Facility License in order to operate; and,

WHEREAS, Mt. Hood Metals, Inc., and American Compost & Recycling, LLC, have jointly applied for a Solid Waste Facility License under the provisions of Metro Code Chapter 5.01; and,

WHEREAS, the applicants have received land use approval from the City of Portland; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.01 of Metro Code; and,

WHEREAS, Metro staff has analyzed the application and recommended approval of the applicant's request for a Solid Waste Facility License on the condition that the applicant provide an operating plan that meets the approval of the Executive Officer within 60 days of the Council's approval of this resolution; and,

WHEREAS, the resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

The Executive Officer is authorized to grant a Solid Waste Facility License for roofing recovery to Mt. Hood Metals, Inc., and American Compost & Recycling, LLC, that shall be substantially similar to the license attached as Exhibit A. Issuance of this license is conditioned on the receipt of an operating plan approved by the Executive Officer. This application shall be deemed denied if the Executive Officer does not issue this license within 60 days of the date this resolution is adopted.

ADOPTED by the Metro Council this ____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

METRO SOLID WASTE FACILITY LICENSE

Number L-038-02

Issued by

Metro

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

<p>LICENSEES:</p> <p>Mt. Hood Metals, Inc. 9645 N. Columbia Blvd. PO Box 31077 Portland, OR 97283</p> <p>American Compost & Recycling, LLC 9707 N. Columbia Blvd. Portland, OR 97283</p>	<p>FACILITY NAME AND LOCATION:</p> <p>American Roof Recycling 9645 N. Columbia Blvd. Portland, OR 97213</p>
	<p>PROPERTY OWNER</p> <p>Bors Brothers Limited Partnership P.O. Box 31077 Portland, OR 97283</p>

This license is granted to the licensee named above and is not transferable. Subject to the conditions stated in this license document, the licensee is authorized to operate and maintain a roofing processing facility, and to accept the materials and perform the activities authorized herein.

Signed:
METRO

Acceptance & Acknowledgement of Receipt:
AMERICAN COMPOST & RECYCLING, LLC

Signature
Mike Burton, Metro Executive Officer

Print name and title

Signature of Licensee
Casey Stroupe,

Print name and title

Date

Date

MT. HOOD METALS, INC.

Signature of Licensee
Bert Bors,

Print name and title

Date



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1.0 ISSUANCE

- 1.1 Licensees**
- Mt. Hood Metals, Inc.
9645 N. Columbia Blvd.
PO Box 31077
Portland, OR 97283
- American Compost & Recycling, LLC
9707 N. Columbia Blvd.
Portland, OR 97283
- Jointly doing business as American Roof Recycling, herein referred to in the singular as "Licensee."
- 1.2 Contacts**
- Bert Bors
Phone: 503-283-3323
Fax: 503-283-0150
- Casey Stroupe
Phone: 503-638-1011
Fax: 503-638-0754
- Rick Franklin
Phone: 800-428-1516
Fax: 541-258-6444
- 1.3 License Number**
- When referring to this license, please cite:
Metro Solid Waste Facility License Number L-038-02
- 1.4 Term of License**
- This license shall remain in force for a term of five (5) years unless modified, suspended, or revoked under the provisions of Section 11.2 of this license. The term commences from the date this license is signed by Metro.
- 1.5 Facility name and mailing address**
- American Roof Recycling
9645 N. Columbia
Portland, OR 97213
- 1.6 Operator**
- Casey Stroupe
Phone: 503-638-1011
Fax: 503-638-0754



- 1.7 **Facility legal description** Township 2N, Range 1W, Section 36CB, Tax Lot 200
- 1.8 **Facility owner** Mt. Hood Metals
9645 N. Columbia Blvd.
PO Box 31077
- 1.9 **Permission to operate** The licensee has obtained the property owner's (Bors Brothers Limited Partnership) consent to operate the facility as specified in this license.

2.0 CONDITIONS AND DISCLAIMERS

- 2.1 **Guarantees** The granting of this license shall not vest any right or privilege in the licensee to receive specific quantities of material at the direction of Metro during the term of the license.
- 2.2 **Non-exclusive license** The granting of this license shall not in any way limit Metro from granting other solid waste licenses within the District.
- 2.3 **Property rights** The granting of this license does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 **No recourse** The licensee shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this license or because of the enforcement of the license or in the event the license or any part thereof is determined to be invalid.
- 2.5 **Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this license or on account of the construction, maintenance, or operation of the facility pursuant to this license.
- 2.6 **Binding nature** The conditions of this license are binding on the licensee. The licensee is liable for all acts and omissions of the licensee's contractors and agents.
- 2.7 **Waivers** To be effective, a waiver of any terms or conditions of this license



must be in writing and signed by the Metro Executive Officer.

- 2.8 Effect of waiver** Waiver of a term or condition of this license shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 2.9 Choice of law** The license shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 Enforceability** If any provision of this license is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this license shall not be affected.
- 2.11 License not a waiver** Nothing in this license shall be construed as relieving any owner, operator, or licensee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
- 2.12 License not limiting** Nothing in this license is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.
- 2.13 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01.

3.0 AUTHORIZATIONS

- 3.1 Purpose** This section of the license describes the materials that the licensee is authorized to accept at the facility, and the activities the licensee is authorized to perform at the facility.
- 3.2 General conditions on acceptable materials** The licensee is authorized to accept at the facility only the materials described in Section 3.0. The licensee is prohibited from knowingly receiving any materials not authorized in this section unless specifically authorized in writing by the Director of the Metro Regional Environmental Management Department.
- 3.3 General conditions on activities** The licensee is authorized to perform at the facility only those waste-related activities that are described in this section.



- 3.4 Acceptance of roofing and related materials** The licensee is authorized by this license to accept the following materials on-site: loads of roofing waste comprised predominantly of wood shingles, shakes, composition shingles from roof tearoffs, trimmings from the manufacture of composition roof shingles, and wood trim and roof support structures. Such loads may also contain small quantities of metal flashing, rain gutters, tar paper, and packaging from new roofing materials. All composition roofing accepted shall be certified as being free of asbestos through a protocol approved by the Oregon Department of Environmental Quality (DEQ).
- 3.5 Acceptance of clean wood** The licensee is authorized to accept pallets and other clean untreated and unpainted wood wastes.
- 3.6 Processing for recovery** The licensee is authorized to process roofing for use as fuel, engineered fill, engineered road base, or any use approved by the DEQ or Metro. The licensee will provide Metro with information on uses approved by the DEQ.

4.0 LIMITATIONS AND PROHIBITIONS

- 4.1 Purpose** This section of the license describes limitations and prohibitions on the materials handled at the facility and activities performed at the facility.
- 4.2 Prohibited waste** The licensee shall be prohibited from knowingly accepting or retaining material amounts of any wastes other than residential roofing, roofing related wastes, and clean wood as described in Section 3 of this license. (Prohibited wastes include, for example, putrescible wastes, household garbage, construction/demolition debris, yard debris, and loads consisting primarily of non-recyclable packaging.) In the event that the licensee unintentionally accepts any prohibited wastes, they shall be managed in conformance with the facility's approved operating plan.
- 4.3 Accumulation limited** Effective October 1, 2003, and thereafter, this license limits the quantity of authorized material that may be accumulated at the facility at any one time to no more than 500 (FIVE HUNDRED) total tons unless the licensee has been granted written approval to accumulate more material by the Director of the Metro Regional Environmental Management Department. Prior to approving any



such authorization, the licensee must provide any additional financial assurance necessary to remove the entire accumulation of on site material in the event of facility closure. Prior to October 1, 2003, the licensee shall ensure that all roofing materials on-site at the time this license was granted and all incoming roofing materials are processed each month so that the total tonnage of outgoing roofing is greater than the total tonnage of incoming roofing, or until the total accumulated tonnage at any one time is 500 tons or less.

- 4.4 Limits not exclusive** Nothing in this section of the license shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this license document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0 OPERATING CONDITIONS

- 5.1 Purpose** This section of the license describes criteria and standards for the operation of the facility.
- 5.2 Qualified Operator** The licensee shall provide an operating staff qualified to carry out the functions required by this license and to otherwise ensure compliance with Metro Code Chapter 5.01. Facility personnel shall be familiar with the provisions of this license and the procedures contained within the facility operating plan (see Section 6.0.)
- 5.3 Fire prevention** The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.
- 5.4 Adequate vehicle accommodation** Vehicles containing landscape waste or yard debris feedstock/waste shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.
- 5.5 Managing prohibited wastes** The licensee shall make reasonable efforts to identify prohibited and unauthorized wastes. Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with the facility operating plan and DEQ procedures.
- 5.6 Storage** Stored materials shall be removed at sufficient frequency to avoid



creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.

- 5.7 Litter, dust, and airborne debris** The licensee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The licensee shall:
- a. Take reasonable steps to notify and remind persons delivering roofing material to the facility that all loads must be suitably secured to prevent any material from falling off the load during transit.
 - b. Construct, maintain, and operate all vehicles and devices transferring or transporting roofing from the facility to prevent sifting, spilling or blowing of the material on-site or while in transit.
 - c. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of roofing related litter and debris.
 - d. Take reasonable steps to suppress the generation of dust from the moving and processing of roofing debris.
- 5.8 Vectors** The licensee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
- 5.9 Noise** The licensee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.10 Odor prevention** The licensee shall operate the facility in a manner that prevents the generation of odors. The licensee shall establish and follow procedures for preventing odors at the facility. Specific measures an operator shall take to prevent odors include but are not limited to adherence to the contents of a required operating plan (see Section 6.0).
- 5.11 Water quality** The licensee shall:
- a. Operate and maintain the facility to prevent submersion of roofing material in water.
 - b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.



- 5.12 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.13 Signage** The licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- a. Name of the facility
 - b. Address of the facility;
 - c. Telephone number(s) of persons who can provide information about the facility in case of an emergency;
 - d. Operating hours during which the facility is open for the receipt of authorized material;
 - e. Metro's name and telephone number (503) 797-1650.
- 5.14 Complaints** The licensee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If licensee receives a complaint, licensee shall:
- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.
- 5.15 Access to license document** The licensee shall maintain a copy of this Metro Solid Waste Facility License on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

6.0 OPERATING PLAN

- 6.1 Purpose** This section lists the procedures that must be included in the required facility operating plan. The operating plan may be amended from time to time subject to approval by Metro.
- 6.2 Access to operating plan** The licensee shall maintain a copy of the operating plan on the facility's premises and in a location where facility personnel and Metro representatives have ready access to it.



- 6.3 Procedures for inspecting loads** The operating plan shall establish:
- Procedures for inspecting incoming loads for the presence of prohibited wastes; and
 - A set of objective criteria for accepting and rejecting loads, including asbestos testing protocol.
- 6.4 Procedures for processing loads** The operating plan shall establish procedures for:
- Processing authorized solid wastes,
 - Storing authorized solid wastes; and
 - Managing stockpiles to ensure that they remain within the authorized volumes.
- 6.5 Procedures for managing prohibited wastes** The operating plan shall establish procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the facility. The plan shall include procedures for managing:
- Hazardous wastes;
 - Special wastes; and
 - Other prohibited solid wastes.
- 6.6 Procedures for odor prevention** The operating plan shall establish procedures for preventing all odors, including odors produced by grass clippings. The plan must include:
- A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; and
 - Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.
- 6.7 Procedures for noise minimization** The operating plan shall establish procedures for minimizing the volume and duration of noise produced in the course of Metro-authorized activities.
- 6.8 Procedures for emergencies** The operating plan shall establish procedures to be followed in case of fire or other emergency.
- 6.9 Procedures for managing stockpiles** The operating plan shall establish procedures for managing stockpiles to assure that they remain within the volumes authorized in Section 4.3.
- 6.10 Closure Protocol** The operator shall establish protocol for closure and restoration of the site in the event of a long-term cessation of operations.



7.0 FEES AND RATE SETTING

- 7.1 Purpose** This section of the license specifies fees payable by the licensee, and describes rate regulation by Metro.
- 7.2 Annual fee** The licensee shall pay an annual license fee, as established in Metro Code. Metro reserves the right to change the license fee at any time by action of the Metro Council.
- 7.3 Fines** Each violation of a license condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.
- 7.4 Rates not regulated** The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.

8.0 RECORD KEEPING AND REPORTING

- 8.1 Purpose** This section of the license describes the record keeping and reporting requirements. The Licensee shall effectively monitor facility operation and maintain accurate records of the information described in this section.
- 8.2 Feedstocks received** The licensee shall keep and maintain accurate records of the amount of roofing materials accumulated on-site, the amount of material received, the amount of outgoing material, the ultimate disposition of all outgoing material (whether recovered or disposed), and the results of the required asbestos testing. This information shall be reported to Metro on a monthly basis. Each monthly report shall be provided by the 15th day of the following month. After September 30, 2002, if the total accumulation of composition roofing reaches 80 percent of the capacity authorized in Section 4.3 of this license, then the license shall provide weekly reports. The report shall be signed and certified as accurate by an authorized representative of licensee. Prior to October 1, 2003, the licensee shall ensure that all roofing materials on-site at the time



this license was granted and all incoming roofing materials are processed each month so that the total tonnage of outgoing roofing is greater than the total tonnage of incoming roofing, or until the total accumulated tonnage at any one time is 500 tons or less.

8.3 Unusual occurrences

The licensee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. Licensee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 797-1650 within two hours of the discovery of their occurrence.

8.4 Nuisance complaints

For every nuisance complaint (e.g. odor, noise, dust, vibrations, litter) received, the licensee shall record:

- a. The nature of the complaint;
- b. The date the complaint was received;
- c. The name, address, and telephone number of the person or persons making the complaint; and

Any actions taken by the operator in response to the complaint (whether successful or unsuccessful).
 Records of such information shall be made available to Metro and local governments upon request. The licensee shall retain each complaint record for a period of not less than two years.

8.5 Changes in ownership

The licensee must, in accordance with Metro Code Section 5.01.090, submit a new license application to Metro if the licensee proposes to transfer control or ownership of (1) the license, (2) the facility property, or (3) the name and address of the operator.

9.0 INSURANCE REQUIREMENTS

9.1 Purpose

The section describes the types of insurance that the licensee shall purchase and maintain at the licensee's expense, covering the licensee, its employees, and agents.

9.2 General liability

The licensee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.

9.3 Automobile

The licensee shall carry automobile bodily injury and property



damage liability insurance.

- 9.4 Coverage** Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.5 Additional insureds** Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED.
- 9.6 Financial Assurance** The licensee shall, throughout the life of the facility, maintain financial assurance adequate to assure the removal of accumulated roofing and related materials in the event of abandonment or long-term cessation of operations. By October 1, 2003, if the licensee has been authorized under Section 4.3 of this license to accumulate more than 500 tons of authorized materials, the licensee shall provide any additional financial assurance necessary to remove the entire accumulation. Any change in the form or amount of required financial assurance shall be approved by the Director of the Metro Regional Environmental Management Department.
- 9.7 Worker's Compensation Insurance** The licensee, its subcontractors, if any, and all employers working under this license, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If licensee has no employees and will perform the work without the assistance of others, a license to that effect may be attached in lieu of the license showing current Workers' Compensation.
- 9.8 Notification** The licensee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage.

10.0 ENFORCEMENT

- 10.1 Generally** Enforcement of this license shall be as specified in Metro Code and in this Section 10.0 of this license.
- 10.2 Authority** The power and right to regulate, in the public interest, the exercise



vested in Metro of the privileges granted by this license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against licensee.

10.3 No Enforcement Limitations Nothing in this license shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this license be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this license or the licensee's operation of the facility.

11.0 MODIFICATIONS

11.1 Modification At any time during the term of the license, either the Executive Officer or the licensee may propose amendments or modifications to this license.

11.2 Modification, suspension or revocation by Metro The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this license in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

- a. Violation of the terms or conditions of this license, Metro Code, or any applicable statute, rule, or standard;
- b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this license;
- c. Failure to disclose fully all relevant facts;
- d. A significant release into the environment from the facility;
- e. A significant change in the character of the material received or in the operation of the facility;
- f. Any change in ownership or control, excluding transfers among subsidiaries of the licensee or licensee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations;
- h. Compliance history of the licensee; and
- i. Operation or maintenance of a roofing processing facility without land use approval from the City of Portland.



11.3 Change to volume limitation A change to the volume limitation set forth in Section 4.3 of this license may be granted by the Director of the Metro Regional Environmental Management Department in response to a written request by the licensee.

12.0 GENERAL OBLIGATIONS

12.1 Compliance with law Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. Such applicable laws, rules, regulations, ordinances, orders and permits include, without limitation, all laws, rules, regulations, ordinances, orders and permits adopted or made applicable during the term of this Franchise. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this license as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the license document, as well as any existing at the time of the issuance of the license but not cited or attached, and permits or conditions issued or modified during the term of the license.

12.2 Indemnification The licensee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the licensee's performance or failure to perform under this license, including patent infringement and any claims or disputes involving subcontractors.

12.3 Deliver processed roofing to appropriate destinations The licensee shall ensure that processed roofing transferred from the facility goes to the appropriate recovery uses, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.

12.4 Right of Authorized representatives of Metro may take soil and water



inspection and audit samples and perform such inspection or audit as the Regional Environmental Management Director deems appropriate and shall be permitted access to the premises of the facility during normal working hours upon giving reasonable advance notice (not less than 24 hours). Subject to the confidentiality provisions of this license, Metro's right to inspect shall include the right to review, at an office of licensee located in the Portland metropolitan area, all information from which all required reports are derived including all books, records, maps, plans, income tax returns, financial statements, contracts, and other like materials of licensee that are directly related to the operation of the Facility.

12.5 Confidential information Licensee may identify any information submitted to or reviewed by Metro under this Section 12.0 as confidential. Licensee shall prominently mark any information which it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. Within five (5) days of Metro's receipt, of any request for disclosure of information identified by licensee as confidential, Metro shall provide Licensee written notice of the request. Licensee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Licensee shall be responsible for any costs incurred by Metro as a result of Metro's efforts to remove or redact, at the specific request of the licensee, any confidential information from documents that Metro produces in response to a public records request. Nothing in this Paragraph 12.5 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

12.6 Compliance by agents The licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this license.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3223 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO GRANT A METRO SOLID WASTE FACILITY LICENSE TO MT. HOOD METALS, INC., AND AMERICAN COMPOST & RECYCLING, LLC, JOINTLY DOING BUSINESS AS AMERICAN ROOF RECYCLING FOR THE OPERATION OF A ROOFING RECOVERY FACILITY

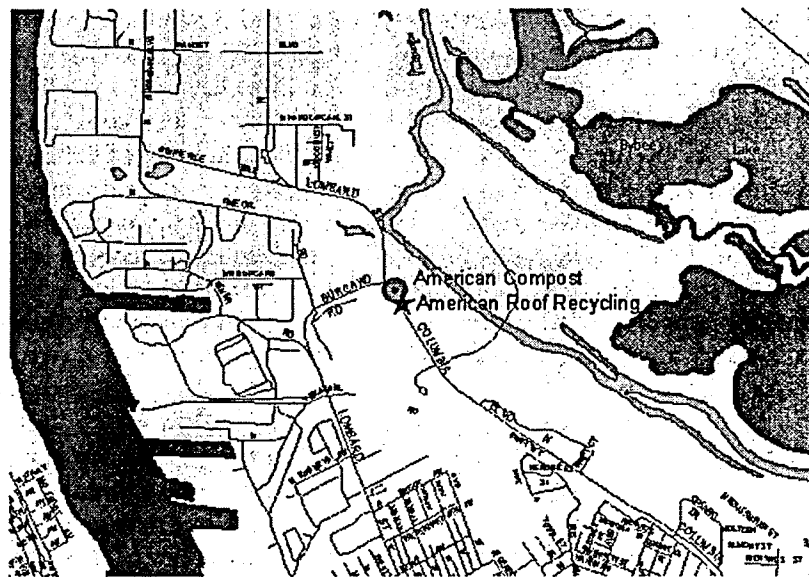
August 15, 2002

Presented by: Terry Petersen

BACKGROUND

Description of the Resolution

Approval of Resolution No. 02-3223 will authorize the Executive Officer to issue a new Solid Waste Facility License jointly to Mt. Hood Metals, Inc. ("Mt. Hood Metals"), and American Compost & Recycling, LLC, ("American Compost") for the operation of a waste roofing processing facility located at 9645 N. Columbia Blvd., Portland, Oregon (Metro District 5). The facility will be known as American Roof Recycling. This site was formerly licensed by Metro to Speyfly, Inc., which operated on the site as "RoofGone" from April 2001 to May 2002, when Metro revoked its license. During this period, RoofGone accumulated approximately 10,000 tons of waste roofing and subsequently abandoned the site. Issuance of the proposed license will authorize the facility to resume operations under a new operator.



American Roof Recycling is an alternative business name registered with the Oregon Secretary of State, Corporation Division, by Bert Bors, Casey Stroupe, and Rick Franklin. Mr. Bors is the president and owner of Mt. Hood Metals. Mr. Stroupe is an owner and operator of American Compost and Mr. Franklin is co-owner of American Compost. American Roof Recycling proposes to be co-located with Mt. Hood Metals, a portion of which property was formerly leased to Speyfly, Inc., dba RoofGone ("Speyfly".) Mt. Hood Metals was left with 10,000 tons of waste roofing when Speyfly abandoned the

site. American Compost is a Metro-licensed compost facility located immediately adjacent to Mt. Hood Metals. American Compost produces yard debris compost and hog fuel and its owner, Mr. Stroupe, is also an owner of Clackamas Compost, Landscape Products & Supply, and S & H Logging Co., three other Metro-licensed facilities. Mr. Stroupe has proven to be a capable facility operator at American Compost.

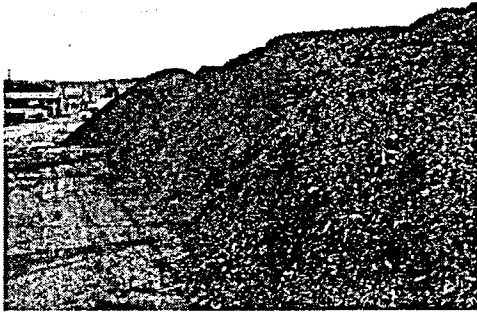
If this license is approved, American Roof Recycling would be authorized to accept wood shakes and composition shingles from roof tear-offs, trimmings from the manufacture of composition roofing, and other materials directly associated with the roofing and re-roofing of buildings. The previous operator abandoned about 10,000 tons of waste roofing. There is about 6,000 tons currently remaining on site. The license would also require American Roof Recycling to reduce the amount of roofing materials in site to 500 tons or less by October 1, 2003. Prior to that time, if the facility had more than 500 tons of material on site, it would be prohibited from accepting more material in each month than the amount of material that was removed from the site. If American Roof Recycling wishes to accumulate more than 500 tons of roofing material on site at any one time after October 1, 2003, the facility would have to request a written authorization from the Metro Regional Environmental Management (REM) Director. Prior to approving any such authorization, the facility would also provide any additional financial assurance necessary to remove the entire accumulation of on site material in the event of facility closure. All material accepted shall be certified as being free of asbestos through a protocol approved by the Oregon Department of Environmental Quality (DEQ). In addition, the facility will be authorized to accept clean wood wastes (such as pallets) to be processed into hog fuel. The applicant intends to use waste roofing as a component of its hog fuel, soil amendments, compost additives, ground cover, and for recycled asphalt products.

History of the Site Where the Facility Will Be Located

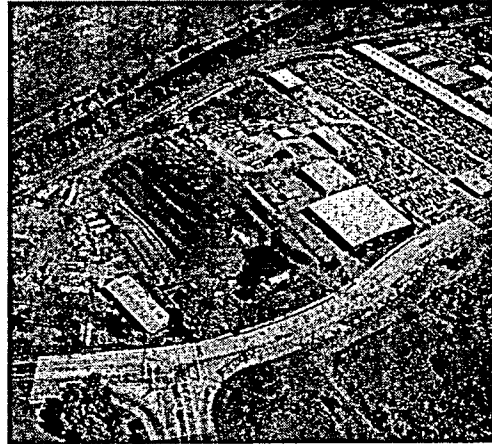
Speyfly began operating a roofing recycling facility on Suttle Road in Northeast Portland in April 1999, without obtaining a DEQ permit or Metro license. In April 2000, Speyfly moved its operation to 9645 N. Columbia Boulevard in Portland, the site where the American Roof Recycling facility will be located, and began to stockpile roofing there, although a substantial stockpile still remained at the Suttle Road site. Shortly thereafter, Metro staff became aware of Speyfly's activities and informed the company that a Metro solid waste facility license was required to operate a facility of that kind within the Metro region. On April 12, 2001, Metro issued a license for the Speyfly facility under the name "RoofGone." The DEQ also required RoofGone to obtain a solid waste disposal site and material recovery facility permit (Permit Number 493). One of the conditions of the Metro license was that RoofGone remove all the waste roofing that had been left at the Suttle Road site within 120 days of the issuance of the license. The license also included a standard condition requiring RoofGone to provide Metro with an operating plan for Metro's review and approval.

RoofGone did not provide the operating plan required by its license and did not clean up the Suttle Road site. Metro provided guidance regarding an operating plan but RoofGone still did not provide an acceptable plan. Ultimately Metro found it necessary to issue RoofGone notices of noncompliance. Still, RoofGone failed to cure its violations and, through frequent inspections by Metro, it became apparent that, although the facility was continuing to accumulate waste roofing, little or none of it was leaving the site. Metro subsequently amended the license to reduce the facility's maximum allowable accumulation. RoofGone never cured its violations; failed to pay its fines; became non-responsive to communications from Metro; and abandoned the site in January, 2002, leaving an accumulation of approximately 10,000 tons of waste roofing. Shortly thereafter, Metro suspended RoofGone's authority to accept additional roofing material, and, on May 15, 2002, RoofGone's license was revoked by the REM Director. RoofGone did not contest the revocation and the Metro Council approved the Final Order permanently revoking its license on August 8, 2002. Since January 2002, in order to facilitate the removal of the

stockpiled waste roofing materials, Metro has allowed Mt. Hood Metals to process and remove approximately 3,000 tons of waste roofing from the site without accepting any new materials.



Processed Roofing



**Aerial View of American Compost (Center),
Mt. Hood Metals (Right), and the former
RoofGone Facility (Top)**

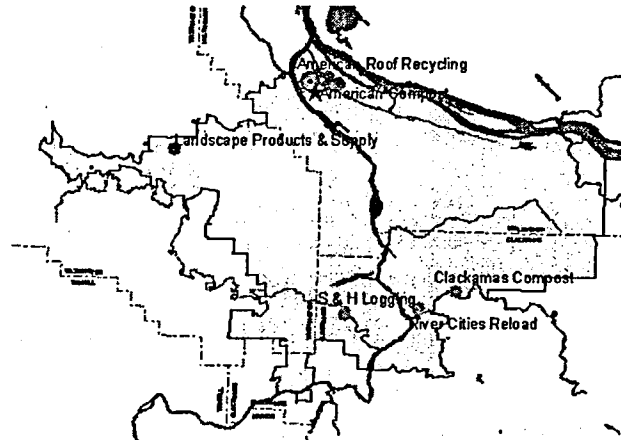
Compliance History of the Applicant

As noted above, one of the owners of American Compost, Mr. Stroupe, is also an owner of Clackamas Compost, a large composting facility, S & H Logging Co. ("S&H"), a yard debris reload facility located in Tualatin, and Landscape Products & Supply, a recently licensed yard debris reload facility located in Hillsboro. Mr. Stroupe has also contracted with the River Cities Environmental Services Board to process yard debris at the River Cities Reload facility in West Linn. Though American Compost, Clackamas Compost, and S&H are well-run operations, they have some history of non-compliance with Metro and DEQ regulations.

- On August 23, 2000, the DEQ issued a Notice of Noncompliance to S&H for allowing particulate matter from its hogged fuel grinding operations to drift off-site.
- On October 4, 2000, before S&H had applied for and received a Metro license, it was directed to cease its unauthorized yard debris reload operations. S&H agreed to do so. However, on June 13, 2001, S&H was discovered to have resumed reloading operations in violation of the order.
- On June 25, 2001, Metro issued S&H a Notice of Noncompliance for resuming yard debris reloading activities without the appropriate Metro license and in violation of the order issued on October 4, 2000. Upon issuance of the Notice of Noncompliance, S&H ceased its yard debris reloading activities until it received a Metro license, which was issued on January 17, 2002 (License Number YD-045-01).
- On May 29, 2002, Metro staff discovered that S&H had begun a new yard debris reload operation in Hillsboro (Landscape Products and Supply) without notifying Metro or applying for the required solid waste facility license. On June 12, 2002, Metro sent S&H a notice to cease yard debris reload operations at the Hillsboro site until a Metro license was obtained. Based on subsequent staff visits to

that facility, S&H has complied with Metro's notice and was issued a license on July 25, 2002 (License Number YD-103-03).

Despite these past regulatory issues, staff believes that American Roof Recycling will be well-run and operated in substantive compliance with Metro Code due to the manner in which Mr. Stroupe operates the other licensed solid waste facilities in the Metro region.



Other Solid Waste Facilities Operated by one of the Applicants

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed American Roof Recycling facility.

2. Legal Antecedents

Metro Code section 5.01.045(b)(1) requires a solid waste processing facility to have a Metro solid waste facility license if its activities will result in processing residual of more than ten percent. Roofing waste processing facilities in the Metro region have had an extremely mixed track record (see "Background"), and have frequently resulted in operations with nearly 100 percent "processing residual." On that basis, Metro staff has concluded that such facilities must obtain a Metro solid waste facility license in order to operate within the region.

Metro Code section 5.01.067 requires Council approval of applications for solid waste facility licenses. Pursuant to that section, the Executive Officer has made an investigation of this application and, as provided in greater detail below, recommends that this application meets the requirements of Metro Code section 5.01.060 and that a license should therefore be issued with conditions. Pursuant to Metro Code section 5.01.067(e), the Council must now issue an order granting or denying this application. If the Council does not act to grant or deny the application by November 13, 2002, Metro Code section 5.01.067(f) provides that a License shall be deemed granted for the solid waste facility requested in the application.

Executive Officer's Investigation Regarding Applicable Metro Code Provisions

5.01.055 Pre-Application Conference

(a) All prospective applicants for a Franchise or License shall participate in a pre-application conference with the Executive Officer. The purpose of such conference shall be to provide the prospective applicant with information regarding the applicable requirements for the proposed facility and to obtain from the prospective applicant a description of the location, site conditions and operations of the proposed facility.

Staff held a pre-application conference with the applicants on April 12, 2002.

(b) If a prospective applicant for a License or Franchise does not file an application for a License or Franchise within one year from the date of the pre-application conference, such applicant shall participate in a subsequent pre-application conference prior to filing any License or Franchise application.

The applicant submitted an incomplete application on April 19, 2002. The application was determined to be complete on July 16, 2002, when Metro received the applicant's proposal for financial assurance. Proof of financial assurance was provided on August 15, 2002.

5.01.060 Applications for Certificates, Licenses or Franchises

(a) Applications for a Certificate, Franchise or License or for renewal of an existing Certificate, Franchise or License shall be filed on forms or in the format provided by the Executive Officer.

The application was filed on forms and in the format provided by the Executive Officer.

(b) In addition to any information required on the forms or in the format provided by the Executive Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

The application contains a description of the activities proposed to be conducted and a description of wastes sought to be accepted. The proposed activities consist of shredding roofing to use as a component in hog fuel. Metal flashing and rain gutters will be separated and recycled as scrap metal. The types of waste sought to be accepted are wood shakes and composition shingles from roof tear-offs, trimmings from the manufacture of composition roofing, and other materials directly associated with the roofing and re-roofing of buildings.

(c) In addition to the information required on the forms or in the format provided by the Executive Officer, applications for a License or Franchise shall include the following information to the Executive Officer:

- (1) Proof that the applicant can obtain the types of insurance specified by the Executive Officer during the term of the Franchise or License;*

A certificate of insurance was provided with the application.

- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;*

The DEQ will not require a permit for this facility per a July 31, 2002, letter from Sally Puent, DEQ Solid Waste and Site Assessment Manager to Roy Brower, REM Regulatory Affairs Manager.

- (3) *A duplicate copy of any closure plan required to be submitted to DEQ, or if DEQ does not require a closure plan, a closure document describing closure protocol for the Solid Waste Facility at any point in its active life;*

The DEQ does not require a permit for this facility. However, the proposed Metro license contains a provision that all material accumulated under the authority of the license must be removed and properly disposed of in the case of a long-term closure of the facility.

- (4) *A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents, proof of financial assurance for the costs of closure of the facility;*

The DEQ does not require a permit for this facility. However, the proposed Metro license requires a form of financial assurance adequate to clean up the site should it cease operations.

The amount of financial assurance is based on the worst-case scenario of having to load, transport and dispose the accumulated roofing material at a landfill, which has been estimated at \$55 per ton. Based on the proposed authorization to accumulate no more than 500 tons of roofing material on site at any one time, the amount of financial assurance required is \$27,500. On August 15, 2002, the applicant has provided an automatically renewing, payment bond certificate for \$27,500, issued by Union Bank of California and naming Metro as the beneficiary as its proof of an acceptable form and amount of financial assurance.

- (5) *Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the Licensee or Franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of section 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;*

A copy of the required consent form signed by the property owners was included with the application.

- (6) *Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and*

The facility is in an IH (heavy industrial) zone. It is co-located with a scrap steel yard on a lot directly adjacent to a large yard debris composting facility. A Land Use Compatibility Statement is on file with Metro.

- (7) *Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously*

made, a copy of such permit application, and any permit that has been granted shall be provided.

No other required permits are known or anticipated by Metro staff.

5.01.062 Application Fees

(a) *Upon the filing of an application, every applicant for a Certificate, License or Franchise shall submit an application fee as provided in this section.*

The applicant has submitted the required application fee.

3. Anticipated Effects

Approval of Resolution No. 02-3223 will authorize the Executive Officer to issue a new Solid Waste Facility License jointly to Mt. Hood Metals, Inc. and American Compost and Recycling, LLC, for the operation of a waste roofing processing facility located at 9645 N. Columbia Blvd., Portland, Oregon (Metro District 5). The facility will be known as American Roof Recycling. If this license is approved, American Roof Recycling would be authorized to accept wood shakes and composition shingles from roof tear-offs, trimmings from the manufacture of composition roofing, and other materials directly associated with the roofing and re-roofing of buildings. The previous operator abandoned about 10,000 tons of waste roofing. There is about 6,000 tons currently remaining on site. The license would require American Roof Recycling to reduce the amount of roofing materials on site to 500 tons or less by October 1, 2003. The applicant intends to use waste roofing as a component of its hog fuel, soil amendments, compost additives, ground cover, and for recycled asphalt products.

4. Budget Impact

The facility anticipates diverting 6,000 tons of roofing annually from existing facilities that do not currently collect Metro fees or taxes. Because flows to these facilities have already been factored into projections on which the current year's budget is based, approval of the applicant's proposed license is not anticipated to have a significant budget impact.

OUTSTANDING QUESTIONS

None

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 02-3223, granting a solid waste facility license to Mt. Hood Metals, Inc., and American Compost & Recycling, LLC, jointly doing business as American Roof Recycling, subject to the terms and conditions incorporated into the license document attached as "Exhibit A" to Resolution No. 02-3223. In addition, the Executive Officer recommends that the Metro Council condition the issuance of this license on the applicant providing an operating plan approved by the Executive Officer and that in the event the license is not issued within 60 days of the date of approval of this resolution, then this application shall be denied.

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Agenda Item Number 6.4

Resolution No. 02-3224, For the Purpose of Authorizing the Executive Officer to Renew a Metro Solid Waste Facility License to K.B. Recycling, Inc. for the operation of a materials recovery facility.

Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO RENEW A METRO SOLID WASTE FACILITY LICENSE TO K.B. RECYCLING, INC., FOR THE OPERATION OF A MATERIAL RECOVERY FACILITY) RESOLUTION NO. 02-3224) Introduced by Mike Burton, Executive Officer)

WHEREAS, the Metro Code requires a solid waste facility license of any facility that processes non-putrescible solid waste if such processing will result in processing residual of more than ten percent; and,

WHEREAS, K.B. Recycling, Inc. has applied to renew a Solid Waste Facility License under the provisions of Metro Code Chapter 5.01; and,

WHEREAS, the applicant has received land use approval from Clackamas County; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.01 of Metro Code; and,

WHEREAS, Metro staff has analyzed the application and recommended approval of the applicant's request to renew a Solid Waste Facility License; and,

WHEREAS, the resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED that the Executive Officer is authorized to renew a Solid Waste Facility License for material recovery to K.B. Recycling, Inc., that shall be substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel



METRO SOLID WASTE FACILITY LICENSE

Number L-007-02

Issued by

Metro
600 NE Grand Avenue
Portland, OR 97232
Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01.

LICENSEE: K.B. Recycling, Inc. P.O. Box 550 Canby, OR 97013 Andy Kahut (503) 659-7004 Fax: (503) 659-2107	FACILITY NAME AND LOCATION: K.B. Recycling, Inc 9602 SE Clackamas Road Clackamas, OR 97015 (503) 659-7004 Fax: (503) 659-2107
FACILITY OWNER: Fred Kahut, Jerald Kahut PO Box 550 Canby, OR 97013 Phone: (503) 266-7903 Fax: (503) 263-6477 e-mail: kbrec@aol.com	PROPERTY OWNER: Fred Kahut, Jerald Kahut PO Box 550 Canby, OR 97013 Phone: (503) 266-7903 Fax: (503) 263-6477 e-mail: kbrec@aol.com

This license is granted to the licensee named above and may not be transferred without the prior written approval of the Executive Officer. Subject to the conditions stated in this license document, the licensee is authorized to operate and maintain a material recovery facility and perform the activities authorized herein.

METRO

Licensee's Acceptance & Acknowledgement of Receipt:

Signature

Signature of Licensee

Mike Burton, Metro Executive Officer

Print name and title

Date

Date



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1.0 ISSUANCE

- 1.1 Licensee** K.B. Recycling, Inc.
P.O. Box 550
Canby, OR 97013
- 1.2 Contact** Andy Kahut (503) 266-7903
Fax: (503) 659-2107
- 1.3 License Number** When referring to this license, please cite:
Metro Solid Waste Facility License Number L-007-02.
- 1.4 Term of License** This license shall remain in force for a term of five (5) years unless modified, suspended, or revoked under the provisions of section 9.2 of this license. The term commences from the date this license is signed by Metro.
- 1.5 Facility name and mailing address** K.B. Recycling, Inc
9602 SE Clackamas Road
Clackamas, OR 97015
- 1.6 Operator** Andy Kahut (503) 659-7004
Fax: (503) 659-2107
- 1.7 Facility legal description** Section 9 of Township 2S of Range 2E; Tax lot(s): 101, 200, 300, 301, 302, W.M.

Section 9 of Township 2S of Range 2E; Tax lot(s): 1701, W.M.
- 1.8 Property owners** Fred Kahut, Jerald Kahut
(503) 266-7903

2.0 CONDITIONS AND DISCLAIMERS

- 2.1 Guarantees** The granting of this license shall not vest any right or privilege in the licensee to receive specific quantities of solid wastes or other materials at the direction of Metro during the term of the license.
- 2.2 Non-exclusive license** The granting of this license shall not in any way limit Metro from granting other solid waste licenses within the District.
- 2.3 Property rights** The granting of this license does not convey any property rights in either real or personal property, nor does it authorize any injury to



private property or invasion of property rights.

- 2.4 No recourse** The licensee shall have no recourse whatsoever against Metro, its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this license or because of the enforcement of the license or in the event the license or any part thereof is determined to be invalid.
- 2.5 Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this license or on account of the construction, maintenance, or operation of the facility pursuant to this license.
- 2.6 Binding nature** The conditions of this license are binding on the licensee. The licensee is liable for all acts and omissions of the licensee's contractors and agents.
- 2.7 Waivers** To be effective, a waiver of any terms or conditions of this License must be in writing and signed by the Metro Executive Officer.
- 2.8 Effect of waiver** Waiver of a term or condition of this license shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 2.9 Choice of law** The license shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 Enforceability** If any provision of this license is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this license shall not be affected.
- 2.11 License not a waiver** Nothing in this license shall be construed as relieving any owner, operator, or licensee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
- 2.12 License not limiting** Nothing in this license is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.
- 2.13 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. In the event that the Metro Code is amended, the latest amended version shall apply to this license.



3.0 AUTHORIZATIONS

- 3.1 Purpose** This section of the license describes the wastes that the licensee is authorized to accept at the facility, and the waste-related activities the licensee is authorized to perform at the facility.
- 3.2 General conditions on solid wastes** The licensee is authorized to accept at the facility only the solid wastes described in this section. The licensee is prohibited from knowingly receiving any solid waste not authorized in this section, and shall not accept any other waste at the facility unless specifically authorized in writing by the Director of the Metro Regional Environmental Management Department.
- 3.3 General conditions on activities** The licensee is authorized to perform at the facility only those waste-related activities that are described in this section.
- 3.4 Non-putrescible waste** The Licensee is authorized to accept "dry" non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, for the purpose of material recovery.
- 3.5 Source-separated recyclables** The Licensee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and performance of other similar functions related to preparing these materials for marketing.
- 3.6 Inert materials** The Licensee is authorized to accept inert materials for purposes of classifying, consolidating, transfer, and other similar functions related to preparing these materials for useful purposes.
- 3.7 Deliveries not limited** This License does not limit the quantity of authorized solid wastes or other materials that may be accepted at the facility.

4.0 LIMITATIONS AND PROHIBITIONS

- 4.1 Purpose** This section of the license describes limitations and prohibitions on the wastes handled at the facility and waste-related activities performed at the facility.
- 4.2 Disposal not limited** The Licensee shall not be limited as to the number of tons of processing residual that may be disposed.



- 4.3 Prohibited waste** The licensee is prohibited from receiving, processing or disposing of any solid waste not authorized in this License. The licensee shall not knowingly accept or retain any material amounts of the following types of wastes: putrescible wastes, yard debris, materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; medical waste; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the Licensee's DEQ Disposal Site Permit.
- 4.4 Material recovery required** The Licensee shall perform material recovery on "dry" non-putrescible wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, or deliver said "dry" non-putrescible wastes to a solid waste facility whose primary purpose is to recover useful materials from solid waste.
- 4.5 Prohibition on mixing** The Licensee shall not mix any source-separated recyclable materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling.
- 4.6 No disposal of recyclable materials** Source-separated recyclable materials accepted at the facility may not be disposed of by landfilling or incineration.
- 4.7 Limits not exclusive** Nothing in this section of the license shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this license document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0 OPERATING CONDITIONS

- 5.1 Purpose** This section of the license describes criteria and standards for the operation of the facility.
- 5.2 Qualified Operator** The licensee shall provide an operating staff qualified to carry out the functions required by this license and to otherwise ensure compliance with Metro Code Chapter 5.01.
- 5.3 Fire prevention** The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.



- 5.4 Adequate vehicle accommodation** Vehicles containing landscape waste or yard debris feedstock/waste shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.
- 5.5 Managing prohibited wastes** The licensee shall make reasonable efforts to identify prohibited and unauthorized wastes. Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with the facility operating plan and DEQ procedures.
- 5.6 Storage** Stored materials shall be removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.
- 5.7 Litter, dust, and airborne debris** The licensee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The licensee shall:
- a. Take reasonable steps to notify and remind persons delivering material to the facility that all loads must be suitably secured to prevent any material from falling off the load during transit.
 - b. Construct, maintain, and operate all vehicles and devices transferring or transporting roofing from the facility to prevent sifting, spilling or blowing of the material on-site or while in transit.
 - c. Keep all areas within the site and all vehicle access roads within $\frac{1}{4}$ mile of the site free of litter and debris.
 - d. Take reasonable steps to suppress the generation of dust from the moving and processing of solid waste and recyclables.
- 5.8 Vectors** The licensee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
- 5.9 Noise** The licensee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.10 Odor prevention** The licensee shall operate the facility in a manner that prevents the generation of odors. The licensee shall establish and follow procedures for preventing odors at the facility. Specific measures an operator shall take to prevent odors include but are not limited to adherence to the contents of a required operating plan (see Section 6.0).
- 5.11 Water quality** The licensee shall:
- a. Operate and maintain the facility to prevent submersion of



solid waste and recyclables in water.

- b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.

5.12 Public Access Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.

5.13 Signage The licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:

- a. Name of the facility
- b. Address of the facility;
- c. Telephone number(s) of persons who can provide information about the facility in case of an emergency;
- d. Operating hours during which the facility is open for the receipt of authorized material;
- e. Metro's name and telephone number (503) 797-1650.

5.14 Complaints The licensee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If licensee receives a complaint, licensee shall:

- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
- b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.

5.15 Access to license document The licensee shall maintain a copy of this Metro Solid Waste Facility License on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

6.0 OPERATING PLAN

6.1 Purpose This section lists the procedures that must be included in the required facility operating plan. The operating plan may be amended from time to time subject to approval by Metro.

6.2 Access to operating plan The licensee shall maintain a copy of the operating plan on the facility's premises and in a location where facility personnel and Metro representatives have ready access to it.



- 6.3 **Procedures for inspecting loads** The operating plan shall establish:
 - a. Procedures for inspecting incoming loads for the presence of prohibited wastes; and
 - b. A set of objective criteria for accepting and rejecting loads.
- 6.4 **Procedures for processing loads** The operating plan shall establish procedures for:
 - a. Processing authorized solid wastes, and
 - b. Storing authorized solid wastes.
- 6.5 **Procedures for managing prohibited wastes** The operating plan shall establish procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the facility. The plan shall include procedures for managing:
 - a. Hazardous wastes;
 - b. Special wastes; and
 - c. Other prohibited solid wastes.
- 6.6 **Procedures for odor prevention** The operating plan shall establish procedures for preventing all odors. The plan must include:
 - a. A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; and
 - b. Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.
- 6.7 **Procedures for noise minimization** The operating plan shall establish procedures for minimizing the volume and duration of noise produced in the course of Metro-authorized activities.
- 6.8 **Procedures for emergencies** The operating plan shall establish procedures to be followed in case of fire or other emergency.
- 6.9 **Closure Protocol** The operator shall establish protocol for closure and restoration of the site in the event of a long-term cessation of operations.

7.0 FEES AND RATE SETTING

- 7.1 **Purpose** This section of the License specifies fees payable by the Licensee, and describes rate regulation by Metro.
- 7.2 **Annual fee** The Licensee shall pay an annual License fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the License fee at any time by action of the Metro Council.



- 7.3 **Fines** Each violation of a License condition shall be punishable by fines as established in Metro Code Chapter 5.01. If a violation is ongoing and lasts for more than one day, each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.
- 7.4 **Rates not regulated** The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.
- 7.5 **Metro fee imposed on disposal** The Licensee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01.

8.0 INSURANCE REQUIREMENTS

- 8.1 **Purpose** The section describes the types of insurance that the licensee shall purchase and maintain at the licensee's expense, covering the licensee, its employees, and agents.
- 8.2 **General liability** The licensee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.
- 8.3 **Automobile** The licensee shall carry automobile bodily injury and property damage liability insurance.
- 8.4 **Coverage** Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 8.5 **Additional insureds** Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSUREDS**.
- 8.6 **Worker's Compensation Insurance** The licensee, its subcontractors, if any, and all employers working under this license, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If licensee has no employees and will perform the work without the assistance of others, a license to that effect may be attached in lieu of the license showing current Workers' Compensation.



8.7 Notification The licensee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage.

9.0 ENFORCEMENT

9.1 Generally Enforcement of this license shall be as specified in Metro Code and in this Section 9.0 of this license.

9.2 Authority vested in Metro The power and right to regulate, in the public interest, the exercise of the privileges granted by this license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against licensee.

9.3 No Enforcement Limitations Nothing in this license shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this license be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this license or the licensee's operation of the facility.

10.0 MODIFICATIONS

10.1 Modification At any time during the term of the license, either the Executive Officer or the licensee may propose amendments or modifications to this license.

10.2 Modification, suspension or revocation by Metro The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this license in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

- a. Violation of the terms or conditions of this license, Metro Code, or any applicable statute, rule, or standard;
- b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this license;
- c. Failure to disclose fully all relevant facts;
- d. A significant release into the environment from the facility;



- e. A significant change in the character of the material received or in the operation of the facility;
- f. Any change in ownership or control, excluding transfers among subsidiaries of the licensee or licensee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations; and
- h. Compliance history of the licensee.

10.3 Changes in ownership The licensee must, in accordance with Metro Code Section 5.01.090, submit a new license application to Metro if the licensee proposes to transfer control or ownership of the license, the facility, or the name and address of the operator.

11.0 GENERAL OBLIGATIONS

11.1 Compliance with law Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. Such applicable laws, rules, regulations, ordinances, orders and permits include, without limitation, all laws, rules, regulations, ordinances, orders and permits adopted or made applicable during the term of this Franchise. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this license as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the license document, as well as any existing at the time of the issuance of the license but not cited or attached, and permits or conditions issued or modified during the term of the license.

11.2 Indemnification The licensee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the licensee's performance or failure to perform under this license, including patent infringement and any claims or disputes involving subcontractors.

11.3 Deliver waste to The Licensee shall ensure that solid waste transferred from the



- appropriate destinations** facility goes to the appropriate destinations under Metro Code Chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
- 11.4 Provide access** The licensee shall allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this license, Metro Code, and the administrative procedures adopted pursuant to Metro Code Chapter 5.01 and this license.
- 11.5 Record keeping and reporting** The Licensee shall comply with the record keeping and reporting requirements as provided in Metro Code Chapter 5.01 and in administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 11.6 Right of inspection and audit** Authorized representatives of Metro may take soil and water samples and perform such inspection or audit as the Regional Environmental Management Director deems appropriate and shall be permitted access to the premises of the facility during normal working hours upon giving reasonable advance notice (not less than 24 hours). Subject to the confidentiality provisions of this license, Metro's right to inspect shall include the right to review all information from which all required reports are derived including all books, records, maps, plans, income tax returns, financial statements, contracts, and other like materials of licensee that are directly related to the operation of the Facility.
- 11.7 Confidential information** Licensee may identify any information submitted to or reviewed by Metro under this Section 11.0 as confidential. Licensee shall prominently mark any information which it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. Within five (5) days of Metro's receipt, any request for disclosure of information identified by licensee as confidential, Metro shall provide Licensee written notice of the request. Licensee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Licensee shall be responsible to pay any costs incurred by Metro as a result of Metro's efforts to remove or redact, at the specific request of the licensee, any confidential information from documents that Metro produces in response to a public records request. Nothing in this Paragraph 11.7 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In



addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

**11.8 Compliance
by agents**

The licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this license.

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3224 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO RENEW A METRO SOLID WASTE FACILITY LICENSE TO K.B. RECYCLING, INC., FOR THE OPERATION OF A MATERIAL RECOVERY FACILITY

August 23, 2002

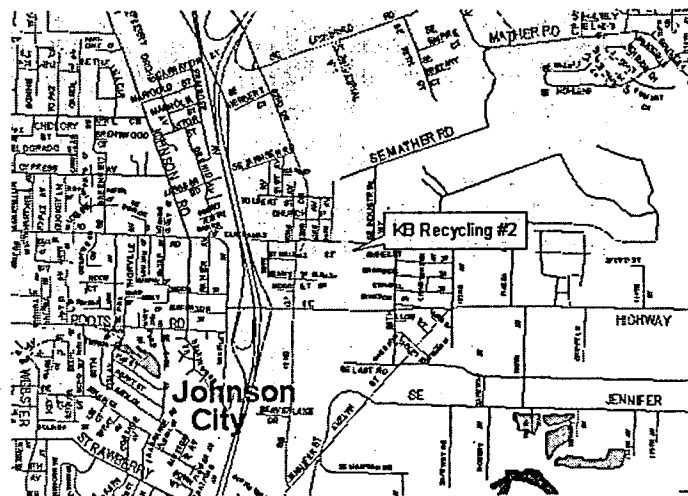
Presented by: Terry Petersen

BACKGROUND

Description of the Resolution

Approval of Resolution No. 02-3224 will authorize the Executive Officer to renew a Solid Waste Facility License issued to K.B. Recycling, Inc., for the operation of a new materials recovery facility located at 9602 SE Clackamas Road, Clackamas, Oregon (Metro District 2). This new facility is currently under construction and will be known as K.B. Recycling and is owned and operated by Fred and Jerald Kahut. The Kahuts currently own and operate a similar material recovery facility, also known as K.B. Recycling, located on Deer Creek Lane in unincorporated Clackamas County and have proven to be capable facility operators.

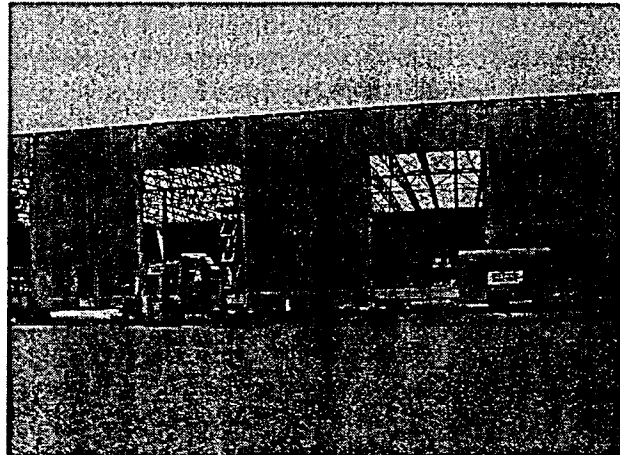
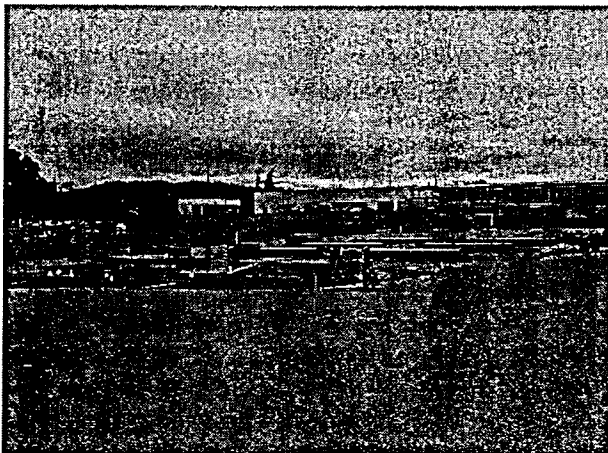
The new K.B. Recycling facility is being designed to replace the existing Deer Creek Lane facility. If this renewal is approved, the applicant anticipates to begin operating the new facility by October 2002, and will close the Deer Creek Lane facility within six months after the new facility begins operating. Renewal of this license will authorize K.B. Recycling to accept inert materials, non-putrescible waste and source-separated recyclables for the purpose of classifying, consolidating, transfer and to perform other functions related to material recovery. K.B. Recycling will not be authorized to accept source-separated yard debris under its new license. The new facility will be open to the public, non-affiliated commercial haulers, and companies that collect non-putrescible waste outside the Metro region. The new facility will have a recycling area available to the public.



Proposed Site Location

History of the Facility

K.B. Recycling was originally issued a solid waste facility franchise in September 1997 for its proposed new facility on Clackamas Road but it was never constructed and did not operate during the term of its license, which will expire on September 22, 2002. In October 1998, pursuant to changes in Metro Code Chapter 5.01, K.B. Recycling exchanged its franchise for a solid waste facility license (License Number L-007-97). Its current license allows K.B. Recycling to accept inert materials, non-putrescible waste, source-separated recyclables and yard debris for the purpose of material recovery and source-separated processing. On June 13, 2002, K.B. Recycling submitted a Metro solid waste facility license renewal form and the required application fee. The proposed new facility is located on a 12.18-acre site that is zoned by Clackamas County for light industrial use and complies with the applicable local land use regulations.

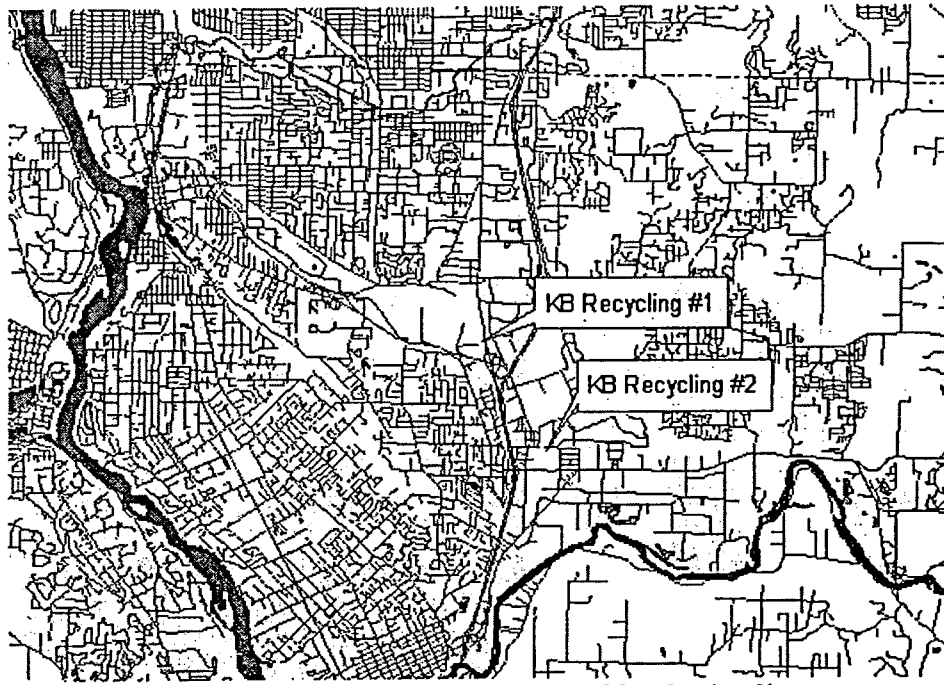


View of the New K.B. Recycling Facility

History of the Applicant

The applicant currently owns and operates a similar material recovery facility in unincorporated Clackamas County located on 8277 Deer Creek Lane. The Deer Creek Lane facility is currently licensed to accept inert materials, non-putrescible waste, source-separated recyclables, and yard debris for the purpose of material recovery and source-separated processing. However, the Deer Creek Lane facility never made use of its authority to accept mixed non-putrescible waste and, in practice, has only accepted source-separated recyclables. The Deer Creek Lane facility is well run and has a good compliance history under the applicant's management with only two compliance incidents since it has been in operation (see Compliance History below).

In conjunction with this license renewal, the applicant also has a pending application for a non-system license (NSL) that, if approved, would authorize delivery of 25,000 tons of non-putrescible, non-hazardous residuals to the Riverbend Landfill in McMinnville, Oregon.



Other Solid Waste Facilities Operated by the Applicant

Compliance History of the Applicant

On December 7, 1998, Metro issued K.B. Recycling, Inc., a Notice of Non-Compliance (NON) for failure to keep all areas within the site and all vehicle access roads within one-quarter-mile of the site free of litter and debris. It was observed that large volumes of newspaper, cardboard, and scrap paper was overflowing into the pavement and that the site appeared generally unsightly due to overflowing of other containment areas and uncontained litter within the site and on Deer Creek Lane adjacent to the facility. The applicant remedied these issues and has operated the facility in compliance with the Metro Code since then.

At the time this staff report was prepared, Metro was preparing to issued K.B. Recycling, Inc., a Finding of Violation and Notice of Assessment of Penalties for its Deer Creek Lane facility for delivering solid waste to the Riverbend Landfill without a Metro-issued non-system license. The applicant has since submitted a non-system license application (see History of the Applicant above) to deliver 25,000 tons of dry waste to the Riverbend Landfill.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to approval of the proposed resolution.

2. Legal Antecedents

Metro Code Section 5.01.087(a) provides:

Solid Waste Facility Licenses shall be renewed unless the Executive Officer determines that the proposed renewal is not in the public interest, providing that the Licensee files a completed application for renewal

accompanied by payment of an application fee of three hundred dollars (\$300) not less than 60 days prior to the expiration of the license term, together with a statement of proposed material changes from its initial application for the License and any other information required by the Executive Officer. The Executive Officer may attach conditions or limitations to any renewed License.

The applicant's current license expires on September 22, 2002. On June 13, 2002, the applicant submitted a solid waste facility license renewal form and the required application fee. On August 9, 2002, the applicant resubmitted the license renewal form describing the material changes from the initial license application and also provided an updated operating plan for the new facility. It is anticipated that under the operation of the applicant, the new K.B. Recycling facility will result in increased material recovery in the region and, therefore, renewal of this license is deemed to be in the public interest.

3. Anticipated Effects

Approval of Resolution No. 02-3224 will authorize the Executive Officer to renew a Solid Waste Facility License issued to K.B. Recycling, Inc., for the operation of a new materials recovery facility that will replace an existing facility. The new facility will provide more capacity than the existing Deer Creek Lane site and is anticipated to be cleaner and a more efficient operation.

4. Budget Impact

The applicant currently processes approximately 80,000 tons of source-separated recyclables at its Deer Creek Lane facility, which it will divert to its new facility if its application is approved. That change therefore will not have a significant financial impact. K.B. Recycling also anticipates that its new facility will attract approximately 28,000 tons of dry non-putrescible solid waste that is currently delivered to the Metro South transfer station. K.B. Recycling believes that it will achieve at least a 25% minimum recovery rate by processing that waste. As a result, K.B. Recycling expects to recover at least 7,000 tons (28,000 tons x 25%) of dry non-putrescible solid waste while the remaining 21,000 tons of residuals will be delivered to a Waste Management landfill.

When tonnage is diverted from Metro transfer stations, there is little impact on collection of the Regional System Fee or Metro excise tax, as these charges "follow the waste," unless recyclable materials are recovered from the waste that is diverted. In this case, Metro foregoes the fees and taxes on the recovered material, but would forego that regardless of where the recovery occurs. The impact on disposal operations is more involved, as explained below.

Impact on the Solid Waste Fund

For this license, Metro would lose the Regional System Fee of \$15 per ton on the 7,000 tons recovered at K.B. Recycling. This translates to a \$105,000 loss to the Solid Waste Fund. There would be no corresponding reductions in budgeted expenditures related to granting this license.

The economics of Metro's disposal operations are affected in a different manner than Regional System Fee collections. Because of the structure of the contracts and recovery of fixed costs in the rate, Metro's costs of disposal operations decline more slowly than revenue when tons leave the transfer stations. The resulting loss of *net operating revenue* is shown in the following table:

**Net Impact on Metro's Operations
Revenue from the Diversion of
28,000 Tons from Metro South to
K.B. Recycling in FY 02-03**

Revenue loss	(\$972,850)
Costs reduced	\$584,714
Net Gain (Loss)	(\$388,136)

Adding together the Regional System Fee losses (\$105,000) and the operating losses (\$388,136), the net revenue shortfall for the Solid Waste Revenue Fund is estimated to be \$493,136 for the full 2002-03 fiscal year. The corresponding shortfall in future years should be recovered through the annual rate setting process.

Impact on the General Fund

For this license, Metro would lose excise tax of \$6.39 per ton on the 7,000 tons recovered at K.B. Recycling. This translates to a \$44,730 reduction in expected General Fund revenues. Of this \$44,730, \$7,000 is dedicated to the Regional Parks and Greenspaces (Parks) program. There would be no corresponding reductions in budgeted General Fund expenditures as a result of granting this license.

Outside of the \$7,000 loss to Parks, which would not be replaced in subsequent fiscal years, granting this license would have no impact on the ability of excise tax revenues in FY 02-03 to cover other budgeted general fund expenditures. However, there could be a potential \$37,730 reduction (\$44,730 minus \$7,000) in the projected ending balance in the Recycling Rate Stabilization reserve.

The per-ton excise tax rate is recalculated for each successive year to help make up for any unanticipated solid waste excise tax losses in the previous year. However, as a \$1 per ton add-on, the Parks tax is not a part of the annual rate recalculation; therefore, the unanticipated \$7,000 shortfall to Parks will reduce Parks revenue in future years unless a subsequent adjustment is made.

Additional Budget Considerations

The above financial analysis is based on the applicant's estimate that K.B. Recycling will achieve the minimum required recovery rate of 25%. At that rate, the facility would satisfy the regulatory recovery rate threshold, but would not be eligible for Regional System Fee and Excise Tax credits. Given that the recovery credit programs offer a significant financial incentive for recovering at or above a 30% rate, the facility operator may be motivated to achieve the higher rate where the financial impacts on Metro would be substantially higher. If K.B. Recycling achieves a recovery rate of 30%, the additional net revenue losses to Metro are estimated to be \$195,000 for the current fiscal year (\$161,500 from the Solid Waste Fund and \$33,500 in excise taxes).

Summary of Net Revenue Impacts

<u>Fund</u>	<u>Amount</u>
Solid Waste Fund	
Regional System Fee	\$105,000
Disposal operations	\$388,136
Total, Solid Waste Fund	\$493,136
General Fund	
Parks	\$7,000
Recycling Rate Stabilization <i>(ending balance)</i>	\$37,730
Total, General Waste Fund	\$44,730
Total Net Revenue Loss	\$537,866
<i>Total impact per diverted ton</i>	<i>\$19.21</i>

OUTSTANDING QUESTIONS

None

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 02-3224, granting a solid waste facility license to K.B. Recycling, Inc., that shall be substantially similar to the license document attached as "Exhibit A" to Resolution No. 02-3224.

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Agenda Item Number 6.5

Resolution No. 02-3225, For the purpose of authorizing the Executive Officer to grant a Metro Solid Waste Facility License to Pacific Land Clearing Company, Inc., for the operation of a roofing recovery and yard debris processing and reload facility.

Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 02-3225
EXECUTIVE OFFICER TO GRANT A METRO SOLID)
WASTE FACILITY LICENSE TO PACIFIC LAND) Introduced by Mike Burton,
CLEARING COMPANY, INC., FOR THE) Executive Officer
OPERATION OF A ROOFING RECOVERY AND)
YARD DEBRIS PROCESSING AND RELOAD)
FACILITY)

WHEREAS, under the Metro Code, a solid waste facility that will be processing roofing waste and yard debris, and that will be reloading yard debris, must obtain a Solid Waste Facility License in order to operate; and,

WHEREAS, the applicants, Pacific Land Clearing Company, Inc., have received land use approval from the City of Portland; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.01 of Metro Code; and,

WHEREAS, Metro staff has analyzed the application and recommended approval of the applicant's request for a Solid Waste Facility License on the condition that the applicant provide proof of financial assurance and an operating plan that meets the approval of the Executive Officer within 60 days of the Council's approval of this resolution; and,

WHEREAS, the resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED that the Executive Officer is authorized to grant a Solid Waste Facility License for roofing recovery and yard debris processing and reload to Pacific Land Clearing and Recycling Company, Inc., that shall be substantially similar to the license attached as Exhibit A. Issuance of this license is conditioned on the receipt of final proof of financial assurance and an operating plan approved by the Executive Officer. This application shall be deemed denied if the Executive Officer does not issue this license within 60 days of the date this resolution is adopted.

ADOPTED by the Metro Council this ____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel



METRO SOLID WASTE FACILITY LICENSE

Number L-102-02

Issued by

Metro

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01.

<p>LICENSEE:</p> <p>Pacific Land Clearing Company, Inc. 34800 South Wilhoit Rd Molalla, OR 97038</p> <p>Jack Botkin (503) 656-7793 Fax: (503) 656-8094</p>	<p>FACILITY NAME AND LOCATION:</p> <p>Pacific Land Clearing & Recycling Center III 4044 N Suttle Road Portland, OR 97217</p> <p>(503) 774-6939 Fax: (503) 649-0198</p>
<p>COMPANY OWNER</p> <p>Jack Botkin 15704 SE 34th Circle Vancouver, WA 98683</p> <p>(360) 944-6600</p>	<p>PROPERTY OWNER</p> <p>Daniel & Colleen Obrist 6431 SE Jenne Road Portland, OR 97236</p> <p>(503) 661-2455</p>

This license is granted to the licensee named above and may not be transferred without the prior written approval of the Executive Officer. Subject to the conditions stated in this license document, the licensee is authorized to operate and maintain a yard debris reload facility, and to accept the solid wastes and perform the activities authorized herein.

METRO

Licensee's Acceptance & Acknowledgement of Receipt:

Signature

Signature of Licensee

Mike Burton, Metro Executive Officer

Print name and title

Date

Date



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1.0 ISSUANCE

- 1.1 Licensee** Pacific Land Clearing Company, Inc.
34800 South Wilhoit Rd
Molalla, OR 97038
- 1.2 Contact** Jack Botkin (503) 656-7793; Fax: (503) 656-8094
- 1.3 License Number** When referring to this license, please cite:
Metro Solid Waste Facility License Number L-102-02.
- 1.4 Term of License** This license shall remain in force for a term of five (5) years unless modified, suspended, or revoked under the provisions of Section 11.2 of this license. The term commences from the date this license is signed by Metro.
- 1.5 Facility name and mailing address** Pacific Land Clearing & Recycling Center III
4044 N Suttle Road
Portland, OR 97217
- 1.6 Operator** Jack Botkin (503) 656-7793
503-656-8094(fax)
- 1.7 Facility legal description** Section 32 of Township 02N of Range 01E

Tax lot(s): R237942 & R237943

Partition Plat 1993-83, lot 1 map 3 22N1E
- 1.8 Property owner** Daniel & Colleen Obrist.
- 1.9 Permission to operate** The licensee has obtained the property owner's (Daniel & Colleen Obrist) consent to operate the facility as specified in this license.

2.0 CONDITIONS AND DISCLAIMERS

- 2.1 Guarantees** The granting of this license shall not vest any right or privilege in the licensee to receive specific quantities of solid wastes or other materials at the direction of Metro during the term of the license.
- 2.2 Non-exclusive license** The granting of this license shall not in any way limit Metro from granting other solid waste licenses within the District.



- 2.3 Property rights** The granting of this license does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 No recourse** The licensee shall have no recourse whatsoever against Metro, its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this license or because of the enforcement of the license or in the event the license or any part thereof is determined to be invalid.
- 2.5 Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this license or on account of the construction, maintenance, or operation of the facility pursuant to this license.
- 2.6 Binding nature** The conditions of this license are binding on the licensee. The licensee is liable for all acts and omissions of the licensee's contractors and agents.
- 2.7 Waivers** To be effective, a waiver of any terms or conditions of this License must be in writing and signed by the Metro Executive Officer.
- 2.8 Effect of waiver** Waiver of a term or condition of this license shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 2.9 Choice of law** The license shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 Enforceability** If any provision of this license is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this license shall not be affected.
- 2.11 License not a waiver** Nothing in this license shall be construed as relieving any owner, operator, or licensee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
- 2.12 License not limiting** Nothing in this license is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.
- 2.13 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. The Metro Code definition of "solid waste" includes source separated yard debris, landscape wastes, and clean



wood wastes. In the event that the Metro Code is amended, the latest amended version shall apply to this license.

3.0 AUTHORIZATIONS

- 3.1 Purpose** This section of the license describes the wastes that the licensee is authorized to accept at the facility, and the waste-related activities the licensee is authorized to perform at the facility. This license is not intended to regulate non-waste-related activities such as the management of bark chips and other finished products.
- 3.2 General conditions on acceptable materials** The licensee is authorized to accept at the facility only the solid wastes described in Section 3.0. The licensee is prohibited from knowingly receiving any solid waste not authorized in this section, and shall not accept any other waste at the facility unless specifically authorized in writing by the Director of the Metro Regional Environmental Management Department.
- 3.3 General conditions on activities** The licensee is authorized to perform at the facility only those waste-related activities that are described in Section 3.0.
- 3.4 Acceptance of yard debris and clean untreated wood** The licensee is authorized to accept for grinding and reloading, source-separated yard debris and landscape waste that has not reached a state of decomposition sufficient to produce malodors detectable beyond the boundaries of the facility. Other green or non-green wastes may only be accepted as specifically authorized in writing by the Director of the Metro Regional Environmental Management Department or by amending this license. The licensee is also authorized to accept clean wood wastes (e.g. untreated lumber and wood pallets).
- 3.5 Acceptance of roofing and related materials** The licensee is authorized to accept wood shingles, shakes, and composition shingles from roof tearoffs; trimmings from the manufacture of composition roof shingles; wood trim and roof support structures, metal flashing, rain gutters, tar paper, and packaging from new roofing materials. All composition roofing accepted shall be certified as being free of asbestos through a protocol approved by the Oregon Department of Environmental Quality (DEQ).
- 3.6 Processing of roofing for recovery** The licensee is authorized to process composition roofing for use as fuel, engineered fill, engineered road base, or any use approved by the DEQ. At Metro's request, the licensee will provide Metro with information on uses approved by the DEQ. Metal shall be separated and recycled.



- 3.7 **Processing of clean wood and yard debris for recovery** The licensee is authorized to grind clean untreated wood wastes and yard debris for use as fuel, mulch, or for use as a feedstock at a Metro-authorized composting facility.

4.0 **LIMITATIONS AND PROHIBITIONS**

- 4.1 **Purpose** This section of the license describes limitations and prohibitions on the wastes handled at the facility and waste-related activities performed at the facility.
- 4.2 **Prohibited waste** The licensee is prohibited from receiving, processing or disposing of any solid waste not authorized in this License. The licensee shall not knowingly accept or retain any material amounts of the following types of wastes: asbestos containing built-up roofing; non-green feedstocks, special wastes as defined in Chapter 5.02 of the Metro Code, materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; medical waste; infectious, biological or pathological waste; radioactive waste; hazardous waste; any waste prohibited by the DEQ; putrescible waste other than that allowed by Sections 3.0 of this license; and any non-putrescible waste.
- 4.3 **Accumulation limited** This license limits the quantity of composition waste roofing material that may be accumulated at the facility at any one time to no more than 3,000 (THREE THOUSAND) total tons unless the licensee has been granted written authorization to accumulate a greater amount of composition roofing material by the Director of the Metro Regional Environmental Management Department. Prior to approving any such authorization, the licensee must provide any additional financial assurance necessary to remove the entire accumulation of on site material in the event of facility closure.
- 4.4 **Limits not exclusive** Nothing in this section of the license shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this license document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.
- 4.5 **Composting prohibited** The licensee shall not keep yard debris on site long enough for more than negligible biological decomposition to begin.
- 4.6 **No disposal of recyclable** Yard debris and organic materials accepted at the facility may not be disposed of by landfilling.



materials

5.0 OPERATING CONDITIONS

- 5.1 Purpose** This section of the license describes criteria and standards for the operation of the facility.
- 5.2 Qualified Personnel** The licensee shall provide an operating staff qualified to carry out the functions required by this license and to otherwise ensure compliance with Metro Code Chapter 5.01. Facility personnel shall be familiar with the provisions of this license and the procedures contained within the facility's operating plan (see Section 6.0).
- 5.3 Fire prevention** The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.
- 5.4 Adequate vehicle accommodation** Vehicles containing landscape waste or yard debris feedstock/waste shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.
- 5.5 Managing prohibited wastes** The licensee shall make reasonable efforts to identify prohibited and unauthorized wastes. Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with the facility operating plan and DEQ procedures.
- 5.6 Storage** Stored yard debris and wood wastes shall be suitably contained and removed at sufficient frequency to prevent nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter. Yard debris may not be stored for more than 24 hours before being removed from the facility.
- 5.7 Litter and airborne debris** The licensee shall operate the facility in a manner that prevents the generation of litter and airborne debris. The licensee shall:
- a. Take reasonable steps to notify and remind persons delivering yard debris and wood wastes to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit;
 - b. Construct, maintain, and operate all vehicles and devices transferring or transporting yard debris and wood wastes from the facility to prevent leaking, spilling or blowing of such material on-site or while in transit;
 - c. Conduct grinding operations in such a manner as to prevent dust and debris from blowing off-site; and
 - d. Keep all areas within the site and all vehicle access roads



within ¼ mile of the site free of litter and debris generated directly or indirectly as a result of the facility's operations.

- 5.8 Vector prevention** The licensee shall operate the facility in a manner that prevents infestations of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
- 5.9 Noise minimization** The licensee shall conduct Metro-authorized activities at the facility in a manner that prevents the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.10 Odor prevention** The licensee shall operate the facility in a manner that prevents the generation of odors. The licensee shall establish and follow procedures for preventing odors at the facility. Specific measures an operator shall take to prevent odors include but are not limited to adherence to the contents of a required operating plan (see Section 6.0).
- 5.11 Water quality** The licensee shall operate and maintain the facility to prevent contact of yard debris and wood wastes with stormwater runoff. Methods must be consistent with the controlling agency (local jurisdiction and DEQ).
- 5.12 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.13 Signage** The licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- a. Name of the facility
 - b. Address of the facility;
 - c. Emergency telephone number for the facility;
 - d. Operating hours during which the facility is open for the receipt of authorized waste;
 - e. Fees and charges;
 - f. Metro's name and telephone number (503) 797-1650; and
 - g. A list of authorized and prohibited wastes.
- 5.14 Complaints** The licensee shall respond to all written complaints of nuisances (including, but not limited to, blowing debris, fugitive dust, odors, noise, and vectors). If licensee receives a complaint, licensee shall:
- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of its attempts (whether successful or



unsuccessful); and

- b. Log all such as provided on Section 8.4 of the license. Each log entry shall be retained for one year and shall be available for inspection by Metro.

5.15 Access to license document The licensee shall maintain a copy of this Metro Solid Waste Facility License on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

6.0 OPERATING PLAN

6.1 Purpose This section lists the procedures that must be included in the required facility operating plan. The operating plan may be amended from time to time subject to approval by Metro.

6.2 Access to operating plan The licensee shall maintain a copy of the operating plan on the facility's premises and in a location where facility personnel and Metro representatives have ready access to it.

6.3 Procedures for inspecting loads The operating plan shall establish:

- a. Procedures for inspecting incoming loads for the presence of prohibited wastes; and
- b. A set of objective criteria for accepting and rejecting loads, including asbestos testing protocol.

6.4 Procedures for processing loads The operating plan shall establish procedures for:

- a. Processing authorized solid wastes,
- b. Storing authorized solid wastes; and

Managing stockpiles to ensure that they remain within the authorized volumes.

6.5 Procedures for managing prohibited wastes The operating plan shall establish procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the facility. The plan shall include procedures for managing:

- a. Hazardous wastes;
- b. Special wastes; and
- c. Other prohibited solid wastes.

6.6 Procedures for odor prevention The operating plan shall establish procedures for preventing all odors, including odors produced by grass clippings. The plan must include:

- a. A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; and
- b. Procedures for receiving and recording odor complaints,



immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.

- 6.7 **Procedures for noise minimization** The operating plan shall establish procedures for minimizing the volume and duration of noise produced in the course of Metro-authorized activities.
- 6.8 **Procedures for emergencies** The operating plan shall establish procedures to be followed in case of fire or other emergency.
- 6.9 **Procedures for managing stockpiles** The operating plan shall establish procedures for managing stockpiles to assure that they remain within the volumes authorized in Section 4.3.
- 6.10 **Closure Protocol** The operator shall establish protocol for closure and restoration of the site in the event of a long-term cessation of operations.

7.0 FEES AND RATE SETTING

- 7.1 **Purpose** This section of the license specifies fees payable by the licensee, and describes rate regulation by Metro.
- 7.2 **Annual fee** The licensee shall pay an annual license fee, as established in Metro Code. Metro reserves the right to change the license fee at any time by action of the Metro Council.
- 7.3 **Fines** Each violation of a license condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.
- 7.4 **Rates not regulated** The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.

8.0 RECORD KEEPING AND REPORTING

- 8.1 **Purpose** This section of the license describes the record keeping and reporting requirements. The Licensee shall effectively monitor facility operation and maintain accurate records of the information described in this section.
- 8.2 **Feedstocks received** The licensee shall keep and maintain accurate records of the amount of materials authorized under Section 4.3 accumulated on-site, the



amount of materials received, the amount of outgoing materials, the ultimate disposition of all outgoing materials (whether recovered or disposed), and the results of the required asbestos testing for waste roofing. This information shall be reported to Metro on a monthly basis. Each monthly report shall be provided by the 15th day of the following month. If the total accumulation of composition roofing reaches 80 percent of the capacity authorized in Section 4.3 of this license, then the licensee shall provide weekly reports. The report shall be signed and certified as accurate by an authorized representative of licensee.

8.3 Unusual occurrences The licensee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. Licensee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 797-1650 within two hours of the discovery of their occurrence.

8.4 Nuisance complaints For every nuisance complaint (e.g. odor, noise, dust, vibrations, litter) received, the licensee shall record:

- a. The nature of the complaint;
- b. The date the complaint was received;
- c. The name, address, and telephone number of the person or persons making the complaint; and
- d. Any actions taken by the operator in response to the complaint (whether successful or unsuccessful).

Records of such information shall be made available to Metro and local governments upon request. The licensee shall retain each complaint record for a period of not less than two years.

8.5 Changes in ownership The licensee must, in accordance with Metro Code Section 5.01.090, submit a new license application to Metro if the licensee proposes to transfer control or ownership of (1) the license, (2) the facility property, or (3) the name and address of the operator.

9.0 INSURANCE REQUIREMENTS

9.1 Purpose The section describes the types of insurance that the licensee shall purchase and maintain at the licensee's expense, covering the licensee, its employees, and agents.

9.2 General liability The licensee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with



automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.

- 9.3 Automobile** The licensee shall carry automobile bodily injury and property damage liability insurance.
- 9.4 Coverage** Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.5 Additional insureds** Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED.
- 9.6 Financial Assurance** The licensee shall, throughout the life of the facility, maintain an instrument of financial assurance to help assure site clean-up in the event of abandonment or long-term cessation of operations. If the licensee has been authorized under Section 4.3 of this license to accumulate more than 3,000 tons of authorized materials, the licensee shall provide any additional financial assurance necessary to remove the entire accumulation. Any change in the form or amount of required financial assurance shall be approved by the Director of the Metro Regional Environmental Management Department.
- 9.7 Worker's Compensation Insurance** The licensee, its subcontractors, if any, and all employers working under this license, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If licensee has no employees and will perform the work without the assistance of others, a certificate to that effect may be provided in lieu of the certificate showing current Workers' Compensation.
- 9.8 Notification** The licensee shall give at least 30 days prior written notice to the Director of the Metro Regional Environmental Management Department of any lapse or proposed cancellation of insurance coverage.

10.0 ENFORCEMENT

- 10.1 Generally** Enforcement of this license shall be as specified in Metro Code and in this Section 10.0 of this license.
- 10.2 Authority vested in Metro** The power and right to regulate, in the public interest, the exercise of the privileges granted by this license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules,



regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against licensee.

10.3 No Enforcement Limitations

Nothing in this license shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this license be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this license or the licensee's operation of the facility.

11.0 MODIFICATIONS

11.1 Modification

At any time during the term of the license, either the Executive Officer or the licensee may propose amendments or modifications to this license.

11.2 Modification, suspension or revocation by Metro

The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this license in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

- a. Violation of the terms or conditions of this license, Metro Code, or any applicable statute, rule, or standard;
- b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this license;
- c. Failure to disclose fully all relevant facts;
- d. A significant release into the environment from the facility;
- e. A significant change in the character of the material received or in the operation of the facility;
- f. Any change in ownership or control, excluding transfers among subsidiaries of the licensee or licensee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations;
- h. Compliance history of the licensee; and
- i. Operation or maintenance of a roofing processing facility without land use approval from the City of Portland.

11.3 Change to volume limitation

A change to the volume limitation set forth in Section 4.3 of this license may be granted by the Director of the Metro Regional Environmental Management Department in response to a written request by the licensee.



12.0 GENERAL OBLIGATIONS

- 12.1 Compliance with the law** Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. Such applicable laws, rules, regulations, ordinances, orders and permits include, without limitation, all laws, rules, regulations, ordinances, orders and permits adopted or made applicable during the term of this Franchise. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this license as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the license document, as well as any existing at the time of the issuance of the license but not cited or attached, and permits or conditions issued or modified during the term of the license.
- 12.2 Indemnification** The licensee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the licensee's performance or failure to perform under this license, including patent infringement and any claims or disputes involving subcontractors.
- 12.3 Deliver waste to appropriate destinations** The licensee shall ensure that processed materials transferred from the facility goes to the appropriate recovery uses, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits
- 12.4 Right of inspection and audit** Authorized representatives of Metro may take soil and water samples and perform such inspection or audit as the Regional Environmental Management Director deems appropriate and shall be permitted access to the premises of the facility during normal working hours upon giving reasonable advance notice (not less than 24 hours). Subject to the confidentiality provisions of this license, Metro's right to inspect shall include the right to review, at an office of licensee located in the Portland metropolitan area, all information from which all required reports are derived including all books, records, maps, plans, income tax returns, financial statements, contracts, and other like materials of licensee that are directly related to the operation of the Facility.



12.5 Confidential information

Licensee may identify any information submitted to or reviewed by Metro under this Section 12.0 as confidential. Licensee shall prominently mark any information which it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. Within five (5) days of Metro's receipt, of any request for disclosure of information identified by licensee as confidential, Metro shall provide Licensee written notice of the request. Licensee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Licensee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact, at the specific request of the licensee, any confidential information from documents that Metro produces in response to a public records request. Nothing in this Section 12.5 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

12.6 Compliance by agents

The licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this license.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3225 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO GRANT A METRO SOLID WASTE FACILITY LICENSE TO PACIFIC LAND CLEARING COMPANY, INC., FOR THE OPERATION OF A ROOFING RECOVERY AND YARD DEBRIS PROCESSING AND RELOAD FACILITY

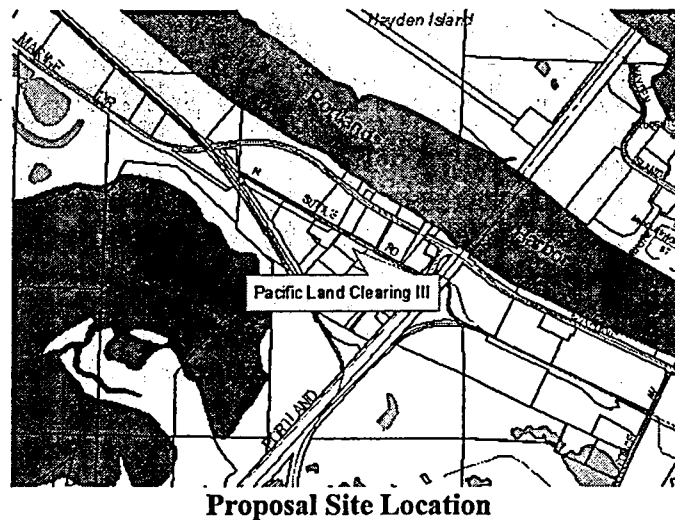
August 23, 2002

Presented by: Terry Petersen

BACKGROUND

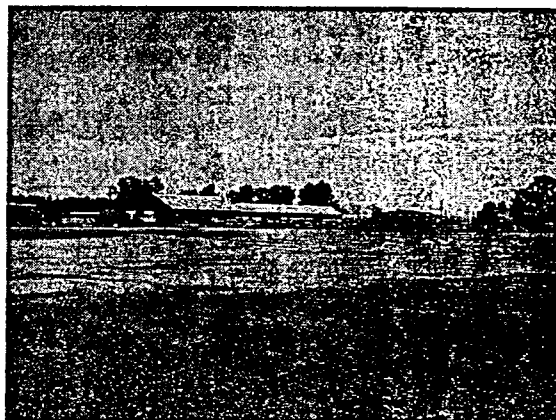
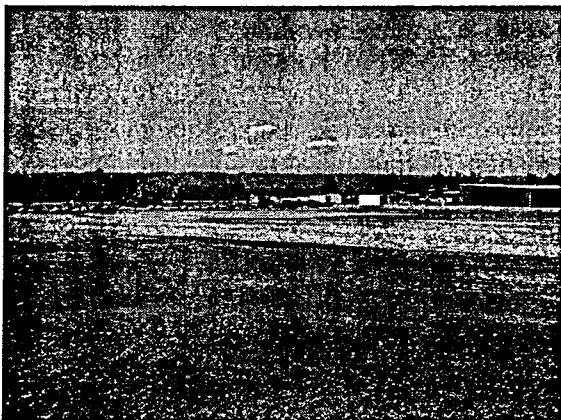
Description of the Resolution

Approval of Resolution No. 02-3225 will authorize the Executive Officer to issue a new Solid Waste Facility License to Pacific Land Clearing Company, Inc., (PLC) for the operation of a waste roofing processing and yard debris reload facility located at 4044 N. Suttle Road, Portland, Oregon (Metro District 5). PLC refers to this facility as Pacific Land Clearing and Recycling Center III (PLCIII). Issuance of the license will authorize the facility to accept wood shakes and composition roofing from roof tear-offs, trimmings from the manufacture of composition roofing, metal flashing, rain gutters, wooden roof structures, tar paper, and other materials directly associated with roofing and re-roofing of buildings for the purpose of processing for use as fuel, engineered fill, or engineered road base. Metal will be separated and recycled. All materials accepted shall be certified as being free of asbestos through a protocol approved by the Oregon Department of Environmental Quality (DEQ). In addition to roofing-related materials, the proposed facility will be authorized to accept clean wood waste (i.e., pallets), chip and particle board and woody land clearing and yard debris for the purpose of processing it into hogged fuel. Processing of incoming yard debris will be limited to grinding and/or reloading it for delivery to an authorized composting facility. PLCIII will not be authorized to conduct composting operations on-site at this time.



History of the Site Where the Facility Will Be Located

The proposed facility is located on a 5.6 acre site that was previously part of an old stockyard area. Beginning in April 1999, Speyfly, Inc. (dba RoofGone) started operating a roofing recycling facility on the site, without obtaining a Metro license or a DEQ permit. In April 2000, RoofGone moved its roof recycling operation to 9645 N. Columbia Boulevard in Portland while a substantial stockpile of waste roofing materials still remained at the N. Suttle Road site. On April 12, 2001, Metro granted RoofGone a solid waste facility license for its N. Columbia Boulevard facility on the condition that all waste roofing that had been left at the N. Suttle Road site be removed within 120 days. RoofGone failed to comply with its license agreement and subsequently abandoned both sites by January 2002. The Metro Council approved a final order revoking RoofGone's license on July 3, 2002. Since the time that RoofGone abandoned the Suttle Road site, most of the waste roofing materials have been removed by a third party operator. The site is currently zoned IH (heavy industrial) and the uses proposed by the applicant comply with the applicable local land use regulations.



View of the Proposed Site

History of the Applicant

The applicant currently owns and operates two other Metro-licensed solid waste facilities that process waste roofing materials, and clean wood and yard debris, which are described below.

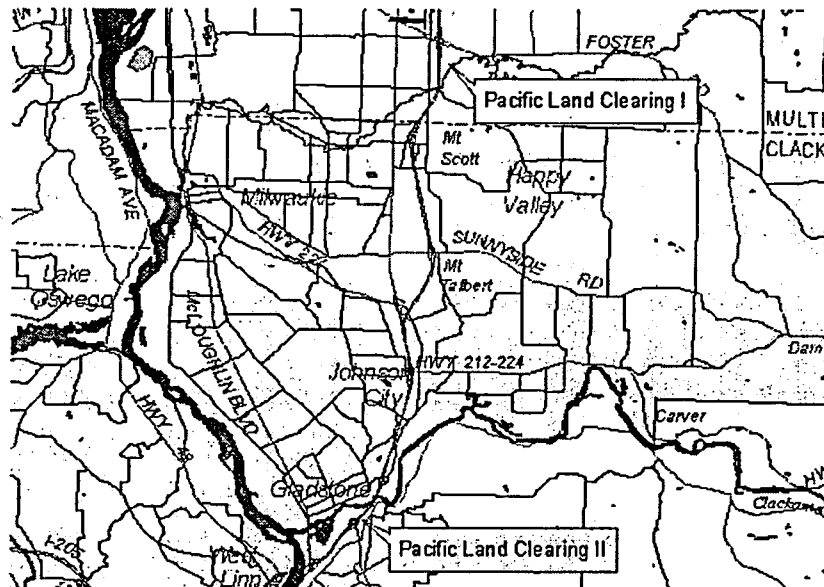
Pacific Land Clearing and Recycling Center I (PLCI):

This facility was originally opened in November 1996 under the name Roofing Recycling Center by a previous owner until acquired by the applicant in May 2000 and issued a license on April 13, 2001. PLCI is located at 6400 SE 101st Avenue, Portland in Metro District 6 and is currently licensed to accept waste roofing materials, clean wood waste and yard debris for processing into hogged fuel or for delivery to an authorized composting facility. PLCI is a well-run facility with a good compliance history under the applicant's management. PLCI has not yet provided financial assurance for the existing stockpile of waste roofing on site.

Pacific Land Clearing and Recycling Center II (PLCII):

This facility is located at 16020 S. Park Place Court in Oregon City (Metro District 2). The site was originally leased from the Southern Pacific/Union Pacific Railroad by Oregon/California Lumber Recycling, Inc. (OCLRI) which operated a wood processing facility. The site was then purchased by the applicant in June 2000 and was issued a Metro Solid Waste Facility License on April 13, 2001. PLCII is currently licensed to accept waste roofing, clean wood waste and yard debris but, because of its flood

potential, is limited by the City of Oregon City to accumulate no more material than can be removed within a 48 hour period. PLCII has had some previous compliance issues related to odor problems primarily stemming from its yard debris operations (see Compliance History below) but has operated without incident since January 2002.



Other Solid Waste Facilities Operated by the Applicant

Compliance History of the Applicant

The following is a brief compliance history of the two other solid waste facilities operated by the applicant:

Pacific Land Clearing and Recycling Center I (PLCI):

This facility has operated in compliance with its license agreement since it was issued on April 13, 2001.

Pacific Land Clearing and Recycling Center II (PLCII):

On June 6, 2001, Metro issued PLCII a Finding of Violation and Notice of Non-Compliance (NON) for the following: A) Accepting prohibited (putrescible) waste; B) Failure to provide a qualified grinder operator for processing yard debris; C) Non-compliance with local law for storing putrescible waste in an open storage container; and D) Improper storage of yard debris resulting in odor problems. On June 15, 2001, Metro issued PLCII a Finding of Continued Violation and Notice of Imposition of Penalty for failure to cure its June 6, 2001, violations by not removing all decomposing organic materials from the site. On June 19, 2001, based on continuing on-site inspections, Metro issued PLCII a Finding of Violation and Notice of Imposition of Penalty for continued violations through June 15, 2001. As a result, PLCII was issued a penalty of \$100. The relatively low amount of the penalty reflects Metro's recognition of PLCII's effort and progress to significantly diminish the magnitude of the violations. On January 22, 2002, Metro issued PLCII a Finding of Violation and Modification of Solid Waste Facility License for continued odor problems related to its yard debris operation. As a result, Metro modified PLCII's license to reflect its primary function as a yard debris reload facility by stipulating more explicit requirements regarding its acceptance of yard debris and by requiring the operation to provide a more detailed operating plan for processing yard debris.

The compliance issues experienced during PLCII's first year of operation have since been resolved and they have operated without incident throughout the current year. Both of the applicant's existing facilities are well run and operated in compliance with Metro Code.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed PLCIII facility.

2. Legal Antecedents

Metro Code section 5.01.045(b)(1) requires a solid waste processing facility to have a Metro solid waste facility license if its activities will result in processing residual of more than ten percent. Roofing waste processing facilities in the Metro region have had an extremely mixed track record (see "Background"), and have frequently resulted in operations with nearly 100 percent "processing residual." On that basis, Metro staff has concluded that such facilities must obtain a Metro solid waste facility license in order to operate within the region.

Metro Code section 5.01.045(b)(2) requires a solid waste processing facility to have a Metro solid waste facility license if its activities include processing and reloading of yard debris. The applicant proposes to operate a yard debris processing and reload facility and, on that basis, will require a solid waste facility license.

Metro Code Section 5.01.055 requires license applicants to participate in a pre-application conference and to file an application within one year from the date of that conference. Metro staff held a pre-application conference with the applicant on May 14, 2002, and received an application on June 7, 2002. On July 3, 2002, the application fee was submitted as required by Metro Code 5.01.062. On July 11, 2002, the application was determined to be complete. Pursuant to Metro Code section 5.01.067(e), the Council must now issue an order granting or denying this application. If the Council does not act to grant or deny the application by November 11, 2002, Metro Code section 5.01.067(f) provides that a License shall be deemed granted for the solid waste facility requested in the application.

All Solid Waste Licenses are subject to approval by the Metro Council [Metro Code 5.01.067(a)]. A decision to approve or deny is made following an investigation and recommendation by the Executive Officer.[5.01.067(c,d)].

Metro Code Section 5.01.060 provides:

(a) Applications for a Certificate, Franchise or License or for renewal of an existing Certificate, Franchise or License shall be filed on forms or in the format provided by the Executive Officer.

The application was filed on forms and in the format provided by the Executive Officer.

(b) In addition to any information required on the forms or in the format provided by the Executive Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

The application contains a description of the activities proposed to be conducted and a description of wastes sought to be accepted. The proposed activities consist of accepting waste roofing materials, clean

wood waste and yard debris for processing into hogged fuel or for delivery to an authorized composting facility. Metal flashing and rain gutters will be separated and recycled as scrap metal.

(c) *In addition to the information required on the forms or in the format provided by the Executive Officer, applications for a License or Franchise shall include the following information to the Executive Officer:*

- (1) *Proof that the applicant can obtain the types of insurance specified by the Executive Officer during the term of the Franchise or License;*

A certificate of insurance was provided with the application.

- (2) *A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;*

The DEQ will not require a permit for this facility per a July 31, 2002, letter from Sally Puent, DEQ Solid Waste and Site Assessment Manager to Roy Brower, REM Regulatory Affairs Manager.

- (3) *A duplicate copy of any closure plan required to be submitted to DEQ, or if DEQ does not require a closure plan, a closure document describing closure protocol for the Solid Waste Facility at any point in its active life;*

The DEQ does not require a permit for this facility. However, the proposed Metro license contains a provision that all material accumulated under the authority of the license must be removed and properly disposed of in the case of a long-term closure of the facility.

- (4) *A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents, proof of financial assurance for the costs of closure of the facility;*

The DEQ does not require a permit for this facility. However, the proposed Metro license requires a form of financial assurance adequate to clean up the site should it cease operations. The amount of financial assurance is based on the worst-case scenario of having to load, transport, and dispose the accumulated roofing material at a landfill, which has been estimated at \$55 per ton. The applicant has proposed his personal annuity account with Jackson National Life for \$50,000 as financial assurance for a requested 6,000 to 8,000 tons of roofing material to be stored on-site at any one time. While this amount is not adequate to clean up the entire site should it cease operations, staff balanced several factors in arriving at an appropriate level of financial assurance. Based on the applicant's track record of operating a similar facility for the last two years that is well run and has a good compliance history with Metro and DEQ factor positively in the applicant's favor. The applicant requested a maximum accumulation of 6,000 to 8,000 tons of roofing but failed to provide adequate financial assurance for that tonnage. However, staff believes the proposed financial assurance of \$50,000, balanced with a lower tonnage accumulation limit of 3,000 tons, would be a reasonable arrangement. As the applicant continues to operate a compliant facility, he may want to seek a larger accumulation limit. Staff would be willing to consider increasing the tonnage limit by evaluating various factors such as compliance history, success of markets for the roofing material, and the ability to provide proof of additional financial assurance in the future. Staff recommends that prior to the issuance of this license, the applicant must provide final proof of financial assurance within 60 days of the date of approval of the accompanying resolution, or this application shall be denied.

- (5) *Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the Licensee or Franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of section 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;*

A copy of the required consent form signed by the property owners was included with the application.

- (6) *Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and*

The site is zoned IH (heavy industrial) and the uses proposed by the applicant comply with the applicable local land use regulations in the City of Portland. A Land Use Compatibility Statement is on file with Metro.

- (7) *Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made, a copy of such permit application, and any permit that has been granted shall be provided.*

No other required permits are known or anticipated by Metro staff.

3. Anticipated Effects

Approval of Resolution No. 02-3225 will authorize the Executive Officer to issue a new Solid Waste Facility License to Pacific Land Clearing Company, Inc. for the operation of a waste roofing processing and yard debris reload facility located at 4044 N. Suttle Road, Portland, Oregon (Metro District 5). Issuance of the proposed license will authorize the facility to accept wood shakes and composition roofing from roof tear-offs, trimmings from the manufacture of composition roofing, metal flashing, rain gutters, wooden roof structures, tar paper, and other materials directly associated with roofing and re-roofing of buildings for the purpose of processing for use as fuel, engineered fill, engineered road base, or other approved uses. Metal will be separated and recycled. In addition to roofing-related materials, the proposed facility will be authorized to accept clean wood waste and woody land clearing for the purpose of processing it into hogged fuel. Processing of incoming yard debris will be limited to grinding and/or reloading it for delivery to an authorized composting facility. PLCIII will not be authorized to conduct composting operations on-site at this time.

4. Budget Impacts

The applicant estimates that 35,000 tons of waste roofing materials and 35,000 tons of wood, yard debris, and concrete, currently being source-separated, will be delivered to the proposed PLCIII facility annually. Since the 35,000 tons of source-separated wood, yard debris, and concrete is not disposed off and,

therefore, exempt from Metro user fees, it will not have a significant financial impact. Based on the information provided by the applicant, approximately 20,000 tons of roofing materials will come from the currently licensed PLCI facility. This tonnage has already been factored into the projections on which the current year's budget is based and, therefore, is not anticipated to have a significant financial impact. Approximately 5,000 tons of roofing materials is anticipated to come from the Vancouver, Washington area. This tonnage is currently being disposed in Clark County and is not subject to Metro fees. The applicant estimates that another 10,000 tons of roofing materials will be generated from the Beaverton, West Portland, and Northwest Portland areas. This tonnage is presently going directly to landfills (non-Metro facilities). The applicant does not anticipate a reduction in tonnage at the Metro transfer stations.

However, while data on the amount of waste roofing materials currently being delivered to the Metro transfer stations is limited, previous waste-composition studies and other data indicate that measurable amounts of waste roofing are currently being delivered to the Metro transfer stations. For that reason, it is the opinion of Metro staff that there will likely be some level of diversion of waste roofing from the Metro transfer stations. Therefore, for the purpose of estimating the potential budget impacts on Metro, this analysis was based on a reasonable scenario that assumes: of the 10,000 being diverted to the PLCIII facility, 5,000 tons of roofing materials would be diverted directly from the Metro transfer stations and 5,000 tons would be diverted directly from landfills.

Impact on the Solid Waste Fund

Under this scenario, approval of the license would result in the loss of the Regional System Fee of \$15 per ton on the 10,000 tons that are now assumed will be recovered. This translates to a \$150,000 loss to the Solid Waste Fund. There would be no corresponding reductions in budgeted expenditures related to granting this license.

Under this scenario, because 5,000 tons are assumed to be diverted away from Metro's transfer station operations, Metro's operations cost will be affected. However, the economics of Metro's disposal operations are affected in a different manner than Regional System Fee collections. Because of the structure of the contracts and recovery of fixed costs in the rate, Metro's costs of disposal operations decline more slowly than revenue when tons leave the transfer stations. The resulting loss of *net operating revenue* is shown in the following table:

Net Impact on Metro's Operations Revenue in the Event that 5,000 Tons are Diverted from Metro Central to PLC III in FY 02-03	
Revenue loss	(\$158,450)
Costs reduced	\$93,337
Net Gain (Loss)	(\$65,113)

Adding together the Regional System Fee losses (\$150,000) and the operating losses (\$65,113), the net revenue shortfall for the Solid Waste Revenue Fund is estimated to be \$215,113 for the full 2002-03 fiscal year. The corresponding shortfall in future years should be recovered through the annual rate setting process.

Impact on the General Fund

Under this scenario, approval of the license would also result in the loss of the excise tax of \$6.39 per ton on the 10,000 tons that are now assumed will be recovered at PLC III. This translates to a \$63,900 loss of expected General Fund revenues. Of this \$63,900, \$10,000 is dedicated to the Parks program. There

would be no corresponding reductions in budgeted General Fund expenditures as a result of granting this license.

Outside of the \$10,000 loss to Parks, granting this license would have no impact on the ability of excise tax revenues in FY 02-03 to cover other budgeted general fund expenditures. However, there could be a potential \$53,900 reduction (\$63,900 minus \$10,000) in the projected ending balance in the Recycling Rate Stabilization reserve.

The per-ton excise tax rate is recalculated for each successive year to help make up for any unanticipated solid waste excise tax losses in the previous year. However, as a \$1 per ton add-on, the Parks tax is not a part of the annual rate recalculation; therefore, the unanticipated \$10,000 shortfall to Parks will reduce Parks revenue in future years.

Summary of Net Revenue Impacts

<u>Fund</u>	<u>Scenario</u>
	5,000 tons diverted from landfills, plus 5,000 tons diverted from Metro transfer stations
Solid Waste Fund	
Regional System Fee	\$150,000
Disposal operations	<u>\$65,113</u>
Total, Solid Waste Fund	\$215,113
General Fund	
Parks	\$10,000
Recycling Rate Stabilization (ending balance)	\$53,900
Total, General Fund	<u>\$63,900</u>
Total Net Revenue Impact	\$279,013
 <i>Total impact per diverted ton</i>	 <i>*\$55.80</i>

*This \$55.80 per ton is the combined effect of diverting 5,000 tons from a privately owned landfill (\$21.39 per ton) and 5,000 tons from a Metro owned facility (\$34.41 per ton) to a facility that exclusively takes source-separated recyclable materials. The high per-ton impact of the tonnage diverted from Metro stems from the relatively minor increase in marginal operating costs at Metro's transfer station and the major loss of revenue due to Metro's policy to forego all fees and taxes from recovered materials. If the tonnage were instead diverted to a local transfer station, where recovery rates are substantially less than 100%, then Metro would continue to collect fees and taxes on most of the tonnage; hence, the per-ton impact would be reduced.

RECOMMENDED ACTION

The Executive Officer recommends approval of Resolution No. 02-3225, granting a Solid Waste Facility License to PLC for the operation of Pacific Land Clearing and Recycling Center III. The facility is

subject to the terms and conditions incorporated into the license document attached as "Exhibit A" to Resolution No. 02-3225.

In addition, the Executive Officer recommends that the Metro Council condition the issuance of this license on the applicant providing acceptable, final proof of financial assurance and an operating plan approved by the Executive Officer within 60 days of approval of this resolution. In the event the license is not issued within 60 days of the date of approval of this resolution, then this application should be deemed denied.

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Agenda Item Number 7.1

Resolution No. 02-3222, For the Purpose of Authorizing the Executive Officer to Purchase a 31-acre parcel owned by Ramsey Family in the Forest Park Expansion Target Area

Executive Session

Metro Council Meeting
Thursday, September 19, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)
THE EXECUTIVE OFFICER TO PURCHASE)
A 31-ACRE PARCEL OWNED BY THE)
RAMSEY FAMILY IN THE FOREST PARK)
TARGET AREA)

RESOLUTION NO. 02-3222
Introduced by Mike Burton,
Executive Officer

WHEREAS, in July 1992, Metro completed the Metro Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements; and

WHEREAS, in November 1995 the Metro Council adopted the Open Space Implementation Work Plan, which provided for Early Acquisition; and

WHEREAS, the Metro Council authorized the Executive Officer on December 14, 1995, via Resolution 95-2255, to purchase two separate parcels of land consisting of 73 and 50 acres, and owned by the Ramsey family (collectively "the Ramsey Properties"), subject to the terms and conditions of the proposed Purchase and Sale Agreement drafted at that time; and

WHEREAS, on February 15, 1996, via Resolution 96-2274A, the Metro Council adopted a refinement plan for the Forest Park regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, the Forest Park target area refinement plan identifies the Ramsey Properties as Tier 1A properties for acquisition; and

WHEREAS, in April 1999, Metro acquired the 73-acre portion of the Ramsey Properties as specifically authorized by Resolution 99-2757 ("For the Purpose of Authorizing the Executive Officer to Purchase Properties in the Forest Park Expansion Target Area"); and

WHEREAS, on June 11, 2002, Metro and the Ramsey Family members executed an Agreement of Purchase and Sale (the "Agreement"), subject to approval of the Metro Council, whereby Metro would purchase 31-acres (as described in Exhibit A hereto) out of the 50 acres originally contemplated by Resolution 95-2255, subject to the terms and provisions of the Agreement; and

WHEREAS, the Open Spaces Implementation Work Plan was amended by the Metro Council on January 9, 1997, via Resolution 96-2424; and

WHEREAS, the purchase of land with terms or provisions that vary from those required in the amended Open Spaces Implementation Plan creates an "unusual circumstance" for Metro's proposed acquisition of the site; and

WHEREAS, the Agreement of Purchase and Sale to purchase the 31-acre Ramsey Property includes certain "unusual circumstances"; and

WHEREAS, the Open Spaces Implementation Work Plan requires Metro Council's specific approval for acquisitions which involve an "unusual circumstance"; and

WHEREAS, on September 27, 2001, the Metro Council approved Resolution 01-3106, modifying the Open Spaces Implementation Work Plan to require specific Metro Council approval of all acquisitions in target areas where minimum acreage goals have been met; and

WHEREAS, Metro has exceeded the minimum 320-acre goal established for the Forest Park target area, and therefore purchase of the 31-acre Ramsey Property requires Metro Council authorization pursuant to Council Resolution 01-3106, now therefore;

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to purchase the 31-acre Ramsey Property in the Forest Park target area, as identified in Exhibit A, subject to the terms and conditions of the Agreement of Purchase and Sale.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

EXHIBIT "A"
Legal Description
Resolution No. 02-3222

AMENDED LEGAL DESCRIPTION:

A portion of Parcel 3, PARTITION PLAT 1997-221, lying in Sections 3, 4, 9 and 10, Township 1 North, Range 1 West of the Willamette Meridian, in the County of Multnomah and State of Oregon, being more particularly described as follows:

Beginning at the Northeast corner of Parcel 3, PARTITION PLAT 1997-221, Multnomah County Records; thence South 60°00'05" West along the North line of said Parcel 3, a distance of 2,167.80 feet to the Northwest corner thereof; thence South 17°35'53" West along the Westerly line of Parcel 3, a distance of 126.04 feet to a 5/8 inch iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC."; thence leaving said Westerly line North 60°00'05" East 571.71 feet to a 5/8 inch iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC."; thence South 30°07'05" East 560.15 feet to a 5/8 inch iron rod with a yellow plastic cap marked "L. JERRY KEENON PLS 1080" at the Northeast corner of that tract of land described in Deed Book 1999, Page 1594, Multnomah County Deed Records and recorded April 27, 1987; thence continuing South 30°07'05" East 150.00 feet to a 5/8 inch iron rod with a yellow plastic cap marked "L. JERRY KEENON PLS 1080" at the Southeast corner of said tract of land described in Deed Book 1999, Page 1594, Multnomah County Deed Records, said point being the most Southerly Southwest corner of said Parcel 3; thence North 59°52'55" East along the Southerly line of said Parcel 3, a distance of 1603.24 feet to the Southeast corner thereof; thence North 23°54'40" West 796.30 feet to the point of beginning.

Staff Report

CONSIDERATION OF RESOLUTION NO. 02-3222 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE A 31-ACRE PARCEL OWNED BY THE RAMSEY FAMILY IN THE FOREST PARK TARGET AREA

Date: September 5, 2002

Presented by: Dan Cooper
Charles Ciecko
Jim Desmond

Description

Resolution No. 02-3222 requests authorization for the Executive Officer to purchase the 31-acre property owned by the Ramsey family ("the Property") in the Forest Park target area.

Existing Law

In May 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements.

On December 14, 1995, via Resolution 95-2255 ("For the Purpose of Authorizing the Executive Officer to Enter a Purchase and Sale Agreement to Purchase Property within the Forest Park Regional Target Area"), the Metro Council authorized purchase of properties in the Forest Park target area owned by the Ramsey family. These properties are inholdings in Forest Park, and were authorized for purchase as Early Acquisition Opportunities under the adopted Open Spaces Implementation Plan and prior to adoption of the Forest Park refinement plan. The properties were two tax lots (73 acres and 50 acres) totaling approximately 123 acres. Metro acquired the 73-acre piece on April 19, 1999, which acquisition was specifically authorized by Council Resolution 99-2757 ("For the Purpose of Authorizing the Executive Officer to Purchase Properties in the Forest Park Expansion Target Area").

On February 9 1996, via Resolution 96-2274A ("For the Purpose of Approving a Refinement Plan for the Forest Park Target Area as Outlined in the Open Space Implementation Work Plan"), the Metro Council adopted a refinement plan that outlined a land protection strategy for the Forest Park regional target area. One objective of the plan is to protect inholdings in Forest Park and the Ramsey properties were identified as Tier 1 acquisitions.

An agreement with the Ramsey family to purchase the Property was not reached in 1995, nor in 1999, and Metro has continued to negotiate with the Ramsey family throughout the past seven years. Now the Ramsey family is a willing seller for 31 acres and Metro has negotiated a signed Agreement of Purchase and Sale for the Property.

On September 27, 2001, the Metro Council adopted Resolution 01-3106, which modifies the Open Spaces Implementation Work Plan and requires that the Metro Council formally authorize all acquisitions in target areas where minimum acreage goals, established in the bond measure, have been met.

The Resolution proposes to approve an unusual circumstance purchase, and to authorize the purchase of the Property subject to the terms of the Agreement of Purchase and Sale executed by the Property owners and Metro. Moreover, since Metro has exceeded the minimum 320-acre goal established for the Forest Park target area, the purchase of the Property also requires Metro Council authorization pursuant to

Resolution 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties that Satisfy Specific Identified Criteria").

Background and Unusual Circumstances

Metro has entered into an Agreement with the owner, members of the Ramsey family, to purchase the Property, which consists of 31 acres out of the larger acreage originally discussed, east of Skyline Road and surrounded on three sides by Forest Park in northwest Portland.

The Property has significant stands of marketable timber and, from a location and habitat perspective, is an integral part of Forest Park, although privately owned.

The Property is currently part of a larger 43-acre tax lot. The 31-acre Property will be segregated into a new separate legal tax lot pursuant to a lot line adjustment into the City of Portland's adjacent 50-acre parcel, thus creating an 81-acre tax lot.

While Metro will be paying all of the purchase price for the Property, Metro and the City of Portland will share title to the newly created 81-acre tax lot with Metro holding a 31/81 interest in the combined 81-acre piece and the City of Portland owning a 50/81 interest in the combined 81-acre piece. Metro did not pay any portion of the purchase price for the 50-acre piece held by the City.

The Property and the 50-acre parcel currently owned by the city would both be operated and managed by the City as part of Forest Park. This shared title arrangement to effect the lot line adjustment may constitute an "unusual circumstance" under the Open Spaces Work Plan.

The additional "unusual circumstance" is that the appraisal for the Property is out of date. The Property was appraised in November 1997. The purchase price in the Agreement is 39% higher than the appraised value from five years ago, representing an annual increase of slightly less than 5%. Assuming a 5% annual increase would be consistent with general market trends for vacant land in northwest Portland, according to Metro's review appraiser Craig Zell. The current owners would not be a willing seller at any price less than the negotiated purchase price; therefore, staff did not deem it advisable to purchase a current appraisal, which could be obtained only at a significant cost to the public.

The Property includes high quality habitat and as a major inholding in Forest Park, has long been considered one of the highest acquisition priorities anywhere within the City of Portland. Acquisition of the Property would meet various Tier 1 objectives of the Forest Park target area refinement plan.

Resolution 99-2757 authorized the purchase of the Property, but, at that time, the unusual circumstances were not anticipated and it was intended that Metro would obtain a conservation easement over approximately 19 additional acres to be retained by the sellers. Council approval is, therefore, now required to reflect the terms of the current Agreement.

Findings

Acquisition of the Property in the Forest Park target area is recommended based on the following:

- The Ramsey property, along with the other holdings of the Ramsey family, are identified in the Forest Park refinement plan as Tier 1 properties.

- These acquisitions have extraordinary public support, including that of the Friends of Forest Park and the City of Portland.
- The Ramsey family is a willing seller.
- This acquisition, on these terms, was recommended by the Real Estate Acquisition Committee, which met in September 2002.

Budget Impact

Bond funds would supply acquisition money. Landbanking costs are expected to be zero, since the properties will be managed by the City of Portland under an intergovernmental agreement.

Outstanding Questions

None

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 02-3222.

MINUTES OF THE METRO COUNCIL MEETING

Thursday, September 12, 2002
Metro Council Chamber

Councilors Present: Carl Hosticka (Presiding Officer), Susan McLain, Rod Park, Bill Atherton, David Bragdon, Rod Monroe, Rex Burkholder

Councilors Absent:

Presiding Officer Hosticka convened the Regular Council Meeting at 2:04 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Art Lewellan, 3205 SE 8th #9 Portland OR 97202, commented on his last two presentations. He had received responses from citizens who had seen his citizen communications on cable television. He summarized those comments and said that political debate was healthy. The topics included a discussion on infill, river debris and cleanup. He talked about access to the Willamette River. Presiding Officer Hosticka asked where this access would be. Mr. Lewellan responded, by the Hawthorne Bridge.

3. PORT OF PORTLAND COMMODITY FORECAST PRESENTATION

Andy Cotugno gave an overview of the history of the project. They were interested in freight related movement. He felt it was useful to better understand economic and transportation characteristics of where commodities moved.

Susie Lahsene, Port of Portland Transportation Manager introduced Paul Brigham, Project Manager. She talked about the sponsors and goals of the project. She gave an overview of the forecast sections.

Paul Bingham, Port of Portland Project Manager, gave a power point presentation on the Forecast Summary Commodity Flow Forecast Update and Lower Columbia River Cargo Forecast (a copy of which is found in the meeting record). He started with the big picture issues effecting freight demand. He spoke to the economy of the past 5 years and expectation of the next five years. He then reviewed the characteristics of long-term projections for the U.S. Economy. Exports and imports had declined because of the recession. Trade will continue to increase. He talked about National Commodity Flow Context. There would be an increasing importance of freight transport, a need for better service, faster modes. There would also be a growth in the demand for food, energy and construction materials. They expected to see a doubling of national tonnage volume within the next 30 years. He also noted that growth in the west would be faster than the national average.

He continued with factors affecting Portland/Vancouver commodity shipping including the port's position on the west coast and reductions in export capacity. He talked about the varying growth in China, India, Japan, Korea and other areas of Asia and its impacts on imports and exports to our region. He clarified the kinds of goods being exported and imported.

He then briefed the Council on the long-term projections for Portland/Vancouver. Modal share of Portland/Vancouver regional tonnage growth, the region's tonnage growth by mode, commodity share of Portland/Vancouver region tonnage, and projections of top tonnage growth commodities over the next 30 years were included in his presentation. He noted risks to the forecasts which included terrorist attacks, oil crisis, war, enronitis spreading further, Japan's financial crisis, contagion from Argentina, and double-dip recession. He focused on questions the region should address including: adequate capacity to meet increasing demands, regional transportation links and future economic requirements, freight impact of new industries and the handling of new cargo due to new transportation services or improved frequencies of service.

Councilors asked clarifying questions about the presentation including: exports and imports issues, ties to the Pacific Rim, goods being traded, freight movement, impacts of deepening of the channel, rate of growth impacts, Oregon Department of Transportation land use and transportation model as compared to Metro's model, economic forecasts over the past five years, capture rates, forecast base and commodity classifications.

Scott Drumm, Port of Portland, added this was the third time that the Port had partnered with others for this forecast. The study was receiving national attention.

Mr. Bingham said the big picture had not changed. Councilor Bragdon made some helpful suggestions on what should be included in future presentations. Mr. Bingham acknowledged those suggestions and talked about the details behind the study. Councilor Bragdon clarified what would be useful to policy makers. Councilor Park asked about impacts by mode and about mode shift. Was it significant? Mr. Bingham said in real terms energy prices were still very low. If there were higher sustained increased energy costs, there may be mode shifts. Councilor Park clarified his questions. Councilor Atherton talked about energy cost risks. Mr. Bingham said there was a shift to fuel efficiency vehicles in the United States. The percentage of fossil fuel from middle-eastern imports to the US was smaller than it had been. We got more of our fuel from South America now. Councilor Monroe asked about barging and channel deepening.

Councilor Burkholder suggested that they talk about other questions the region should address. He talked about impact on roads, how much does the public pay for efficiency, what were the trade-off, and how did they capture the value of tonnage. Mr. Bingham spoke to the benefits of pass through traffic. Councilor Burkholder talked about local government needs, funding, land use needs, and access. Councilor Bragdon added a question the region should address: relationship between private and public sector transportation.

Mr. Bingham concluded his remarks by talking about possible funding mechanisms. Councilor McLain suggested having some comparisons to other ports in the report.

4. MPAC COMMUNICATIONS

Presiding Officer Hosticka said MPAC would be meeting tonight. Councilor Park said they would be looking at housing and jobs issues. MTAC would bring forward their recommendations on the Urban Growth Report. Taxi regulation would also be discussed.

5. CONSENT AGENDA

5.1 Consideration of minutes of the September 5, 2002 Regular Council Meeting.

Motion	Councilor Bragdon moved to adopt the meeting minutes of the September 5, 2002, Regular Council meeting
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Vote:	Councilors Bragdon, Monroe, Park, Burkholder, McLain and Presiding Officer Hosticka voted aye. The vote was 6 aye with Councilor Atherton abstaining from the vote, the motion passed.
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6. ORDINANCES – FIRST READING

6.1 Ordinance No. 02-961, An ordinance Confirming the Annual Readoption of Metro Code 2.06 (Investment Policy); and Declaring an Emergency.

Presiding Officer Hosticka assigned Ordinance No. 02-961 to the Budget and Finance Committee.

7. RESOLUTIONS

7.1 Resolution No. 02-3212, For the Purpose of Confirming the Appointments Ela Whelan, John Nagy and Rick Gruen to the Water Resources Policy Advisory Committee.

Motion	Councilor Atherton moved to adopt Resolution No. 02-3212.
Seconded:	Councilor McLain seconded the motion

Councilor Atherton reviewed the resolution. Natural Resources Committee unanimously recommended approval. He urged an aye vote.

Vote:	Councilors Bragdon, Atherton, Monroe, Park, Burkholder, McLain and Presiding Officer Hosticka voted aye. The vote was 7 aye, the motion passed.
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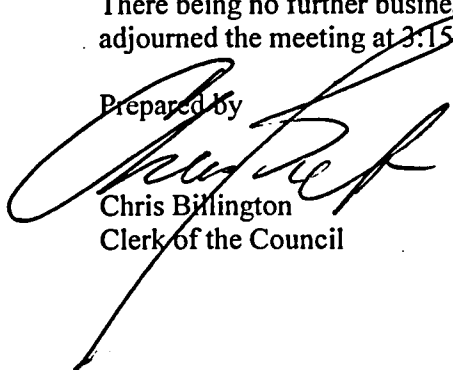
8. COUNCILOR COMMUNICATION

There were none.

9. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 3:15 p.m.

Prepared by



Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF SEPTEMBER
12, 2002**

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
5.1	MINUTES	9/5/02	METRO COUNCIL MINUTES OF SEPTEMBER 5, 2002 SUBMITTED FOR APPROVAL	091202C-01
3	POWER POINT PRESENTATION	SEPT 2002	TO: METRO COUNCIL FROM: PAUL BINGHAM, PORT OF PORTLAND POWER POINT PRESENTATION ON FORECAST SUMMARY COMMODITY FLOW FORECAST UPDATE AND LOWER COLUMBIA RIVER CARGO FORECAST	091202C-02
7.1	COMMITTEE REPORT	5/10/02	TO: METRO COUNCIL FROM: MICHAEL MORRISSEY, COUNCIL ANALYST COMMITTEE REPORT ON RESOLUTION No. 02-3212	091202C-03

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE SECTIONS 3.01.015, 3.01.025, 3.01.065 AND 3.09.050 TO ALLOW EXPANSION OF THE URBAN GROWTH BOUNDARY ONTO LAND OUTSIDE THE DISTRICT PRIOR TO ANNEXATION ON CONDITION THAT THE TERRITORY BE ANNEXED PRIOR TO URBANIZATION; AND DECLARING AN EMERGENCY

ORDINANCE NO. 02-964

Introduced by Councilor Park

WHEREAS, sections 3.01.015, 3.01.025, 3.01.065 and 3.09.050 of the Metro Code require annexation of territory to the Metropolitan Service District prior to its inclusion within the urban growth boundary; and

WHEREAS, this requirement causes Metro and the Metro Council to undertake a duplicative, time-consuming and expensive sequence of procedures in order to amend the urban growth boundary; and

WHEREAS, this requirement prevents the Metro Council from taking timely final action to amend the urban growth boundary in a legislative process, which may delay compliance with state planning laws; and

WHEREAS, the policy objective to ensure that urbanization does not precede annexation of territory to the district can be accomplished by conditioning urbanization of territory added to the urban growth boundary upon annexation to the district; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Section 3.01.015 of the Metro Code is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, to remove the requirement that the Metro Council annex territory to the district prior to inclusion of the territory in the urban growth boundary, and to establish a new requirement that the local government with land use jurisdiction over the territory agree to limit urbanization of the territory until the Council annexes it.
2. Section 3.01.025 of the Metro Code is hereby amended, as indicated in Exhibit B, attached and incorporated into this ordinance, to remove the requirement that any application for a major amendment to the urban growth boundary be accompanied by a petition for annexation to the district.
3. Section 3.01.065 of the Metro Code is hereby amended, as indicated in Exhibit C, attached and incorporated into this ordinance, to remove the requirement that the Council adopt a resolution expressing intent to include territory in the urban growth boundary prior to inclusion in the boundary by major amendment or minor adjustment.

4. Section 3.09.050 of the Metro Code is hereby amended, as indicated in Exhibit D, attached and incorporated into this ordinance, to conform it to amendments made by sections 1, 2 and 3 of this ordinance.

5. Section 3.07.1120 of the Metro Code is hereby amended, as indicated in Exhibit E, attached and incorporated in this ordinance, to ensure comprehensive plans provide for annexation of territory to the district prior to urbanization if the territory is not part of the district at the time it is added to the urban growth boundary.

6. The Findings of Fact and Conclusions of Law in Exhibit F, attached and incorporated into this ordinance, demonstrate that the ordinance complies with the Regional Framework Plan and the statewide planning goals.

7. This ordinance is necessary for the immediate preservation of public health, safety and welfare because Metro must, under ORS 197.296, 197.296(6) and 197.628 through 197.650, provide a 20-year supply of buildable land for needed housing within its urban growth boundary by December 20, 2002. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this ____ day of _____, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A to Ordinance No. 02-964

3.01.015 Legislative Amendment Procedures

- (a) The process for determination of need and location of lands for amendment of the UGB is provided in section 3.01.020.
- (b) Notice shall be provided as described in section 3.01.050.
- (c) The Council shall initiate Legislative Amendments when it determines pursuant to Goal 14 and section 3.01.020 that there is a need to add land to the Urban Growth Boundary.
- (d) Before adopting any legislative amendment, Metro shall consult with cities, counties and MPAC to determine which cities and counties, if any, are prepared to initiate comprehensive plan amendments for urban reserve areas, if they are included, within the Urban Growth Boundary.
- (e) Where a city or county has adopted comprehensive plan amendments for an urban reserve area pursuant to section 3.01.012(c), the Metro Council shall rely upon the planned status of that urban reserve in considering applicable criteria.
- (f) Legislative amendment decisions shall be based upon substantial evidence in the decision record which demonstrates how the amendment complies with applicable state and local law and statewide goals as interpreted by section 3.01.020.
- (g) The following public hearings process shall be followed for legislative amendments:
 - (1) The district council shall refer a proposed amendment to the appropriate council committee at the first council reading of the ordinance.
 - (2) The committee shall take public testimony at as many public hearings as necessary. At the conclusion of public testimony, the committee shall deliberate and make recommendations to the council.
 - (3) The council shall take public testimony at its second reading of the ordinance, discuss the proposed amendment, and approve the ordinance with or without revisions or conditions, or refer the proposed legislative amendment to the council committee for additional consideration.

- (4) Testimony before the council or the committee shall be directed to Goal 14 and Goal 2 considerations interpreted at section 3.01.020 of this chapter.
- [(5) Prior to the council acting to approve a legislative amendment, including land outside the district, the council shall annex the territory to the district. The annexation decision shall be consistent with the requirements of section 3.09.120 of this code. If the annexation decision becomes the subject of a contested case pursuant to chapter 3.09 of this code, the Legislative amendment to the Urban Growth Boundary shall not be approved until the contested case is either withdrawn or the annexation is approved by the Boundary Appeals Commission, whichever occurs first.]

(h) The council may approve expansion of the UGB to include land outside the district only upon a written agreement with the local government that exercises land use planning authority over the subject land that the local government will apply the interim protection requirements set forth in section 3.07.1110 of the Metro Code to that land until Metro annexes the land to the district. A city or county may approve an amendment to its comprehensive plan, pursuant to section 3.07.1120 of the Metro Code so long as the amendment does not become applicable to the subject land until Metro annexes that land to the district.

Exhibit B to Ordinance No. 02-964

3.01.025 Major Amendment Procedures

(a) A city, a county, a special district or a property owner may file an application for a major amendment to the UGB on a form provided for that purpose. The Executive Officer will accept applications for major amendments between February 1 and March 15 of each calendar year except that calendar year in which the Metro Council is completing its five-year analysis of buildable land supply under ORS 197.299(1). After receipt of a complete application, the Executive Officer will set the matter for a public hearing and provide notice to the public in the manner set forth in sections 3.01.050 and 3.01.055.

(b) The Executive Officer will determine whether the application is complete and notify the applicant of its determination within seven working days after the filing of an application. If the application is not complete, the applicant shall revise it to be complete within 14 days of notice of incompleteness from the Executive Officer. The Executive Officer will dismiss an application and return application fees if it does not receive a complete application within 14 days of its notice.

(c) Upon a request by a Metro councilor and a finding of good cause, the Metro Council may, by a two-thirds vote of the full Council, waive the filing deadline for an application.

(d) Except for that calendar year in which the Metro Council is completing its five-year analysis of buildable land supply, the Executive Officer shall give notice of the March 15 deadline for acceptance of applications for major amendments not less than 120 calendar days before the deadline and again 90 calendar days before the deadline in a newspaper of general circulation in the district and in writing to each city and county in the district. A copy of the notice shall be mailed not less than 90 calendar days before the deadline to anyone who has requested notification. The notice shall explain the consequences of failure to file before the deadline and shall specify the Metro representative from whom additional information may be obtained.

(e) The Executive Officer shall submit a report and recommendation on the application to the hearings officer not less than 21 calendar days before the hearing. The Executive Officer shall send a copy of the report and recommendation simultaneously to the applicant and others who have requested copies. Any subsequent report by the Executive Officer to be used at the hearing shall be available at least seven days prior to the hearing.

(f) An applicant shall provide a list of names and addresses of property owners for notification purposes, consistent with section 3.01.055, when submitting an application. The list shall be certified in one of the following ways:

- (1) By a title company as a true and accurate list of property owners as of a specified date; or
- (2) By a county assessor, or designate, pledging that the list is a true and accurate list of property owners as of a specified date; or
- (3) By the applicant affirming that the list is a true and accurate list as of a specified date.

(g) An applicant may request postponement of the hearing to consider the application within 90 days after filing of the application. The Executive Officer may postpone the hearing for no more than 90 days. If the Executive Officer receives no request for rescheduling within 90 days after the request for postponement, the application shall be considered withdrawn and the Executive Officer shall return the portion of the fee deposit not required for costs assessed pursuant to 3.01.045.

(h) Position of City or County:

- (1) Except as provided in paragraph (4) of this section, an application shall not be considered complete unless it includes a written statement by the governing body of each city or county with land use jurisdiction over the area included in the application that:
 - (A) Recommends approval of the application;
 - (B) Recommends denial of the application; or
 - (C) Makes no recommendation on the application.
- (2) Except as provided in paragraph (4) of this subsection, an application shall not be considered complete unless it includes a written statement by any special district that has an agreement with the governing body of any city or county with land use jurisdiction over the area included in the application to provide an urban service to the area that:
 - (A) Recommends approval of the application;
 - (B) Recommends denial of the application; or
 - (C) Makes no recommendation on the application.
- (3) If a city, county or special district holds a public hearing to consider an application, it shall:

- (A) Provide notice of such hearing to the Executive Officer and any city or county whose municipal boundary or urban planning area boundary abuts the area; and
 - (B) Provide the Executive Officer with a list of the names and addresses of persons testifying at the hearing and copies of any exhibits or written testimony submitted for the hearing.
- (4) Upon request by an applicant, Executive Officer shall waive the requirements of subsections (1) and (2) of this section if the applicant shows that the local government has a policy not to comment on such applications or that a request for comment was filed with the local government or special district at least 120 calendar days before the request and the local government or special district has not yet adopted a position on the application. The governing body of a local government may delegate the decisions described in paragraphs (1) and (2) of this subsection to its staff.
- (i) Applications involving land outside district boundary:
- (1) An application to expand the UGB to include land outside the district shall not be accepted unless accompanied by a copy of a petition for annexation to the district.
 - (2) A city or county may approve a plan or zone change to implement the proposed amendment prior to a change in the district UGB if:
 - (A) The Executive Officer receives notice of the local action;
 - (B) The local action is contingent upon subsequent action by the Metro Council to amend its UGB; and
 - (C) The local action to amend the local plan or zoning map becomes effective only if the Metro Council amends the UGB consistent with the local action.
 - (3) If the Metro Council approves the application, the local government shall amend its plan or map within one year to be consistent with the amendment.]
- (i) The council may approve expansion of the UGB to include land outside the district only upon a written agreement with the local government that exercises land use planning authority over the subject land that the local government will apply the interim

protection requirements set forth in section 3.07.1110 of the Metro Code until Metro annexes the subject land to the district. A city or county may approve an amendment to its comprehensive plan, pursuant to section 3.07.1120 of the Metro Code so long as the amendment does not become effective until Metro annexes the subject land to the district.

(j) The proposed amendment to the UGB shall include the entire right-of-way of an adjacent street to ensure that public facilities and services can be provided to the subject property by the appropriate local government or service district in a timely and efficient manner.

Exhibit C to Ordinance No. 02-964

3.01.065 Council Action On Quasi-Judicial Amendments

(a) The council may act to approve, remand or deny an application in whole or in part. When the council renders a decision that reverses or modifies the proposed order of the hearings officer, then, in its order, it shall set forth its findings and state its reasons for taking the action.

(b) Parties to the case and the hearings officer shall be notified by mail at least 10 calendar days prior to council consideration of the case. Such notice shall include a brief summary of the proposed action, location of the hearings officer report, and the time, date, and location for council consideration.

(c) Final council action following the opportunity for parties to comment orally to council on the proposed order shall be as provided in Code section 2.05.045. Parties shall be notified of their right to review before the Land Use Board of Appeals pursuant to 1979 Oregon Laws, chapter 772.

(d) Comments before the council by parties must refer specifically to any arguments presented in exceptions filed according to the requirements of this chapter, and cannot introduce new evidence or arguments before the council. If no party to the case has filed an exception, then the council shall decide whether to entertain public comment at the time that it takes final action on an application.

(e) Within 20 days from the day that the proposed order and findings of the hearings officer are mailed to them, parties may file a motion to reopen the record to receive admissible evidence not available at the hearing. The motion shall show proof of service on all parties. The council shall rule on such motions with or without oral argument at the time of its consideration of the case. An order approving such a motion to reopen the record shall remand the case to the hearings officer for evidentiary hearing. When the council or the hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(f) When the council acts to approve an application [in whole or in part by requiring] with a condition that requires annexation to a city [and/or], a service district[(s) and] or Tri-Met [and whenever an application includes land outside the district]:

- (1) Such action shall be by resolution expressing intent to amend the UGB if and when the affected property is annexed to the city, the district or Tri-Met within six months of the date of adoption of the [R]resolution.

- (2) The council shall take final action, as provided for in paragraphs (c) and (d) of this section, within 30 calendar days of notice that all required annexations [to a city, service district(s) and the district] have been approved.

(g) When the council is considering an ordinance to approve an application, it shall take all public comment at its first reading of the ordinance, discuss the case, and then either pass the ordinance to second reading or remand the proposed order and findings of the hearings officer to the executive officer or the hearings officer for new or amended findings. If new or amended findings are prepared, parties to the case shall be provided a copy of the new order and findings by mail no less than seven calendar days prior to the date upon which the council will consider the new order and findings, and parties will be given the opportunity to provide the council with oral or written testimony regarding the new order and findings.

Exhibit D to Ordinance No. 02-964

3.09.050 Uniform Hearing and Decision Requirements for Final Decisions Other Than Expedited Decisions

(a) The following minimum requirements for hearings on boundary change decisions operate in addition to all procedural requirements for boundary changes provided for under ORS chapters 198, 221 and 222. Nothing in this chapter allows an approving entity to dispense with a public hearing on a proposed boundary change when the public hearing is required by applicable state statutes or is required by the approving entity's charter, ordinances or resolutions.

(b) Not later than 15 days prior to the date set for a boundary change decision, the approving entity shall make available to the public a report that addresses the criteria in subsections (d) and (g) below, and that includes at a minimum the following:

- (1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;
- (2) A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;
- (3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;
- (4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (5) The proposed effective date of the decision.

(c) In order to have standing to appeal a boundary change decision pursuant to section 3.09.070 a necessary party must appear at the hearing in person or in writing and state reasons why the necessary party believes the boundary change is inconsistent with the approval criteria. A necessary party may not contest a boundary change where the boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065. At any public hearing, the persons or entities proposing the boundary change shall have the burden to prove that the petition meets the criteria for a boundary change.

(d) An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:

- (1) Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;
- (2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;
- (3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;
- (4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;
- (5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;
- (6) [If the proposed boundary change is for annexation of territory to Metro, a determination by the Metro Council that t]The territory [should be included in] lies within the Urban Growth Boundary [shall be the primary criterion for approval]; and
- (7) Consistency with other applicable criteria for the boundary change in question under state and local law.

(e) When there is no urban service agreement adopted pursuant to ORS 195.065 that is applicable, and a boundary change decision is contested by a necessary party, the approving entity shall also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of sections 3.09.050(d) and (g). The findings and conclusions adopted by the approving entity shall explain how these factors have been considered.

- (1) The relative financial, operational and managerial capacities of alternative providers of the disputed urban services to the affected area;
- (2) The quality and quantity of the urban services at issue with alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers;

- (3) Physical factors related to the provision of urban services by alternative providers;
- (4) For proposals to create a new entity the feasibility of creating the new entity.
- (5) The elimination or avoidance of unnecessary duplication of facilities;
- (6) Economic, demographic and sociological trends and projections relevant to the provision of the urban services;
- (7) Matching the recipients of tax supported urban services with the payers of the tax;
- (8) The equitable allocation of costs to alternative urban service providers between new development and prior development; and
- (9) Economies of scale.
- (10) Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria of section 3.09.050(d) considering factors (1) through (9) above.

(f) A final boundary change decision by an approving entity shall state the effective date, which date shall be no earlier than 10 days following the date that the decision is reduced to writing, and mailed to all necessary parties. However, a decision that has not been contested by any necessary party may become effective upon adoption.

(g) Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.

Exhibit E to Ordinance No. 02-964

3.07.1120 Urban Growth Boundary Amendment Urban Reserve Plan Requirements

All territory added to the Urban Growth Boundary as either a major amendment or a legislative amendment pursuant to Metro Code chapter 3.01 shall be subject to adopted comprehensive plan provisions consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan and in particular this Title 11. The comprehensive plan provisions shall be fully coordinated with all other applicable plans. The comprehensive plan provisions shall contain an urban growth plan diagram and policies that demonstrate compliance with the RUGGO, including the Metro Council adopted 2040 Growth Concept design types. Comprehensive plan amendments shall include:

- A. Provision for annexation to the district and to a city or any necessary service districts prior to urbanization of the territory or incorporation of a city or necessary service districts to provide all required urban services.
- B. Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities which conform to the 2040 Growth Concept Plan design type designation for the area.
- C. Demonstrable measures that will provide a diversity of housing stock that will fulfill needed housing requirements as defined by ORS 197.303. Measures may include, but are not limited to, implementation of recommendations in Title 7 of the Urban Growth Management Functional Plan.
- D. Demonstration of how residential developments will include, without public subsidy, housing affordable to households with incomes at or below area median incomes for home ownership and at or below 80 percent of area median incomes for rental as defined by U.S. Department of Housing and Urban Development for the adjacent urban jurisdiction. Public subsidies shall not be interpreted to mean the following: density bonuses, streamlined permitting processes, extensions to the time at which systems development charges (SDCs) and other fees are collected, and other exercises of the regulatory and zoning powers.
- E. Provision for sufficient commercial and industrial development for the needs of the area to be developed consistent with 2040 Growth Concept design types. Commercial and industrial designations in nearby areas inside the Urban Growth Boundary shall be considered in comprehensive plans to maintain design type consistency.
- F. A conceptual transportation plan consistent with the applicable provision of the Regional Transportation Plan, Title 6 of the Urban Growth Management Functional Plan, and that is also consistent with the protection of natural resources either identified in acknowledged comprehensive plan inventories or as required by Title 3 of the Urban Growth Management Functional Plan. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.

- G. Identification, mapping and a funding strategy for protecting areas from development due to fish and wildlife habitat protection, water quality enhancement and mitigation, and natural hazards mitigation. A natural resource protection plan to protect fish and wildlife habitat, water quality enhancement areas and natural hazard areas shall be completed as part of the comprehensive plan and zoning for lands added to the Urban Growth Boundary prior to urban development. The plan shall include a preliminary cost estimate and funding strategy, including likely financing approaches, for options such as mitigation, site acquisition, restoration, enhancement, or easement dedication to ensure that all significant natural resources are protected.
- H. A conceptual public facilities and services plan for the provision of sanitary sewer, water, storm drainage, transportation, parks and police and fire protection. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.
- I. A conceptual school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.
- J. An urban growth diagram for the designated planning area showing, at least, the following, when applicable:
 - 1. General locations of arterial, collector and essential local streets and connections and necessary public facilities such as sanitary sewer, storm sewer and water to demonstrate that the area can be served;
 - 2. Location of steep slopes and unbuildable lands including but not limited to wetlands, floodplains and riparian areas;
 - 3. General locations for mixed use areas, commercial and industrial lands;
 - 4. General locations for single and multi-family housing;
 - 5. General locations for public open space, plazas and neighborhood centers; and
 - 6. General locations or alternative locations for any needed school, park or fire hall sites.
- K. The plan amendments shall be coordinated among the city, county, school district and other service districts.

Exhibit F to Ordinance No. 02-964
Findings of Fact and Conclusions of Law
Available at a Future Date

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 02-964 FOR THE PURPOSE OF AMENDING METRO CODE SECTIONS 3.01.015, 3.01.025, 3.01.065 AND 3.09.050 TO ALLOW EXPANSION OF THE URBAN GROWTH BOUNDARY ONTO LAND OUTSIDE THE DISTRICT PRIOR TO ANNEXATION ON CONDITION THAT THE TERRITORY BE ANNEXED PRIOR TO URBANIZATION

Date: September 2002

Prepared by: Brenda Bernards
Presented by: Richard Benner

PROPOSED ACTION

Adoption of Ordinance No. 02-964 to amend Metro Code Sections 3.01.015, 3.01.025, 3.01.065 and 3.09.050 in order to allow for the expansion of the Urban Growth Boundary onto land outside of the Metro jurisdictional boundary prior to annexation on the condition that annexation occur prior to urbanization.

BACKGROUND

The current Metro Code provides the following steps for expansion of the Urban Growth Boundary onto lands outside of the Metro jurisdictional boundary:

1. Council adopts a resolution to expand the Urban Growth Boundary.
2. Council annexes the territory into the Metro jurisdictional boundary.
3. Council expands the Urban Growth Boundary to include the newly annexed areas.

This sequence is time-consuming, expensive and often confusing to the participants. More seriously, the sequence may frustrate the Land Conservation and Development Committee's (LCDC) acknowledgement of a legislative expansion to the Urban Growth Boundary undertaken in Task 2 of Metro's periodic review program. It is likely that a legislative expansion will include some lands outside of the Metro jurisdictional boundary. If the expansion has reached only the "resolution to expand" stage, the Land Conservation and Development Committee will not be able to conclude that Metro has complied with state requirements because the expansion will not be final.

PROCESS

In order to resolve this issue, the Metro Code could be amended to allow the Metro Council to expand the Urban Growth Boundary onto lands outside of the jurisdictional boundary and simultaneously amend Title 11 of the Urban Growth Management Functional Plan to require annexation prior to urbanization. This would remove the contingency of annexation upon Urban Growth Boundary expansion and place the contingency on urbanization. Title 11 already imposes a planning contingency on urbanization.

For this solution to be fully effective, the interim protection standards of Title 11 must apply to limit development until the annexation and completion of concept planning requirements are met. While Metro does not have the authority to impose limits on development on land outside its jurisdictional boundary, Metro can condition Urban Growth Expansions on agreement by the

local government to abide by the condition that it apply the interim protections standards prior to annexation into the Metro jurisdictional boundary.

Five amendments to the Metro Code are proposed.

1. Section 3.01.015: remove the requirement that the Metro Council annex lands into the jurisdictional boundary prior to inclusion into the Urban Growth Boundary.
2. Section 3.01.025: remove the requirement that any application for a major amendment to the Urban Growth Boundary be accompanied by a petition for annexation into the jurisdictional boundary.
3. Section 3.01.065: remove the requirement that the Council adopt a resolution expressing intent to include land in the Urban Growth Boundary prior to inclusion in the jurisdictional boundary by major or minor adjustment.
4. Section 3.09.050: conform to the amendments made to Section 3.01.
5. Section 3.07.1120: ensure that local comprehensive plans provide for annexation of land into the Metro jurisdictional boundary at the time the land is added to the Urban Growth Boundary.

BUDGET IMPACT

Adoption of this ordinance has no budget impact.

EXECUTIVE OFFICER'S RECOMMENDATION

It is recommended that the Metro Council adopt the proposed amendments to Sections 3.01.015, 3.01.025, 3.01.065, 3.09.050 and 3.07.1120 of the Metro Code as described above.

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GOVERNMENT AFFAIRS COMMITTEE REPORT

CONSIDERATION OF **RESOLUTION NO. 02-3219**, FOR THE PURPOSE OF CONFIRMING PEGGY COATS TO THE METRO 401(K) EMPLOYEE SALARY SAVINGS PLAN ADVISORY COMMITTEE

Date: 12 September 2002

Presented by: Councilor Monroe

Committee Recommendation: At its September 12, 2002, meeting, the Government Affairs Committee voted 3-0 to recommend Council adoption of Resolution No. 02-3219. Voting in favor: Councilors Monroe, Bragdon, and Burkholder. Voting against: None. Absent: None.

Background: Scott Moss, Assistant Administrative Services Director, presented the staff report. He explained that explained that, according to Resolution 94-1985, which defines how appointments to the Metro Employee Salary Savings Advisory Committee are made, nominees for membership on the Committee are referred by Metro's Executive Officer to Council for confirmation. The 401(K) Employee Salary Savings Plan Advisory Committee monitors and manages Metro's 401(k) plan, and provides information on the plan to Metro employees.

Committee Issues/Discussion: None

Key Public Testimony: None

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION No. 02-3220A
EXECUTIVE OFFICER TO ESTABLISH "THE)	
NORTHERN WILLAMETTE VALLEY HABITAT)	Introduced by Mike Burton,
CONSERVATION FUND" IN PARTNERSHIP)	Executive Officer
WITH THE NATIONAL FISH AND WILDLIFE)	
FOUNDATION)	

WHEREAS, Metro Council adopted the Metropolitan Greenspaces Master Plan in 1992 and the Regional Framework Plan in 1997 that envisioned a cooperative, interconnected regional system of parks, natural areas, trails and greenways for fish, wildlife and people (The Regional System); and

WHEREAS, Achieving the vision of these plans will require a variety of funding strategies including donations from private citizens, foundations and corporations; and

WHEREAS, Successful fundraising efforts typically require the participation of a reputable 501(c)(3) organization; and

WHEREAS, The National Fish and Wildlife Foundation (The Foundation) is a nationally recognized 501(c)(3) non-profit organization with a long history of successful conservation projects and fundraising efforts; and

WHEREAS, The goals of the Foundation are consistent with and complementary to Metro's goals for The Regional System creating a unique opportunity for a partnership; and

WHEREAS, A Memorandum of Agreement (Exhibit A) details the partnership between The Foundation and Metro and establishes the "Northern Willamette Valley Habitat Conservation Fund" to benefit natural resource conservation and education activities on lands included in The Regional System; now therefore,

BE IT RESOLVED

- 1) The Executive Officer is authorized to sign the Memorandum of Agreement (Exhibit A) and implement the provisions of the partnership agreement contained therein.
- 2) The use of Open Space, Parks and Streams Bond funds in the amount of \$200,000 is authorized for eligible capital expenditures as set forth in the Memorandum of Agreement.

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

Exhibit A
Resolution 02-3220A

**Memorandum of Agreement
Metro Regional Services
and
National Fish and Wildlife Foundation
to establish a
“Northern Willamette Valley Habitat Conservation Fund”**

1. Background–Purposes and Objectives

This Memorandum of Agreement (the "Agreement") memorializes the agreement between Metro and the National Fish and Wildlife Foundation (the "Foundation") to establish a joint grant-making "Northern Willamette Valley Habitat Conservation Fund" (the "Fund"), NFWF Project #2002-0008, as a special project of the Foundation. The Fund compliments and enhances the mutually compatible conservation objectives and goals of the Foundation and Metro ("the Partners"), with its primary purpose being to expand upon existing and on-going habitat protection, restoration and conservation education efforts in the metro area of Portland, and to offer a focal point for conservation donations from other private individuals, corporations and other parties with an interest in helping these conservation efforts.

2. Partner description

A. *The Foundation* - The Foundation is a private, 501 (c)(3) non-profit organization established by an Act of Congress in 1984 (P.L. 98-244, as amended, 16 U.S.C. 3701 et seq.), to encourage, accept and administer private gifts for the benefit of, or in conjunction with, various entities to undertake and conduct such activities as will further the conservation and management of fish, wildlife and plant resources for present and future generations through creative and respectful partnerships, sustainable solutions, and better education.

The Foundation has successfully forged on-the-ground public-private partnerships with many federal agencies, state, local, and private donors to implement innovative community-based projects. To date, the Foundation has received over \$150 million in Congressional appropriations and matched it with an additional \$400 million in non-federal funds to invest in over 5,000 conservation projects nationally. Last year, the Foundation received over \$30 million in federal funds matching them with over \$60 million of non-federal funds on a project-by-project basis. The Pacific Northwest Regional Office opened in Portland in fall 2000 to better administer local partnership programs throughout the region and currently manages over 300 active grants in Alaska, Oregon, Washington and Idaho, with over 100 of these projects in Oregon.

B. *Metro Regional Services and Metro Regional Parks and Greenspaces Department* -

Metro is a Metropolitan Service District organized under Article 11, Section 14 of the Oregon Constitution, ORS Chapter 268, and the Home Rule Charter as approved by voters in 1992 and amended in 2000.

Metro's Regional Parks and Greenspaces Department was established in 1994 to pursue the creation of a cooperative, interconnected regional system of parks, natural areas, trails and greenways for fish, wildlife and people as envisioned in the Metropolitan Greenspaces Master Plan (1992) and Metro's Regional Framework Plan (1997) ("The Regional System").

The Regional Parks and Greenspaces Dept. owns and manages approximately 11,000 acres of open space and regional parks throughout the three (3) county Portland Metropolitan Area which provides critical habitat for a diversity of native species, contributes to the protection of air and water quality and provides,

primarily, natural resource dependent recreation and education opportunities to approximately 1.5 million visitors annually. The department provides a wide variety of environmental education programs and has developed an aggressive volunteer program to actively engage citizens of the region in the stewardship of the region's natural resources. Much of the land managed by the dept. (\pm 7,100 acres) has been acquired since 1996 with proceeds from a \$135.6 million bond measure approved by voters in 1995 ("Metro Open Spaces Bond Measure"). Acquired sites provide numerous opportunities to restore and enhance unique habitat types of the Northern Willamette Valley.

The department works closely with federal, state and local governments who own and manage components of The Regional System. Many of these sites offer unique opportunities to enhance natural resource values through cooperative restoration and enhancement projects.

C. Benefit of Joint Venture - The Foundation will assure that national and regional resources of the Foundation will be available to Metro, such as full accounting and auditing of funds received, a long track record and reputation of nationally successful conservation projects, and access to other national and local foundations/donors for funding that may not be easily accessible to Metro or its local government cooperators. Additional funds raised by the Foundation for Metro can be used to co-fund projects. The Foundation will have full responsibility for all office management/staff/and administrative aspects of grant-making, once the grants have been approved as set forth below. For the Foundation, this joint venture will assure that there is a strong local entity to assist with seeking good applicants, and conducting project reviews. By working together, both Metro and NFWF will realize many advantages not otherwise possible.

3. Funding; Projects; Joint Approval; Grants Manager

The Foundation's Board of Directors has approved the Fund for up to \$400,000 for joint grants (and up to an additional \$40,000 for grants administration) at its November 2001 meeting in Tucson, AZ for habitat restoration/protection and environmental/conservation education projects related to The Regional System.

Accordingly, the Foundation will contribute up to \$240,000 to the Fund in July 2002 (from U.S. Fish and Wildlife Service funds) and Metro agrees to contribute \$200,000 of non-federal funds to the Fund at the beginning of its FY 2003 upon receipt of an invoice (the "Metro Contribution"). The parties acknowledge that Metro's financial contribution is from the 1995 Open Space, Parks and Streams Bond Measure and as such is subject to the restrictions and limitations of said measure. The Metro Contribution shall be spent only on properties acquired by Metro with proceeds from the Metro Open Spaces Bond Measure or on acquisitions of properties within "target areas" as set forth in the bond measure and implementing regulations. The Foundation will provide a final programmatic and financial report that documents the expenditures of the Fund on an annual basis, including an accounting of the expenditures of the Metro Contribution. The parties acknowledge that not more than \$40,000 (10% of the total) will be used to administer the joint program. Additional funds may be contributed by the Foundation and/or Metro to the Fund as mutually agreed upon in the future.

A joint Metro/Foundation Grants Committee will be established to assure efficient and inclusive local decision-making regarding projects to be funded. The composition and duties of this committee will be mutually acceptable to the Partners. The Grants Committee shall make a recommendation to the Partners regarding each proposed grant. The Partners shall jointly review the committee recommendation, and no grant shall be awarded without the specific approval of both Partners. The Director for the Foundation's PNW Regional Office, Krystyna Wolniakowski, shall serve as the Partner representative for NFWF, and Charles Ciecko, Metro Regional Parks and Greenspaces Department Director, shall serve as the Partner representative for Metro, in evaluating and approving grants.

Specifically, the types of projects that will be considered for support from the Fund may include:

- A. Restoration and/or enhancement (including project monitoring and evaluation) of unique, rare or threatened habitats located on public or private lands (with protective covenants) that are included in The Regional System. Examples include (but are not limited to) Oregon white oak woodland and savanna, Geyer willow wetland, tidal freshwater wetland and riverine and stream riparian habitat;
- B. Acquisition of conservation easements, timber rights, water rights, fee simple title or other ownership interest when such acquisition is deemed to be directly related to the successful implementation of projects described in "A" above or the Metropolitan Greenspaces Master Plan;
- C. Reintroduction of extirpated species or the restoration of rare, endangered or sensitive species on components of The Regional System;
- D. Suppression, removal and/or eradication of non-native, invasive species on components of The Regional System;
- E. Environmental education which is intended to enhance public understanding and involvement in the stewardship and conservation of native fish and wildlife and the habitat which they require.

The Director for the Foundation's PNW Regional Office, Krystyna Wolniakowski, will serve as the grants manager for administering the grants, after joint approval by the Partners as set forth above.

4. Term of Agreement

This Agreement shall be effective as of the date of the last signature of the parties and shall remain in effect, except as modified or terminated in Section 68 hereof, for five (5) years if funding is available. This Agreement shall be reviewed on an annual basis, at which point the Agreement may be renewed, modified, or terminated according to the interests of the parties.

5. Specific Obligations of the Partners

The Foundation will be responsible for the following aspects of this Agreement:

- A. Establish a segregated interest bearing account within the Foundation to receive and hold the financial resources of the Fund.
- B. Serve as the fiscal agent/program manager for the Fund.
- C. Provide ongoing support and counsel for the development of projects to be funded.
- D. Fundraise and receive funds from federal, corporate, state, and private contributions in the Tri-County Metropolitan area and elsewhere, and manage these funds for the restoration and preservation of habitat and conservation education programs as described in Section 3.
- E. Participate in the establishment of a grants committee per Section 3.
- F. Assist Metro and the committee to develop proposal guidelines and requests for proposals for projects.
- G. Establish (1-2) deadlines per year for accepting proposals.

- H. Facilitate proposal review by the committee and other relevant scientific reviewers.
- I. Negotiate contracts, manage disbursements and other financial details with grantees.
- J. Provide semi-annual financial and programmatic reports to Metro and the committee.
- K. Appoint an individual, the Project Officer, who will represent the Foundation in carrying out its obligations under this Agreement.
- L. Provide funds as set forth above in Section 3, and make additional in-kind contributions of staff and marketing/promotional time as needed, consistent with the availability of staff and financial resources as determined by the Foundation.

Metro will be responsible for the following:

- A. Appoint an individual, the Project Officer, who will represent Metro Regional Parks and Greenspaces Dept., in carrying out its obligations under this Agreement.
- B. Contribute funds as set forth above in Section 3 and make additional in-kind contributions of staff and marketing/promotional time as needed, consistent with the availability of staff and financial resources as determined by Metro.
- C. Develop promotional materials for the public describing the joint program and include a link from Metro website to NFWF website.
- D. Refer other individuals, corporations, and other interested parties wishing to donate funds for urban conservation projects to the Fund.
- E. Identify key areas for project implementation.
- F. Participate in the establishment of a grants committee per Section 3.
- G. Keep the Metro Council informed of progress of the program and provide information on the Fund in its public outreach efforts to the general public as appropriate.
- H. Promote opportunities provided by the Fund to appropriate cooperators in The Regional System which may include federal, state and local governments, non-profit organizations, schools, community groups, watershed councils and private landowners.
- I. Assist with the generation of a prospective donor list and participate in the production of grant applications and donor development.
- J. Provide technical assistance, as staff resources allow, to assure the development and implementation of high quality projects.
- K. Conduct real estate negotiations and due diligence, in accordance with Metro guidelines, with respect to properties or rights to be purchased, if any, with funds from the Metro Contribution.

6. Names/Logos/Promotions

With prior written approval of the other party, Metro and the Foundation may utilize the name or logo of the other party in advertising or other forms of public communication to convey the support of the other party for the Fund. Each party agrees to reproduce the other party's logo accurately and in accordance with any specifications that may be required for the promotional purposes, in accordance with such terms as the parties may specify.

7. Workplan and Timelines

September 30, 2002: Final MOA signed between Metro and the Foundation
Discussion to set up joint proposal review committee
Establish timelines for proposal review committee meetings

October 30, 2002: Establish a segregated interest bearing account at the Foundation/finalize paperwork
Finalize criteria for proposal reviews with Metro

December 2002: First round of proposal reviews.**
Draft a fund-raising plan to attract other donors to the Fund
Write contracts for projects approved**
Draft press releases and other promotional materials for the Fund

January 2003: NFWF submits first quarterly report to Metro

April 2003: Submit second quarterly report to Metro

July 2003: Submit third quarterly report to Metro and submit request for renewal from Metro Council. Design new program for FY 2004.

October 15, 2003 Submit final report to Metro.

**Remaining proposal review schedules will be determined by Metro/NFWF

8. Amendment and Termination

Amendments to this Agreement may be proposed by either party in writing and will become effective upon being reduced to a written instrument, approved by the Metro Council, and being signed by the duly authorized representative of both parties.

This Agreement may be terminated by any party upon 30 days written notice to the other party. If this Agreement is terminated, the Foundation shall return any unobligated funds donated by Metro to Metro and to any of the other donors to those donors.

9. Notices and Project Officers

For the purpose of this Agreement, the following individuals shall be the Project Officers. Notices to be given hereunder shall be made in writing and may be given by delivering the same in person, by mail, or by fax. Notices shall be effective only if and when received at the address of the party to be notified.

If to Metro Regional Parks and Greenspaces Dept.:

Charles Ciecko, Director
Metro Regional Greenspaces Parks and Greenspaces Dept.
600 Northeast Grand Avenue
Portland, OR 97232
tel: 503-797-1843 fax: 503-797-1849

If to the Foundation:

Krystyna Wolniakowski, Director, PNW
National Fish and Wildlife Foundation
806 Southwest Broadway, Suite 750
Portland, OR 97205
tel: 503-417-8700 fax: 503-417-8787

Please indicate your acceptance of the terms of this Agreement by signing two originals of this letter and returning one to the Foundation.

AGREED AND ACCEPTED:

Metro Regional Services, Regional Parks and Greenspaces Dept.

By: _____

Title: _____

Date: _____

National Fish and Wildlife Foundation

By: _____

Title: _____

Date: _____

METRO NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3220A, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ESTABLISH "THE NORTHERN WILLAMETTE VALLEY HABITAT CONSERVATION FUND" IN PARTNERSHIP WITH THE NATIONAL FISH AND WILDLIFE FOUNDATION

Date: September 17, 2002

Presented by: Councilor McLain

Committee Action: At its September 18, 2002 meeting, the Metro Natural Resources Committee voted 3-0 to recommend Council adoption of Resolution 02-3220A. Voting in favor: Councilors Hosticka, Park and McLain

Background: The Greenspaces Master Plan and the Regional Framework Plan envision a regional network of parks, open spaces and trails, and the ability to protect and operate these assets for public benefit. Metro is encouraged to seek innovative means to fund these objectives, and an opportunity to do that arises through adoption of this resolution.

Resolution 02-3220 authorizes the Executive officer to sign a Memorandum of Agreement with the National Fish and Wildlife Foundation (Foundation). The Foundation is a non-profit organization established by Congress in 1984, authorized to accept appropriated federal funds to build community partnerships that fund conservation-oriented projects. The Foundation has approved a \$240,000 seed fund, the "Northern Willamette Valley Habitat Conservation Fund," to be matched by Metro by \$200,000 from the Open Spaces Bond Fund. Metro will partner with the Foundation through their Pacific Northwest Regional Office, located in Portland. Cooperative roles are spelled out in the agreement. The foundation will hold the specified funds, and others that may be raised, while a jointly agreed upon committee will make grant funding decisions.

- Existing Law: Regional Framework Plan and Open Spaces Bond Measure.
- Budget Impact: Metro is contributing \$200,000 to the fund. This amount is in the FY 02-03 adopted budget, in the Open Spaces Fund.
- Known Opposition: There is no known opposition to this resolution.

Committee Issues/Discussion: The resolution was first heard in committee on September 4, 2002. Charlie Ciecko, Regional Parks and Greenspaces Director, made the staff presentation and introduced Krystina Wolniakowski, director of the Pacific Northwest National Fish and Wildlife Foundation.

Three issues were raised at the September 4th meeting. First, the committee wanted clarification that any future amendment to the agreement will require Council approval. Second, more information was requested on the investment and fiscal practices of the Foundation. Third, the Committee directed that Council membership on the grants committee be specified.

On September 18, 2002, Charlie Ciecko presented the requested information to the committee. Section 8 of Exhibit A was amended to require Council approval of amendments to the agreement. Attachment #1 to the staff report was amended to specify that the grants committee will contain a Council representative. Mr. Ciecko also presented a memorandum by Jeff Tucker, specifying that the fiscal and investment practices of the Foundation were at a level equivalent to Metro's own practices.

Staff Report

CONSIDERATION OF RESOLUTION NO. 02-3220 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ESTABLISH THE "NORTHERN WILLAMETTE VALLEY HABITAT CONSERVATION FUND" IN PARTNERSHIP WITH THE NATIONAL FISH AND WILDLIFE FOUNDATION

Date: August 14, 2002

Presented by: Charles Ciecko

BACKGROUND

Resolution No. 02-3220 authorizes the Executive Officer to sign a Memorandum of Agreement (MOA) with the National Fish and Wildlife Foundation (the "Foundation").

The MOA will establish a joint grant establishing "Northern Willamette Valley Habitat Conservation Fund" (the "Fund") as a partnership project of the Foundation and Metro. Financial resources of the Fund will come from the Foundation, Metro, and future joint fundraising efforts. The term of the agreement is five years.

The Fund will be established to pursue specific objectives on public and/or private lands (with protective covenants) that are included in "The Regional System" as envisioned in the Greenspaces Master Plan and the Regional Framework Plan.

Specific projects that will be considered include:

1. Restoration and/or enhancement of unique rare or endangered habitats (including project monitoring and evaluation)
2. Acquisition of easements, timber rights, water rights, fee simple title, or other ownership interest when the acquisition is directly related to the success of a restoration project or the Greenspaces Master Plan
3. Reintroduction of extirpated or rare, endangered, or sensitive species
4. Suppression, removal or eradication of non-native invasive species
5. Environmental Education which enhances public understanding and involvement in the stewardship of native fish and wildlife and associated habitat

PARTNERSHIP ROLES

The National Fish and Wildlife Foundation will:

1. Establish a segregated interest bearing account with the Foundation to receive and hold financial resources.
2. Serve as fiscal agent and program manager for the Fund.
3. Assist with the development of appropriate projects.
4. Participate in fundraising activities.

5. Assist with the development of a grants committee, proposal guidelines, and grants schedule.
6. Negotiate contracts, make disbursements, and manage records.
7. Provide semi-annual reports on the activities and status of the Fund.
8. Provide initial funds in the amount of \$240,000 and additional funds in the future as deemed appropriate by the Foundation.
9. Provide in-kind contributions of staff and marketing/promotional time.
10. Assist with donor development and fundraising efforts.

Metro will:

1. Identify key areas for project implementation.
2. Assist with the development of a grants committee, proposal guidelines, and grants schedule.
3. Promote opportunities provided by the Fund to cooperators in The Regional System.
4. Assist with the generation of a prospective donor list and donor development.
5. Provide technical assistance for project development and implementation.
6. Develop appropriate marketing materials for the program.
7. Provide initial funds in the amount of \$200,000 and additional funds in the future as deemed appropriate by Metro.
8. Keep the Metro Council informed on the progress and activities of the Fund.
- 9.

Note: No grants will be awarded without the specific approval of both partners.

ANALYSIS/INFORMATION

1. Known opposition

None.

2. Legal Antecedents

A. Metropolitan Greenspaces Master Plan (1992)

The proposed MOA is consistent with, and complementary to, the following policies of the Greenspaces Master Plan:

- Policy 1.18 - "Acquire and/or protect land via purchase, gift, dedication or conservation agreement and pursue appropriate local, regional, state, federal, foundation and private funding sources in its acquisition and operations strategies."
- Policy 2.27 - "Facilitate establishment of a Greenspaces foundation, a separate, private non-profit organization dedicated to the support of Greenspaces programs and operations"
- Policy 2.33 - "Promote public appreciation and understanding of the relationship between a healthy environment and sustainable economy and encourage public involvement in natural resource management decisions."
- Policy 2.34 - "Provide mechanisms for the business community to be involved in protection of natural areas."

- Policy 2.36 - "Initiate education programs to inform the public about opportunities related to protection, restoration, or creation of greenspaces"

B. Regional Framework Plan (1997)

The proposed MOA is consistent with, and complementary to, the following policies of Chapter 3 of the Regional Framework Plan:

- Policy 3.6.3 - "Metro will provide and promote opportunities for the public to engage in stewardship activities or publicly owned natural resource lands. Cooperative efforts between Metro and private and non-profit groups, community groups, schools and other public agencies should be encouraged."
- Policy 3.6.5 - "Metro and local governments should work with state, federal, non-profit and private partners to facilitate stewardship and educational opportunities on publicly owned natural resource lands."

C. Open Space and Streams Bond Measure (1995)

Metro's contribution to the Fund will come from the 1995 bond measure proceeds. As such, expenditure of the funds is subject to the restrictions and limitations of the measure. The proposed MOA includes provisions which guarantee that bond funds will be expended in a manner consistent with bond measure restrictions. The use of Metro bond funds will be limited to capital expenditures consistent with the bond measure and the Open Spaces Implementation Work Plan as follows:

- The Work Plan, as amended (January 1997) provides in its definition of stabilization that "some stabilization measures will continue during the landbanking period, if initial stabilization assessment for the property purchased indicates that continued actions are necessary to prevent degradation or to avoid increased landbanking costs. Examples of such long-term stabilization measures include, but are not limited to, vegetation of the property or reforestation."
- It is anticipated that, pursuant to the MOA, Metro bond funds would be used to effect some long-term stabilization measures, such as vegetation of the property or reforestation, with the goal of improving the habitat value of certain sites acquired with Metro open space funds and in some cases recreating the more natural condition of the property that existed prior to its conversion to a more altered landscape for agricultural, housing, or other non-habitat purposes.
- Metro bond funds will not be spent for environmental education or other non-capital purposes that this partnership between Metro and the Foundation may otherwise support.

3. Anticipated Effects

Approval of the MOA will create a partnership between Metro and the National Fish and Wildlife Foundation to benefit the interconnected regional system of parks, natural areas, trails, and greenways envisioned in the Metropolitan Greenspaces Master Plan and Chapter 3 of the Regional Framework Plan.

The Foundation has a long track record and reputation of nationally successful conservation projects and fundraising. The Foundation will assure that the national and regional resources of the Foundation will be available to Metro, such as full accounting and auditing of funds received.

The affiliation of Metro's Regional Parks and Greenspaces program with a nationally known foundation will enhance fundraising opportunities and provide a non-government entity to receive and manage donations.

The partnership will enhance Metro's ability to further the goals and objectives of Regional Parks and Greenspaces programs on Metro owned properties as well as properties owned by local partners. The partnership will enhance stewardship opportunities for citizens of the region.

4. Budget Impacts

The adopted budget for FY02-03 includes the \$200,000 Metro contribution to the Fund. These resources come from the 1995 bond measure.

5. Outstanding Questions

None.

RECOMMENDED ACTION

The Executive Officer recommends passage of Resolution No. 02-3220.

Attachment No. 1
Resolution No. 02-3220A

**Tentative Composition of Grants Committee
Northern Willamette Valley Habitat Conservation Fund**

1. Metro Council * (1)
2. U. S. Fish & Wildlife Service (1)
3. Oregon Department of Fish & Wildlife (1)
4. Metro Regional Parks & Greenspaces (1)
5. Local Government Natural Resources Managers (2)
6. The Nature Conservancy (1)
7. National Fish & Wildlife Foundation (Chair)
8. At Large (1)

* If grants committee is organized prior to the end of 2002, the Council Presiding Officer shall appoint this position. If the grants committee is organized after the end of 2002, the Council President shall appoint this position.

Total (9)

SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF **RESOLUTION NO. 02-3223**, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO GRANT A METRO SOLID WASTE FACILITY LICENSE TO MT. HOOD METALS, INC., AND AMERICAN COMPOST AND RECYCLING, LLC, JOINTLY DOING BUSINESS AS AMERICAN ROOF RECYCLING FOR THE OPERATION OF A ROOFING RECOVERY FACILITY

Date: September 18, 2002

Presented by: Councilor McLain

Committee Recommendation: At its September 18 meeting, the Solid Waste and Recycling Committee voted 3-0 to recommend Council adoption of Resolution No. 02-3223. Voting in favor: Councilors Monroe, McLain and Chair Atherton. Voting against: None. Absent: Councilors Bragdon and Park.

Background: Metro Code Chapter 5.01 requires that solid waste processing facilities obtain a license from Metro if the facility will produce residual of more than ten percent. Roofing processing facilities were initially not licensed. However, after Metro found that some facility operators were processing only a limited amount of material or had abandoned sites leaving large stockpiles of material behind, the licensing program was extended to include such facilities. Staff now requires such facilities to have an approved operations plan and provide adequate financial assurance related to site cleanup prior to the issuance of a license.

Committee Issues/Discussion: Roy Brower, REM Regulatory Affairs Manager, presented the staff report. He explained that the proposed resolution would grant a solid waste processing facility license to Mt. Hood Metals and American Compost and Recycling, jointly doing business as American Roof Recycling. The proposed facility is located on N. Columbia Blvd and, if granted a license, would accept wood and composite roofing materials from material manufacturers and roofing installation and removal projects. These materials will be processed as an additive to hog fuel, soil amendments, compost additives, ground cover and recycled asphalt products. The facility also could accept clean wood waste for processing into hog fuel.

The proposed site is owned by Mt. Hood Metals and is adjacent to a yard debris site operated by American Compost on land leased from Mt. Hood Metals. A roofing recycling facility had been previously operated on the site under a Metro license issued to Speyfly, Inc. However, Speyfly was unable to develop an acceptable operations plan or provide adequate financial assurance for site cleanup. It subsequently abandoned the site, leaving a stockpile of 10,000 tons of unprocessed material. The Council recently revoked Speyfly's license. The applicants for the new license that would be authorized under the proposed resolution have reduced the stockpile by about one-half.

Brower noted the resolution contains a provision that the license will not be issued until the applicants submit an acceptable operations plan and an appropriate level of financial assurance for site cleanup. If this requirement is not met within 60 days after the adoption of the resolution the license shall be deemed denied. Brower indicated that the applicants have submitted a proposed operations plan and financial assurance that are currently under review by staff.

Brower indicated that the stockpile of unprocessed material at the site would be limited to 500 tons under the terms of the proposed license.

Key Public Testimony: Bert Bors, a principal of Mt. Hood Metals, and Casey Stroupe, a principal of American Compost, appeared for the purpose of answering questions.

Chair Atherton asked about the types of products that would be produced from the roofing material. Bors responded that the principal product would be an additive to hog fuel, but that other uses are possible depending on the marketplace at any given time.

Council Analyst Houser asked about how long it would take to eliminate the current material stockpile. Stroupe responded that it was their intent to eliminate the stockpile in about six months. He and Mr. Brower noted that the license requires that the 500-ton stockpile limit will become effective in October 2003.

SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3225, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO GRANT A METRO SOLID WASTE FACILITY LICENSE TO PACIFIC LAND CLEARING COMPANY, INC., FOR THE OPERATION OF A ROOFING RECOVERY AND YARD DEBRIS PROCESSING AND RELOAD FACILITY

Date: September 18, 2002

Presented by: Councilor

Committee Recommendation: At its September 18 meeting, the Solid Waste and Recycling Committee voted 3-0 to recommend Council adoption of Resolution No. 02-3225. Voting in favor: Councilors Park, McLain and Chair Atherton. Voting against: None. Absent: Councilors Bragdon and Monroe.

Background: Metro Code Chapter 5.01 requires that solid waste processing facilities obtain a license from Metro if the facility will produce residual of more than ten percent. Roofing processing facilities were initially not licensed. However, after Metro found that some facility operators were processing only a limited amount of material or had abandoned sites leaving large stockpiles of material behind, the licensing program was extended to include such facilities. Staff now requires such facilities to have an approved operations plan and provide adequate financial assurance related to site cleanup prior to the issuance of a license.

Yard debris processing and reload facilities are also required to obtain a solid waste processing facility license under Metro Code Chapter 5.01.

Committee Issues/Discussion: Roy Brower, REM Regulatory Affairs Manager, presented the staff report. He explained that the proposed resolution would authorize the Executive Officer to issue a license to Pacific Land Clearing to operate a roofing recycling and yard debris processing and reloading facility on Suttle Road in North Portland. Pacific Land Clearing currently operates two other similar licensed facilities in the region, one in Southeast Portland and another in Oregon City near the Metro South Transfer Station. The southeast Portland facility had some initial operational and odor issues that resulted in the issuance of non-compliance notices by Metro, however these problems have been corrected.

Speyfly, Inc previously used the site for the proposed facility as an unlicensed roofing recycling facility. When Speyfly obtained a license to operate a facility on N. Columbia Blvd., the license required that the stockpile of material at the Suttle Road site be removed. Speyfly subsequently abandoned both sites and Metro has revoked the company's facility license. Following the abandonment of the site, a third party cleared the remaining material stockpile.

Brower noted the resolution contains a provision that the license will not be issued until the applicants submit an acceptable operations plan and an appropriate level of financial assurance for site cleanup. If this requirement is not met within 60 days after the adoption of the resolution the license shall be deemed denied. Brower indicated that the applicants have submitted a proposed operations plan and financial assurance that are currently under review by staff.

Brower indicated that the stockpile of unprocessed material at the site would be limited to 3,000 tons under the terms of the proposed license.

Councilor McLain asked why the proposed stockpile for this facility was significantly higher than that for the American Roofing facility whose license application had been considered earlier by the committee. Brower indicated that the Suttle Road site was about three times larger than the American Roofing site and that the level of site cleanup financial assurance being offered by Pacific Land Clearing would justify a higher stockpile limitation.

Key Public Testimony: Jack Botkin, a principal in Pacific Land Clearing, appeared on behalf of the applicant. He noted that the roofing material would be used for road base and other proprietary uses under the terms of two long-term contracts with potential end-users. He noted that the company's other two licensed facilities are currently in compliance with all applicable Metro regulatory requirements.

METRO NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3222 FOR THE PURPOSE OF
AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE A 31-ACRE PARCEL
OWNED BY THE RAMSEY FAMILY IN THE FOREST PART TARGET AREA

Date: September 19, 2002

Presented by: Councilor Burkholder

Committee Action: At its September 18, 2002 meeting, the Metro Natural Resources Committee voted 3-0 to recommend Council adoption of Resolution 02-3222. Voting in favor: Councilors Hosticka, Park and McLain.

Background: This parcel represents an inholding in Forest Park that has been subject of negotiations with the Ramsey family for many years. It is a Tier 1 property in the Forest Park Refinement Plan. The property is part of a 43-acre tax lot. Metro's purchase will be aggregated with an adjoining 50-acre parcel owned by the City of Portland, via a lot-line adjustment process. The resulting 81-acre parcel will be jointly owned by Metro and the City of Portland, and managed and maintained by Portland. The remaining 12 acres (of the 43-acre Ramsey tax lot)) will be retained by the Ramsey family.

Several unusual circumstances require Council approval of this purchase, consistent with Open Space Bond Measure provisions and subsequent Council revisions to the Work Plan.

- Existing Law: Open Spaces Implementation Work Plan, and revisions.
- Budget Impact: Acquisition costs will come from budget Open Spaces Bond Measure funds.

Committee Issues/Discussion: Jim Desmond gave the staff presentation, after an Executive Session called by the Chair.

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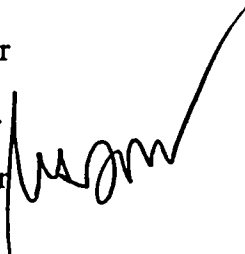


METRO

OFFICE OF THE AUDITOR

SEP 18 2002

To: Carl Hosticka, Presiding Officer
Susan McLain, Deputy Presiding Officer
Rod Park, Metro Councilor
Bill Atherton, Metro Councilor
Rex Burkholder, Metro Councilor
Rod Monroe, Metro Councilor
David Bragdon, Metro Councilor

From: Alexis Dow, CPA, Metro Auditor 

Date: September 18, 2002

Re: Supplemental Information – REM Department Survey

This memo supplements the information we presented on our report, *Solid Waste Management Framework is Sound*, at the August 8, 2002 Council meeting. The additional material expands upon the nature and purpose of the work that led to this report. It also clarifies how we addressed the related objectives described in the September 2001 *Audit Plan*.

We based the *Framework* report on information compiled during the broad survey we conducted in fulfilling our *Audit Plan*. Generally, auditors use surveys to obtain background information to identify areas for future audit work and to determine whether the subject area warrants further audit work. Our *Audit Plan* indicates this by stating that “based on the survey results, we may identify several areas for further audit.”

Audit surveys usually do not result in formal reports. In this case, however, we had compiled and analyzed enough information on Metro’s overall framework for managing the region’s solid waste to determine that the framework is sound. We concluded that this message, coupled with a presentation of the previously undocumented framework, would be of sufficient value and interest to Metro and the public to warrant issuing a report.

During the survey we compiled information in accordance with the objectives outlined in our *Audit Plan*. However, only a portion of this information was relevant to and included in the “framework” report. Because of your questions, I thought you might want a more detailed description of what we found in relation to each of the survey objectives.

The objectives were to determine:

- How the REM Department is organized to accomplish policy goals
- How REM measures its performance

- How REM determines the level of resources devoted to specific activities
- What actions REM took to streamline operations due to the change in how excise taxes are assessed.

REM Organization

Our “framework” report contains information on how REM is organized and includes a chart containing an overview of the Department’s organization structure, programs and budget (Chart 2, page16).

The REM Department reorganized effective November 1, 2001 and at that time established divisions that generally align with the four major roles that Metro has assumed in managing the region’s waste. As you may recall, the four roles are:

- Reducing the amount of waste generated and disposed
- Providing disposal services through Metro-owned facilities
- Regulating privately owned disposal facilities, and
- Being an environmental steward, primarily through managing two closed landfills.

In addition, REM’s Strategic Plan shows how REM’s core business services are oriented to accomplishing Metro’s defined primary goals. These services also appear to reasonably correlate to the stated goals, and REM’s various programs appear to align with these services.

While REM activities and operations appear to align with its objectives and goals, making a determination as to whether REM should be engaged in the particular programs it has established to support the services shown in its Strategic Plan is a potential subject for future audit. It requires more in-depth study than that undertaken in a survey. We do note that some programs, such as Enhancement Grants, are required by State law and others have been approved by the Metro Council to accomplish State mandates (e.g., waste reduction programs). Other activities, such as entering into transport and disposal contracts, are simply an outgrowth of Metro having decided to own and operate transfer stations.

REM Performance Measurement

Our framework report contains a section entitled “Performance is Monitored, Evaluated and Reported” (page 18). This section outlines the framework Metro and REM have for measuring and reviewing the performance of solid waste programs.

As mentioned in the report, REM has performance measures for its major programs. Assessing the appropriateness of these measures is something we likely would do when evaluating a particular program. Surveys are essentially a planning tool. They are used to obtain background information and to determine whether a subject area warrants further audit work.

Resource Allocations

Many factors drive how REM allocates resources (staff, materials, etc.) to its particular programs and activities. For example, some programs and activities are discretionary while others are legally mandated. Factors influencing resource allocation include:

- Operational requirements – e.g., the number of persons needed to staff the transfer stations is determined by the hours of operation.
- Legal requirements – e.g., the State requires Metro to institute waste reduction programs. In addition, the closure and monitoring of the St. Johns landfill must be done in accordance with Federal environmental laws that necessitate monitoring and conducting certain tests.
- Service Level Objectives – e.g., REM has used discretionary resources to increase the number of neighborhood collection efforts to increase the amount of hazardous waste collected and disposed of properly.
- Regulatory Affairs – e.g., as the number of private waste facilities has increased, Metro has increased its level of monitoring and oversight.

Determining whether the resources being devoted to a particular program or activity is appropriate is something that could be done as part of the audit of a particular program. It requires more in-depth study than is undertaken in a survey.

Streamlining Due to Excise Tax Change

Our *Audit Plan* states that we planned to determine what actions REM had taken to streamline its operations due to solid waste excise taxes now being assessed on a tonnage rather than percent of revenue basis. We based this objective on the observation that prior to the change some disincentive may have existed to reducing operating costs as lower operating costs would yield less excise tax revenue.

We dropped this line of inquiry once we understood that REM had always tried to reduce operating costs, regardless of the impact on the amount of excise tax collected. As evidence of this, the Director of REM referred us to several improvements that lowered costs, including:

- Automating scale house operations, saving three FTEs
- Directly purchasing fuel for the contractor trucks that haul waste to the landfill, saving millions by no longer having to pay the federal fuel excise tax
- Renegotiating lower disposal costs (change order Number 7)
- Renegotiating lower transport costs, saving millions

We compiled a lot of information on REM's activities that now provides us a good basis for understanding REM's priorities, plans and programs.

If I can be of further assistance, please let me know.