

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: November 14, 2002
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. MPAC COMMUNICATIONS

4. CONSENT AGENDA

4.1 Consideration of Minutes for the November 7, 2002 Metro Council Regular Meeting.

5. ORDINANCES - FIRST READING

5.1 **Ordinance No. 02-980**, For the Purpose of Amending Chapter 5.05 of Metro Code to adjust the Fee Schedule for Applications for Non-System Licenses.

6. ORDINANCES - SECOND READING

6.1 **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, and Declaring an Emergency.

Community
Planning Com.

6.2 **Ordinance No. 02-968A**, For the Purpose of Amending Ordinance No. 99-809, Which Amended the Urban Growth Boundary to Include Former Urban Reserve Area 55W of Washington County.

McLain

- | | | |
|---------------------------------|--|-----------------------------|
| 6.3 | Ordinance No. 02-971 , For the Purpose of Amending the FY 2002-03 Budget and Appropriations Schedule Recognizing \$411,051 in Grant Funds from Various State, Federal and Private sources; and Increasing the Regional Parks Fund Operating Expenses by \$411,051. | Budget &
Finance Com. |
| 6.4 | Ordinance No. 02-979 , For the Purpose of Amending Metro Code Chapter 5.05 to Include the Coffin Butte Landfill on the List of Designated Facilities; and Declaring an Emergency. | McLain |
| 6.5 | Ordinance No. 02-981 , For the Purpose of Amending Ordinance No. 95-625A to Amend the 2040 Growth Concept Map and Ordinance No. 96-647C to Amend the Employment and Industrial Areas Map, December 2002, and Declaring an Emergency. | Community
Planning Com. |
| 6.6 | Ordinance No. 02-982 , For the Purpose of Amending the FY 2002-03 Budget and Appropriations Schedule to recognize \$104,570 in grant funds and government contributions from various state and local sources; transferring \$25,430 from Contingency to Operating Expenses; increasing the Regional Parks Fund Operating Expenses by \$130,000; amending the FY 2002-03 Capital Improvement Plan; and Declaring an Emergency. | Budget and
Finance Com. |
| 7. RESOLUTIONS | | |
| 7.1 | Resolution No. 02-3237 , For the Purpose of Endorsing the I-5 Transportation and Trade Study Recommendations. | Transportation
Committee |
| 7.2 | Resolution No. 02-3238 , For the Purpose of Considering a Designated Facility Agreement with Valley Landfills, Inc. for the Coffin Butte Landfill. | McLain |
| 7.3 | Resolution No. 02-3240 , For the Purpose of Adopting the Capital Improvement Plan for Fiscal Years 2003-04 through 2007-2008. | Budget &
Finance Com. |
| 7.4 | Resolution No. 02-3241 , For the Purpose of Authorizing the Executive Officer to Acquire a Conservation Easement and Execute a 25-Year Lease of Open Space Property in the Tualatin River Access Points Target Area. | McLain |
| 7.5 | Resolution No. 02-3245 , For the Purpose of Making Citizen Appointments to the Transportation Policy Advisory Committee (TPAC) and the Transportation Demand Management Subcommittee (TDM). | Transportation
Committee |
| 8. CONTRACT REVIEW BOARD | | |
| 8.1 | Resolution No. 02-3239 , For the Purpose of Authorizing Release of RFB #03-1032-REM for the Provision of Diesel Fuel and Authorizing the Executive Officer to Execute the Resulting Contract. | Atherton |

9. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for Week of November 14, 2002 (PCA)

	Sunday (11/17)	Monday (11/18)	Tuesday (11/19)	Wednesday (11/20)	Thursday (11/14)	Friday (11/15)	Saturday (11/16)
CHANNEL 11 (Community Access Network) (most of Portland area)		4:00 PM				2:00 PM (previous meeting)	
CHANNEL 21 (TVTV) (Washington Co., Lake Oswego, Wilsonville)						7:00 PM 11:00 PM	3:30 PM
CHANNEL 30 (TVTV) (NE Washington Co. - people in Wash. Co. who get Portland TCI)						7:00 PM 11:00 PM	3:30 PM
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 PM	8:30 PM					
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 32 (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
Tualatin Valley Television
West Linn Cable Access
Milwaukie Cable Access

www.pcatv.org
www.tvca.org
www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm

(503) 288-1515
(503) 629-8534
(503) 650-0275
(503) 652-4408

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).

Agenda Item Number 4.1

Consideration of the November 7, 2002 Regular Metro Council Meeting minutes.

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

Agenda Item Number 5.1

Ordinance No. 02-980, For the Purpose of Amending Chapter 5.05 of Metro Code to Adjust the Fee Schedule for Applications for Non-System Licenses.

First Reading

Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) Ordinance No. 02-980
CHAPTER 5.05 OF THE METRO CODE TO)
ADJUST THE FEE SCHEDULE FOR) Introduced by Executive Officer Mike Burton
APPLICATIONS FOR NON-SYSTEM)
LICENSES)

WHEREAS, Chapter 5.05 of the Metro Code concerning solid waste flow control was amended on October 25, 2001; and,

WHEREAS, the October 25, 2001, amendments to Chapter 5.05 of the Metro Code required the Executive Officer to recommend to the Metro Council a non-system license application and issuance fee schedule (see Metro Code Section 5.05.035(g)); and,

WHEREAS, the Executive Officer recommended to the Metro Council on March 14, 2002, that certain changes be made to non-system license application fees; and,

WHEREAS, the October 25, 2001, amendments to Chapter 5.05 of the Metro Code required the Executive Officer to recommend to the Metro Council a schedule of fines which impose sanctions based on the nature and extent of a violation of, or failure to comply with, Chapter 5.05 of the Metro Code (see Metro Code Section 5.05.070(d); and,

WHEREAS, the Executive Officer recommended to the Metro Council on March 14, 2002, that no changes be made to the current Metro Code provisions imposing sanctions on persons that violate or fail to comply with Chapter 5.05 of the Metro Code; and,

WHEREAS, the Executive Officer now recommends that the Metro Council implement the fee schedules that the Executive Officer recommended on March 14, 2002; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.05.035 is amended as follows:

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within the District to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the District, any non-system facility only by obtaining a non-system license in the manner provided for in this section 5.05.035.

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

- (1) The name and address of the waste hauler or person making such application;

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

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

(b) Every application shall be accompanied by payment of an non-refundable application fee, and an issuance fee ~~part of which shall may be refunded to the applicant in the event that the application is denied, as provided in this section. Until such time as council acts on the executive officer's recommendation pursuant to section 5.05.035(g) of this chapter, the following application fees shall apply:~~

- (1) For an application for a limited duration non-system license or for a change in authorization to an existing non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied, and the issuance fee shall be fifty dollars (\$50) for each 30 days (or part thereof) that the license is valid;
- (2) For all other an application for a non-system licenses seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), and the issuance fee shall be five hundred dollars (\$500) two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied.
- (3) For an application for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee

shall be one thousand dollars (\$1000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied.

- (4) For an application for a non-system license to deliver solid waste that is exempt from paying Metro regional fees in section 5.01.150, no application fee shall be required.
- (5) Notwithstanding any other requirement of this section, the Chief Operating Officer may waive the application fee for an application for a non-system license seeking authority to deliver a de minimis amount of solid waste per year to a non-system facility.

(c) Determination Whether to Issue Non-System License. Within 60 days after receipt of a completed application for a non-system license and any additional information required by the executive officer in connection therewith, the executive officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination. In making such determination, the executive officer shall consider the following factors to the extent relevant to such determination:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations.
- (7) Such other factors as the executive officer deems appropriate for purposes of making such determination.

At the discretion of the executive officer, the executive officer may impose such conditions on the issuance of a non-system license as the executive officer determines are necessary or appropriate under the circumstances.

(d) Issuance of Non-System License; Contents. In the event the executive officer determines to issue a non-system license, then such non-system license shall be issued by the executive officer. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than 120 days from the date of issuance for limited-duration non-system licenses, and two years from the date of issuance for all other non-system licenses; and
- (6) Any conditions imposed by the executive officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in section 5.05.035(c).

(e) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month;
- (3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(f) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to section 5.05.035(c), then, upon discovery of such non-compliance, the executive officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days

following the date of such notice of non-compliance or such longer period as the executive officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the executive officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the executive officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the executive officer may determine to grant as provided below. If, in the judgment of the executive officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the executive officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the executive officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

~~(g) Executive Officer to Recommend License Application and Issuance Fee Schedules.~~
~~Prior to March 15, 2002, the executive officer shall recommend to council non-system license application and issuance fee schedules which vary for each applicant and licensee based on the type and quantity of solid waste subject to the non-system license and other appropriate factors.~~

Section 2. Metro Code Section 5.05.070 is amended as follows:

5.05.070 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations

(a) Any waste hauler or person who violates or fails to comply with any provision of this chapter 5.05 or who fails to comply with the terms and conditions of any non-system license or required use order shall be subject to the fines and penalties set forth in this section, which fines and penalties shall be assessed by the executive officer.

- (1) A fine in the amount of not to exceed \$500 for each violation; and
 - (2) Such waste hauler or person shall not be extended any credit by Metro for the use of any facility constituting a part of the system until such time as all fines owing under this chapter as a result of such violation or failure to comply have been paid in full.
- (b) In addition to the foregoing fines and penalties:
- (1) Any waste hauler or person who fails to comply with the terms and conditions of any non-system license shall be required to pay to Metro a fine in the amount equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the District transported, disposed of or otherwise processed in violation of the terms and conditions of such non-system license; and

- (2) Any waste hauler or person who, without having a non-system license then in effect, transports solid waste generated within the District to, or utilizes or causes to be utilized for the disposal or other processing of any solid waste generated within the District, any non-system facility shall be required to pay to Metro a fine in an amount equal to the \$500 non-system license application fee, plus the \$500 non-system license issuance fee, plus an amount equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the District transported, recycled, disposed of or otherwise processed to or at any non-system facility.

(c) If in the judgment of the executive officer such action is warranted, Metro shall commence an appropriate action in a state court of competent jurisdiction for the purpose of collecting the fines and penalties provided for above and/or enjoining any violations of the provisions of this chapter 5.05 or any non-compliance with the terms and conditions of any non-system license or required use order.

~~(d) By March 15, 2002, the executive officer shall recommend to council a schedule of fines which impose sanctions based on the nature and extent of the violation or failure to comply.~~

(ed) A required use order may be enforced by authorized gatehouse employees at any Metro facility, by denying facility access to a waste hauler or other person who is subject to a required use order and is attempting to deliver waste to a facility not specified in the order. This enforcement shall be in addition to the fines and penalties that may be levied pursuant to this section.

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

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-980, FOR THE PURPOSE OF AMENDING CHAPTER 5.05 OF THE METRO CODE TO ADJUST THE FEE SCHEDULE FOR APPLICATIONS FOR NON-SYSTEM LICENSES

October 22, 2002

Presented by: Terry Petersen

BACKGROUND

Section 5.05.035(g) of the Metro Code, amended by the Metro Council on October 25, 2001, requires the Executive Officer to recommend to Council a fee schedule for the issuance of non-system licenses by March 15, 2002. Such a schedule is to be based on type, quantity of solid waste and other appropriate factors. On March 6, the Executive Officer submitted a report to the Metro Council making recommendations for appropriate levels of fees and fines. Based on review and discussion of that report, the following non-system license fees should be modified accordingly.

TYPE OF NON-SYSTEM LICENSE	CURRENT FEE SCHEDULE	RECOMMENDED FEE SCHEDULE
	<i>Application fee/Issuance Fee</i>	<i>Application fee/Issuance Fee</i>
Non-system license (for <u>more</u> than 500 tons annually) <ul style="list-style-type: none">• Original application• Renewal• Amendment	\$500/\$500 \$500/\$500 \$0/\$0	\$1,000*/\$0 \$1,000*/\$0 \$250/\$0 (* \$500 refundable if denied.)
Non-system license (for 500 tons or <u>less</u> annually) <ul style="list-style-type: none">• Original application• Renewal• Amendment	\$500/\$500 \$500/\$500 \$0/\$0	\$500*/\$0 \$100/\$0 \$250/\$0 (* \$250 refundable if denied.)
Limited duration NSL <ul style="list-style-type: none">• Original application• Renewal• Amendment	\$50/\$50 for each 30 days NA \$0/\$0	\$250/\$0 NA NA (NSLs granted for 120 day maximum)
Non-system license (when waste exempt from paying Metro fees and taxes) <ul style="list-style-type: none">• Original application• Renewal• Amendment	\$500/\$500 \$500/\$500 \$0/\$0	\$0/\$0 \$0/\$0 \$0/\$0

ANALYSIS/INFORMATION

1. Known Opposition

No known opposition.

2. Legal Antecedents

Fees for Standard Non-System Licenses (NSL)

Chapter 5.05 of the Code presently specifies that \$1,000 in fees (a \$500 application fee and a \$500 issuance fee) shall be paid for all non-system licenses (NSLs) except limited-duration NSLs. The same fees apply regardless of the type of waste or amount of work required by staff to process the application. A standard NSL (as opposed to limited-duration) is intended for waste streams that are generated on an ongoing basis. Such licenses are typically issued for a term of two years. Charging the application and issuance fee separately can delay the issuance of NSLs and sometimes causes confusion when applicants fail to understand that there are two separate \$500 fees. In order to streamline the process and lessen this confusion, the Executive Officer recommends that the fees be combined into a \$1,000 application fee to be paid upon submission of an application. If an application is denied, Metro would refund \$500. Renewals of standard non-system licenses should be subject to the same fee schedule as the original license since renewals require similar level of processing.

Fees for Limited Duration Non-System Licenses

When Chapter 5.05 was amended, it allowed Metro to issue "limited-duration" NSL's. Limited-duration NSL's have a maximum term of 120 days. In contrast to a standard license, a limited-duration NSL is intended for situations in which the applicant generates solid waste from a short-term project, usually, in relatively small amounts. These are generally clean-up projects and delaying disposal in such cases sometimes poses particular hardships to the waste generators or increased risk to the public. A limited-duration NSL may also be issued as an interim measure or to provide a trial period when more information is needed prior to issuance of a full-term NSL.

The limited-duration NSL was intended to expedite the process of issuing NSLs in such situations or create a bridge to the issuance of a longer term NSL. The amended Code currently stipulates that the application fee for a limited-duration license be \$50 and that the issuance fee be \$50 for each 30-day period up to the maximum term of 120 days. However, experience has found that many applicants seeking a 30-day license end up requesting more time thus requiring more staff time to issue time extensions. Therefore, staff recommends these licenses for 120 days without opportunity to extend them. In order to further expedite the issuance of such licenses, it is recommended that these type of NSLs be issued immediately upon approval. Because of the nature of these licenses there is not an opportunity to renew them.

Proposal for Fees for Non-System Licenses Issued for 500 or Fewer Tons Annually

Applicants sometimes have legitimate reasons for requesting non-system licenses for tonnages of solid waste that are generated on an ongoing basis but are still so small as to make the full \$1,000 cost of obtaining a non-system license unduly burdensome. For example, Epson Portland, under a Metro NSL, sends its solid waste to the Covanta Waste-to-Energy facility in Marion County for the sole purpose of adhering to a company waste reduction and recycling policy to minimize the use of landfilling. However, since the facility generates only 300 tons of waste annually, it must pay a premium for its effort to

conform to the waste reduction hierarchy. It is therefore recommended that the application fee for NSLs requesting authority to deliver 500 or fewer tons annually be charged a \$500 application fee to be paid upon submission of an application. If an application is denied, Metro would refund \$250. Because these types of licenses have a relatively small impact and processing time, staff recommends that the application fee for the renewal of such licenses be \$100.

Proposal for Fees for Changes in Authorization to Existing Non-System Licenses

Presently, there is no fee associated with an application for a change in authorization of an existing NSL. In order that there not be a cost advantage to applying for an authorization for a shorter term or lesser tonnage and then subsequently increasing it by amendment, it is recommended that the Code establish a fee of \$250 for any application for a change in authorization.

Non-System Licenses for Waste Exempt from Metro fees

On occasion Metro must issue non-system licenses for waste that is exempt from paying Metro fees and taxes e.g. residual from the processing of scrap tires and useful material. While Chapter 5.05 requires a non-system license for this waste to go to non system facilities, the Council has made the policy decision that this waste should not be subjected to additional fees and taxes. A non-system license is desirable in order to obtain reports that contribute to Metro's understanding of waste flow and waste recovery. In following this rationale, any application fees associated with hauling the waste to a more cost effective disposal option should not be subjected to application fees. Therefore, staff recommends that for waste requiring a non-system license but is not subject to fees should also not be subject to non-system license application fees.

3. Anticipated Effects

This change will create a reduced fee for non-system licenses that are issued for a limited period of time and for relatively small amounts of waste. It also allows Metro to refund a portion of the fee for non-system licenses should any be denied.

4. Budget Impacts

Non-system license application and issuance fees are anticipated to total approximately \$10,000 annually. Since the recommended fee changes are relatively small and include both increases and decreases, they are not anticipated to have a significant fiscal impact.

RECOMMENDED ACTION

The Executive Officer recommends approval of Ordinance No. 02-980.

RB:bjl
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Agenda Item Number 6.1

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 All 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.

Second Reading

Metro Council Meeting
Thursday, November 14, 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) ORDINANCE NO. 02-964
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) Introduced by Councilor Park
DECLARING AN EMERGENCY)

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 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:

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

Statewide Planning Goals

Goal 1 – Citizen Involvement: Metro submitted proposed Ordinance No. 02-964 to the Department of Land Conservation and Development in compliance with ORS 197.610(1). Metro also provided public notice required by the Metro Charter and held a public hearing. Metro's ordinance complies with Goal 1.

Goal 2 – Land Use Planning: Ordinance No. 02-964 complies with the Regional Framework Plan, as set forth below. Metro coordinated the proposed revisions to its annexation process with local governments in the region. Metro's ordinance complies with Goal 2.

Goal 3 – Agricultural Land: Ordinance No. 02-964 affects only land within the urban growth boundary. Goal 3 does not apply to the land subject to the ordinance.

Goal 4 – Forest Land: Ordinance No. 02-964 affects only land within the urban growth boundary. Goal 4 does not apply to the land subject to the ordinance.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: Ordinance No. 02-964 does not affect Goal 5 resources. If Metro includes land within the urban growth boundary (UGB) under the revisions to this ordinance, Metro will apply Goal 5 at the time of expansion of the UGB. Metro's ordinance complies with Goal 5.

Goal 6 – Air, Water and Land Resources Quality: Ordinance No. 02-964 does not affect Goal 6 resources. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 6 at the time of expansion of the UGB. Metro's ordinance complies with Goal 6.

Goal 7 – Areas Subject to Natural Disasters and Hazards: Ordinance No. 02-964 does not affect Goal 7 resources. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 7 at the time of expansion of the UGB. Metro's ordinance complies with Goal 7.

Goal 8 – Recreational Needs: Ordinance No. 02-964 does not affect recreational needs. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 8 at the time of expansion of the UGB. Metro's ordinance complies with Goal 8.

Goal 9 – Economic Development: Ordinance No. 02-964 will indirectly improve the climate for economic development by streamlining the process for adding land that lies outside the district boundary to the UGB. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 9 at the time of expansion of the UGB. Metro's ordinance complies with Goal 9.

Goal 10 – Housing: Ordinance No. 02-964 does not affect the supply of land for housing, but it will indirectly reduce the cost of housing by streamlining the process for adding land that lies outside the district boundary to the UGB. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 10 at the time of expansion of the UGB. Metro's ordinance complies with Goal 10.

Goal 11 – Public Facilities and Services: Ordinance No. 02-964 does not affect the provision of public facilities and services. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 11 at the time of expansion of the UGB. Metro's ordinance complies with Goal 11.

Goal 12 – Transportation: Ordinance No. 02-964 does not affect the region's transportation system or the provision of transportation services. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 12 at the time of expansion of the UGB. Metro's ordinance complies with Goal 12.

Goal 13- Energy Conservation: Ordinance No. 02-964 does not affect the region's energy resources. If Metro includes land within the UGB under the revisions to this ordinance, Metro will apply Goal 13 at the time of expansion of the UGB. Metro's ordinance complies with Goal 13.

Goal 14 – Urbanization: Ordinance No. 02-964 neither adds land to, nor subtracts land from, the UGB. However, the ordinance will make the transition of land from rural to urban use more orderly and efficient by streamlining the process for adding land that lies outside the district boundary to the UGB. Metro's ordinance complies with Goal 14.

Regional Framework Plan

Policy 1.4 - Economic Opportunity: This policy calls upon Metro to maintain a strong economic climate in the region. Ordinance No. 02-964 will indirectly improve the climate for economic development by streamlining the process for adding land that lies outside the district boundary to the UGB. Metro's ordinance complies with Policy 1.4.

Policy 1.6 – Growth Management: This policy requires Metro to manage the supply of urban land to achieve an efficient urban form, to provide a distinction between rural and urban land, to achieve redevelopment objectives, and to be consistent with the 2040 Growth Concept. Ordinance No. 02-964 will make the transition of land from rural to urban use more orderly and efficient by streamlining the process for adding land that lies outside the district boundary to the UGB. Metro's ordinance complies with Goal 14.

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.

\\alex\work\gm\community_development\projects\2000 UGB Periodic Review\Annexation Staff Report.doc

Agenda Item Number 6.2

Ordinance No. 02-968A, For the Purpose of Amending Ordinance No. 99-809, Which Amended the Urban Growth Boundary to Include Former Urban Reserve Area 55W of Washington County.

Second Reading

Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 02-968
ORDINANCE NO. 99-809, WHICH AMENDED)	
THE URBAN GROWTH BOUNDARY TO	)	Introduced by Councilor McLain
INCLUDE FORMER URBAN RESERVE AREA)	
55W OF WASHINGTON COUNTY)	

WHEREAS, the Metro Council adopted Ordinance No. 99-809 on June 17, 1999 to amend the Urban Growth Boundary (UGB) and the 2040 Growth Concept Map to include former Urban Reserve Area 55W; and

WHEREAS, Ordinance No. 99-809 imposed conditions upon the City of Hillsboro to be met prior to urbanization of Area 55W; and

WHEREAS, circumstances in Area 55W have changed since adoption of Ordinance No. 99-809, including the acquisition of land and commencement of construction of a public school, adoption by the city of Hillsboro of ordinances implementing Title 3 of the Urban Growth Management Functional Plan, and adoption by the city of a transportation systems plan, such that accomplishment of some of the conditions is rendered impossible; and

WHEREAS, conditions 6(F)(1), 6(F)(2), 6(F)(3) and 6(F)(4) imposed upon the City of Hillsboro by Ordinance No. 99-809 have been implemented since adoption of the ordinance; and

WHEREAS, the Council has amended the Regional Transportation Plan since adoption of Ordinance No. 99-809 to include some of the transportation facilities identified in conditions in the ordinance; and

WHEREAS, the Council has amended Title 11 of the Urban Growth Management Functional Plan since adoption of Ordinance No. 99-809 to require amendments to local comprehensive plans to address the subjects of most of the conditions imposed upon the city of Hillsboro by the ordinance; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Ordinance No. 99-809 is hereby amended to delete items 1 (designation of regional design types) and 6 (conditions on amendment to UGB).
2. The regional design type consistent with the Metro 2040 Growth Concept for the land added to the UGB by Ordinance No. 99-809 shall be Inner Neighborhood, as shown on Exhibit A, attached and incorporated into this ordinance.
3. The amendment to the UGB is subject to compliance with Titles 7 (Affordable Housing) and 11 (Urban Growth Boundary Amendment Urban Reserve Plan Requirements) of the Urban Growth Management Functional Plan.

4. The amendment to the UGB is subject to compliance with the Regional Transportation Plan, including the requirements of Chapter 6 of that plan.
5. The City of Hillsboro and Washington County shall include the area added to the UGB by Ordinance No. 99-809 in the applicable text and map provisions of their comprehensive plans.
6. The Findings of Fact and Conclusions of Law in Exhibit B, attached and incorporated into this ordinance, explain how Ordinance No. 02-968 complies with state law and the Regional Framework Plan.

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

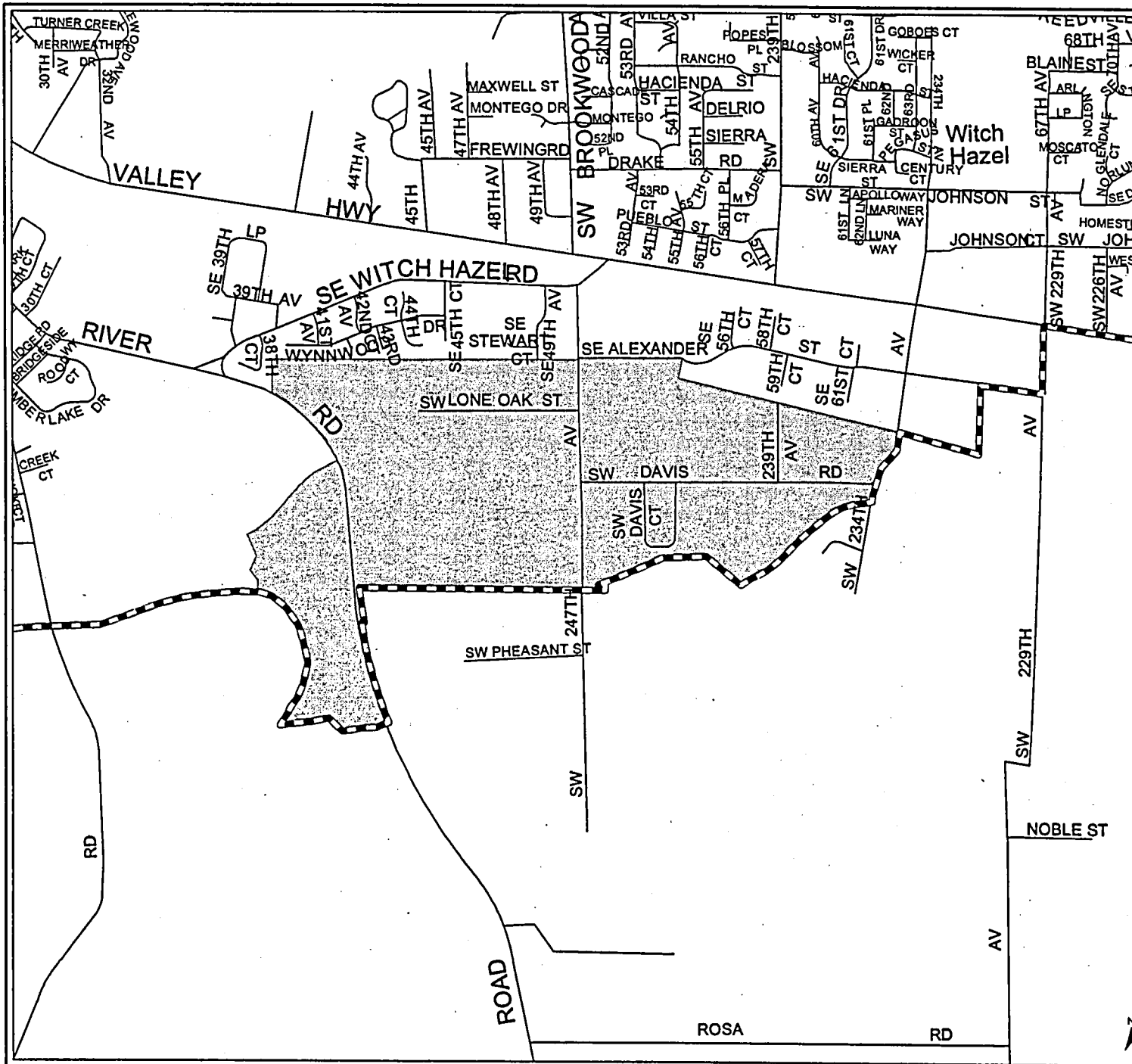
Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel



R L I S

REGIONAL LAND INFORMATION SYSTEM

ORDINANCE 02-968

Exhibit A

Area Proposed for Inner Neighborhood 2040 Design Type

Urban Growth Boundary

SOURCES:

TAX LOT MAP
County Assessment and Taxation offices, 2002. Data collection scale is 1"=100' in urban areas and 1"=400' or 1"=600' in rural areas. Horizontal accuracy is plus or minus five feet or better in Beaverton, Milwaukie, Oregon City, Tigard and Multnomah County. Other areas are plus or minus ten feet.

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 0.3 miles

0 0.1 0.2 0.4 Miles

Location Map

METRO

METRO DATA RESOURCE CENTER
800 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-2736
TEL (503) 797-1742 | FAX (503) 797-1908
drc@metro.or.us | www.metro-region.org

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statewide Planning Goals

Goal 1 – Citizen Involvement: Metro submitted proposed Ordinance No. 02-968 to the Department of Land Conservation and Development in compliance with ORS 197.610(1). Metro also provided the notice required by Metro Code 3.01.050 and held a public hearing pursuant to Metro Code 3.01.015. Metro's ordinance complies with Goal 1.

Goal 2 – Land Use Planning: Ordinance No. 02-968 complies with the Regional Framework Plan, as set forth below and in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary (UGB). Metro developed Ordinance No. 02-968 in coordination with the City of Hillsboro and Washington County. Metro's ordinance complies with Goal 2.

Goal 3 – Agricultural Land: Ordinance No. 02-968 affects only land within the Urban Growth Boundary. Goal 3 does not apply to the land subject to the ordinance.

Goal 4 – Forest Land: Ordinance No. 02-968 affects only land within the Urban Growth Boundary. Goal 4 does not apply to the land subject to the ordinance.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: Ordinance No. 02-968 requires the City of Hillsboro to provide interim and long-term protection to those Goal 5 resources protected by Title 3 of the Urban Growth Management Functional Plan (UGMFP). The City of Hillsboro will apply Goal 5 to the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP. This ordinance also complies with Goal 5 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the UGB. Metro's ordinance complies with Goal 5.

Goal 6 – Air, Water and Land Resources Quality: The City of Hillsboro will apply Goal 6 to the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP. Ordinance No. 02-968 complies with Goal 6 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary. Metro's ordinance complies with Goal 6.

Goal 7 – Areas Subject to Natural Disasters and Hazards: The City of Hillsboro will apply Goal 7 to the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP. Ordinance No. 02-968 complies with Goal 7 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the UGB. Metro's ordinance complies with Goal 7.

Goal 8 – Recreational Needs: The City of Hillsboro will apply Goal 8 to the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP. Ordinance No. 02-968 complies with Goal 8 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary. Metro's ordinance complies with Goal 8.

Goal 9 – Economic Development: The City of Hillsboro will apply Goal 9 to the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11,

section 3.07.1120 of the UGMFP. Section 3.07.1120E requires provision for sufficient commercial and industrial development for the area. Ordinance No. 02-968 also complies with Goal 9 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary. Metro's ordinance complies with Goal 9.

Goal 10 – Housing: Ordinance No. 02-968 requires the City of Hillsboro to ensure that the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP, will allow at least 10 units per net developable, residential acre in Area 55W. Ordinance No. 02-968 complies with Goal 10 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary. Metro's ordinance complies with Goal 10.

Goal 11 – Public Facilities and Services: Ordinance No. 02-968 requires the City of Hillsboro to ensure that the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP, will provide for a system of public facilities and services to support the 2040 Growth Concept design types for Area 55W. Ordinance No. 02-968 complies with Goal 11 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary. Metro's ordinance complies with Goal 11.

Goal 12 – Transportation: Ordinance No. 02-968 requires the City of Hillsboro to ensure that the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP, will provide for a system of transportation to support the 2040 Growth Concept design types for Area 55W. That system must be consistent with Metro's acknowledged Regional Transportation Plan. Ordinance No. 02-968 complies with Goal 12 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary. Metro's ordinance complies with Goal 12.

Goal 13- Energy Conservation: Ordinance No. 02-968 requires the City of Hillsboro to ensure that the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP, will allow at least 10 units per net developable, residential acre in Area 55W. This ensures the energy savings that come from implementation of the 2040 Growth Concept, acknowledged by LCDC on December 17, 1997. Ordinance No. 02-968 also complies with Goal 13 for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary. Metro's ordinance complies with Goal 13.

Goal 14 – Urbanization: Ordinance No. 02-968 involves the same Area 55W that Metro added to the Urban Growth Boundary by Ordinance No. 99-809 on June 17, 1999, acknowledged pursuant to ORS 197.625. Ordinance No. 02-968 revises the conditions imposed by Ordinance No. 99-809 upon expansion of the UGB. The new conditions continue to require the City of Hillsboro to comply with Title 11 of the UGMFP. For this reason and for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, Metro's ordinance complies with Goal 14.

Regional Framework Plan

Policy 1.1- Urban Form: This policy requires Metro to maintain a compact urban form, to protect existing neighborhoods and to work for affordable housing. Ordinance No. 02-968 helps achieve a compact urban form for the reason set forth in the finding on Statewide Planning Goal 10. For

this reason and for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, Metro's ordinance complies with Policy 1.1.

Policy 1.4 - Economic Opportunity: This policy requires Metro to designate areas for expansion of the UGB that will help achieve balance between housing cost and availability and wage levels. Ordinance No. 02-968 requires the City of Hillsboro to ensure that the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP, will allow at least 10 units per net developable, residential acre in Area 55W. For this reason and for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, Metro's ordinance complies with Policy 1.4.

Policy 1.6 – Growth Management: This policy requires Metro to manage the supply of urban land to achieve an efficient urban form, to provide a distinction between rural and urban land, to achieve redevelopment objectives, and to be consistent with the 2040 Growth Concept. Ordinance No. 02-968 requires the City of Hillsboro to ensure that the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP, comply with the Growth Concept. For this reason and for the reasons set forth in the Findings of Fact and Conclusions in Ordinance No. 99-809, Metro's ordinance complies with Policy 1.6.

Policy 1.9- Urban Growth Boundary: This policy requires Metro to locate the Urban Growth Boundary in a manner consistent with the statewide planning goals. As these findings, and the Findings of Fact and Conclusions in Ordinance No. 99-809, which included Area 55W in the Urban Growth Boundary, demonstrate, Ordinance No. 02-968 comply with the statewide planning goals.

Policy 1.14 – School Siting: This policy requires Metro to coordinate its planning with local governments and special districts to provide land for school facilities. One reason for revision of the conditions imposed by Ordinance No. 02-809 upon inclusion of Area 55W in the Urban Growth Boundary is to account for the siting of a public school in the Area, which rendered several of the conditions impossible to achieve. Ordinance No. 02-968 complies with Policy 1.14.

Regional Transportation Policies 2.0 (Intergovernmental Coordination), 3.0 (Urban Form); 4.0 (Consistency Between Land-use and Transportation Planning); 7.0 (Natural Environment); 8.0 (Water Quality); 9.0 (Clean Air); and 10.0 (Energy Efficiency) – Ordinance No. 02-968 requires the City of Hillsboro to ensure that the comprehensive plan and zoning designations that it applies to Area 55W pursuant to this ordinance and Title 11, section 3.07.1120 of the UGMFP, comply with the Regional Framework Plan and the 2040 Growth Concept. Plan and zone designations that comply with the Regional Framework Plan and the Growth Concept will also achieve these transportation policies.

STAFF REPORT

FOR THE PURPOSE OF AMENDING ORDINANCE NO. 99-809, WHICH
AMENDED THE URBAN GROWTH BOUNDARY TO INCLUDE FORMER
URBAN RESERVE AREA 55W OF WASHINGTON COUNTY

Date: October 24, 2002

Prepared and Presented by: Ray Valone

PROPOSED ACTION

Adoption of Ordinance No. 02-968 to amend Ordinance No. 99-809 by deleting items 1 and 6, reassigning a 2040 design type to the area and requiring the City of Hillsboro and Washington County to include the area within their comprehensive plans.

BACKGROUND AND ANALYSIS

On June 17, 1999, the Council adopted Ordinance No. 99-809 to include Area 55 West into the Urban Growth Boundary. Area 55 West is approximately 300 acres, located south of the city of Hillsboro. Ordinance No. 99-809 assigned the 2040 design type of Outer Neighborhood to the area and included a list of conditions of approval. These conditions include requirements for housing, schools, natural resource protection, stormwater, public facilities and transportation.

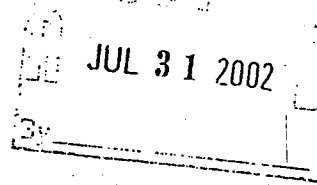
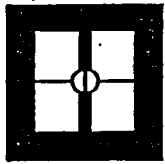
In a letter to the Metro Council, dated July 29, 2002, Mayor Hughes of Hillsboro requested that Metro delete or update the conditions as appropriate, particularly those dealing with densities, land use patterns, local transportation facilities, and issues now covered by regulations adopted subsequent to the Council action (Attachment A). Hillsboro staff submitted their suggested changes and reasons for those changes to Metro planning staff and the Office of General Council (Attachment B). After reviewing this submittal, staff agrees with Hillsboro that some conditions have already been met, others are no longer applicable and the remainder will be met through the requirements of Title 11 of the Functional Plan.

BUDGET IMPACT

Adoption of this ordinance has no budget impact.

EXECUTIVE OFFICER'S RECOMMENDATION

It is recommended that Ordinance 02-968 be adopted to recognize the changed circumstances and to facilitate the on-going effort by the City of Hillsboro to develop a community plan for future urbanization of Area 55 West.



July 29, 2002

Hon. Carl Hosticka, Presiding Officer
And Members
Metro Council
Hon. Mike Burton, Executive Officer
600 NE Grand Avenue
Portland, OR 97232-2736

RE: Request to amend Metro Ordinance No. 99-809

Dear Presiding Officer, Metro Councilors, and Executive Officer:

The City of Hillsboro has recently launched a public planning process to develop a Community Plan to guide future urbanization of Site 55 West (please see attached newsletter). The City has committed to completing the Community Plan by the end of the year. Our goal is to create a plan that will lay the foundation for a 2040 community that will serve as a model throughout the region. The plan will be consistent with the requirements of Metro Functional Plan Title 11, state Goal 14: Urbanization, the Regional Transportation Plan and other applicable requirements.

Metro Ordinance No. 99-809, approving the addition of Site 55 West into the UGB, includes several conditions that were to be addressed prior to urbanization of the site. City staff have been coordinating closely with Metro staff to review the conditions. It appears that many of them have either 1) already been met, 2) are now addressed by regulations, such as Title 3, that have been adopted since Ordinance No. 99-809 was passed, or 3) are no longer appropriate due to changing conditions and circumstances (such as the school district purchase of 20 acres in the middle of the site for an elementary school and possible future middle school).

We respectfully request that the Metro Council amend Ordinance No. 99-809 to delete or update the conditions as appropriate, particularly those dealing with densities, land use patterns, local transportation facilities, and issues now covered by regulations adopted subsequent to the Council action. We have forwarded our suggested amendments to Metro staff.

If you have any questions about this request, please contact our Long Range Planning Supervisor, Valerie Counts, at 503-681-6239. Thank you for your consideration of this request.

Sincerely,

Tom Hughes
Mayor

Attachment

Hillsboro Site 55 (West) Community Plan

The City of Hillsboro is developing a community plan for approximately 300 acres brought into the Metro Urban Growth Boundary (UGB) in 2000. This site, known as Site 55 (West) is located south of TV Highway, east of the Tualatin River and west of 229th in unincorporated Washington County. It includes a new elementary school that will replace Witch Hazel School and part of the Reserve Vineyards and Golf Club. Before this land can be developed, a community plan must be prepared to determine the future land uses and transportation system.

What is a Community Plan?

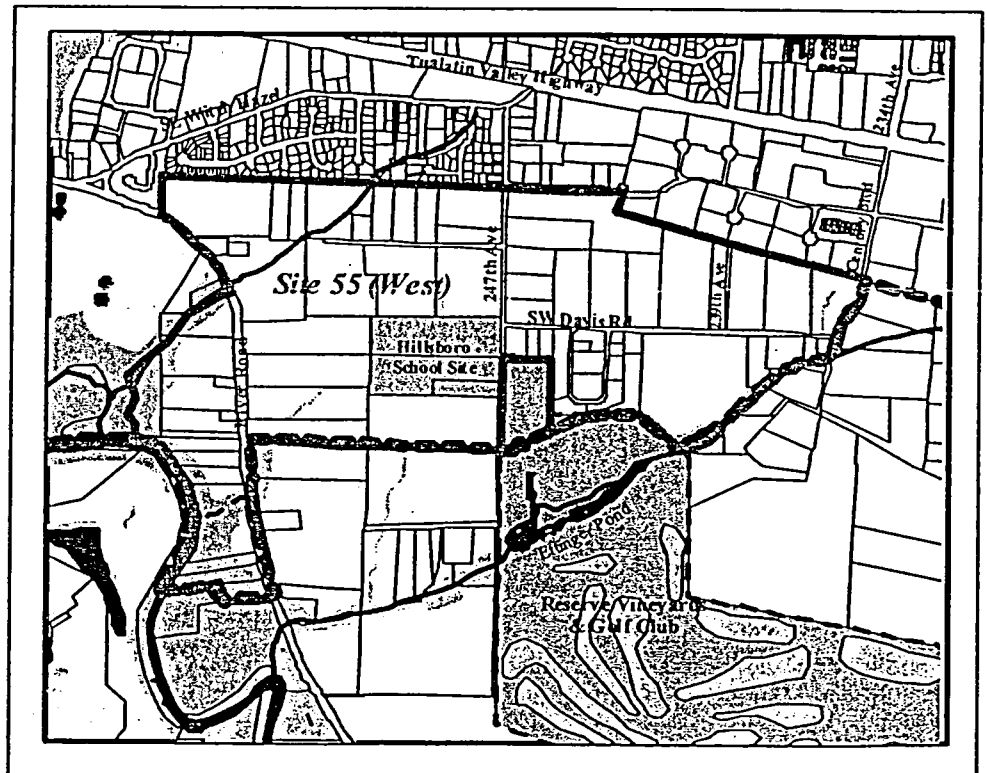
A community plan identifies the desired land uses, public facility and transportation components for urban levels of development. The plan will address: urban services (e.g., water, sewer, storm drainage); future land uses and zoning; transportation needs (i.e., streets, transit, bike and pedestrian facilities); housing types and densities; employment, commercial, office and retail opportunities; parks and greenspaces; and public facility needs (e.g., police, fire, community centers, schools).

The objectives of the Community Planning process are to:

- Establish future land use patterns and residential densities with appropriate Comprehensive Plan map designations;
- Provide clear direction on infrastructure improvements required (particularly transportation);

- Establish strategies for a public/private partnership to address phasing and cost distribution;
- Create development certainty in terms of land use patterns and physical development character; and
- Adopt specific measures to direct implementation of the plan.

The City and a consultant team led by Parsons Brinckerhoff have made a commitment to design a high quality new urban community. The design will allow for a strong neighborhood feeling, with mostly residential development and enough retail and commercial to support the residential uses (such as a corner grocery store) with friendly streetscapes, pedestrian paths, bikeways and parks. The Plan will include transportation options to address traffic congestion. The goal is to make this area its own identifiable neighborhood that is well integrated with the adjoining part of the City.



Hasn't a Plan Already Been Done?

In 1999, a "concept" plan was developed for the 1,600 acres south of TV Highway known as Hillsboro South. Hillsboro Site 55 (West) was part of this larger planning process. Since that time, only Site 55 (West) was annexed to the UGB and the concept plan was never adopted by the City of Hillsboro.

The prior work, however, will not be ignored. This planning process will revisit the original concept plan for this site and determine what aspects are still relevant. In addition, changes to the site conditions, such as the construction of a new elementary school which will replace Witch Hazel School, will be considered.

Key questions that will be asked during the Community Planning process include:

- What type of housing, and at what density, is appropriate for the site?
- How much commercial development can be supported?
- What infrastructure has been put in place with the relocation of Witch Hazel Elementary School?
- How can the transportation system be enhanced to relieve traffic congestion?
- How can this area be compatible with the surrounding neighborhoods?

What is the Schedule?

The Community Planning process will be completed by December 2002. Public hearings at the Planning Commission and adoption by the City Council will occur early in 2003.

Who is Involved in Creating the Plan?

A citizen Task Force will provide advice and recommendations to the consultant team on the land use plan, including the key issues for urbanizing the land, development goals and objectives, and area land use design and urban service provision. Task Force members are

currently being sought by the City representing the following groups:

- Property Owner – east of 247th north of Davis
- Property Owner – west of River Road
- Property Owner – northeast of golf course
- Property Owner – east of 247th south of Davis
- Property Owner – north of Witch Hazel Creek
- Witch Hazel neighborhood
- Reserve Golf Course
- Roseway Industrial Park
- Alexander Street Businesses
- TV Highway Businesses
- Rural area to the south

A 20 member **Technical Advisory Committee (TAC)**, consisting of staff from the affected local governments and service agencies as well as private sector utilities, will provide technical advice, input, and review of urban service and natural resource issues affecting service provision and regulatory compliance.

How Can I get Involved?

Your input is important! There are two opportunities for property owners to be involved.

First, through the Task Force. Several on the Task Force have been reserved for property owners within Hillsboro Site 55 (West).

Second, through property owner meetings. In both August and October, property owner meetings will be held to seek your input on the key issues of concern in developing, and implementing the Community Plan. Watch your mailboxes for the dates and locations.

Please contact Karla Antonini at 503-681-6181 or karlaa@ci.hillsboro.or.us at the City of Hillsboro if you are interested in joining the Task Force or if you have any questions about the process.

Join us for a Site 55 (West) Community Plan Open House on August 13 from 7 to 9 pm in the cafeteria in the Public Services Building in Hillsboro (123 W Main ST).

SUBMISSION BY CITY OF HILLSBORO STAFF
(July 29, 2002)

Suggested Revisions to Conditions Metro Ordinance No. 99-809		
Condition No.	Comments	Recommendation
6 (A) – The land added to the Urban Growth Boundary by this ordinance shall be planned and zoned for housing uses to the extent and in a manner consistent with the acknowledged 2040 Growth Concept text and the regional design types for the Lands shown on Exhibit A.	The exact location of 2040 design types as shown in Exhibit A will need to be adjusted to reflect reasonable expectations for urbanization patterns in the context of current conditions and the public planning process underway.	<u>Revise as shown:</u> The land added to the Urban Growth Boundary by this ordinance shall be planned and zoned for housing uses to the extent and in a manner consistent with the acknowledged 2040 Growth Concept text and the regional design types. for the Lands shown on Exhibit A.
6 (B) (1) –The portions of the Lands west of River Road shall be designated for parks, greenspaces, Title 3 and recreation corridor uses substantially as shown on Exhibit D.	This condition should be deleted. Title 3 regulations have been implemented. The reconfiguration of the proposed land use pattern will likely result in different locations for park and recreation areas from those shown on Exhibit D. Goal 5 resource sites mapped by the City and Metro also may not be consistent with Exhibit D once the Natural Resource Management Program is developed and implemented.	Delete.
6 (B) (2), (3) (a) & (b) – (2) The portion of the Lands shown as “low-medium density” residential areas on Exhibit D shall be assigned low-medium density zoning of at least 7 dwelling units per net developable acre; (3) Development in the Gordon Creek neighborhood/main street around the SE Davis - Brookward intersection shown on Exhibit D shall be assigned the following zoning: a. The portion of the Lands shown as “Medium-high” density shall be assigned zoning averaging of at least 22 dwelling units per net developable acre; b. The portion of the Lands shown as “mixed use-high density” shall be assigned zoning of at least 29 dwelling units per net developable acre.	These conditions should be deleted. Plan designations and densities should be consistent with the low, medium and high density ranges in the Comprehensive Plan that were adopted to comply with Metro Functional Plan targets and with provisions of Title 11.	Delete.

<p>6 (B) (4) - Affordable housing shall be enhanced by zoning at least 35 acres of apartments, senior housing, or other multi-family housing among the higher density residential zoning in the Gordon Creek neighborhood/main street area averaging at least 25 dwelling units per net developable acre.</p>	<p>This condition should be deleted. The proposed CommunityPlan/Comprehensive Plan amendments would include provisions for affordable housing consistent with Title 11 of Metro's Functional Plan.</p>	<p>Delete.</p>
<p>6 (C) – Adoption of an urban comprehensive plan designation and urban zoning for this area shall include means to assure that speed, temperature, sedimentation and chemical composition of the stormwater runoff meet State and Federal water quality standards.</p>	<p>This condition should be deleted and replaced with the applicable language from Title 11. Washington County CleanWater Services is the agency that deals with state and federal water quality standards.</p>	<p>Delete.</p>
<p>6 (D) and (E) – D. Urban zoning shall address on-site stormwater detention requirements. The City shall consider a requirement that the amount of stormwater runoff after completion of development shall not be greater than the stormwater runoff before development. E. Adoption of an urban comprehensive plan designation and urban zoning for the subject area shall be approved only after the city has complied with all Title III Functional Plan requirements, and has addressed Federal requirements adopted pursuant to the Endangered Species Act.</p>	<p>These conditions should be deleted. Title 3, CleanWater Service's Healthy Streams Program, and the Tualatin Basin Approach address the regional Goal 5 work, ESA and the Clean Water Act. It is inappropriate to include the specifications of this condition in the zoning ordinance. Clean Water Services has jurisdiction over stormwater runoff.</p>	<p>Delete.</p>
<p>6 (F) (1) and (2) – F. Prior to the conversion of the urbanizable land created by this ordinance to urban land available for development, the City's comprehensive plan shall be amended to include the following provisions: (1) The functional classification of the Tualatin Valley Highway shall remain "principal arterial" consistent with the Regional Motor Vehicles System Map (1997) of the Regional Framework Plan. (2) The transportation element of the comprehensive plan shall be amended to require the Access Management Strategies in the August 25, 1998 Draft Hillsboro TSP, or substantially equivalent policies.</p>	<p>These conditions should be deleted as they have already been met through adoption of the City's TSP and related comprehensive plan amendments.</p>	<p>Delete.</p>

<p>6 (F) (3) – (3) The transportation element of the comprehensive plan shall be amended to adopt the alternative Level of Service provision authorized by Title 6 of Metro's Urban Growth Management Functional Plan at Metro Code 3.07.640 for the road system planned for this land added to the urban growth boundary by this ordinance.</p>	<p>These conditions should be deleted as they have already been met through adoption of the City's TSP and related comprehensive plan amendments</p>	<p>Delete.</p>
<p>6 (F) (4) -The transportation element of the comprehensive plan shall be amended to require the number of local street connections per mile required by Title 6 of Metro's Urban Growth Management Functional Plan at Metro Code 3.07.630 for the road system planned for the land added to the urban growth boundary by this ordinance.</p>	<p>This condition should be deleted as it has already been met by the City's Subdivision Ordinance that was amended to comply with Metro Functional Plan requirements. New connectivity standards in the RTP may need to be addressed in the current Hillsboro TSP update.</p>	<p>Delete.</p>
<p>6 (F) (5) - The transportation element of the comprehensive plan shall require the City to coordinate transit service with Tri-Met to phase in increased transit service as this area is developed.</p>	<p>This condition should be deleted. Comprehensive Plan Section 13, Transportation, Policy (B) (5) addresses coordination of transit service throughout the City.</p>	<p>Delete.</p>
<p>6 (F) (6) – Amendments to the public facilities plan in the Transportation System Plan shall be made with rough cost estimates for each of the following on-site transportation facilities needed for this area to address existing and future needed road improvements as identified in the transportation report of the urban reserve plan:</p> <ul style="list-style-type: none"> • Davis Road from River Road to Gordon Creek neighborhood/mainstreet center: new two lane community street. • Davis Road through the Gordon Creek neighborhood/mainstreet center: new three lane community boulevard. • Davis Road through the Gordon Creek neighborhood/mainstreet center to Century Blvd.: new two lane community street. 	<p>This condition should be deleted. The streets listed and the various design types and configurations were premised on a conceptual transportation system that would have served Site 55 in its entirety. Final street design and alignments will be determined through the Community Plan process.</p>	<p>Delete.</p>

<ul style="list-style-type: none"> • Brookwood Ave. from TV Highway to Gordon Creek neighborhood/mainstreet center: new two lane community street. • Brookwood to Gordon Creek neighborhood/mainstreet center: new three lane community boulevard. • Century Blvd. from TV Highway to Davis Road: new two lane community street. • Alexander St. from Brookwood Ave. to 229th: new two lane collector. • River Road from Witch Hazel to Gordon Creek: new three lane arterial. 		
<p>6 (F) (7) - Amendments to the Public Facilities Plan shall be made with rough cost estimates for each of the following off-site transportation facilities needed for this area to address existing and future needed road improvements identified in the approved urban reserve plan:</p> <ul style="list-style-type: none"> • River Road from Gordon Creek to Rosedale Road: reconstruct to two lanes. • River Road at Witch Hazel: left turn lane, signalization. • Brookwood/Witch Hazel at TV Highway: realignment, added lanes, new traffic and RR signalization. • Brookwood from TV Highway to Baseline: reconstruct to 3 lanes, and rebuild curves at Ash St. and Golden Road. • Brookwood Ave. from Baseline to Cornell: construct to three lanes. • Century Blvd. from Baseline to Century High School: new three lane roadway extension. • 229th from 2,000 feet north of Butternut Creek to Rosedale Road: reconstruct two lanes. 	<p>This condition lists numerous requirements for off-site improvements which were largely taken from the Concept Plan for Site 55 (West). Some of the improvements listed are already built, others are already in the TSP, some are no longer desirable, others can be added, as deemed appropriate, as part of the TSP update currently underway. The final determination of off-site improvements should be made based upon analyses of current conditions and needs as part of the Community Plan process. The TSP/PFP would be amended as required. It is recommended that provision of parallel east/west routes be considered to take pressure off of TV Highway.</p>	<p>Delete.</p>

<ul style="list-style-type: none"> • Brookwood at Cedar Street: channelization and signalization. • Brookwood at Bently: channelization and signalization. • Brookwood at Golden: channelization and signalization. 		
<p>6 (F) (8) - The transportation element of the comprehensive plan shall be amended to require completion of a corridor study of the Tualatin Valley Highway prior to urban development approvals for land added to the urban growth boundary by this ordinance to provide additional means of maintaining the through traffic capacity while providing acceptable access to and across this highway.</p>	<p>This condition has been superceded by RTP amendments that resulted from the corridor initiatives. An appropriate segment of TV Highway demonstrating a nexus between Site 55 West and anticipated impacts on TV Highway will be studied. An updated traffic analysis would be performed as part of the Community Plan. In addition, opening the new elementary school at 247th and Davis will allow the Witch Hazel school to be closed and subsequently demolished, which facilitates realignment of the Brookwood Avenue/TV Highway intersection. It is anticipated that this realignment will have a positive impact on TV Highway capacity.</p>	<p>Revise as shown. 6 (F) (8) - The transportation element of the comprehensive plan shall be amended to require completion of <i>be consistent with the RTP regarding</i> a corridor study of the Tualatin Valley Highway prior to urban development approvals for land added to the urban growth boundary by this ordinance to provide additional <i>Based on findings of a traffic study to be conducted as part of the Community Plan process, a segment of TV Highway in the vicinity of Site 55 West shall be studied to determine necessary means for maintaining through traffic capacity while providing acceptable access to and across this highway.</i></p>
<p>6 (F) (9) – A school site plan consistent with ORS 195.110 that addresses the future needed school sites identified in the urban reserve plan.</p>	<p>This condition should be deleted. The School District has purchased approximately 20 acres at the southwest intersection of 247th and Davis Road and is in the development review process for a new 600 student K-12 elementary school to be constructed on the site. The District has also proposed possible construction of a middle school on the same property in the future. These schools will serve the needs of the population in Site 55 West consistent with the requirements of Metro Functional Plan Title 11.</p>	<p>Delete.</p>
<p>6 (F) (10) – Funding strategies and planning requirements shall be adopted for the acquisition and protection of adequate land to meet</p>	<p>This condition can be deleted as it is already addressed by Section 9, <u>Recreation</u> of the Comprehensive Plan, and</p>	<p>Delete.</p>

or exceed locally adopted level of service standards for provision of public parks, natural areas, trails, and recreational facilities. Lands which are undeveloped due to natural hazards or environmental protection purposes (i.e., steep slopes, floodways, riparian corridors, wetlands, etc.) shall only be considered to meet the natural area level of service standards if the land will be preserved in perpetuity for public benefit.	Section 4.6.4, <u>System Improvement Goals</u> , of the Public Facilities Plan that was adopted as a supporting document to the comprehensive plan earlier this year. Funding strategies and requirements for parks and natural areas in Site 55 (West) will be consistent with the new City Park Master Plan that is currently being developed.	
6 (G) – The City of Hillsboro and Washington County shall coordinate transportation facilities to provide appropriate farm vehicle access to farm land outside, but adjacent to, the new urban growth boundary established by this ordinance.	This requirement for coordination between the City and County to provide farm vehicle access adjacent to Site 55 (West) will be addressed in appropriate Comprehensive Plan amendments through the Community Plan process.	No change.
7 – Consistent with ORS 268.390(3) and ORS 195.025(1), Washington County and the City of Hillsboro shall include the area added to the Urban Growth Boundary by this Ordinance as shown on the map in Exhibit B in applicable text and map provisions of their comprehensive plans.	The County recently adopted Ordinance No. 571 clarifying the process for changing the County Plan designation from rural to urban on property that has been added to a UGB. This process applies only to quasi-judicial plan amendments for individual properties. The City is in the process of preparing appropriate Comprehensive Plan map and text amendments as required prior to urbanization of the site.	No change.

Ordinance No. 02-971, For the purpose of Amending the FY 2002-02 Budget and Appropriations Scheduled Recognizing \$411,051 in Grant Funds From Various State, Federal, and Private Sources; and Increasing the Regional Parks Fund Operating Expenses by \$411,051.

Second Reading

Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 2002-03	)	ORDINANCE NO. 02-971
BUDGET AND APPROPRIATIONS SCHEDULE FOR)	
THE PURPOSE OF AMENDING THE FY 2002-03)	
BUDGET AND APPROPRIATIONS SCHEDULE	)	Introduced by Mike Burton,
RECOGNIZING \$411,051 IN GRANT FUNDS FROM	)	Executive Officer
VARIOUS STATE, FEDERAL AND PRIVATE)	
SOURCES; AND INCREASING THE REGIONAL)	
PARKS FUND OPERATING EXPENSES BY \$411,051)	
)	

WHEREAS, the Metro Council has reviewed and considered the need to recognize the additional grant funding within the FY 2002-03 Budget; and

WHEREAS, Oregon Budget Law ORS 294.326(3) allows for the expenditure of grants, gifts, bequests and other devices received by a municipal corporation in trust for a specific purpose; and

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

The Metro Council ordains as follows:

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 recognizing \$411,051 in grant funds from various sources and increasing the Regional Parks Fund Operating Expenses by a like amount.

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.02-971

REGIONAL PARKS & GREENSPACES

ACCT	DESCRIPTION	Current Budget Amount	Amount	Amended Budget Amount
Regional Parks Fund				
Resources				
<i>BEGBAL</i>	<i>Beginning Fund Balance</i>			
*	Unrestricted	1,685,786	0	1,685,786
*	Unrestricted - Used to Balance	628,505	0	628,505
*	Project Carry Forward	218,896	0	218,896
*	Renewal & Replacement	0	0	0
*	Cash Flow Reserve	0	0	0
*	Renewal, Replacement, Capital Improvement	1,032,660	0	1,032,660
*	Prior year adjustment	0	0	0
<i>GRANTS</i>	<i>Grants</i>			
4100	Federal Grants - Direct	301,000	63,000	364,000
4105	Federal Grants - Indirect	0	75,000	75,000
4110	State Grants - Direct	255,000	0	255,000
4115	State Grants - Indirect	0	0	0
4120	Local Grants - Direct	0	0	0
4125	Local Grants - Indirect	0	0	0
<i>LGSHRE</i>	<i>Local Gov't Share Revenues</i>			
4135	Marine Board Fuel Tax	130,800	0	130,800
4139	Other Local Govt Shared Rev.	250,000	0	250,000
<i>GVCNTB</i>	<i>Gov't Contributions</i>			
4145	Government Contributions	30,300	0	30,300
<i>CHGSVC</i>	<i>Charges for Service</i>			
4160	Boat Ramp Use Permits	0	0	0
4165	Boat Launch Fees	137,000	0	137,000
4170	Fines and Forfeits	0	0	0
4180	Contract & Professional Service	0	0	0
4230	Product Sales	6,000	0	6,000
4280	Grave Openings	157,500	0	157,500
4285	Grave Sales	117,670	0	117,670
4450	Insurance Recovery Revenue	0	0	0
4500	Admission Fees	488,950	0	488,950
4510	Rentals	308,300	0	308,300
4550	Food Service Revenue	24,000	0	24,000
4560	Retail Sales	3,000	0	3,000
4580	Utility Services	1,000	0	1,000
4610	Contract Revenue	926,588	0	926,588
4645	Reimbursed Services	0	0	0
4650	Miscellaneous Charges for Svc	11,500	0	11,500
Sub-Total		6,714,455	138,000 #	6,852,455

Exhibit A
Ordinance No.02-971

ACCT	DESCRIPTION	Current Budget Amount	Revision Amount	Amended Budget Amount
<u>Resources (cont.)</u>				
<i>INTRST</i>	<i>Interest Earnings</i>			
4700	Interest on Investments	51,930	0	51,930
<i>DONAT</i>	<i>Contributions from Private Sources</i>			
4750	Donations and Bequests	297,230	273,051	570,281
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>			
4805	Financing Transactions	0	0	0
4890	Miscellaneous Revenue	500	0	500
<i>INTSRV</i>	<i>Internal Service Transfers</i>			
4980	Transfer for Direct Costs			
*	from Open Spaces Fund	560,811	0	560,811
*	from Smith & Bybee Lakes Fund	10,000	0	10,000
*	from Regional Parks Trust Fund	48,911	0	48,911
<i>EQTREV</i>	<i>Fund Equity Transfers</i>			
4970	Transfer of Resources			
*	from General Fund (general allocation)	515,290	0	515,290
*	from General Fund (project allocation)	15,000	0	15,000
*	from General Fund (1% on SW revenues)	710,532	0	710,532
*	from General Fund (\$1 per ton)	1,184,000	0	1,184,000
*	from General Fund (landbanking)	224,280	0	224,280
TOTAL RESOURCES		\$10,332,939	\$411,051 #	\$10,743,990

Exhibit A
Ordinance No.02-971

ACCT	DESCRIPTION	Current Budget Amount	Revision Amount	Amended Budget Amount
<u>Requirements</u>		FTE - 38.75		FTE - 38.75
Total Personal Services		\$2,957,227	\$0	\$2,957,227
<u>Materials & Services</u>				
<i>GOODS</i>	<i>Goods</i>			
5201	Office Supplies	34,945	0	34,945
5205	Operating Supplies	60,160	0	60,160
5210	Subscriptions and Dues	1,960	0	1,960
5215	Maintenance & Repairs Supplies	55,285	0	55,285
5219	Purchasing Card Expenditures	0	0	0
5220	Food	2,025	0	2,025
5225	Retail	10,400	0	10,400
<i>SVCS</i>	<i>Services</i>			
5240	Contracted Professional Svcs	726,639	411,051	1,137,690
5250	Contracted Property Svcs	59,200	0	59,200
5251	Utility Services	106,380	0	106,380
5255	Cleaning Services	300	0	300
5260	Maintenance & Repair Services	55,095	0	55,095
5262	Capital Maintenance-non-CIP	240,000	0	240,000
5265	Rentals	22,150	0	22,150
5270	Insurance	14,000	0	14,000
5280	Other Purchased Services	65,416	0	65,416
5290	Operations Contracts	1,700	0	1,700
<i>IGEXP</i>	<i>Intergov't Expenditures</i>			
5300	Payments to Other Agencies	286,920	0	286,920
5310	Taxes (Non-Payroll)	152,424	0	152,424
5320	Government Assessments	0	0	0
<i>INCGEX</i>	<i>Internal Charges for Service</i>			
5400	Charges for Service	7,700	0	7,700
<i>OTHEXP</i>	<i>Other Expenditures</i>			
5450	Travel	1,255	0	1,255
5455	Staff Development	10,100	0	10,100
5490	Miscellaneous Expenditures	19,770	0	19,770
Total Materials & Services		\$1,933,824	\$411,051	2,344,875
Total Debt Service		\$0	\$0	\$0
Total Capital Outlay		\$1,214,041	\$0 #	\$1,214,041
Total Interfund Transfers		\$1,239,703	\$0 #	\$1,239,703
Total Contingency and Ending Balance		\$2,988,144	\$0	\$2,988,144
TOTAL REQUIREMENTS		# \$10,332,939	\$411,051 #	\$10,743,990

Exhibit B
Ordinance No. 02-971
FY 2002-03 SCHEDULE OF APPROPRIATIONS

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Amended</u> <u>Appropriation</u>
REGIONAL PARKS FUND			
Operating Expenses (PS & M&S)	\$4,891,051	\$411,051	\$5,302,102
Debt Service	0	0	0
Capital Outlay	1,214,041	0	1,214,041
Interfund Transfers	1,239,703	0	1,239,703
Contingency	244,249	0	244,249
Unappropriated Balance	2,743,895	0	2,743,895
Total Fund Requirements	\$10,332,939	\$411,051	\$10,743,990

All Other Appropriations Remain as Previously Adopted

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-971, FOR THE PURPOSE OF AMENDING THE FY 2002-03 BUDGET AND APPROPRIATIONS SCHEDULE RECOGNIZING \$411,051 IN GRANT FUNDS FROM VARIOUS STATE, FEDERAL AND PRIVATE SOURCES; AND INCREASING THE REGIONAL PARKS FUND OPERATING EXPENSES BY \$411,051

Date: September 30, 2002

Prepared by: Charles Cieccko

BACKGROUND

The Metro Regional Parks and Greenspaces Department has developed a habitat improvement and restoration plan at Gotter Bottom on the Tualatin River, purchased in 1996 as part of the Open Spaces Acquisition Program. The Gotter Bottom Restoration Project includes the removal of invasive plant species and other weeds, reconstruction of an existing valve on the drainage system, minor surface grading, and seeding and planting with native wetland and riparian vegetation within the 90 acres of potential wetland and 20 acres of surrounding riparian habitat.

Metro has entered into agreements with The Tualatin River Keepers, the Division of State Lands and Ducks Unlimited to allow these agencies to perform this work on Metro-owned property. Metro is responsible for procuring all necessary permits for this project. Tualatin River Keepers is acting as the general contractor for this project, with Regional Parks and Greenspaces staff overseeing and approving phases of the project as they are implemented.

Project Funding

Metro has been awarded a grant through the Wetlands Restoration Program in the US Department of Agriculture in the amount of \$63,000 toward this project. Additionally, Tualatin River Keepers has received an award of \$187,651 from the Oregon State Division of State Lands for implementing various components of this project. Metro has also entered into an agreement with Ducks Unlimited to restore and enhance a water control structure on the property, funded through a \$45,000 grant from the North America Wetlands Conservation Act (US Department of Agriculture) and \$5,000 of their own money. Ducks Unlimited has also secured \$15,000 from the US Fish and Wildlife Service toward other site enhancements. The project anticipates a \$75,000 grant from the Northern Willamette Valley Habitat Conservation Fund of the National Fish and Wildlife Foundation.

\$187,651	Oregon State Division of State Lands
63,000	Wetlands Restoration Program (USDA)
75,000	National Fish and Wildlife Foundation
45,000	North America Wetlands Conservation Act
15,000	US Fish and Wildlife Service
\$20,400	Tualatin River Keepers
5,000	Ducks Unlimited
<hr/>	
\$411,051	Total

Of the total \$411,051 in external funds for this project, \$138,000 will come directly to Metro as grant revenue. The remaining \$273,051 will be given by the granting agencies to either of our two partners (Ducks Unlimited and Tualatin River Keepers). However, because the work is being performed on Metro property, accounting rules require that the \$273,051 being received and spent by our partners must also be recorded as revenues and expenditures on Metro's General Ledger.

For this reason, this action requests the recognition of \$411,051 in revenue and an increase in appropriation authority of \$411,051 for Fiscal Year 2002-2003.

ANALYSIS/INFORMATION

1. **Known Opposition:** No known opposition
2. **Legal Antecedents:** ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts and bequests received by a municipal corporation in trust for a specific purpose.
3. **Anticipated Effects:** This action allows the department to recognize the value of the land improvements as described in the Gotter Bottom Restoration Project.
4. **Budget Impacts:** This action requests the recognition of \$411,051 in Federal Direct Grants, grants from private foundations and donations from non-profit organizations, according to Exhibit A. This action increases appropriation authority in the Regional Parks Fund by \$411,051 as described in Exhibit B Schedule of Appropriations.

RECOMMENDED ACTION

The Executive Officer recommends adoption of this ordinance.

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Agenda Item Number 6.4

**Ordinance No. 02-979, For the Purpose of Amending Metro Code Chapter 5.05
to include the Coffin Butte Landfill on the list of Designated Facilities; and Declaring an Emergency.**

Second Reading

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.05 TO INCLUDE THE)
COFFIN BUTTE LANDFILL ON THE LIST OF)
DESIGNATED FACILITIES; AND DECLARING)
AN EMERGENCY)

ORDINANCE NO. 02-979

Introduced by Mike Burton, Executive Officer

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

WHEREAS, Valley Landfills, Inc. ("Valley") is the owner of the Coffin Butte Landfill in Corvallis, Oregon, and has made application to Metro seeking designated facility status for the Coffin Butte Landfill by requesting that Metro add the Coffin Butte Landfill to the list of designated facilities set forth in Metro Code Section 5.05.030; and,

WHEREAS, based on the information set forth in the staff report accompanying this Ordinance, the Metro Council finds that the criteria set forth in Metro Code section 5.05.030(b) for a determination of whether to add a designated facility have been met; and,

WHEREAS, this Ordinance was submitted for the consideration of the Metro Council by the Executive Officer, who recommends approval of this Ordinance; now therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. Metro Code Section 5.05.030(a) is amended to add the following provision as subsection 9:

(9) Coffin Butte Landfill. The Coffin Butte Landfill, located in Benton County, Oregon, which may accept solid waste generated within the District only as follows:

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

2. Metro Code Section 5.05.035(b) should be amended to add the following provision as subsection (5):

"Notwithstanding any other requirement of this section, the chief operating officer may waive the application fee for an application for a non-system license seeking authority to deliver a de minimis amount of solid waste per year to a non-system facility."

3. This ordinance is necessary for the immediate preservation of public health, safety and welfare by providing for more effective and comprehensive management and regulation of the regional solid waste system through the timely implementation of the designated facility agreement related to the Coffin Butte Landfill. 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 November, 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-979, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.05 TO INCLUDE THE COFFIN BUTTE LANDFILL ON THE LIST OF DESIGNATED FACILITIES; AND DECLARING AN EMERGENCY.

October 3, 2002

Drafted by: Chuck Geyer

BACKGROUND

In November 2001, Metro received a request from Valley Landfills, Inc., for Metro to recognize its Coffin Butte Landfill as a "Designated Facility" under the provisions of Metro Code 5.05.030. The Coffin Butte Landfill is located at 28972 Coffin Butte Road in Benton County, north of Corvallis, Oregon (see attachments for additional site information.) Following this request, Regional Environmental Management staff entered into negotiations with the firm to draft an agreement acceptable to both parties. The Designated Facility Agreement that is Exhibit "A" to Resolution No. 02-3238, "For the purpose of considering a designated facility agreement with Valley Landfills, Inc., for the Coffin Butte Landfill," is the result of these negotiations.

The primary purpose of the agreement is to allow special waste and non-putrescible waste generated from within the Metro to be received at the facility. The waste must have been already processed for material recovery, or be a type of dry wastes such as cleanup materials and special waste that lack material recovery potential. Such waste is currently received by the facility through Non System Licenses (NSLs) that would no longer be needed. Approximately 100,000 tons of non-putrescible waste is currently authorized under the NSLs that would be replaced by this agreement. NSLs would still be required for putrescible waste received by the facility (up to 45,000 tons/year is currently authorized). The facility received approximately 69,000 tons of waste from the Metro region in FY2001-02. This represents about 16% of the total waste (426,000) received at the facility.

Metro Code 5.05.030(a) contains a list of designated facilities. Metro Code 5.05.030(b) states that, pursuant to a duly enacted ordinance, the Metro Council may add (or remove) facilities to the list. In deciding whether to designate an addition facility shall consider several factors listed in the Code. Below are the factors that must be considered followed by how they are addressed by the agreement.

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

The Coffin Butte Landfill (CBLF) first came into use during the 1940s or 50s when it served as the landfill for the nearby Adair Village Military base. Later, the landfill accepted industrial wastes from the Wah Chang facility located in Albany, Oregon. When the CBLF became a Subtitle D landfill in 1992, the original unlined cells were capped. However, there remains a problem of leachate contamination of groundwater that is presently being monitored by the DEQ. Since 1992, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ.

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

The Coffin Butte Landfill is permitted by the Oregon Department of Environmental Quality (DEQ) to take unlimited amounts of authorized wastes (putrescible, non-putrescible, special and cleanup wastes). The facility was issued a NON by DEQ in 1998 for failure to immediately report a landfill fire. Another NON was issued in July 2001 when too high a level of non-methane gasses was detected in the landfill gas power generation system. The problem was promptly remedied. These are considered to be relatively minor violations, both DEQ and Benton County considers the landfill to be a well run facility that is in compliance with federal, state and local requirements. Benton County and the landfill executed an agreement in December 2000 establishing the parameters to be monitored by the Benton County Environmental Health Division, and authorizing the landfill to accept quantities of waste consistent with the DEQ permit. The facility has a good compliance record with public health, safety and environmental rules and regulations.

(3) *The adequacy of operational practices and management controls at the facility;*

The Coffin Butte Landfill uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

(4) *The expected impact on the region's recycling and waste reduction efforts;*

The region's recycling and waste reduction efforts should be enhanced (or at least stay the same) because only non-putrescible waste from within the region that has been processed can be received at the facility. This should act as an incentive for additional material recovery, particularly at other subsidiaries of the facility's parent corporation.

Waste is currently going to the facility from the subsidiaries such as WRI and Keller Drop Box. It includes putrescible, special, and dry processing residual wastes. Putrescible waste will not be authorized under the designated facility agreement and must continue to be delivered under a non-system license (NSL). Special waste has no recovery potential and therefore should not affect waste reduction efforts. Since individual NSL's will not be required for dry processing residual, it may encourage additional processing at WRI, which may increase regional recovery.

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

The waste subject to the proposed agreement is non-putrescible waste and therefore, under Change Order No. 8, not included within the definition of "Metro Solid Waste Tonnage" for purposes of Metro's disposal contract. The requested agreement does not appear to conflict with Metro's disposal contract or any other of its existing contractual arrangements.

(6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

The applicant is Valley Landfills, Inc. doing business as the Coffin Butte Landfill. The applicant had not been subject to Metro ordinances since it is located outside the Metro boundary. The applicant has assisted Metro with enforcement actions when waste was illegally hauled to its facilities. The applicant is a subsidiary of Allied Waste Systems, Inc. Other subsidiaries of the parent (such as River City Disposal, WRI, Keller Drop Box, United Disposal Services) that are active in the Metro solid waste system have a good record of compliance with Metro ordinances and agreements and have assisted Metro in their

enforcement. The DFA would also allow third party contractor other than the subsidiaries to haul waste directly from generator sites, if the waste fell into the categories permitted by the DFA such as special waste that does not require processing.

- (7) *Such other factors as the executive officer deems appropriate for purposes of making such determination.*

The agreement will enhance the collection of fees and taxes due Metro as they are required by the agreement. The agreement also makes the facility subject to Metro's regulatory requirements as if it were located within the Metro boundary.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code Sections 5.03.030 (a) and (b) as described above; and section (c) requiring the agreement be adopted be approved by the Metro Council; and section (d) that requires the agreement to specify waste types.

3. Anticipated Effects

Reduce the number of NSLs serving the facility.

4. Budget Impacts

No immediate budget impact is anticipated.

EXECUTIVE OFFICER RECOMMENDATION

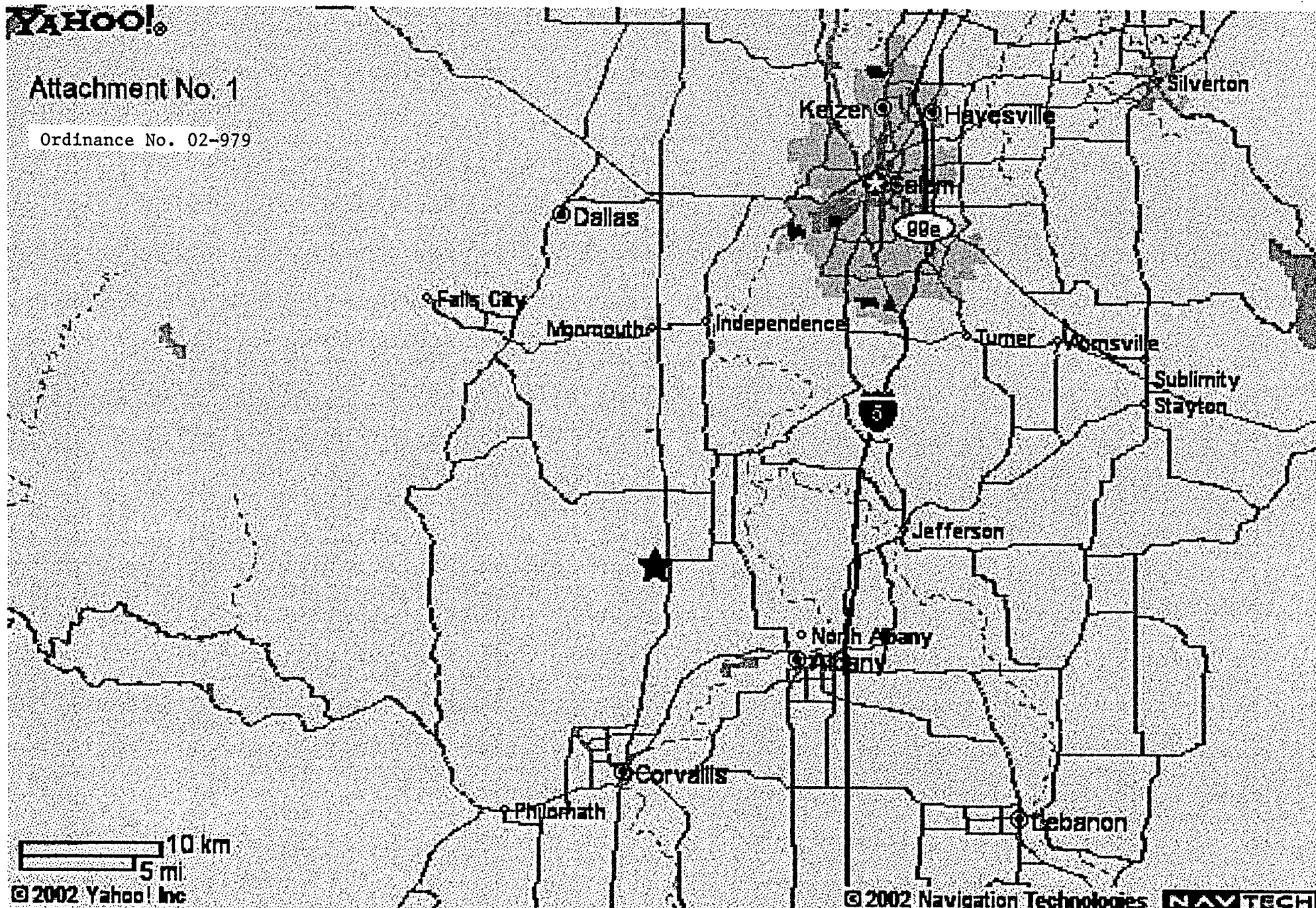
The Executive Officer recommends adoption of Ordinance No. 02-979.

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YAHOO!

Attachment No. 1

Ordinance No. 02-979



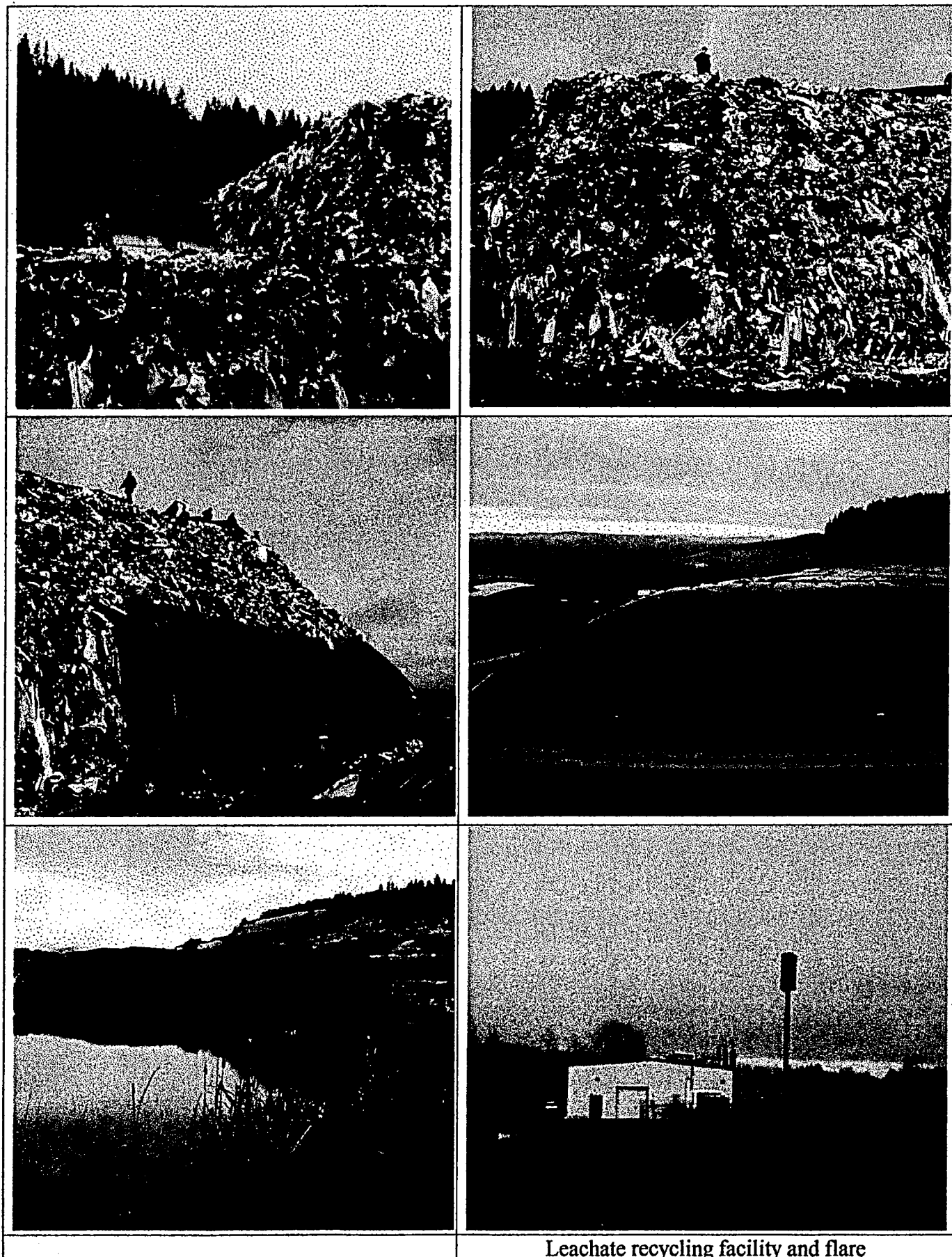
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Attachment 2
Ordinance No. 02-979



Leachate recycling facility and flare

Agenda Item Number 6.5

Ordinance No. 02-981, For the Purpose of Amending Ordinance No. 95-625A to Amend the 2040 Growth Concept Map and Ordinance No. 96-647C to Amend the Employment and Industrial Areas Map, November 2002; and Declaring an Emergency.

Second Reading

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 02-981
ORDINANCE NO. 95-625A TO AMEND THE)
2040 GROWTH CONCEPT MAP AND) Introduced by Executive Officer Mike Burton
ORDINANCE NO. 96-647C TO AMEND THE)
EMPLOYMENT AND INDUSTRIAL AREAS
MAP –NOVEMBER 2002; AND DECLARING
AN EMERGENCY

WHEREAS, Metro's regional goals and objectives required by ORS 268.380, the Regional Urban Growth Goals and Objectives (RUGGO), were adopted December 14, 1995 in Ordinance No. 95-625A; and

WHEREAS, RUGGO was transmitted to the Land Conservation and Development Commission (LCDC) for acknowledgement of consistency with statewide land use planning goals; and

WHEREAS, LCDC acted on November 1, 1996 to authorize the RUGGO final acknowledgement Order dated December 9, 1996; and

WHEREAS, the Metro Council adopted the Urban Growth Management Functional Plan in Ordinance No. 96-647C on November 21, 1996 which includes Council-approved changes in certain 2040 Growth Concept design type designations as part of 2040 Growth Concept implementation; and

WHEREAS, functional plans must remain consistent with RUGGO, including the 2040 Growth Concept Map; and

WHEREAS, changes in industrial and employment areas in the Cities of Cornelius, Fairview, Forest Grove, Gresham, Portland, and Tualatin have been requested; and

WHEREAS, a change in the corridor in the City of Happy Valley has been requested; and

WHEREAS, the staff have recommended that changes be made to the Airport Light Rail Line Station Communities, that the outer neighborhood designation be amended to inner neighborhood, the Town Center be moved north, and Employment Areas be added in Pleasant Valley, and that the rural reserve designations be removed; and

WHEREAS, RUGGO Goal 1 requires that amendments to RUGGO involve MPAC for public and local government review prior to final Metro Council action; and

WHEREAS, amendment of acknowledged RUGGO requires a 45 day notice to the Department of Land Conservation and Development under ORS 197.610 which has been sent; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the 2040 Growth Concept Map, a part of the Regional Urban Growth Goals and Objectives in Ordinance No. 95-625A, is hereby amended as indicated on the amended 2040 Growth Concept Map attached as Exhibit A.

2. That the amendments to the 2040 Growth Concept Map are described generally as follows:

A. City of Cornelius:

i. All Employment Area designations save the City's Development Services Facilities are changed to Industrial Areas.

ii. The Outer Neighborhood designation at the northwest corner of the City are changed to Industrial Area.

iii. The Employment Area designation east of N 10th Avenue and south of the railway tracks is changed to Outer Neighborhood.

iv. The Employment Area designation west of N 19th Avenue, north of the railway tracks to N Holladay Street is changed to Outer Neighborhood.

B. City of Fairview:

i. The Industrial Area designation in the vicinity of NE 238th and Sandy Boulevard is changed to Employment Area.

ii. The Employment Area designation on the lands occupied by NACCO is changed to Industrial Area.

C. City of Forest Grove:

i. The Employment Area designation west of Quince St/Martin Rd is changed to Industrial Area.

ii. The Inner Neighborhood designation west of Elm Street, north of 23rd Avenue is changed to Industrial Area.

iii. The Industrial Area designation on the Sewage Lagoons is changed to Inner Neighborhood.

iv. The Inner Neighborhood designation southeast of Highway 47 is changed to Industrial Area.

D. City of Gresham:

i. The Industrial Area designation commonly known as the brickyards is changed to Employment Area.

ii. The Employment Area designation on Powell Boulevard is changed to Inner Neighborhood.

iii. The Employment and Industrial Area designation on Powell Boulevard west of SE 182nd Avenue is changed to Inner Neighborhood.

E. City of Happy Valley:

i. The Corridor designation on SE Mt. Scott Boulevard and SE 122nd/129th Avenues is changed to Outer Neighborhood.

F. Portland:

i. The Inner Neighborhood designation on the Oregon Health and Sciences University and the Veterans Hospital is changed to Employment Area.

ii. The Industrial Area designation on the Albina Fuel site at NE 33rd Avenue is changed to Inner Neighborhood.

iii. The center of the Light Rail Community Station at NE Going is moved to NE Prescott St.

iv. The Main Street designation on SE Tacoma Street west of SE 7th Street is changed to Inner Neighborhood.

v. A Main Street designation is added on SE 92nd Avenue between SE Harold and SE Duke Streets.

vi. A Main Street designation is added on NE and SE 102nd Avenue between NE Wiedler and SE Washington Streets.

vii. The Open Space designation on the center of the racetrack at Portland Meadows is changed to Industrial Area.

G. City of Tualatin:

i. The Inner Neighborhood designation on the Legacy Meridian Hospital is changed to Employment Area.

ii. The Employment Area designation north of SW Nyberg Road and west of the County line is changed to Inner Neighborhood.

iii. The Industrial Area designation southwest of SW Tualatin Road and north of SW Herman Road is changed to Inner Neighborhood.

iv. The Employment Area designation between SW Mohawk and SW Sagert Streets on SW Martinazzi Avenue is changed to Inner Neighborhood.

v. The Employment Area designation south of SW Nyberg Road, west of SW 65th Avenue and north of SW Sagert Street is changed to Inner Neighborhood.

H. Airport Light Rail Line Station Communities:

i. The Airport Light Rail Line Station Communities are changed from Potential Light Rail Stations to Light Rail Stations.

I. Pleasant Valley:

i. The Pleasant Valley Town Center is moved north to focus on the proposed new intersection of 172nd Avenue and Giese Road.

ii. The Outer Neighborhood designation in the Pleasant Valley area is changed to Inner Neighborhood.

iii. Employment Areas area added west of 190th Avenue at Giese Road and east of 172nd Avenue at Sager Road in Pleasant Valley.

J. Rural Reserves:

i. The Rural Reserve designation is removed from the map. The Exclusive Farm Use designation is expanded to include Forestlands and Renamed Resource Land.

3. That the Employment and Industrial Areas Map, a part of the Regional Urban Growth Goals and Objectives in Ordinance No. 96-647C, is hereby amended as indicated on the amended Title 4 Map attached as Exhibit B.

4. The amendments to the Employment and Industrial Areas Map are described generally as follows:

a. The Employment Areas in the City of Cornelius, save the City's Development Services Facilities are changed to Industrial Areas.

b. Industrial Areas are added to the northwest corner of Cornelius and to east of S 4th Avenue, south of Baseline Street.

c. Employment Areas east of N 10th, south of the railway tracks and west of N 19th, north of the railway tracks in Cornelius are removed.

d. The Industrial Area in the vicinity of NE 238th and Sandy Boulevard is changed to Employment Area in Fairview.

e. The Employment Area on the lands occupied by NACCO is changed to Industrial Area in Fairview

f. The Employment Area west of Quince Street/Martin Road in Forest Grove is changed to Industrial Area.

g. Industrial Areas are added east of Cedar Street at 23rd Place, west of Elm Street, north of 23rd Avenue, and southeast of Highway 47 in Forest Grove.

h. The Industrial Area is removed from the Sewage Lagoons in Forest Grove.

- i. The Industrial Area south of 19th Avenue, east of B Street is removed in Forest Grove.
- j. The Industrial Area commonly know as the brickyards is changed to Employment Area.
- k. The Employment Area on Powell Boulevard east of NW 182nd Avenue, west of NW Battaglia Avenue developed or zoned as residential or owned by Gresham for park purposes is removed.
- j. The Employment Area south of Powell Boulevard, west of SW Highland Drive in Gresham zoned for residential uses is removed.
- l. Employment Area is added on the Oregon Health and Sciences University and the Veterans Hospital site in Portland.
- j. The Industrial Area on the Albina Fuel site at NE 33rd Avenue is removed.
- k. Employment Area is added on the Legacy Meridian Hospital in Tualatin.
- l. Employment Areas are removed from SW Nyberg Road, west of the County line, from SW Martinazzin Avenue between SW Mohawk and SW Sagert Streets, and from SW Nyberg Road west of SW 65th Avenue, north of SW Saggert Street.
- m. The Industrial Area southwest of Tualatin Road north of SW Herman Road is removed.
- n. Employment Areas area added west of 190th Avenue at Giese Road and east of 172nd Avenue at Sager Road in Pleasant Valley.

5. This ordinance is necessary for the immediate preservation of public health, safety and welfare because state law requires Metro to ensure that the region's UGB includes a 20-year supply of buildable land for housing upon the completion of its analysis of the capacity of the boundary. The resulting decision will include amendments to the 2040 Growth Concept and Employment and Industrial Areas Maps and it is necessary to have the Map amendments effective at the same time. 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:

Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A

Proposed 2040 Growth Concept Map

Exhibit B

**Proposed Employment and Industrial Areas Map
Title 4**

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 02-981 FOR THE PURPOSE OF AMENDING ORDINANCE NO. 95-625A TO AMEND THE 2040 GROWTH CONCEPT MAP AND THE TITLE 4: INDUSTRIAL AND EMPLOYMENT AREAS MAP, NOVEMBER, 2002; AND DECLARING AN EMERGENCY

Date: November, 2002

**Presented by: Brenda Bernards
Prepared by: Brenda Bernards**

PROPOSED ACTION

Adoption of Ordinance No. 02-981 to amend the 2040 Growth Concept Map and the Employment and Industrial Areas Map.

BACKGROUND

As the jurisdictions work through the Urban Growth Management Functional Plan (Functional Plan) compliance process, a number of requests for amendments to the 2040 Growth Concept Map have been received. Requests for amendments to the 2040 Growth Concept Map were expected and staff anticipates that additional requests will come forward as more jurisdictions come into compliance with the requirements of the Functional Plan.

In April 2001, Metro Council adopted a substantial number of amendments to the 2040 Growth Concept Map and Employment and Industrial Areas Map. At that time, the Metro Council asked that the staff bring forward proposed map changes on an annual basis. A letter was sent to the Planning Directors of the local jurisdictions requesting that proposed map amendments. Requests for map amendments were received from the Cities of Cornelius, Fairview, Forest Grove, Gresham, Happy Valley, Portland, and Tualatin. In addition, Metro staff has initiated a number of mapping amendments.

ANALYSIS/INFORMATION

Known Opposition

There is no known opposition to the proposed legislation.

Legal Antecedents

The 2040 Growth Concept is a component of both the acknowledged Regional Urban Growth Goals and Objectives and the Regional Framework Plan. Authority to amend the 2040 Growth Concept map comes from ORS 268.380 and ORS 268.390(5). The Authority to amend the Employment and Industrial Areas Map comes from Metro Code 3.07.820.B.4.

Anticipated Effects

Adoption of this Ordinance will result in amendments to the 2040 Growth Concept and Employment and Industrial Areas Maps.

Budget Impacts

Adoption of this ordinance has no budget impact.

PROPOSED 2040 GROWTH CONCEPT MAP AND EMPLOYMENT AND INDUSTRIAL AREAS MAP AMENDMENTS

The Cities of Cornelius, Fairview, Forest Grove Gresham, Portland and Tualatin have requested amendments to their Industrial and Employment designations on the 2040 Growth Concept Map. These requests also require changes to the Title 4: Industrial Employment Areas Map. The City of Happy Valley has requested that a Corridor designation be removed. In addition to Employment and Industrial Areas related amendments, Portland has requested amendments to a number of Main Streets and the Interstate Max Line.

Metro staff is recommending a number of amendments including showing the Airport Max Light Rail Line as operating, amending the design type designations in the Pleasant Valley area to reflect the planning that has occurred and removing the Rural Reserve designation.

A number of the requested amendments to the Employment and Industrial Areas Map will not appear on the 2040 Growth Concept Map. This is because a number of the requests for amendments are to remove Employment and Industrial Areas from floodways and park lands. These sites are already shown on the 2040 Growth Concept Map as Public Parks and Open Spaces not the underlying Industrial or Employment Area Designation. A number of the requests for additions or removal of these areas are in Town Centers. As mixed-use areas overlay the Employment and Industrial Areas on the 2040 Growth Concept Map, these amendments to the Employment and Industrial Areas map show no apparent change to the 2040 Growth Concept map.

City of Cornelius

2040 Growth Concept Map Amendment Recommendation: Replace Employment Areas with Industrial Areas, add Industrial Areas and remove Employment Areas as shown on Map 1.

Employment and Industrial Areas Map Amendment Recommendation: Replace Employment Areas with Industrial Areas, add Industrial Areas and remove Employment Areas as shown on Map 2.

At this time, the City of Cornelius has only Employment Area designations. The City has requested that all of the Employment Areas on the 2040 Growth Concept Map and the Employment and Industrial Areas Map be replaced with Industrial Areas as these areas are zoned for industrial uses. The exception to this is a parcel used for the City's Development Services Facilities that will remain as an Employment Area as shown on Maps 1 and 2.

The City has requested that Industrial Area designation be added to the industrially zoned lands in the northwest corner of the City (a on Maps 1 and 2) and on the industrially zoned land east of S 4th Avenue and south of Baseline Street (b Map2). There is no change to the 2040 Growth Concept Map as a Corridor covers the new Industrial Area. The City has requested that the Employment designation be removed from the lands zoned for residential east of N 10th Avenue and south of the railway tracks (c on Maps 1 and 2) and west of N 19th Avenue, north of the railway tracks to N Holladay Street (d on Maps 1 and 2). These areas will be designated as Outer Neighborhood on the 2040 Growth Concept Map.

City of Fairview

2040 Growth Concept Map Amendment Recommendation: Replace Industrial Area with Employment Area, replace Employment Areas with Industrial Area as shown on Map 3

Employment and Industrial Areas Map Amendment Recommendation: Replace Industrial Area with Employment Area, replace Employment Area with Industrial Area as shown on Map 4

The City is requesting two map amendments in order to better reflect the land use and institutional structure of Fairview and the anticipated economic future. The first requested amendment would replace an Industrial Area designation with an Employment Area designation in the vicinity of NE 238th and Sandy Boulevard (a on Maps 3 and 4). This change is reflective of the growing commercial and industrial activities in this area. The second requested amendment would replace the Employment Area designation on the lands occupied by NACCO, Fairview's largest manufacturing facility with an Industrial Area designation (b on Maps 3 and 4).

City of Forest Grove

2040 Growth Concept Map Amendment Recommendation: Replace Employment Area with Industrial Area, replace Industrial Area with Inner Neighborhood, Replace Inner Neighborhood with Industrial Area as shown on Map 5.

Employment and Industrial Areas Map Amendment Recommendation: Replace Employment Area with Industrial Area, add and remove Industrial Area as shown on Map 6.

The City is requesting a number of map amendments in order that the 2040 Growth Concept and Employment and Industrial Areas Maps to better reflect the zoning in place in Forest Grove. The Employment Area designation west of Quince St/Martin Rd and north of railroad tracks would be replaced with an Industrial Area designation (a on Maps 5 and 6). Industrial Area designations are to be added east of Cedar Street at 23rd Place and west of Elm Street, north of 23rd Avenue (b on Maps 5 and 6). The Cedar Street addition would not be seen on the 2040 Growth Concept Map as this area is covered by the Town Center designation. The Elm Street addition would replace an Inner Neighborhood designation. The City has requested that the Industrial Area designation on the Sewage Lagoons be removed. Although this area is zoned as industrial, its current use precludes any type of industrial uses. The area would appear as an Inner Neighborhood and Open Space on the 2040 Growth Concept Map (c on Maps 5 and 6). The City has requested that the Industrial Area designation southeast of Highway 47 be extended to include the recently annexed areas of the City. The Industrial Area designation replaces an Inner Neighborhood designation on the 2040 Growth Concept Map (d on Maps 5 and 6). The City has requested that a triangle of land west of Fern Hill Road, south of Highway 47 designated as Employment Area be redesignated as Industrial Area (e on Map 5 and 6). The City has requested that the Industrial Area designation south of 19th Avenue be east of B Street be removed as this area is part of the Town Center (f on Map 6). There would be no change to the 2040 Growth Concept Map as this area is covered by the Town Center designation.

City of Gresham

2040 Growth Concept Map Amendment Recommendation: Replace Industrial Area with Employment Area, replace Employment Areas with Inner Neighborhood and Parks and Open Space as shown on Map 7.

Employment and Industrial Areas Map Amendment Recommendation: Replace Industrial Area with Employment Area, remove Employment Area as shown on Map 8.

Gresham is requesting a number of amendments to the lands designated as Industrial or Employment areas in three locations in the City.

The City is requesting that Industrial Area designation on the site, commonly known as the "brickyards," be removed and replaced with an Employment Area designation (a on Maps 7 and 8). Gresham is attempting to increase its family-wage employment opportunities and is intending to rezone this area to Business Park as part of its Periodic Review program. This zone is compatible with the Employment Area designation as it is primarily intended for manufacturing and related industrial activities and office

development. Secondary uses permitted as part of a mixed-use development include commercial services and retail uses. Both are restricted to a certain percentage of the total floor area.

The 2040 Growth Concept and Employment and Industrial Areas Maps includes an Employment Area along Powell Boulevard east of SE 182nd Avenue. A portion of this Employment Area is owned by the City and planned for public park and trail purposes. The City is requesting that these areas be removed from the Employment and Industrial Areas Map. The 2040 Growth Concept Map shows these City-owned properties as parks and open space (b on Maps 7 and 8).

A number of the sites within this Employment Area are zoned and developed as residential uses. The City is requesting that these sites be designated as Inner Neighborhood and removed from the Employment and Industrial Areas Map. The residential zones support the Corridor designation along Powell Boulevard (c on Maps 7 and 8).

The 2040 Growth Concept and Employment and Industrial Areas Maps include a small Industrial Area and surrounded by Employment Area south of Powell Boulevard west of SE 182nd Avenue. This area is zoned for residential and mixed-use developments. Gresham has requested that the Industrial Area and the eastern portion of the Employment Area be removed from the Employment and Industrial Areas Map and be designated as Inner Neighborhood on the 2040 Growth Concept Map (d on Maps 7 and 8).

City of Happy Valley

2040 Growth Concept Map Amendment Recommendation: Replace Corridor designation with Inner and Outer Neighborhood as shown on Map 9.

The City is requesting that the Corridor designation on SE Mt. Scott Boulevard and SE 122nd/129th Avenues be removed (a on Map 9). The City has indicated that environmental constraints, existing development patterns and the fact that a substantial amount of the land along the Corridor is in public ownership limits the potential for increased development. In addition, the Corridor is poorly served by transit; the service is infrequent and does not run the full length of the Corridor. The northern portion of this corridor, between the Happy Valley City limits and Foster Road lies in the City of Portland. As the majority of this portion of the Corridor runs through the Lincoln Memorial and Willamette National Cemeteries, the City of Portland concurs with the removal of the Corridor designation.

City of Portland

2040 Growth Concept Map Amendments Recommendation: Replace Inner Neighborhood with Employment Area, Replace Industrial Area with Inner Neighborhood, Move Light Rail Station, Modify and add Main Streets, Remove Open Space designation, as shown on Map 10.

Employment and Industrial Areas Map Amendment Recommendation: Add Employment Area, Remove Industrial Area as shown on Map 11.

The City is requesting that the Inner Neighborhood designation on the Oregon Health and Science University and the Veterans Hospital be amended to Employment Area. These institutions have a combined employment base of more than 10,000 people and the City anticipates an increase in employment over the 30-year planning horizon for the Marquam Hill Plan (a on Maps 10 and 11).

The City has requested that the Industrial Designation on the Albina Fuel site at NE 33rd Avenue south of NE Broadway be removed. It is a remnant parcel once part of the larger Hyster Plan that is now a Fred Meyer Store. The remaining parcel is insufficient in size to constitute a viable Industrial Area. It would be shown as Inner Neighborhood on the 2040 Growth Concept Map b on Maps 10 and 11).

The 2040 Growth Concept shows a Light Rail Community Station along the Interstate Max Line at NE Going Street. This Community Station is located between NE Prescott and NE Skidmore Streets and the City is requesting that it be relocated to more accurately reflect its location (c on Map 10).

The City is requesting that the Main Street designation on SE Tacoma Street be shown from SE 7th Avenue to SE 17th Avenue, as SE Tacoma Street west of SE 7th Avenue is a bridge approach. Through the planning for the Lents Town Center and the Gateway Regional Center, two new Main Streets have been identified. These include SE 92nd Avenue between SE Harold and SE Duke Streets and NE and SE 102nd Avenue between NE Wiedler and SE Washington Streets (d on Map 10).

The 2040 Growth Concept Map shows the center of the racetrack at Portland Meadows as Open Space. The City is requesting that this be removed and designated as Industrial Area. The Employment and Industrial Areas Map shows this as Industrial Area, no amendment is necessary on this Map (e on Map 10).

City of Tualatin

2040 Growth Concept Map Amendment Recommendation: Replace Inner Neighborhood with Employment Area, Replace Employment Area with Inner Neighborhood, Replace Industrial Area with Inner Neighborhood as shown on Map 12.

Employment and Industrial Areas Map Amendment Recommendation: Add and Remove Employment Areas, Remove Industrial Areas as shown on Map 13.

Tualatin has requested a number of amendments to the Growth 2040 Concept and Employment and Industrial Areas Maps to more accurately reflect the City zoning.

The City has requested that the Legacy Meridian Hospital, east of SW 65th Avenue, north of SW Borland Road, and the area around the hospital be designated as Employment Area rather than as Inner Neighborhood to reflect the Medical Center and Commercial Office zoning (a on Maps 12 and 13). This would be added to the Employment and Industrial Areas Map.

The City has requested that the Employment Area designation be removed from the area zoned for medium and high density housing, north of SW Nyberg and west of the County line, and replaced with Inner Neighborhood (b on Maps 12 and 13).

The City has requested that the Industrial Area designation be removed from the area zoned for residential, southwest of SW Tualatin Rd and north of SW Herman Road, and the road-right-of-way where SW Herman and SW Tualatin Roads intersect and replaced with Inner Neighborhood (c on Maps 12 and 13).

The City has requested that area west of the railroad tracks and south of the old Tualatin-Sherwood Road be designated as Employment Area on the Employment and Industrial Areas Map. There would be no change to the 2040 Growth Concept Map as the Tualatin Town Center circle covers this area (d on Maps 12 and 13).

The City has requested that the Employment Area between SW Mohawk Street and SW Sagert Street on SW Martinazzi Avenue be removed and the area be designated as Inner Neighborhood (e on maps 12 and 13). The area is zoned as residential.

The City has requested that the Employment Area south of SW Nyberg Street, west of SW 65th Avenue and north of SW Sagert be redesignated as Inner Neighborhood (f on Maps 12 and 13). The area is zoned for residential.

Additional Map Changes

Airport Light Rail Line

2040 Growth Concept Map Amendment Recommendation: Replace Potential Light Rail Station with Light Rail Station designation as shown on Map 14.

Currently, the Light Rail Stations along the Airport Light Rail Line are shown as potential stations. This Line opened in September 2001 and the Stations should be shown as in place.

Pleasant Valley

2040 Growth Concept Map Amendment Recommendation: Move Town Center, Replace Outer Neighborhood with Inner Neighborhood as shown on Map 15.

Employment and Industrial Areas Map Amendment Recommendation: Add Employment Areas as shown on Map 16.

The Concept Planning for the Pleasant Valley area has recently been completed. The focus of the Town Center has moved north to the proposed new intersection of 172nd Avenue and Giese Road. The designation of Inner Neighborhood is a closer fit with the results of this effort and staff is recommending that the Outer Neighborhood designation be replaced with Inner Neighborhood. Two Employment Areas have been added. The first is located west of 190th Avenue at the Giese Road terminus and the second is located east of 172nd Avenue at Sager Road (a on Maps 15 and 16). As the Concept Plan for this area is further refined, additional amendments to the 2040 Growth Concept Map maybe brought forward.

Rural Reserves

2040 Growth Concept Map Amendment Recommendation: Remove Rural Reserve designations, replace the Exclusive Farm Use Designation with a Resource Lands Designation.

In January 2000, the Oregon Court of Appeals upheld a decision by the Oregon Land Use Board of Appeals that said Metro erred in the way that it designated urban reserves in 1997. In particular, the court said Metro included resource land as urban reserves before it had considered all non-resource land. As a result of these decisions, with its adoption of Ordinance No. 01-892A, Council removed the urban reserve designation from the 2040 Growth Concept Map.

At that time, staff noted that the removal of the Urban Reserve designation raised a number of issues regarding the depiction of the areas outside of the Urban Growth Boundary on the 2040 Growth Concept Map and that staff would bring this issue forward to Council at a later date.

As the Council designated the Urban Reserves and the Rural Reserves in Ordinance No. 9X-xxx, and the Rural Reserves only apply when the Urban Reserves are in place, staff is recommending that the Rural Reserve be removed.

With the removal of the Rural Reserves, an indication of the location of the resource lands outside of the Urban Growth Boundary would be useful. At this time, the 2040 Growth Concept Map includes a designation of Exclusive Farm Use, staff is recommending that this be expanded to include Forestlands and the designation be renamed Resource Lands.

EXECUTIVE OFFICER'S RECOMMENDATION

That the recommended amendments to the 2040 Growth Concept and the Employment and Industrial Areas maps described above be adopted.

ATTACHMENT 1 – List of Maps

Map 1 – Cornelius 2020 Growth Concept Map Update

Map 2 – Cornelius Title 4 Map Update

Map 3 – Fairview 2040 Growth Concept Map Update

Map 4 – Fairview Title 4 Map Update

Map 5 – Forest Grove 2040 Growth Concept Map Update

Map 6 – Forest Grove Title 4 Map Update

Map 7 – Gresham 2040 Growth Concept Map Update

Map 8 – Gresham Title 4 Map Update

Map 9 – Happy Valley 2040 Growth Concept Map Update

Map 10 – Portland 2040 Growth Concept Map Update

Map 11 – Portland Title 4 Map Update

Map 12 – Tualatin 2040 Growth Concept Map Update

Map 13 – Tualatin Title 4 Map Update

Map 14 – Airport Light Rail Line 2040 Growth Concept Map Update

Map 15 – Pleasant Valley 2040 Growth Concept Map Update

Map 16 – Pleasant Valley Title 4 Map Update

Agenda Item Number 6.6

Ordinance No. 02-982, For the Purpose of Amending the FY 2002-03 Budget and Appropriations Schedule to recognize \$104,570 in grant funds and government contributions from various state and local sources; transferring \$25,430 from Contingency to Operating Expenses; increasing the Regional Parks Fund Operating Expenses by \$130,000; amending the FY 2002-03 Capital Improvement Plan; and Declaring an Emergency.

Second Reading

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 2002-03	)	ORDINANCE NO. 02-982
BUDGET AND APPROPRIATIONS SCHEDULE TO)	
RECOGNIZE \$104,570 IN GRANT FUNDS AND)	
GOVERNMENT CONTRIBUTIONS FROM VARIOUS	)	Introduced by Mike Burton,
STATE AND LOCAL SOURCES; TRANSFERRING	)	Executive Officer
\$25,430 FROM CONTINGENCY TO OPERATING)	
EXPENSES; INCREASING THE REGIONAL PARKS)	
FUND OPERATING EXPENSES BY \$130,000;)	
AMENDING THE FY 2002-2003 CAPITAL)	
IMPROVEMENT PLAN; AND DECLARING AN)	
EMERGENCY)	

WHEREAS, the Metro Council has reviewed and considered the need to recognize the additional grant funding within the FY 2002-03 Budget; and

WHEREAS, Oregon Budget Law ORS 294.326(3) allows for the expenditure of grants, gifts, bequests and other devices received by a municipal corporation in trust for a specific purpose; 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 recognizing \$104,570 in grant funds and government contributions from various sources; transferring \$25,430 from the Regional Parks Fund contingency to Operating Expenses; increasing the Regional Parks Fund Operating Expenditure appropriation by \$130,000; and amending the FY 2002-03 Capital Improvement Plan.

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.02-982

ACCT	DESCRIPTION	Current		Revision		Amended	
		Budget		Budget		Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Regional Parks Fund							
Resources							
<u>Resources</u>							
REGIONAL PARKS & GREENSPACES							
<i>BEGBA Beginning Fund Balance</i>							
	* Unrestricted		1,685,786		0		1,685,786
	* Unrestricted - Used to Balance		628,505		0		628,505
	* Project Carry Forward		218,896		0		218,896
	* Renewal, Replacement, Capital Impr		1,032,660		0		1,032,660
<i>GRANT Grants</i>							
	4100 Federal Grants - Direct		364,000		45,000		409,000
	4105 Federal Grants - Indirect		75,000		0		75,000
	4110 State Grants - Direct		255,000		13,500		268,500
<i>LGSHR Local Gov't Share Revenues</i>							
	4135 Marine Board Fuel Tax		130,800		0		130,800
	4139 Other Local Govt Shared Rev.		250,000		0		250,000
<i>GVCNT Gov't Contributions</i>							
	4145 Government Contributions		30,300		46,070		76,370
<i>CHGSV Charges for Service</i>							
	4165 Boat Launch Fees		137,000		0		137,000
	4230 Product Sales		6,000		0		6,000
	4280 Grave Openings		157,500		0		157,500
	4285 Grave Sales		117,670		0		117,670
	4500 Admission Fees		488,950		0		488,950
	4510 Rentals		308,300		0		308,300
	4550 Food Service Revenue		24,000		0		24,000
	4560 Retail Sales		3,000		0		3,000
	4580 Utility Services		1,000		0		1,000
	4610 Contract Revenue		926,588		0		926,588
	4650 Miscellaneous Charges for Svc		11,500		0		11,500
<i>INTRST Interest Earnings</i>							
	4700 Interest on Investments		51,930		0		51,930
<i>DONAT Contributions from Private Sources</i>							
	4750 Donations and Bequests		570,281		0		570,281
<i>MISCRV Miscellaneous Revenue</i>							
	4890 Miscellaneous Revenue		500		0		500
<i>INTSRV Internal Service Transfers</i>							
	4980 Transfer for Direct Costs						

Resources

* from Open Spaces Fund	560,811	0	560,811
* from Smith & Bybee Lakes Fund	10,000	0	10,000
* from Regional Parks Trust Fund	48,911	0	48,911
<i>EQTRE Fund Equity Transfers</i>			
4970 Transfer of Resources			
* from General Fund (general allocatio	515,290	0	515,290
* from General Fund (project allocatio	15,000	0	15,000
* from General Fund (1% on SW reven	710,532	0	710,532
* from General Fund (\$1 per ton)	1,184,000	0	1,184,000
* from General Fund (landbanking)	224,280	0	224,280
<hr/>			
TOTAL RESOURCES	#####	\$104,570	#####

Exhibit B
Ordinance No. 02-982
FY 2002-03 SCHEDULE OF APPROPRIATIONS

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Amended</u> <u>ppropriation</u>
REGIONAL PARKS FUND			
Operating Expenses (PS & M&S)	\$5,302,102	\$130,000	\$5,432,102
Capital Outlay	1,214,041	0	1,214,041
Interfund Transfers	1,239,703	0	1,239,703
Contingency	244,249	(25,430)	218,819
Unappropriated Balance	2,743,895	0	2,743,895
Total Fund Requirements	\$10,743,990	\$104,570	\$10,848,560

All Other Appropriations Remain as Previously Adopted

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-982, FOR THE PURPOSE OF AMENDING THE FY 2002-03 BUDGET AND APPROPRIATIONS SCHEDULE TO RECOGNIZE \$104,570 IN GRANT FUNDS AND GOVERNMENT CONTRIBUTIONS FROM VARIOUS STATE AND LOCAL SOURCES; TRANSFERRING \$25,430 FROM CONTINGENCY TO OPERATING EXPENSES; INCREASING THE REGIONAL PARKS FUND OPERATING EXPENSES BY \$130,000; AMENDING THE FY 2002-03 CAPITAL IMPROVEMENT PLAN; AND DECLARING AN EMERGENCY

Date: October 24, 2002

Prepared by: Charles Ciecko

BACKGROUND

Emergency maintenance dredging is presently needed around the boat basin at the M. James Gleason Boat Ramp. Dredging was last done in 1998 and is normally scheduled on a seven-year cycle. However, sand accumulation around the boat basin has accumulated at a faster rate than anticipated requiring dredging to be necessary this fiscal year. It is anticipated that the improvements at this facility identified in the department's CIP will significantly reduce or eliminate this problem.

Approximately 6,000 cubic yards of material need to be dredge with costs estimated at \$130,000. The Oregon State Marine Board has granted Metro \$13,500 for the project. Also, a \$45,000 federal Sport Fish and Restoration Fund proposal has been submitted to ODFW and approval is anticipated. The remaining \$71,500 will be split by Metro, Multnomah County Sheriff's Office River Patrol, and the Port of Portland's Airport Water Rescue based on the amount of dredge material in the respective locations.

Metro will manage the contract and the Sheriff and Port will pay Metro for their share of the project costs. Metro's portion of the costs will be paid for out of existing budget appropriation. This Budget Amendment increases the Regional Parks Fund appropriation to accommodate the additional expenditures that are being paid for through grants and government contributions. In addition, this Ordinance will transfer \$25,430 from the Regional Parks Fund Contingency account into Contracted Professional Services. This ordinance also amends the FY 2002-2003 Capital Improvement Plan to include this project.

Revenues:

State Direct Grant	\$13,500
Federal Direct Grant	\$45,000
Government Contribution	\$46,070
Regional Parks Fund Contingency	<u>\$25,430</u>
	\$130,000

Expenditures:

Contracted Professional Services	\$130,000
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All required project permits have either been approved or are in the process of approval. Dredging can only be done within the appropriate in-water work period (November 1 - February 28) for this stretch of the Columbia River.

ANALYSIS/INFORMATION

1. **Known Opposition:** No known opposition
2. **Legal Antecedents:** ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts and bequests received by a municipal corporation in trust for a specific purpose.
3. **Anticipated Effects:** This action allows the department to recognize the grants and government contributions dedicated to the emergency dredging project at the M. James Gleason Boat Ramp and allows the Executive Officer to enter into a contract for such services. It will also amend the FY 2002-2003 Capital Improvement Plan to reflect this project.
4. **Budget Impacts:** This action requests the recognition of \$104,570 in Federal Direct Grants, State Direct Grants and government contributions, according to Exhibit A. This action also transfers \$25,430 from Contingency into Operating Expenditures and increases appropriation authority in the Regional Parks Fund Operating Expenditures by \$130,000 as described in Exhibit B Schedule of Appropriations. This action amends the FY 2002-03 CIP to include this project.

RECOMMENDED ACTION

The Executive Officer recommends adoption of this ordinance.

\\alex\work\asd\finance\confidential\budget\fy02-03\bud ord\parks gleason dredging project\staff report : gleason dredging budget amendment.doc

Capital Project Request - Project Detail

Staff Report - Attachment 1

Project Title: M. James Gleason Boat Ramp - Dredging

Fund(s): Regional Parks Fund (160)

Project Number: TBD	Dept. Priority:	Year First Proposed FY 2003	Department: Division:	Regional Parks and Greenspaces Parks and Visitor Services	Project:	Date:	10/24/2002			
Type of Project: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Replacement	Type of Request <input checked="" type="checkbox"/> Initial <input type="checkbox"/> Revision <input type="checkbox"/> Continuation	Source of Estimate: <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Based on Design <input type="checkbox"/> Actual Bid Documents			Start Date:	December 2002	Prepared By: Jeff Tucker			
				Finish Date:	April 2003					
Project Estimates		Actual Expend	Budget/Est Fy 2001-02	Prior Years	2002-03	2003-04	2004-05	2005-06	2006-2007	Total
Capital Cost:										
Plans & Studies										-
Land & Right-of-Way										-
Design & Engineering										-
Construction (incl. Permitting)										-
Equipment/Furnishings										-
Capital Maintenance					130,000					130,000
Project Contingency										-
1% for Art										-
Other										-
Total		\$ -	\$ -	\$ -	\$ 130,000					\$ 130,000
Funding Source:										
Fund Balance-Contingency					25,430					25,430
Program Revenues										-
Grants/Donations					58,500					58,500
Other Government Contributions					46,070					46,070
Open Spaces-Acquisition										-
Other Government Contributions										-
GSR/Glendoveer										-
Total		\$ -	\$ -	\$ -	\$ 130,000	\$ -	\$ -	\$ -	\$ -	\$ 130,000
Annual Operating Budget Impact										
Annual Revenues:										\$ -
Annual Expenditures:										
Personal Services Costs										-
Materials & Services Costs										-
Capital Outlay Costs										-
Other Costs										-
Sub-total, Expenditures:					-	-	-	-	-	-
Net Operating Contribution (Cost):		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Estimated Useful Life (years)				7	First Full Fiscal Year of Operation:				2003-2004	
Project Description/Justification:										
<p>Emergency maintenance dredging is presently needed around the boat basin at the M. James Gleason Boat Ramp. Dredging was last done in 1998 and is normally scheduled on a seven year cycle. However, sand accumulation around the boat basin has accumulated at a faster rate than anticipated requiring dredging to be necessary this fiscal year. It is anticipated that the improvements at this facility identified in the department's CIP will significantly reduce or eliminate this problem.</p> <p>Approximately 6,000 cubic yards of material need to be dredge with costs estimated at \$130,000. The Oregon State Marine Board has granted Metro \$13,500 for the project. Also, a \$45,000 federal Sport Fish and Restoration Fund proposal has been submitted to ODFW and approval is anticipated. The remaining \$71,500 will be split by Metro, Multnomah County Sheriff's Office River Patrol, and the Port of Portland's Airport Water Rescue based on the amount of dredge material in the respective locations.</p>										

Agenda Item Number 7.1

Resolution No. 02-3237, For the Purpose of Endorsing the I-5 Transportation and Trade Study Recommendations.

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING THE I-5) RESOLUTION NO. 02-3237A
TRANSPORTATION AND TRADE STUDY)
RECOMMENDATIONS) Introduced by Councilor Rod Monroe

WHEREAS, I-5 is the only continuous Interstate on the West Coast; and

WHEREAS, I-5, between Portland, Oregon and Vancouver, Washington experiences some of the Portland region's worst congestion; and

WHEREAS, at the Columbia River I-5 provides a key economic connection to two major ports, deep-water shipping, up-river barging, two transcontinental rail lines, and much of the Portland/Vancouver region's industrial land; and

WHEREAS, the transportation facilities in the I-5 corridor in the vicinity of the Columbia River provide important connections to and from national and international markets for businesses throughout Oregon; and

WHEREAS, in the Portland/Vancouver area, I-5 provides one of two crossings of the Columbia River for cars, trucks and transit vehicles; and

WHEREAS, doing nothing in the I-5 corridor between Portland and Vancouver will result in unpredictable delays and congestion throughout the day, which cannot be tolerated without an adverse impact on the Portland/Vancouver region's economy and quality of life; and

WHEREAS, the Oregon and Washington Departments of Transportation jointly conducted a public planning process to develop a strategic plan for the I-5 Corridor between the Fremont Bridge in Oregon and the I-205 interchange in Washington; and

WHEREAS, the development of the I-5 Corridor Strategic Plan was guided by a bi-state Task Force representing a wide range of interests; and

WHEREAS, a thorough process of public outreach and involvement was conducted to seek public input in the development of the I-5 Corridor Strategic Plan; and

WHEREAS, recommendations of the I-5 Transportation and Trade Partnership Task Force for a I-5 Corridor Strategic Plan have statewide significance; now therefore; now therefore

BE IT RESOLVED,

1. That the Joint Policy Advisory Committee on Transportation (JPACT) and Metro Council endorse the Portland/Vancouver I-5 Transportation and Trade Partnership's "Final Strategic Plan" (June 2002) including the following improvements for the Interstate-5 corridor, as recommended by the I-5 Transportation and Trade Partnership Task Force at their June 18, 2002 meeting:
 - Three through-lanes in each direction on I-5, between I-405 in Portland and I-205 in Clark County including southbound through Delta Park including designation of one of the three through-lanes as an High Occupancy Vehicle (HOV) lane as feasible.

- A phased light rail loop in Clark County in the vicinity of the I-5, SR500/4th Plain and I-205 corridors
 - An additional span or a replacement bridge for the I-5 crossing of the Columbia River, with up to 2 additional lanes in each direction for merging plus 2 light rail tracks
 - Interchange improvements and additional auxiliary and/or arterial lanes where needed between SR500 in Vancouver and Columbia Boulevard in Portland. These include a full interchange at Columbia Boulevard
 - Capacity improvements for freight rail that will improve freight and intercity passenger rail services
 - Bi-state coordination of land use and management of our transportation system to reduce demand on the freeway and to protect the corridor investments
 - Involving communities along the corridor to ensure that the final project outcomes are equitable and committing to establish a fund for community enhancements
 - Develop additional transportation demand and system strategies to encourage more efficient use of the transportation system
2. That the bridge influence area (BIA) improvements be identified as illustrative projects for the purposes of federal review and certification, and therefore included in interim air quality analyses completed prior to the next scheduled RTP update;
 3. That Metro staff be directed to incorporate these recommendations into the next update of the Regional Transportation Plan (RTP), scheduled to occur in 2003-04;
 4. That I-5 Transportation and Trade Partnership Task Force recommendations for further study of the NW Highway 30 to I-5 connections be incorporated into the North Willamette Crossing Study provisions of Section 6.7 of the RTP, and that this study be elevated to a Type 2 refinement plan as part of the next RTP update.

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

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING THE I-5) RESOLUTION NO. 02-3237A
TRANSPORTATION AND TRADE STUDY)
RECOMMENDATIONS) Introduced by Councilor Rod Monroe

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WHEREAS, recommendations of the I-5 Transportation and Trade Partnership Task Force for a I-5 Corridor Strategic Plan have statewide significance; now therefore; now therefore

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

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3237, FOR THE PURPOSE OF ENDORSING THE I-5 TRANSPORTATION AND TRADE STUDY RECOMMENDATIONS

Date: November 1, 2002

Prepared by: Tom Kloster

BACKGROUND

The I-5 Partnership brought together Washington and Oregon citizens and leaders to respond to concerns about growing congestion on I-5. Governors Gary Locke and John Kitzhaber have appointed a bi-state Task Force of community, business and elected representatives to develop a recommended Strategic Plan for the I-5 Corridor between I-84 in Oregon and I-205 in Washington.

As the only continuous Interstate on the West Coast, I-5 is critical to the local, regional and national economy. At the Columbia River I-5 provides a critical connection to two major ports, deep-water shipping, up-river barging, two transcontinental rail lines, and much of the region's industrial land. In 1997, 14 million tons of freight (valued at \$17 billion) was shipped from the Oregon side of the metro area to locations in Washington. Shipments southbound from Washington into the Oregon side of the region totaled 28.5 million tons (worth an estimated \$7.5 billion).

Both the Ports of Portland and Vancouver are located in the I-5 Trade Corridor, as is much of the Portland/Vancouver industrial land. For residents in the Portland and Vancouver area, I-5 provides one of two crossings of the Columbia River for transit and automobiles. It connects the communities of Portland and Vancouver for work, recreation, shopping and entertainment purposes. An average of 125,000 trips are made across the I-5 Bridge every day.

In 1999, a bi-state leadership committee considered the problem of growing congestion on the highway and rail systems in the I-5 Corridor. The committee recommended that the Portland/Vancouver region initiate a public process to develop a plan for the I-5 Corridor based on the following findings:

- **Doing nothing in the I-5 Corridor is unacceptable.** While there are some transportation improvements planned in the corridor, they are insufficient to address the transportation and economic needs of the corridor. Without additional improvements, congestion in the corridor will increase to unacceptable levels. Further, the increased congestion will have a significant impact on our economy, potentially limiting attraction and retention of business throughout our industrial areas.
- **There must be a multi-modal solution in the I-5 Corridor – there is no silver bullet.** The needs of the corridor will require highway, transit, and rail improvements, and better management of traffic demand. In other words, constructing new highway capacity alone will not solve the problem; neither does constructing only new transit capacity or new rail capacity.
- **Transportation funds are limited. Paying for improvements in the I-5 Corridor will require new funds.** The scale of improvements needed in the corridor far exceeds presently available state and federal funds. These sources can contribute but cannot completely pay for the improvements. Assuming the current structure of public funding, tolling will be required to pay for a new Columbia River crossing and other corridor improvements. From a historical perspective, tolls are not new. Tolls were used to construct the original I-5 bridges.

- **The region must consider measures that promote transportation- efficient development.** This includes a better balance of housing and jobs on both sides of the river and other measures that manage additional demand. Even with improvements in the I-5 Corridor, there will be a significant capacity problem that must be managed.

In January 2001, based on the above findings, Washington Governor Locke and Oregon Governor Kitzhaber initiated the Portland/Vancouver I-5 Transportation and Trade Partnership, also known as the I-5 Partnership. A 28-member Task Force was established to guide the development of the *Strategic Plan* for the corridor. This group worked for a year and a half, hosting six rounds of public meetings to get ideas and comments from the community. In addition, a Community Forum of interested stakeholders from both states was invited to closely follow the strategic planning process and to provide input at each milestone in the study.

The overall goal of this strategic planning effort was to determine the overall level of investment needed in the corridor for highways, transit and heavy rail, and to determine how to manage the transportation and land use system to protect investments in the corridor. The Task Force's final product has been sent to the Oregon Transportation Commission, the Washington Department of Transportation, and is now being considered by the metropolitan planning organizations in Portland and SW Washington for review and potential adoption into their transportation plans. After adoption, the environmental review and project development phase may begin.

Before any improvements suggested in this plan can be made, a formal environmental process must to be conducted under the requirements of the National Environmental Policy Act (NEPA) to identify the specific design of improvements and the impacts. The NEPA process is designed to ensure public participation in the process and a thorough assessment of environmental and community impacts. Through the NEPA process, plans for mitigating impacts that cannot be avoided will need to be developed. In addition, issues of environmental justice will receive a thorough exploration.

The foundation for the *Strategic Plan* is the problem, vision and values statement. This statement was created, edited and revised based on feedback from Community Forum members and public input. The recommendations in the *Strategic Plan* document have been crafted to address the identified corridor problems and to do them in a manner that reflects the collective vision for the community.

SUMMARY OF I-5 STRATEGIC PLAN RECOMMENDATIONS

Transit:

- Provide a phased light rail loop in Clark County in the vicinity of the I-5, SR500/4th Plain and I-205 Corridors.
- Provide peak-hour, premium express bus service in the I-5 and I-205 Corridors to markets not well served by light rail.
- Increase transit service in the Corridor over the next 20 years called for in regional transportation plans.

Interstate 5:

- The I-5 freeway between the Fremont Bridge in Portland and the I-205 interchange in Vancouver will be a maximum of three through lanes in each direction. This includes widening I-5 to three lanes between Delta Park and Lombard, and 99th St. to I-205 in Vancouver.
- Designate one of the three through lanes for use as a high occupancy vehicle (HOV) lane during the peak period, in the peak direction.

- Add a new supplemental or replacement bridge across the Columbia River with up to 2 auxiliary and/or arterial lanes in each direction, and 2 light rail tracks.
- Improve interchanges between SR 500 and Columbia Blvd to address safety and capacity problems -- including making Columbia Blvd into a full interchange.
- In adding river crossing capacity and making interchange improvements every effort should be made to: 1) avoid displacements and encroachments, 2) minimize the highway footprint and 3) minimize the use of the freeway for local trips.

Additional Rail Capacity:

- Pursue the rail infrastructure improvements required to accommodate anticipated 20 year freight rail growth in the I-5 Corridor and frequent, efficient intercity passenger rail service.
- Establish a public/private Bi-State rail forum to advise regional decision-makers about prioritizing, scheduling and funding of needed rail improvements.
- The rail forum and regional decision-makers should encourage funding for:
 1. Additional inter-city passenger rail service in the Pacific Northwest High Speed Rail Corridor
 2. High Speed Rail service in the Corridor; and
 3. The replacement of the existing "swing span" with a "lift span" located closer to the center of the river channel

Land Use:

- Adopt and implement a Bi-State Coordination Accord to protect existing and new capacity and support economic development.
- Jurisdictions in the Corridor will develop and agree on a plan to manage land development to avoid adversely impacting I-5 or the Region's growth management plans.
- Commit to formation of a Bi-State Coordination Committee to review and comment on transportation and land use decisions of bi-state significance.

Transportation Demand and System Management:

- Commit to a comprehensive use of TDM/TSM strategies -- alternative modes, work-based strategies, policies and regulatory strategies, pricing and TSM strategies -- and pursue additional funding for transit and TDM/TSM strategies.
- Prepare an "I-5 TDM/TSM Corridor Plan" with guidance from the proposed "Bi-State Coordination Committee"
- Fund and implement additional TDM/TSM strategies now to encourage more efficient use of the transportation system.

Environmental Justice

- Establish a Community Enhancement Fund for use in the impacted areas in the I-5 Corridor in Oregon and Washington
- Map low-income and minority communities in the corridor.
- Take list of potential impacts identified by representatives of environmental justice communities into the EIS for the Bridge and Bridge Influence Area as a starting point for more analysis.
- Work with affected communities to explore ways to offset impacts and/or bring benefits to the community.
- Develop a public outreach plan for EIS process that includes special outreach to low-income and minority communities.
- Form and coordinate two working groups for the EIS -- one for public involvement and one for environmental justice.

Finance

- OR, WA and the Portland/Vancouver region should develop a financing plan for transit and highway capital projects
- Tri-Met and C-Tran need to increase revenues for a significant expansion of transit service, starting within the next five years.
- Establish regional transit financing commitments that will allow for:
 1. an aggressive bi-state TDM program and
 2. an expansion of transit service to support the light rail loop.
 3. Seek funding to widen I-5 to 3 lanes: Delta Park to Lombard after environmental and design work is completed.

Next Steps/Implementation

- Fall 2002: SW Washington Regional Transportation Council and Metro review and amend the Regional Transportation Plans to incorporate recommended I-5 corridor improvements.
- Delta Park to Lombard: widen I-5 to 3 lanes
 - Summer 2002-2004: Conduct environmental assessment and design work
 - Post 2004: Construction of Delta Park to Lombard
- 2003 – 2009: Environmental Impact Study on Bridge Influence Area
(new supplemental or replacement bridge, interchange improvements between SR 500 and Columbia Blvd., including light rail between Expo Center and downtown Vancouver)
- 2010+: Construct improvements in Bridge Influence Area.

RECOMMENDED ACTION

That the Joint Policy Advisory Committee on Transportation (JPACT) and Metro Council endorse the Interstate-5 corridor strategy, as recommended by the I-5 Transportation and Trade Partnership Task Force at their June 18, 2002 meeting. This endorsement, in the form of the attached resolution, would call for the needed policy and project updates to be included in the next Regional Transportation Plan (RTP) update, scheduled to begin in Spring 2003.

Agenda Item Number 7.2

**Resolution No. 02-3238, For the Purpose of Considering a Designated Facility Agreement with Valley Landfills, Inc,
for the Coffin Butte Landfill.**

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONSIDERING A) RESOLUTION NO. 02-3238
DESIGNATED FACILITY AGREEMENT WITH)
VALLEY LANDFILLS, INC., FOR THE COFFIN) Introduced by Mike Burton, Executive Officer
BUTTE LANDFILL

WHEREAS, Valley Landfills, Inc., ("Valley") owns the Coffin Butte Landfill in Corvallis, Oregon; and,

WHEREAS, Valley has requested that Metro name the Coffin Butte Landfill to the list of designated facilities set forth under the provisions of Metro Code Chapter 5.05 and has further requested that Metro enter into a designated facility agreement with it for the Coffin Butte Landfill; and,

WHEREAS, for the reasons set forth in the accompanying staff report, the Metro Council has found that it is in the public interest to grant such designated facility status to the Coffin Butte Landfill because such designation is likely to contribute to increased material recovery of waste from the Metro Region; will reduce the number of non-system licenses that Metro must administer, and will ensure the collection of Metro Regional System Fees and solid waste excise taxes on solid waste generated within the Metro Region; and,

WHEREAS, the Metro Council, having considered the factors contained in Metro Code Section 5.05.030 accordingly has designated the Coffin Butte Landfill as a designated facility and has placed the Coffin Butte Landfill on the list of designated facilities in Metro Code 5.05.030; and,

WHEREAS, the Executive Officer has recommended the terms and conditions of a designated facility agreement with Valley for the Coffin Butte Landfill, and the Metro Council finds that the proposed terms are in the public interest and consistent with the policies and practices of Metro in the management of the Region's solid waste; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Executive Officer to execute with Valley Landfills, Inc., a designated facility agreement for the Coffin Butte Landfill in a form substantially similar to that set forth on the attached Exhibit A.

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 No. 02-3238

METRO CONTRACT NO. _____

DESIGNATED FACILITY AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under ORS Chapter 268 and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, ("Metro") and Valley Landfills, Inc. doing business as the Coffin Butte Landfill located at 28972 Coffin Butte Road, Corvallis, OR 97330 (the "Facility") and is entered under the authority of ORS 268.317, and Metro Code section 5.05.030. The Facility enters into this Agreement in recognition of the "Designated Facility" status conferred upon it by Metro Resolution No. 02-3238.

In exchange for the promises set forth below, the Facility and Metro agree as follows:

1. Purpose and Authority. The purposes of this Agreement are to manage effectively the disposal of certain solid wastes from within the Metro Region while concurrently increasing material recovery by establishing the terms and conditions under which the Facility may receive the wastes specified in Section 3 of this Agreement.
2. Duration. Unless terminated sooner as specified herein, this Agreement shall remain in effect for five years from the date of execution by both Parties.
3. Waste That May be Accepted at the Facility.
 - a. Provided that the Facility has any required separate and appropriate legal authority, the Facility may accept only the following types of materials generated from within the Metro Region:
 - (1) Processing residual, as that term is used in Metro Code Section 5.01.010, that has been (1) generated by any person certified, licensed or franchised by Metro to perform material recovery on non-putrescible wastes as defined in Metro Code Section 5.01.010 including waste generated at construction and demolition sites, or (2) generated by any person with whom Metro has executed a designated facility agreement to perform such processing;
 - (2) "Cleanup Material Contaminated By Hazardous Substances" as that term is defined in Metro Code Chapter 5.01.010;
 - (3) "Special waste" as defined in Metro Code 5.02.015, provided that such special wastes are specifically required in the Oregon Department of Environmental Quality ("DEQ") solid waste disposal permit for the Facility to have special handling or testing prior to disposal, and are not eligible or amenable to material recovery;

- (4) Useful Material as defined in Metro Code section 5.01.010 , including but not limited to Alternative Daily Cover Material as approved by DEQ, but only for those quantities demonstrated to be equivalent to 6-inches of earthen materials in accordance with OAR 340-97-120(5) or (6);
 - (5) Inert materials as approved by DEQ in accordance with the solid waste permit exemption process as authorized by OAR 340-93-080(2);
 - (6) Waste other than that permitted by this Agreement, provided it is authorized by Metro under a non-system license;
 - (7) Disaster debris as may be specifically authorized by the Director.
 - (8) Other waste as described in any future addendum to this Agreement approved by the Director of the Regional Environmental Management Department ("the Director"); and
- b. Except as provided in section 3a., the Facility agrees that no other types of wastes generated within the Metro boundary shall be accepted or disposed at the Facility, including but not limited to the following types of wastes: putrescible wastes; putrescible source-separated recyclable material; non-putrescible waste that has not undergone material recovery at by a person certified, licensed or franchised by Metro to perform material recovery on non-putrescible waste including waste generated at construction and demolition sites, or with whom Metro has executed a designated facility agreement to perform such processing; source separated recyclable material; and any other materials prohibited by the DEQ solid waste disposal site permit.

4. Facility Operating Plan.

- a. The Facility shall submit to Metro, for its review and approval, an operating plan for the Facility. The plan shall address how the Facility intends to comply with the requirements of this Agreement. The Facility 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.
- b. The plan shall demonstrate how incoming solid wastes will be identified as appropriate for the Facility and the criteria used for such identification, including:
 - (i) Procedures for inspecting incoming loads for the presence of prohibited wastes;
 - (ii) A set of objective criteria for accepting and rejecting loads;
 - (iii) The provision of sufficient personnel to ensure compliance with Section 3 above, including the provision of at least one person on the ground at the working face of the landfill where the waste is disposed whose

- primary responsibility shall include identification and removal of waste that is not authorized under Section 3 above; and
- (iv) Procedures for establishing whether the waste originated within the Metro boundary.
- c. 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:
- (i) Hazardous wastes;
 - (ii) Recovery of any source separated materials that might be received at the Facility
 - (iii) Other prohibited solid wastes in accordance with the provisions of Section 3b. above.
- d. Amendments to the operating plan shall be submitted to Metro for review and approval by the Director prior to implementation. Metro's review shall be limited to compliance with this Agreement and shall not be unreasonably withheld.
- e. The Facility shall adhere to the policies and procedures contained in its operating plan. Failure to ensure such compliance with the operating plan shall be considered a default of this Agreement.

5. Record keeping and Audits.

- a. The Facility shall maintain complete and accurate records regarding all solid waste transported, received, treated, disposed of, or otherwise processed pursuant to this Agreement. The Facility shall make such records available to, or send copies to, the Director or his duly designated agents for inspection, auditing, and copying upon not less than seven (7) days written notice from Metro. Sequential, pre-numbered tickets shall be used for all transactions and voided or canceled tickets shall be retained.
- b. The Facility shall maintain waste profiles, waste analysis plans, or Material Safety Data Sheets (MSDS) at Keller Drop Box, Inc.'s Wilsonville office and at the Coffin Butte Landfill for all special waste and cleanup material delivered for disposal under the authority of this Agreement. Such profiles and MSDS sheets shall be made available to the Director (or his designated agent) at both locations for its examination or copying during routine inspections without advance notice.
- c. At Metro's option, the Facility shall have an independent audit conducted by a firm acceptable to Metro, no more than once a year, at Metro's expense. The audit report provided to Metro following an independent audit shall address matters reasonably

related to this Agreement, as specified in an audit program approved by Metro and provided to the Facility prior to the audit.

6. Reports and Information.

a. The Facility shall report the following information to Metro on a monthly basis for waste originating in Washington, Clackamas and Multnomah counties of Oregon:

- (1) Record numbers designating individual incoming loads;
- (2) Customer account numbers (using separate account numbers to differentiate waste received from a person or facility authorized to perform material or resource recovery, transfer or reload as those terms are defined in Metro Code 5.01.010, pursuant to a Metro Solid Waste Franchise, Certificate, Designated Facility Agreement, License or Non-System License);
- (3) Date each load is received at the Facility;
- (4) Time each load is received at the Facility;
- (5) Net weight of each load;
- (6) Designation of each load into one of the categories listed in Section 3a.;
- (7) Whether each load originated from inside or outside the Metro boundary (each load consisting of waste from both inside and outside the Metro boundary shall be counted as originating from inside the Metro boundary if more than 10% of the weight of the waste in the load was collected from inside the Metro boundary or if more than 10% of the locations where the load was collected are within the Metro boundary);
- (8) Whether the material in each load was used for alternative daily cover, or other "Useful material" as defined in Metro Code Chapter 5.01.
- (9) The Facility shall submit to Metro a record of all waste received from within the Metro boundary disposed at a site other than the Coffin Butte Landfill. Such information shall include a copy of the disposal site's billing to the Facility for such disposal. Such billing must include the tonnage of each load.

b. Records required under Section 6a. shall be reported to Metro no later than fifteen (15) days following the end of each month, via E-mail, electronic records encoded on 3.5" data diskettes or CD, and in a format prescribed by Metro that is compatible with Metro's data processing equipment.

- c. The Facility shall post a sign at the scalehouse directing all customers disposing of waste generated within the Metro boundary to declare the origin of the waste. The Facility shall provide a map of the Metro region to any customer that requests one.
- d. The Facility shall provide to Metro copies of all permits relating to operations at the Facility, including any new land use applications, appeals or modifications. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven (7) business days of receipt. The Facility shall also provide, within ten (10) business days, a copy of any official enforcement action regarding the Facility or its operation, including, but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.
- e. The Facility shall provide to Metro a copy of the Facility's disposal rate schedule. The Facility shall provide to Metro a copy of any revised or updated disposal rate schedule within seven (7) days of the date such revised or updated rates become effective.
- f. On a quarterly basis the Facility shall provide Metro a listing of account numbers and corresponding customer names and material codes and corresponding material names for incoming loads covered by this Agreement.

7. Regional System Fee and Excise Tax.

- a. The Facility shall pay monthly to Metro an amount equal to the Regional System Fee for which provision is made in Metro Code Section 5.02.045 for each ton of waste listed in section 3a. disposed at the Facility. Such payment shall be made in accordance with Metro Code Section 5.02.055, and shall be in the form of check or cash or other payment method as approved by the Director.
 - b. The Facility shall also pay monthly to Metro an amount equal to the Excise Tax for which provision is made in Metro Code Section 7.01.020(e) for each ton of waste listed in section 3a. disposed at the Facility. Such payment shall be made in accordance with Metro Code Sections 7.01.070 and 7.01.080, and shall be in the form of check or cash or other payment method as approved by the Director.
- 8. Compliance with Law.** The Facility shall fully comply with all provisions of Metro Code Chapter 5.01 applicable to disposal sites, which provisions are incorporated by this reference as if set forth in full. The Facility shall also fully comply with all applicable federal, state, regional, and local laws, rules, regulations, ordinances, orders, and permits, as amended. All conditions imposed on the operation of the Facility, whether by federal, state, or local governments or agencies having jurisdiction over the Facility, are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those

attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection; Enforcement of Metro Code.

- a. Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:
 - (1) At any time without notice, during all regular working hours that the Facility accepts waste deliveries;
 - (2) At other reasonable times if written notice is given during regular working hours that the Facility accepts waste deliveries, which notice may be made via facsimile sent to the Facility, attention Brian Stone at (541)745-3826; and
 - (3) At any time without notice when, in the reasonable opinion of the Director, such notice would defeat the purpose of the entry.
- b. The Facility shall cooperate with Metro regarding Metro's investigation of waste haulers suspected of fraudulently claiming waste as having originated from outside the Metro boundary or otherwise violating the provisions of this Agreement or the Metro Code. Such cooperation shall include, without limitation, providing Metro with requested information in the Facility's possession regarding waste haulers under investigation and providing appropriate Facility representatives to testify in deposition or at a contested case hearing regarding such waste haulers.
- c. If Metro asserts that the Facility has violated any requirement of this Agreement or any provision of the Metro Code applicable to disposal sites as applied to the Facility under Paragraph 8 of this Agreement, the Facility hereby expressly agrees to submit to all enforcement proceedings that are applicable to disposal sites within Metro's boundaries and to accept the jurisdiction of Metro for the purpose of providing notice of, commencing and conducting enforcement proceedings as provided in Metro Code Chapters 2.03 and 2.05 and Metro Code Sections 5.01.180 and 5.01.200.
- d. Subject to the confidentiality provisions of this license, Metro's right to inspect and audit shall include the right to review, at an office of the Facility located in or near the Portland metropolitan area, all information from which all required reports are derived, adequate to ensure compliance with this Agreement.

10. Indemnification. The Facility shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages,

actions, losses, and expenses, including attorney's fees, arising out of, or in any way connected with, the Facility's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities herein ("Confidential Information") which the Facility is required to submit to Metro under Section 6a. of this Agreement. Metro acknowledges that, although the Facility is not obligated by law to submit such information, the Facility is voluntarily obligating itself to do so pursuant to this Agreement. Metro also recognizes that the Confidential Information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by the Facility, is used by the Facility in its business, has commercial value, and gives the Facility a business advantage over competitors not possessing such information. The ability of competitors of the Facility to obtain the Confidential Information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose Confidential Information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate Confidential Information to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain Confidential Information for Metro's solid waste management purposes. Neither Metro nor any person at Metro shall use the Confidential Information specified in this section for personal benefit.
- c. Notwithstanding subsections 11.a and 11.b. of this Agreement, Metro may use Confidential Information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory enforcement or other law enforcement. Metro may also use Confidential Information in aggregations or summaries that may be released to the public, so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste that specific persons or other entities generate or deliver to the Facility. Metro shall notify the Facility within six (6) business days of Metro's receipt of a request for Confidential Information from a third party. If it becomes necessary for Metro to release Confidential Information to any person

outside of Metro, Metro shall so notify the Facility in writing at least ten (10) days prior to releasing such information.

- d. When submitting to Metro the Confidential Information specified herein, the Facility shall mark such materials as confidential. Metro shall keep all such material separate from other records and materials such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- e. If Oregon law is modified such that the Confidential Information referenced in this section is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, the Facility shall no longer be required to submit such information to Metro. In such instance, upon request, the Facility nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro has a reasonable suspicion that a violation has occurred.

12. Modification, Suspension, and Termination.

- a. If the Facility fails to fully and promptly comply with a term or condition of this Agreement, the Director shall issue to the Facility a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Director of at least twenty (20) days, the Facility must demonstrate to the satisfaction of the Director either that the Facility has not violated a term or condition of this Agreement, that the violation has been corrected, or that the Facility is making diligent efforts to correct the violation and is likely to succeed in a reasonable period of time. The Facility shall also, within the same twenty (20) day period, pay all fines owing as a result of noncompliance per Metro Code 5.05.070 or make arrangements for payment satisfactory to the Director. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Director, effective as of 5:00 p.m. on the last day of the compliance period specified by the Director, until such time as the Director issues a written finding to the Facility that the violation has been cured. The Director may extend the compliance period to a total of no more than sixty (60) days from the date of the notice of noncompliance, upon determining that the Facility is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. The Director may suspend this Agreement without prior notice only as follows:
 - (1) If necessary in the reasonable opinion of the Director to protect the public health, safety, or welfare, and in the case of an emergency; or

- (2) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro:
- (a) May be liable for damages for allowing waste of a type specified in this Agreement to be disposed of at the Facility; or
 - (b) May no longer allow such waste to be disposed of at the Facility.
- c. The Metro Council ("Council") may modify, suspend, or terminate this Agreement for good cause or substantial change of circumstances upon passage of a resolution specifying the action taken and the effective date. If this Agreement is modified by Council resolution, the Facility shall have thirty (30) days from the date of the resolution to acknowledge the modification by signing a written instrument containing the terms of the modification. Failure of the Facility to acknowledge the modification within the 30-day period, unless otherwise excused by the Director, shall result in suspension of the Agreement effective as of 5:00 p.m. on the 30th day, until the modification is acknowledged in writing by the Facility.
- d. The Facility may terminate this Agreement for good cause provided that such termination shall commence no sooner than thirty (30) days after the Facility provides Metro with written notice of the Facility's intent to terminate.
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of the Metro boundary, regardless of the perceived or actual impact of such decisions on the Facility's business. A policy judgment by Metro to limit or prevent waste generated within the Metro boundary from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to the Facility.
- f. To be effective, the amendment or modification of this Agreement must be in writing, signed by both the Director and by an authorized representative of the Facility.

13. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement 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 legal requirements against the Facility.
- b. The Facility shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.

- c. The granting of this Agreement shall not confer a property right to the Facility, nor vest any right or privilege in the Facility to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of this Agreement must be in writing, signed by either the Director, if Metro is making the waiver, or by an authorized representative of the Facility, if the Facility is making the waiver. Waiver of a term or condition of this Agreement by either party shall neither waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. If any deadline required to be computed under any provision of this Agreement falls on a Saturday, Sunday, or legal holiday, then the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday. As used in this subsection, "legal holiday" means legal holiday as defined in Oregon Revised Statutes 187.010 and 187.020, as amended.
- i. Unless otherwise specified, all terms are as defined in Metro Code Chapter 5.01.
- j. This Agreement is the entire agreement between the Parties.

COFFIN BUTTE LANDFILL

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3238, FOR THE PURPOSE OF APPROVING A DESIGNATED FACILITY AGREEMENT WITH VALLEY LANDFILLS, INC., FOR THE COFFIN BUTTE LANDFILL

October 3, 2002

Prepared by: Chuck Geyer

BACKGROUND

In November 2001, Metro received a request from Valley Landfills, Inc., for Metro to recognize its Coffin Butte Landfill as a "Designated Facility" under the provisions of Metro Code 5.05.030. The Coffin Butte Landfill is located at 28972 Coffin Butte Road in Benton County, north of Corvallis, Oregon (see attachments for additional site information.) Following this request, Regional Environmental Management staff entered into negotiations with the firm to draft an agreement acceptable to both parties. The Designated Facility Agreement that is Exhibit "A" is the result of these negotiations.

The primary purpose of the agreement is to allow special waste and non-putrescible waste generated from within the Metro to be received at the facility. The waste must have been already processed for material recovery, or be a type of dry wastes such as cleanup materials and special waste that lack material recovery potential. Such waste is currently received by the facility through Non System Licenses (NSLs) that would no longer be needed. Approximately 100,000 tons of non-putrescible waste is currently authorized under the NSLs that would be replaced by this agreement. NSLs would still be required for putrescible waste received by the facility (up to 45,000 tons/year is currently authorized). The facility received approximately 69,000 tons of waste from the Metro region in FY2001-02. This represents about 16% of the total waste (426,000) received at the facility.

Metro Code 5.05.030(a) contains a list of designated facilities. Metro Code 5.05.030(b) states that, pursuant to a duly enacted ordinance, the Metro Council may add (or remove) facilities to the list. In deciding whether to designate an addition facility shall consider several factors listed in the Code. Below are the factors that must be considered followed by how they are addressed by the agreement.

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

The Coffin Butte Landfill (CBLF) first came into use during the 1940s or 50s when it served as the landfill for the nearby Adair Village Military base. Later, the landfill accepted industrial wastes from the Wah Chang facility located in Albany, Oregon. When the CBLF became a Subtitle D landfill in 1992, the original unlined cells were capped. However, there remains a problem of leachate contamination of groundwater that is presently being monitored by the DEQ. Since 1992, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ.

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

The Coffin Butte Landfill is permitted by the Oregon Department of Environmental Quality (DEQ) to take unlimited amounts of authorized wastes (putrescible, non-putrescible, special and cleanup wastes).

The facility was issued a NON by DEQ in 1998 for failure to immediately report a landfill fire. Another NON was issued in July 2001 when too high a level of non-methane gasses was detected in the landfill gas power generation system. The problem was promptly remedied. These are considered to be relatively minor violations, both DEQ and Benton County considers the landfill to be a well run facility that is in compliance with federal, state and local requirements. Benton County and the landfill executed an agreement in December 2000 establishing the parameters to be monitored by the Benton County Environmental Health Division, and authorizing the landfill to accept quantities of waste consistent with the DEQ permit. The facility has a good compliance record with public health, safety and environmental rules and regulations.

(3) *The adequacy of operational practices and management controls at the facility;*

The Coffin Butte Landfill uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

(4) *The expected impact on the region's recycling and waste reduction efforts;*

The region's recycling and waste reduction efforts should be enhanced (or at least stay the same) because only non-putrescible waste from within the region that has been processed can be received at the facility. This should act as an incentive for additional material recovery, particularly at other subsidiaries of the facility's parent corporation.

Waste is currently going to the facility from the subsidiaries such as WRI and Keller Drop Box. It includes putrescible, special, and dry processing residual wastes. Putrescible waste will not be authorized under the designated facility agreement and must continue to be delivered under a non-system license (NSL). Special waste has no recovery potential and therefore should not affect waste reduction efforts. Since individual NSL's will not be required for dry processing residual, it may encourage additional processing at WRI, which may increase regional recovery.

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

The waste subject to the proposed agreement is non-putrescible waste and therefore, under Change Order No. 8, not included within the definition of "Metro Solid Waste Tonnage" for purposes of Metro's disposal contract. The requested agreement does not appear to conflict with Metro's disposal contract or any other of its existing contractual arrangements.

(6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

The applicant is Valley Landfills, Inc. doing business as the Coffin Butte Landfill. The applicant had not been subject to Metro ordinances since it is located outside the Metro boundary. The applicant has assisted Metro with enforcement actions when waste was illegally hauled to its facilities. The applicant is a subsidiary of Allied Waste Systems, Inc. Other subsidiaries of the parent (such as River City Disposal, WRI, Keller Drop Box, United Disposal Services) that are active in the Metro solid waste system have a good record of compliance with Metro ordinances and agreements and have assisted Metro in their enforcement. The DFA would also allow third party contractor other than the subsidiaries to haul waste

directly from generator sites, if the waste fell into the categories permitted by the DFA such as special waste that does not require processing.

- (7) *Such other factors as the executive officer deems appropriate for purposes of making such determination.*

The agreement will enhance the collection of fees and taxes due Metro as they are required by the agreement. The agreement also makes the facility subject to Metro's regulatory requirements as if it were located within the Metro boundary.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code Sections 5.03.030 (a) and (b) as described above; and section (c) requiring the agreement be adopted be approved by the Metro Council; and section (d) that requires the agreement to specify waste types.

3. Anticipated Effects

Reduce the number of NSLs serving the facility.

4. Budget Impacts

No immediate budget impact is anticipated.

EXECUTIVE OFFICER RECOMMENDATION

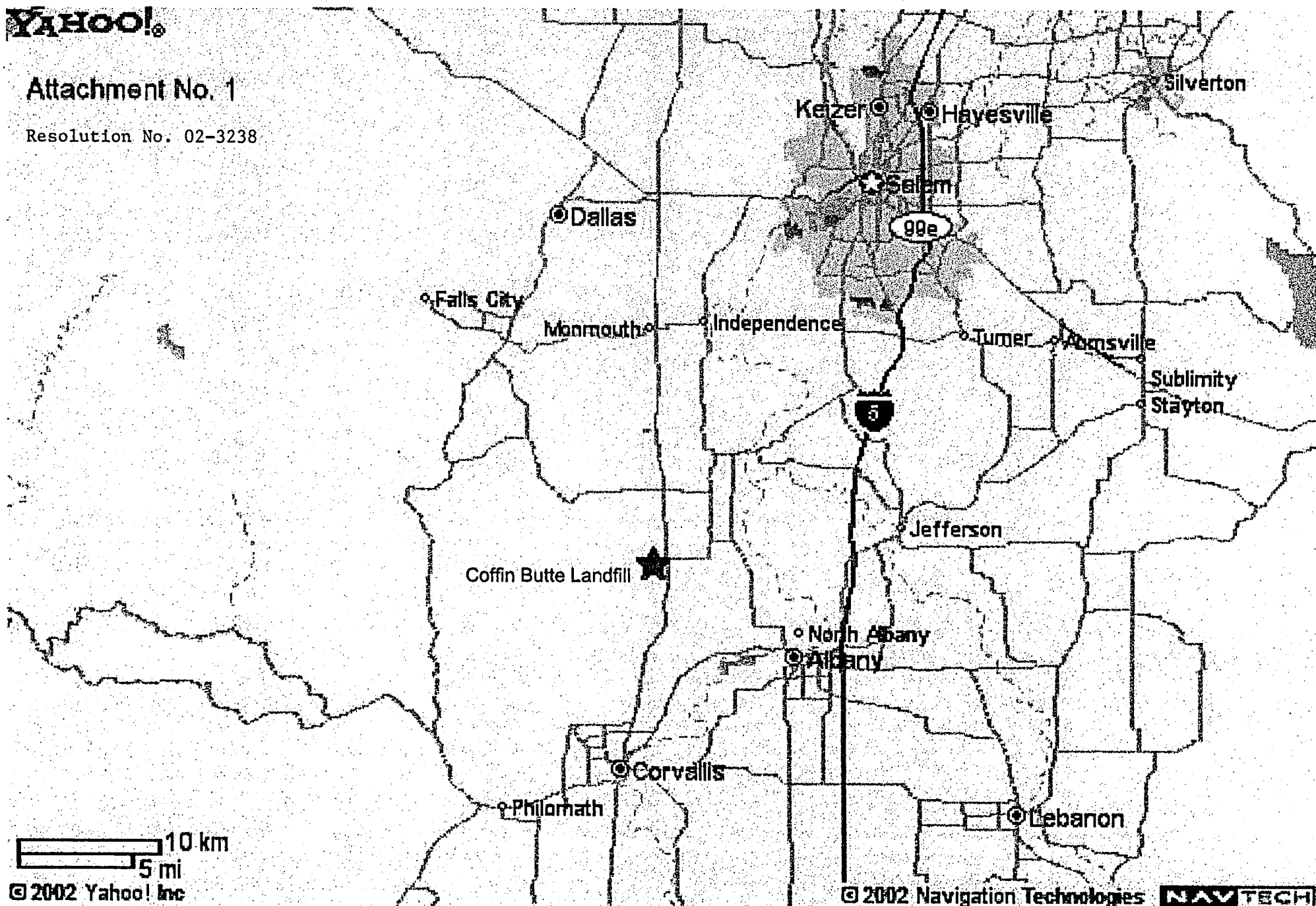
The Executive Officer recommends adoption of Resolution No. 02-3238.

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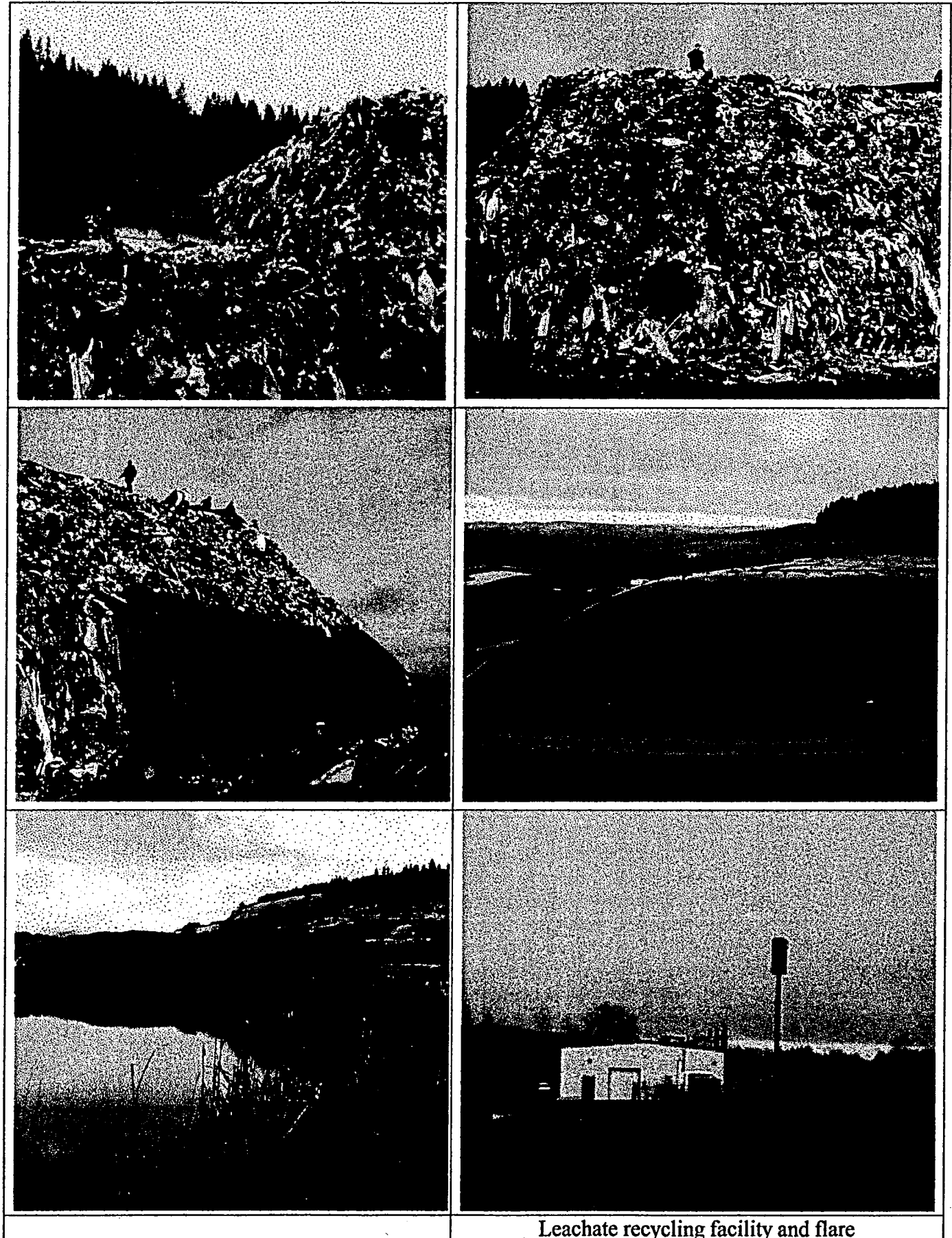
YAHOO!

Attachment No. 1

Resolution No. 02-3238



Attachment 2
Resolution No. 02-3238



Leachate recycling facility and flare

Agenda Item Number 7.3

Resolution No. 02-3240, For the Purpose of Adopting the Capital Improvement Plan for Fiscal Years 2003-04 through 2007-2008.

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE
CAPITAL IMPROVEMENT PLAN FOR FISCAL
YEARS 2003-04 THROUGH 2007-08

)
)
)

RESOLUTION NO. 02-3240
Introduced by
Mike Burton, Executive Officer

WHEREAS, Metro recognizes the need to prepare a long-range plan estimating the timing, scale and cost of its major capital projects & equipment purchases;

WHEREAS, Metro departments have inventoried existing major capital assets, prepared status reports on current capital projects and assessed future capital needs;

WHEREAS, Metro's Executive Officer has directed the preparation of a Capital Improvement Plan for fiscal years 2003-04 through 2007-08 that projects Metro major capital spending needs over the next five years, assesses the impact of capital projects on the forecasted financial condition of Metro funds, and assesses the impact on operating costs;

WHEREAS, The Metro Council has reviewed the FY 2003-04 through FY 2007-08 Capital Improvement Plan; and

WHEREAS, The Council has conducted a public hearing on the FY 2003-04 through FY 2007-08 Capital Improvement Plan; now, therefore

BE IT RESOLVED,

1. That the FY 2003-04 through 2007-08 Capital Improvement Plan, included as Exhibit A to this Resolution, on file at the Metro offices, is hereby adopted.

2. That the Metro Council President is requested to include the FY 2003-04 capital projects from the FY 2003-04 through 2007-08 Capital Improvement Plan in the proposed FY 2003-04 budget.

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

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3240, FOR THE PURPOSE OF ADOPTING THE CAPITAL IMPROVEMENT PLAN FOR FISCAL YEARS 2003-04 THROUGH 2007-08

Date: October 25, 2002

Presented by: Mike Burton, Executive Officer
Jennifer Sims, Chief Financial Officer

BACKGROUND

The Proposed Capital Improvement Plan for Fiscal Years 2003-04 through 2007-08 represents the seventh year of Metro's long-range capital improvement planning process. Over the past six years, Metro has established a sound base to forecast the agency's capital needs and balance those needs with available resources. As a result, Metro has been able to coordinate the financing and timing of its capital improvements in a way that maximizes the benefits to the public and provides opportunities to save money.

ANALYSIS/INFORMATION

Known Opposition: None

Legal Antecedents: There is no legal requirement for Metro to prepare a Capital Improvement Plan.

Anticipated Effects: The resolution signifies the Council has reviewed and approved the Capital Improvement Plan covering the years FY2004 – FY2008.

Within the 85 projects planned during the five years covered by this CIP are projects for replacing or improving existing facilities, projects purchasing new equipment, and projects that create new facilities. The total cost for these projects during the five years is estimated to be \$41.3 million.

This Resolution is the formal instrument by which the plan will be adopted. Final action to adopt the plan should occur by December 1, 2002, to allow sufficient time to incorporate the plan's FY 2003-04 capital projects into the proposed FY 2003-04 budget. Exhibit A is the Proposed Capital Improvement Plan. An Adopted Capital Improvement Plan will include all the proposed information.

Budget Impacts: The plan's FY 2003-04 capital projects are the proposed FY 2003-04 CIP capital requests. The financial impacts of the projects are described in detail and in summary form in the Capital Improvement Plan.

RECOMMENDED ACTION

The Executive Officer recommends adoption of Resolution No. 02-3240

Agenda Item Number 7.4

Resolution No. 02-3241, For the Purpose of Authorizing the Executive Officer to Acquire a Conservation Easement and Execute a 25-Year Lease on Open Space Property in the Tualatin River Access Points Target Area.

Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 02-3241
THE EXECUTIVE OFFICER TO ACQUIRE)	
A CONSERVATION EASEMENT AND	)	Introduced by Mike Burton,
EXECUTE A 25-YEAR LEASE OF OPEN	)	Executive Officer
SPACE PROPERTY IN THE TUALATIN)	
RIVER ACCESS POINTS TARGET AREA)	

WHEREAS, in July 1992, Metro completed the Metropolitan 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 capital improvements; and

WHEREAS, on March 14, 1996, via Resolution 96-2299 ("For the Purpose of Approving a Refinement Plan For the Tualatin River Greenway and Access Points as Outlined in the Open Space Implementation Work Plan," adopted March 14, 1996), the Metro Council adopted a refinement plan for the Tualatin River Access Points regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, on June 26, 1996, Metro acquired 114 acres from James and Viola Stahlke, for a future public access point on the Tualatin River, which property (the "Metro Property") is depicted on the map attached as Exhibit A hereto; and

WHEREAS, Samuel and Susan Gotter own approximately 6.1-acres of land that lies in Tier I of the Tualatin River Access Points target area, adjacent to the Metro Property, and is further identified in Exhibit B (the "Gotter Property"); and

WHEREAS, the Gotters wish to convey a conservation easement to Metro that would encumber the Gotter Property and which would restrict land uses over the property such that its natural condition would be permanently protected and would allow public access on the property pursuant to the terms and conditions set forth in Exhibit C; and

WHEREAS, in consideration for the conservation easement, the Gotters require that Metro execute a lease to the Gotters for a term of 25 years over an approximate 1.0-acre portion of the Metro Property, that is adjacent to the Gotter Property, pursuant to the terms and conditions as set forth in Exhibit D and as depicted in the map attached as Exhibit A; and

WHEREAS, on November 6, 1997, the Metro Council adopted Ordinance No. 97-714 ("For the Purpose of Enacting a Policy to Allow Metro to Purchase and Accept Conservation Easements to Promote the Protection of Regionally Significant Natural Resources, Adding the Policy to the Metro Code, and Declaring an Emergency," adopted November 6, 1997), codified as Metro Code Section 10.03.60, establishing the procedure by which Metro can acquire and hold conservation easements, and requiring public notice and a vote of the Metro Council; and

WHEREAS, Metro has exceeded the minimum 266-acre goal established for the Tualatin River Access Points target area, and therefore acquisition of the conservation easement requires Metro Council authorization pursuant to Council 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," adopted September 27, 2001); and

WHEREAS, acquisition of the Gotter conservation easement meets two criteria of Council Resolution 01-3106 in that it will 1) improve public access to the Tualatin River and 2) help accomplish the assemblage of a regional scale natural area consistent with the goals of the refinement plan; and

WHEREAS, the Lease is for non-park purposes and can be accommodated without significant impact to natural resources, recreational facilities, recreational opportunities, or their operational management, per Metro Council Resolution No. 97-2539B ("For the Purpose of Approving General Policies Related to the Review of Easements, Rights of Ways, and Leases for Non-Park Uses Through Properties Managed by The Regional Parks and Greenspaces Department," adopted November 6, 1997); and

WHEREAS, Metro has met public notice requirements for conservation easements as set forth in Metro Code Section 10.03.020; and

WHEREAS, the Lease area depicted in Exhibit A is currently surplus, is not needed for public use for the term of the Lease, and the Conservation Easement to be received by Metro in exchange for said Lease is of equal to or superior value for public use; now therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to acquire the conservation easement over the Gotter Property in the form attached as Exhibit C; and

BE IT FURTHER RESOLVED,

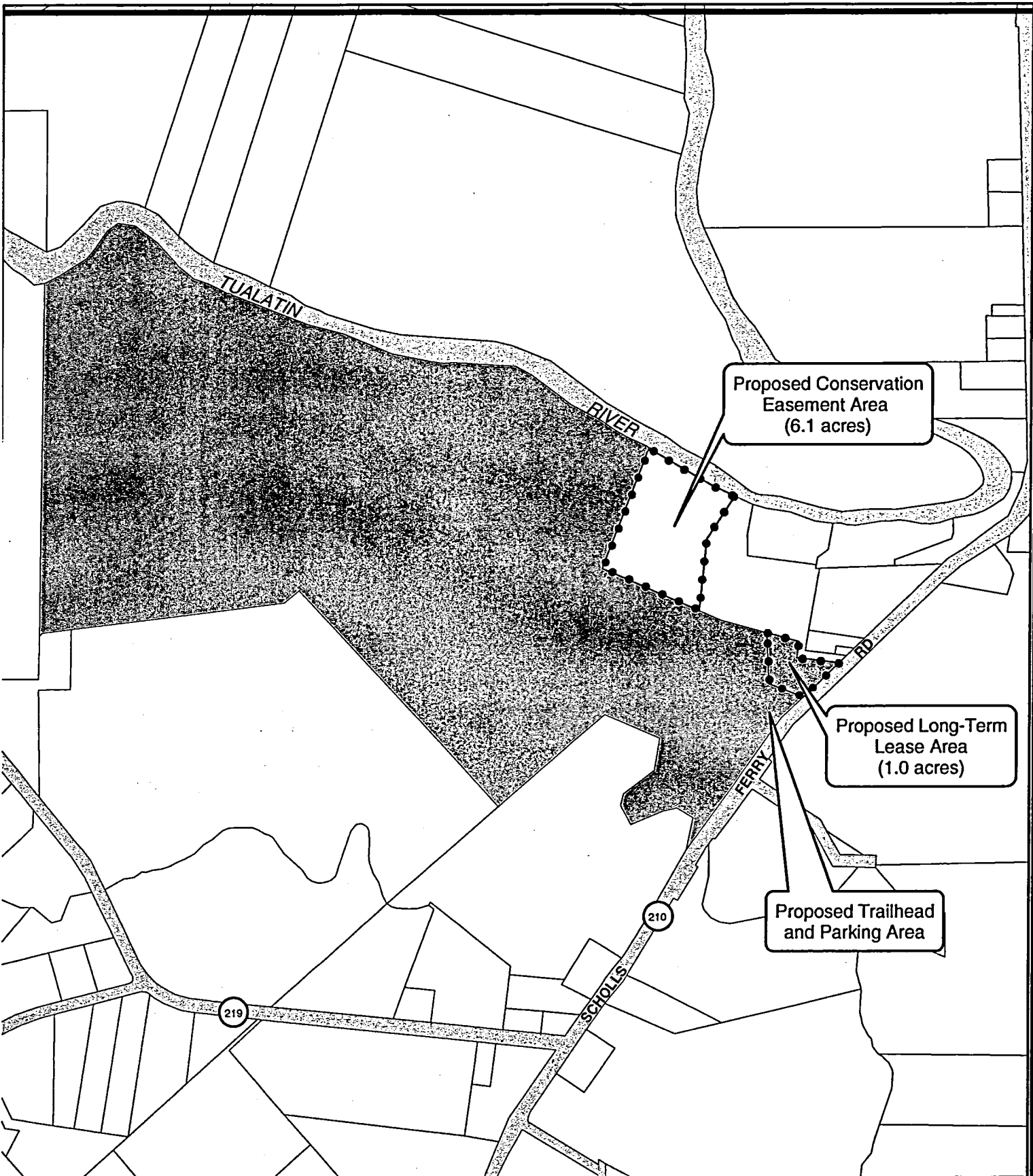
That the Metro Council authorizes the Metro Executive Officer to grant the Gotters a 25-year lease over Metro-owned property in the form attached as Exhibit D.

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

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel



REGIONAL LAND INFORMATION SYSTEM

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

Gotter Bottom

Exhibit A

Res. 02-3241

800

1 inch equals 600 feet

Location Map

Metro Parcel

Areas of Interest

UTM COORDINATE SYSTEM: NAD 83, UTM ZONE 18Q, DATUM: NAD 83, EPOCH: 1982.0, SCALE FACTOR: 0.999 609 319 226, FALSE EASTING: 500 000 M, FALSE NORTHING: 0 M, ELEVATION: 0 M

EXHIBIT B
Resolution 02-3241

A tract of land situated in Sections 9 and 10, Township 2 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, more particularly described as follows:

Beginning at the Northerly Northeast corner of the tract of land described in Deed to Samuel A. Gotter Jr., et ux recorded in Book 455 page 415, Records of Washington County, being a point in the center of the Tualatin River; thence South 10° 28' West along the Easterly and Northerly boundary of said Gotter tract, 167.45 feet, South 0° 10' East 100.12 feet and South 82° 19' East 317.15 feet; thence South 09° 51' West 17.20 feet to the Northerly line of that tract of land described in Deed to Land Syndicate Ltd., recorded in Book 375 page 36, Records of Washington County; thence North 88° 20' East along said Northerly line, 14.30 feet to the Northerly Northeast corner thereof; thence South 09° 51' West along the Easterly line of a 28.0 foot wide roadway easement as described by instrument recorded in Book 639 page 240, Records of Washington County, 384.30 feet to an angle point; thence South 81° 46' East along the Northerly line of said easement, 191.80 feet to the Northwesterly line of State Highway 210, (Scholls Ferry Road); thence South 46° 00' West along the Northwesterly line of said Highway, 35.42 feet to the Southeasterly corner of said easement; thence North 81° 46' West along the Southerly line thereof, 199.0 feet to an angle point; thence North 09° 51' East along the West line of said easement 114.0 feet to an iron rod at the Southeast corner of that tract of land described in Deed to Samuel A. Gotter Jr., et ux, recorded in Book 892 page 577, Records of Washington County; thence North 77° 05' 55" West along the South line of said tract, 246.21 feet to an iron rod; thence leaving said South line, South 85° 21' 20" West 134.78 feet to an iron rod; thence North 68° 25' 35" West 590.0 feet; thence North 21° 34' 25" East 610.0 feet, more or less, to the center of the Tualatin River; thence downstream in the center of said river, 530.0 feet, more or less, to the point of beginning.

EXHIBIT C
Resolution 02-3241

When recorded return to:

Metro Office of General Counsel
600 NE Grand Avenue
Portland, OR 97232

Mail Tax Statements to:
No Change Requested

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("the Easement") is made this _____ day of _____, 2002, by Samuel A. Gotter, Jr. and Susan B. Gotter having an address at 24125 SW Scholls Ferry Road in the County of Washington, State of Oregon ("Grantors"), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon, having an address at 600 NE Grand Avenue, Portland, Oregon ("Metro").

RECITALS

WHEREAS, Grantors are owners in fee simple of that certain real property (the "Protected Property") located on Scholls Ferry Road in Hillsboro, in the County of Washington, State of Oregon, which is a portion of that certain real property known as Reference Parcel 2S20900 01801 (the "Larger Property"), more particularly described in Attachment A (legal description). The Protected Property is more particularly described in Attachment B (legal description) and depicted in Attachment C (survey map), attached hereto and incorporated into this Easement by reference herein;

WHEREAS, the Protected Property possesses scenic, open space, educational and recreational values of great importance to Grantors, the people of Washington County, the Portland Metropolitan Region, and the State of Oregon (collectively, "Conservation Values");

WHEREAS, the Protected Property lies near the confluence of McFee Creek and the Tualatin River west of Scholls Ferry Road and north of State Highway 219. All of the Protected Property lies within the Tualatin River floodplain and is next to a 114-acre parcel that Metro purchased in 1996 ("the Metro Property"). The purpose of the Metro Property acquisition was to provide public access to and from the adjacent Tualatin River and to develop suitable natural habitat in the Tualatin River watershed. The northeast section of the Protected Property includes a section of McFee Creek and is near the confluence of the creek and the Tualatin River. This portion of the Protected Property is forested with native riparian vegetation. The remaining portion of the Protected Property has been farmed for many years and is part of the same cultivated area that is on Metro Property. Metro has developed a plan to restore the wetland hydrology and vegetation to the prior-converted agricultural land on its property. Since the Protected Property and the Metro Property both lie in the floodplain and are contiguous, it is advantageous to Metro to also restore and manage the Protected Property. Furthermore, the Protected Property contains an existing farm road that connects with the access road that runs from Scholls Ferry

Road and passes through the Metro Property. Metro intends to use the farm road area of the Protected Property if necessary for potential public pedestrian and vehicular access to and from the Tualatin River;

WHEREAS, the specific Conservation Values of the Protected Property are or will be documented in an inventory of relevant features of the Protected Property, dated _____, 2002, on file at the offices of Metro and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantors and Metro further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Metro, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions;

WHEREAS, Grantors, as owners of the Protected Property, have the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desire to transfer such rights to Metro;

WHEREAS, Grantors acknowledge that Metro intends to use the Metro Property and the Protected Property as a natural area park and Tualatin River access point that will be open to the public;

WHEREAS, Metro is a political subdivision of the State of Oregon, whose purpose includes the protection, management and restoration of urban natural areas and areas in proximity to the urban area deemed to be of regional and metropolitan concern; and

WHEREAS, Metro agrees, by accepting this Easement, to honor the intentions of Grantors as stated in this Easement and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of Metro leasing an approximate 1.0-acre portion of the Metro Property to Grantors for 25 years under the terms and conditions set forth in the Agricultural Lease attached to the Purchase and Sale Agreement creating this Easement and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantors hereby voluntarily grant and convey to Metro a Conservation Easement in perpetuity on, through and over the Protected Property of the nature and character and to the extent set forth below, and create an Appurtenant Public Pedestrian and Vehicular Access Easement of the nature and character set forth below. Grantors expressly intend that these perpetual Easements run with the land and that these Easements shall be binding upon Grantors' personal representatives, heirs, successors, and assigns. All references to "Grantors" herein apply equally to Grantors' personal representatives, heirs, successors, and assigns.

1. **Conservation Easement.** The Purpose of this Conservation Easement is to assure that (with the exception of the Trail, as defined below) the Protected Property will be retained forever predominantly in its natural condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). Grantors intend that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
2. **Appurtenant Pedestrian and Vehicular Access Easement.**

- a. **Purpose.** The Purpose of the Appurtenant Public Pedestrian and Vehicular Access Easement is to provide public access to the Protected Property and for the development, at Metro's discretion, of a public recreational trail and vehicular roadway to provide access to and from the Tualatin River on and through the Protected Property. The Appurtenant Pedestrian and Vehicular Access Easement provides Metro with the perpetual right to construct and maintain a trail and roadway for public access to, on and through the Protected Property in a location acceptable to Metro in its sole discretion.
 - b. **Access by Public.** It is the intent of Metro that all of the Protected Property will be open to the public, consistent with the Conservation Values of this Easement. However, access by the general public to the Protected Property shall not unreasonably interfere with the Conservation Values of the Protected Property.
3. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Metro:
- A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
 - B. **Access.** In addition to the access provided to Metro and the public as set forth herein for the Appurtenant Pedestrian and Vehicular Easement, access to the Protected Property for Metro staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:
 - i. Quarterly general inspections to assure compliance with this Easement;
 - ii. Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement;
 - iii. Restoration and enhancement of native vegetation and wildlife habitat enhancement;
 - iv. Access to the Protected Property via the Metro Property and activities performed by Metro elsewhere on the Protected Property consistent with the terms of this Easement, require no prior notice.
 - C. **Restoration of Native Vegetation; Wildlife Habitat Enhancement.** To restore, at Metro's discretion, but not its obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:
 - i. The removal of existing non-native and competitive vegetation, and the planting of native vegetation for the purpose of establishing a native plant community to enhance the Conservation Values of the Protected Property;
 - ii. The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
 - iii. The alteration of water courses or removal of drainage tile to restore natural systems and enhance the Conservation Values of the Protected Property.

- D. **Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and at Metro's sole option to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.
 - E. **Enforcement.** To enforce the terms of this Easement, consistent with Section 7.
 - F. **Assignment.** To assign, convey, or otherwise transfer Metro's interest in the Protected Property in accordance with Section 14.
4. **Prohibited Uses.** Grantors acknowledge and agree that they will not conduct, engage in or permit any activity on or use of the Protected Property inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the Grantors and their agents, heirs and assigns are expressly prohibited from engaging in the following activities and uses:
- A. **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
 - B. **Utilities.** The above or below ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.
 - C. **Construction.** The placement or construction by Grantors of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas), except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
 - D. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
 - E. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
 - F. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
 - G. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
 - H. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.

- I. **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- J. **Hunting.** Hunting or trapping; except to the extent determined necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- K. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
- L. **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
- M. **Domestic Animals.** Use of the site to exercise, train or pasture any domestic animal on the Protected Property.
- N. **Herbicides or Pesticides.** The use of any herbicides or pesticides; except for Metro's activities pursuant to in Section 3 (C) herein and except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- O. **Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the Purpose of this Easement.
- P. **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property, or the planting or introduction of any species of vegetation; except as deemed necessary by Metro to enhance the Conservation Values of the Protected Property.
- Q. **Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property, except when used for habitat enhancement within the Protected Property.
- R. **Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
- S. **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
- T. **Fires.** Fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
- U. **Fireworks.** Use of all forms of fireworks.
- V. **Motorized Vehicles.** Operation of motorized or mechanized vehicles or motorized equipment except when approved by Metro and in association with the maintenance of Conservation Values, and except pursuant to the provisions of Sections 2 and 3 herein.
- W. **Amplified Sound.** Uses of devices which amplify or emit amplified sound.

5. **Reserved Rights.** Grantors specifically reserve for themselves and their personal representatives, heirs, successors and assigns, the following uses of and activities on the Protected Property that are consistent with the Purpose of the Easement and that are not prohibited by this Easement.

- A. **Recreation.** The undertaking of passive recreational activities such as hiking, and bird watching on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property.
- B. **Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible. Grantors shall provide Metro with notice of their intent to take action under this subsection.

6. **Notice and Approval.**

- A. **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Metro prior to undertaking certain permitted activities, as provided in Section 5(B), is to afford Metro an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Easement. Whenever notice is required, Grantors shall notify Metro in writing not less than 7 days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Metro to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantors must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantors may proceed with such action without Metro's approval only if Grantors notify Metro prior to taking such action and Metro fails to provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- B. **Metro's Approval.** Where Metro's approval is required, Metro shall grant or withhold its approval in writing within 7 days of receipt of Grantors' written request therefor. Metro's approval may be withheld only upon a reasonable determination by Metro that the action as proposed would be inconsistent with the Purpose of this Easement.
- C. **Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: Samuel A. Gotter Jr. and Susan B. Gotter
PO Box 23023
Tigard, Oregon 97123

To Metro: Metro Department of Parks and Greenspaces
Attn: Charles Ciecko
600 NE Grand Avenue
Portland, OR 97232

With a copy to: Metro Office of General Counsel
600 NE Grand Avenue
Portland, OR 97232

or to such other address as either party designates by written notice to the other.

7. **Metro's Remedies.**

A. **Notice of Violation.** If Metro determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Metro shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured. Grantors shall thereafter cure the violation or restore any portion of the Protected Property injured by Grantors.

B. **Grantors' Failure To Respond.** If Grantors fail to cure the violation within 30 days after receipt of notice thereof from Metro, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fail to begin curing such violation within the 30-day period, or fail to continue diligently to cure such violation until finally cured, Metro may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement.

C. **Metro's Action to Remedy Violation.**

- (1) To enjoin the violation ex parte as necessary, by temporary or permanent injunction;
- (2) To recover from Grantors or third parties any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, occurring after the date of recording of the Easement, including damages for the loss of scenic, aesthetic, or environmental values; and
- (3) To require the restoration of the Protected Property to the condition that existed prior to any such injury.

Without limiting Grantors' liability therefor, Metro, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. **Immediate Action Required.** If Metro in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Metro may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Metro's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantors agree that Metro's remedies at law for any violation of the terms of this Easement are inadequate and that Metro shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including specific performance of the terms of this Easement, without the

necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Metro's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. **Cost of Enforcement.** Any costs incurred by Metro in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation attorneys' fees, shall be borne by Metro.
 - F. **Metro's Discretion.** Metro acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Metro, and any forbearance by Metro to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantors, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Metro of such term of any of grant of rights under this Easement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
 - G. **Waiver of Certain Defenses.** Grantors acknowledge that they have carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantors hereby waive any claim or defense they may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
 - H. **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Metro to bring any action against Grantors to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantors' control including, without limitations natural changes, fire, flood, storm or earth movement, or from acts of trespassers, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
8. **Costs, Liabilities and Insurance.** Grantors retain all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to Grantors. Metro shall be responsible for the operation, upkeep and maintenance of the public pedestrian trail and roadway, if built by Metro on the Protected Property, and for any other activity performed or responsibility assumed by Metro under Sections 2 and 3 herein. Metro shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.
9. **Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Metro with satisfactory evidence of payment upon request. If Grantors fail to pay any taxes when due, Metro is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate

authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantors to reimburse Metro created by such payment shall bear interest until paid by Grantors at the maximum rate allowed by law.

10. **Hold Harmless.**

- A. **Grantor.** Grantor shall hold harmless, indemnify, and defend Metro and its elected officials, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter relating to or occurring on or about the Protected Property that is proximately caused by the presence of Grantor or Grantor's lessees, licensees or invitees presence upon the Protected Property, or (ii) the violation or alleged violation of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, proximately caused by the presence of Grantor or Grantor's lessees, licensees or invitees presence upon the Protected Property.
- B. **Metro.** To the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, Metro shall hold harmless, indemnify, and defend Grantor, its personal representatives, heirs, successors, and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter relating to or occurring on or about the Protected Property that is proximately caused by the presence of any person upon the Protected Property for the benefit of Metro or with Metro's authorization, or (ii) the violation or alleged violation of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, proximately caused by the presence of any person upon the Protected Property for the benefit of Metro or with Metro's authorization. Grantor shall be afforded the full protection from liability to the public provided under Oregon Revised Statute 105.672-696.

11. **Environmental Representations and Warranties.** Grantors represent and warrant that to the best of Grantors' knowledge:

- A. There are no apparent or latent environmental defects in or on the Protected Property;
- B. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
- C. Neither Grantors nor Grantors' predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances on the Protected Property

regulated by State or Federal environmental laws, including but not limited to ORS Chapter 465 and 42 U.S.C. § 9601 et seq; and

- D. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantors or their predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantors nor their predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

12. **Subsequent Transfer and Extinguishment.**

- A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Metro shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, in accordance with Section 13(B) of this Easement. Metro shall use all such proceeds in a manner consistent with the Purpose of this Easement.
- B. **Condemnation.** In the event that the Protected Property is taken, in whole or in part, by the exercise of the power of eminent domain, Metro shall be entitled to compensation in accordance with applicable law.
- C. **Subsequent Transfers.** Grantors agree to:
1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
 2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
 3. Give written notice to Metro of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantors to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

13. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Metro are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Metro under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and

shall be recorded in the official records of Washington County, Oregon, and any other jurisdiction in which such recording is required.

14. **Assignment.** Metro may assign this Easement to Washington County or to any qualified holder of a Conservation Easement without the agreement of Grantors. Any other assignment of this Easement by Metro or any subsequent holder, must be approved by Grantors, which approval shall not be unreasonably withheld. As a condition of such transfer, Metro shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Metro shall notify Grantors in writing, at Grantors' last known address, in advance of such assignment.
15. **Recording.** Metro shall record this instrument in a timely fashion in the official records of Washington County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.
16. **General Provisions.**
 - A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
 - B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
 - C. **Severability.** If any provision of this Easement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
 - D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 14.
 - E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantors' title in any respect.
 - F. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
 - G. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

- H. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. **Schedule of Attachments**

- A. Legal Description of Larger Property
- B. Legal Description of Protected Property
- C. Survey Map of Protected Property

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TO HAVE AND TO HOLD unto Metro, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantors have executed this instrument this _____ day of _____, 2002.

Samuel A. Gotter, Jr.

Susan B. Gotter

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2002, before me _____, the undersigned Notary Public, personally appeared Samuel A. Gotter, Jr. and Susan B. Gotter, personally known to me (or proved to be on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument, and acknowledged that they executed it.

My commission expires: _____

Metro does hereby accept the above Deed of Conservation Easement

METRO

Mike Burton, Executive Officer

Dated: _____

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2002, before me _____, the undersigned Notary Public, personally appeared _____, as Executive Officer of Metro; a municipal corporation, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

My commission expires: _____

EXHIBIT D
Resolution 02-3241

AGRICULTURAL LEASE

Date: _____, 2002

Between: Metro
Attn: Charles Ciecko, Director
Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, Oregon 97232
("Landlord")

And: Samuel A. Gotter, Jr. and Susan B. Gotter
24125 SW Scholls Ferry Road
Hillsboro, Oregon 97123
("Tenant")

RECITALS

A. Landlord owns approximately 114 acres of real property located on SW Scholls Ferry Road in the County of Washington, State of Oregon, which is commonly known as Tax Parcel Number 1804 of Section 9, Township 2 South, Range 2 West of the Willamette Meridian (the "Larger Property").

B. Tenant owns approximately 10.65 acres of real property at 24125 SW Scholls Ferry Road in the County of Washington, State of Oregon, which is commonly known as Tax Parcel 1801 of Section 9, Township 2 South, Range 2 West of the Willamette Meridian (the "Tenant Property"). The Tenant Property is adjacent to Landlord's Larger Property.

C. Landlord desires to purchase from Tenant, and the Tenant desires to sell and convey to Landlord, a conservation easement (the "Conservation Easement") over a portion of the Tenant Property, consisting of approximately 6.1 acres of real property (the "Protected Property").

D. In exchange and consideration for the Conservation Easement, Landlord agrees to rent (the "Lease") a 1.0-acre portion of the Larger Property to Tenant (the "Lease Area"). The term of the Lease shall be for 25 years and shall be for agricultural purposes only. A metes and bounds legal description of the Lease Area shall be established by survey prior to Closing, and attached as Exhibit A-1.

E. The Larger Property, Tenant Property, Protected Property and Lease Area are depicted in the map attached as Exhibit B.

F. The specific terms of this Lease are as follows:

Section 1. Description of Lease Area. Landlord agrees to lease a 1.0-acre portion (the "Lease Area") of the Larger Property, together with the improvements, to Tenant, who owns the adjacent Tenant Property. The Lease Area is legally described and further depicted in Exhibit A-1 and A-2 attached hereto.

Section 2. Term of Lease. The term of this Lease shall commence _____, 2002 and terminate _____, 2027.

Section 3. Condition of Property at Termination. Upon the termination of this Lease, the Lease Area shall be returned to Landlord in the same condition as at the commencement of this Lease, all repairs being completed as required in this Lease, reasonable wear and tear to the improvements being excepted (except for repair obligations).

Section 4. Consideration. Consideration for this lease is the perpetual Conservation Easement granted by Tenant to Landlord over a portion of the Tenant Property and recorded as Fee No. _____, Washington County Deed Records. The area protected by the Conservation Easement consists of approximately 6.1 acres of real property.

Section 5. Use of Property By Tenant.

5.1 Tenant shall maintain the Lease Area in good condition and shall not commit, permit, or suffer waste to the Lease Area.

5.2 Tenant shall maintain all of the buildings and fences on the Lease Area in as good a condition and repair as the same were at the commencement of this Lease, reasonable wear and tear excepted, and always subject to the repair covenants of this Lease. Notwithstanding the above, if Tenant keeps livestock on the Lease Area, Tenant shall build and maintain fences adequate to contain all livestock.

5.3 The Property shall be used by Tenant for agricultural purposes only. Tenant may replace the existing pole-barn with a similar-sized pole-barn. Tenant may also erect an additional structure that is either separate or attached to the existing pole barn, provided the new structure is not more than one-half the size of the existing pole barn. Any new structure must be used for agricultural purposes only. At the termination of the lease, any improvements on the Lease Area that were constructed by Tenant will become the property of Landlord. However, prior to the termination of the lease, Tenant may remove, at their own expense, any improvements that they constructed on the Property. No other improvements shall be constructed upon the Lease Area. Tenant may plant and grow crops and trees on the Lease Area and raise poultry and livestock so long as it is not inconsistent with other provisions of this agreement or does not cause damage to the existing mature trees on the Lease Area. Tenant shall suppress the growth of all noxious weeds on the Lease Area, consistent with Section 7, below.

Section 6. Costs of Farming. Tenant shall be responsible for and pay all the costs of materials, labor, equipment, utilities, and other expenses necessary to farm the Lease Area, raise crops and livestock on the Lease Area during the lease term.

Section 7. Manner of Farming and Conservation Laws. Tenant shall farm, cultivate, maintain, and operate the Lease Area consistent with the best agricultural practices employed by the farming industry in the area where the Lease Area is located. Tenant shall refrain from practices that will cause unusual erosion to the Lease Area. Tenant shall maintain the Lease Area in compliance with all federal, state, and other governmental laws, regulations, and directives.

Section 8. Compliance with Law and Hazardous Materials

8.1 Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities pertaining to Tenant's use of the Lease Area, and with all recorded covenants, conditions, and restrictions, regardless of when they become effective. These include, without limitation, any required alteration of the Lease Area

because of Tenant's specific use, and all applicable federal, state, local laws, regulations, or ordinances pertaining to air and water quality, Hazardous Materials as defined in Section 8.4 below, waste disposal, air emissions and other environmental matters, and all zoning and other land use matters.

8.2 Tenant shall not cause or permit any Hazardous Material to be brought upon, stored, or used, applied or released in, on, or about the Lease Area by Tenant, Tenant's agents, employees, contractors, or invitees, with the exception of the following:

8.2.1 Gasoline, diesel and other farm fuels, motor oils and other farm lubricants and supplies held within the reservoirs and tanks of agricultural equipment for purposes of their operation; and

8.2.2 Application, in amounts reasonably necessary for customary farm operations of any farm fertilizers, herbicide, fungicide and/or pesticides not classified as "restricted," in accordance with their labeling, and at concentrations, and timing approved by the EPA for farm use of said substances.

8.3 Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value of the Lease Area, damages for the loss or restriction on use or rent of the Lease Area, damages arising from any adverse impact on marketing of the Lease Area, and sums paid in settlement of claims, attorney fees, consultant fees, and expert fees) that arise during or after the lease term due to contamination by Hazardous Materials as a result of Tenant's use or activities or of Tenant's agents or contractors. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater or under the Lease Area. Without limiting the foregoing, if the presence of any Hazardous Material on the Lease Area caused or permitted by Tenant or Tenant's agents or contractor results in any contamination of the Lease Area, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Lease Area to the condition existing prior to the release of any such Hazardous Material onto the Lease Area, provided that Landlord's approval of such action shall first be obtained, and approval shall not be unreasonably withheld, as long as such actions would not potentially have any material adverse long-term or short-term effect on the Lease Area. The foregoing indemnity shall survive the expiration or earlier termination of this Lease. If Tenant fails to promptly take action as set forth, Landlord may declare a default and terminate this Lease, remediate the contamination or clean up the Lease Area and charge Tenant the costs of doing so.

8.4 As used in this Lease, the term Hazardous Material means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in ORS 465.200; those substances and defined as Hazardous Substances in CERCLA, 42 USC sec. 9601; those substances defined as pollutants or contaminants in CERCLA 12 USC sec. 9604(a)(2); and those substances defined as hazardous waste in RCRA, 42 USC sec. 6903(5), or other such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

Section 9. Chemicals and Fertilizers. No pesticides, herbicides, fungicides, chemicals or fertilizers may be mixed or stored on the Lease Area. Subject to the limitations in Section 7 above, chemicals and fertilizers may be applied to the Lease Area in accordance with their labeling.

Section 10. Irrigation. There are no water rights or other irrigation rights associated with the Lease Area.

Section 11. Taxes.

11.1 Landlord shall pay all the real property taxes levied on the Lease Area.

11.2 Tenant shall pay all taxes on any of Tenant's personal property and equipment used on the Lease Area.

Section 12. Liens. Tenant shall pay when due all claims for work done on the Lease Area, and for services rendered or material furnished to Tenant to grow Tenant's crops on the Lease Area or incurred for Tenant's repair responsibilities for the Lease Area and improvements; and Tenant shall keep the Lease Area and the crops free of any liens arising out of the failure to pay such claims or arising out of any other activity of Tenant. If the Lease Area, improvements, or crops are subjected to any lien because of the activities of Tenant, and a lien is not discharged within 10 days, Landlord may discharge the lien, and recover the cost from Tenant on demand, plus interest at the rate of 18% per annum from the date of expenditure. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default. If the Tenant in good faith elects to contest the lien, then Tenant shall, upon Landlord's written request, deposit with Landlord cash or sufficient corporate surety bond or other security satisfactory to Landlord, to discharge the lien plus costs and interest.

Section 13. Indemnity; Liability Insurance.

13.1 Tenant shall defend, indemnify, and hold harmless Metro and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute or common law, including, but not limited to, attorneys' fees and expenses at trial and on appeal, arising out of Tenant's and Tenant's agents, contractors, or invitees' use or occupation of the License Area and activities thereon.

13.2 Before going into possession of the Lease Area, Tenant shall procure, and during the term of this Lease shall continue to carry, public liability and property damage insurance, naming Landlord as an additional insured, with liability limits of not less than \$1,000,000.00 for injury to persons or property in one occurrence. Such insurance should be provided by an insurance carrier reasonably acceptable to Landlord. Tenant shall deliver to Landlord certificates evidencing such insurance with an endorsement requiring 10 days' notice to Landlord prior to the cancellation of such insurance coverage.

Section 14. Default and Termination; Remedies

14.1 The following shall be events of default by the Tenant:

14.1.1 Failure to comply with the terms of the Conservation Easement.

14.1.2 Failure of Tenant to comply with any term or condition, or fulfill any other obligation of the lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.

14.1.3 Abandonment by the Tenant of the Lease Area for a period of 90 days.

14.1.4 Notwithstanding the above, no default shall occur where Landlord's basis for a violation is arbitrary and capricious.

14.2 In the event of default, and upon Tenant's failure to cure any of the events of default, as set forth above, Landlord shall have the right to re-enter, take possession of the Lease Area, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Such right shall be cumulative and in addition to all other remedies available to Landlord under applicable law.

Section 15. Landlord's Right of Entry. Landlord may go on the Lease Area at any time to inspect or show the Lease Area, provided Landlord does so in a reasonable manner that does not harm the growing crops or interfere with the farming activities of Tenant.

Section 16. Covenants of Title. Landlord covenants that Landlord has full right and authority to lease the Lease Area and will protect Tenant from all other claims and claimants, except those listed in the attached Exhibit C.

Section 17. Assignment; No Sublease. Tenant may assign this lease upon Tenant's sale, transfer or devise of the Tenant Property, to the new owner of said tax parcel. No other assignment is permitted hereunder, and this Lease shall terminate automatically upon sale or transfer of the Tenant Property to a new owner without an attendant assignment as set forth above. Landlord shall be notified within 30 days of the sale or lease by Tenant of the Tenant Property and the assignment of this Lease. Tenant shall not sublease all or any part of the Lease Area.

Section 18. Successors-In-Interests. Subject to the limitation on assignment by Tenant, this lease shall be binding upon and inure to the benefit of the parties, their successors, and assigns.

Section 19. Nonwaiver. Failure by either party at any time to require performance by the other of this Lease shall in no way affect such party's right to enforce any Lease provisions; nor shall any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

Section 20. Notices. Any notice under this Lease shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the addresses below as stated in this Lease or to such other address as either party may specify by notice to the other party. Payments to Landlord shall be made to the same address.

Landlord
Attn: Charles Ciecko, Director
Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, Oregon 97232

and:

Tenant
Samuel A. Gotter, Jr. and Susan B. Gotter
24125 SW Scholls Ferry Road
Hillsboro, Oregon 97123

Section 21. Quitting Lease Area at End of Lease. Tenant shall peaceably surrender, quit, and give up the Lease Area at the termination or earlier expiration of this Lease, in as good condition as it was upon Tenant's receipt of possession of the Lease Area.

Section 22. Representations and Warranties. Tenant accepts the Lease Area, improvements, and the personal property, if any, included in this Lease in their present condition, AS IS, without any representation or warranties, express or implied, except as otherwise set forth in this Lease. It is understood and agreed that Landlord makes no guarantee or representation as to the production or carrying capacity of the Lease Area, that Tenant has inspected the Lease Area, and that Tenant has made his or her own determination of the value of the Lease Area.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

LANDLORD:
METRO

TENANT:

By: _____
Charles Ciecko, Director
Regional Parks and Greenspaces

By: _____
Samuel A. Gotter, Jr.

By: _____
Susan B. Gotter

Staff Report

CONSIDERATION OF RESOLUTION NO. 02-3241 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ACQUIRE A CONSERVATION EASEMENT AND EXECUTE A 25-YEAR LEASE OF OPEN SPACE PROPERTY IN THE TUALATIN RIVER ACCESS POINTS TARGET AREA

Date: October 23, 2002

Presented by: Charles Ciecko
Jim Desmond

BACKGROUND

Resolution No. 02-3241 requests authorization for the Executive Officer to acquire a perpetual conservation easement (the "Easement") over a 6.1-acre portion of property owned by Samuel and Susan Gotter in the Tualatin River Access Points target area. The Resolution also requests authorization for the Executive Officer to grant the Gotters, as consideration to purchase the Easement, a 25-year lease of a 1.0-acre portion of adjacent Metro open space property.

The Gotters own a 10.7-acre parcel of land, which is located at 24125 SW Scholls Ferry Road, near the community of Scholls in Washington County. The Gotter property is adjacent to a 114-acre Metro property, acquired with Open Spaces bond measure funds in June 1996 from the Stahlke family. The purpose of that Metro acquisition was to provide public access to the adjacent Tualatin River and to promote the development of suitable natural habitat in the Tualatin River watershed.

The 6.1-acre portion of the Gotter property (the "Property") that will be encumbered by the Easement is bottomland that is part of the same hydrological and vegetative system as the floodplain on the Metro property. The Property also has 860 feet of frontage along McFee Creek and 433 feet along the Tualatin River. Furthermore, the Property includes the confluence of McFee Creek with the Tualatin River.

Metro's Natural Resources Team plans to restore wetland hydrology and vegetation to approximately 100 acres of the Tualatin River floodplain on the Metro property. According to the restoration plan, this site represents "one of the best opportunities for wetland restoration in the Tualatin River Watershed." Since the Property is bottomland adjacent to Metro property and includes the mouth of McFee Creek, having control and protection over the Property is important for supporting the restoration effort. Another benefit of the Easement is that it improves access to the Tualatin River by providing a shorter, more direct route across a corner of the Gotter Property, without having to traverse around the corner on the Metro property.

In exchange for the Easement, Metro would grant the Gotters a 25-year lease over approximately a 1.0-acre portion of the upland area (the "Lease Area") on the 114-acre Metro property. The Lease area is a small pasture bordered by an access road on the south, by the Gotters property to the north, and Scholls Ferry Road to the east. It also includes a small pole barn that was constructed in 1979. Mr. Gotter already leases from Metro on a yearly basis the upland and pole barn at issue. However, Gotter would like to have a longer-term lease so that he can expand his existing hobby farm. The Lease area, along with the remainder of the Metro and Gotter property, is zoned for EFU and the lease is for agricultural uses only. After the lease expires, Metro will retain full rights to the Lease area.

Lora Price, Metro Regional Parks and Greenspaces Planner, reviewed the Metro site to determine whether the proposed lease would interfere with future park uses of the property. She concluded that the proposed exchange was beneficial to Metro and that the Lease area was not necessary for a future parking lot or trailhead to the Metro property. Instead, she concluded that the 0.7-acre upland area to the south is sufficient for this purpose. Consequently, the upland to be exchanged is not needed for public park use in the foreseeable future or through the term of the lease.

The specific terms of the Easement and Lease are attached respectively as Exhibits B and C to the accompanying resolution. The proposed areas of exchange are outlined on the enclosed map, attached as Exhibit D to the resolution.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

A. Refinement Plans.

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. Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property.

The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 95-2228A ("For the Purpose of Authorizing the Executive Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Open Space Implementation Work Plan," adopted November 2, 1995) and amended via Resolution 96-2424 ("For the Purpose of Authorizing the Executive Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Amended Open Spaces Implementation Work Plan," adopted January 9, 1997) established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Via Resolution 96-2299 ("For the Purpose of Approving a Refinement Plan For the Tualatin River Greenway and Access Points as Outlined in the Open Space Implementation Work Plan," adopted March 14, 1996), the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Tualatin River Access Points target area. Through that resolution, the Metro Council also approved the target area refinement plan tax-lot specific map, which includes the subject Property as a Tier I priority.

Acquisition of the Property meets the following Tier I criteria:

- Preservation of floodplain, wetland and riparian habitats along the river, while providing possible access to natural areas in and around the access points, including distinctive habitats such as the interiors of oxbows and the confluences of major creek tributaries. The Property is in the floodplain and contains frontage at and near the confluence of McFee Creek, which is a perennial stream that drains down from

Chehalem Mountain and is identified as an area of interest in Appendix B of the Refinement Plan.

- Safe accessibility from a public roadway that can adequately accommodate additional traffic. The Property provides a more direct route to the river via the upland portion of the Metro property and the terms of the Conservation Easement permit public vehicular and pedestrian traffic across the Property.

B. Resolution 01-3106 Criteria

The acquisition of the Easement would also meet two of the criteria set forth in 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," adopted September 27, 2001).

- "Acquire key remaining parcels adjacent to parcels already acquired by Metro or other parks or conservation entities that are necessary to accomplish the assemblage of a regional scale natural area, consistent with the specific goals and objectives set forth in the refinement plan for that target area." By acquiring the Easements, Metro can manage the Gotter bottomland as one hydrological and vegetative unit.
- "Acquire properties that will provide needed or desirable points of public access to existing public lands held by Metro, other public agencies or conservation organizations." The acquisition improves vehicular and trail access to the Tualatin River by cutting a corner that exists on the Metro property.

Since Metro has exceeded the minimum 266-acre goal established for the Tualatin River Access Points target area, acquisition of the Easement requires Metro Council authorization pursuant to Resolution 01-3106.

C. Conservation Easements

Oregon Revised Statute (ORS) Section 271.725 authorizes the state, any county, metropolitan service district, or city or park and recreation district to acquire conservation easements by purchase, agreement or donation upon a determination that such acquisition will be in the public interest.

Metro Code Chapter 10.03, entitled "Conservation Easements," authorizes Metro to purchase and accept conservation easements. The Metro Code explicitly states the purpose of this chapter as "encourag[ing] the voluntary retention and protection of the natural, scenic, or open space values of real property . . . through sale, donation, or dedication of conservation easements to Metro." Code Section 10.03.020.

Metro Code Section 10.03.060 provides that prior to the acquisition or acceptance of a conservation easement, Metro shall hold one or more public hearings on the proposal, with notice as stated therein, and at the conclusion of the hearing, the Metro Council shall decide whether to accept, reject, or condition such easement, and upon acceptance Metro may execute all necessary documents to obtain conveyance of the conservation easement.

D. Metro Policy on Leases for Non-Park Uses.

Metro Council Resolution No. 97-2539B ("For the Purpose of Approving General Policies Related to the Review of Easements, Rights of Ways, and Leases for Non-Park Uses Through Properties Managed by The Regional Parks and Greenspaces Department," adopted November 6, 1997) approved general policies related to the review of easements, right of ways, and leases for non-park uses through properties managed by Metro Regional Parks and Greenspaces Department (the "Easement Policy"). The Easement Policy prohibits the development of utilities, transportation projects and other non-park uses on sites, which are located inside of Metro-owned regional parks, natural areas and recreational facilities except in accordance with the terms of the Easement Policy. A non-park use may be allowed under the Easement Policy, subject to Metro Council approval, if it is determined that the proposed lease use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.

E. Transfer or Lease of Public Lands

A government agency may convey or lease their interest in real property (1) when the property is not needed for public use, or (2) whenever the public interest may be furthered. ORS 271.310(1). The consideration for the transfer or lease may be cash or real property, or both. Any property not immediately needed for public use may be leased if it will not be needed for public use within the period of the lease. ORS 271.310(3). Moreover, property needed for public use may be conveyed or leased so long as it is exchanged for property that is of equal or superior useful value for public use.

4. Anticipated Effects

Acquisition of this Property is important to assembling a publicly-owned natural area along the Tualatin River, totaling approximately 120 acres.

5. Budget Impacts

The proposed exchange requires no monetary consideration to be paid. Metro is paying for the usual due diligence costs, except that the Gotters have agreed to pay a portion of the boundary survey costs.

6. Outstanding Questions

None.

FINDINGS

- The Property has significant natural resource value, including approximately 860 feet of McFee Creek frontage, 433 feet of Tualatin River frontage, and 6.1 acres of Tualatin River floodplain.
- The Easement lies in Tier I of the Tualatin River Access Points target area and fulfills the goals of the target area refinement plan.
- The Easement contributes to the assemblage of a regional scale natural area, consistent with the specific goals and objectives set forth in the refinement plan for that target area.

- The Easement improves the vehicular and trail access to the Tualatin River by cutting a corner that exists on the Metro property.
- The Easement will allow Metro to more effectively restore the wetland hydrology and vegetation on the Metro property, and include the Property as part of that restoration project.

Metro has met the public notice requirements for acquisition of conservation easements detailed in Metro Ordinance 97-714 ("For the Purpose of Enacting a Policy to Allow Metro to Purchase and Accept Conservation Easements to Promote the Protection of Regionally Significant Natural Resources, Adding the Policy to the Metro Code, and Declaring an Emergency," adopted November 6, 1997).

- The Metro Regional Parks and Greenspaces Department Advisory Committee considered this issue at their June 4, 2002 meeting and recommends its adoption.
- The Metro Regional Parks and Greenspaces Department has determined that the Lease proposal meets all of the Easement Policy criteria, as set forth in the Metro Regional Parks and Greenspaces Department Project Report attached hereto. (Attachment 1).
- The Lease Area is not needed for public use in the foreseeable future.
- The value of the Easement is of equal or greater value than the value of the Lease.

RECOMMENDED ACTION

The Executive Officer recommends passage of Resolution No. 02-3241.

ATTACHMENT 1
Resolution 02-3241

Metro Easement Policy Criteria and Staff Findings

- 1) Provide for formal review of all proposed easements, rights of ways, and leases for non-park uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.**

Staff Finding: Criterion has been satisfied through a review and approval process that includes review through the Parks Department staff and approval from the Regional Parks and Greenspaces Citizen Advisory Committee. The Metro Natural Resource Committee and full Council body will review the Lease prior to approval.

- 2) Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.**

Staff Finding: The applicant proposes to continue to use the approximate 1.7-acre Lease area for agricultural purposes for a period of twenty-five years and as more specifically set forth in the Lease Agreement which is attached as Exhibit C to the Resolution accompanying this report.

- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.**

Staff Finding: The Lease will have minimal impact on park or natural resource values. The upland area impacted by the lease is considered to be of much lower habitat value than the 5.3 acre riparian area that will be protected pursuant to a perpetual conservation easement offered in exchange for this Lease.

- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: Meets criteria.

- 5) Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.**

Staff Finding: No mitigation is required given the minimal impact and benefit that applicant will maintain property that is not needed for public use in the foreseeable future.

- 6) Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The rights conveyed under the Lease were limited to use for agricultural purposes only. Applicant must maintain the property in good condition, use "best agricultural practices employed by the farming industry," and could be in default of the Lease if he fails to comply with the terms of the Conservation Easement.

- 7) Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The twenty-five year lease term was the shortest time period agreeable to the applicant. The 25-year lease is considered by staff an equitable exchange for the perpetual conservation easement over applicant's superior natural resource property.

- 8) Require reversion, non-transferable, and removal and restoration clauses in all easements, rights of ways, and leases.**

Staff Finding: Lease is for 25-years and Metro regains all rights to the property at the termination of the Lease. Moreover, applicant will default on Lease if he fails to comply with the Lease terms and with the terms of the Conservation Easement. The Lease is assignable during the 25-year lease term to any party who may purchase the Lessee's adjacent 10.7-acre property, which the lease is intended to benefit.

- 9) Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying, or assuring compliance with the terms of any easement, right of way, or lease for non-park use.**

Staff Finding: Since the Lease is consideration for the acquisition of the Conservation Easement, the transaction is actually part of an Open Spaces Bond Measure purchase. Therefore, staff time has not been billed to the applicant. Applicant has agreed to pay a portion of the survey costs.

- 10) Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than money.**

Staff Finding: Metro will receive a perpetual Conservation Easement over a 5.3-acre portion of applicant's property in exchange for the Lease. A preliminary analysis indicates that this is an equitable exchange and no other consideration is owed to either party. An appraisal has been ordered to confirm this staff assessment.

- 11) Require full indemnification from the easement, right of way or leaseholder for all costs, damages, expenses, fines, or losses related to the use of the easement, right of way, or lease. Metro may also require insurance coverage and/or environmental assurances if deemed necessary by the Office of General Counsel.**

Staff Finding: The Lease includes indemnification and insurance provisions.

- 12) Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and**

recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.

Staff Finding: No exception requested.

13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:

- A. The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute unfeasibility.**

Staff Finding: Applicant has submitted a detailed proposal including all required information.

- B. Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities, which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exist all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.**

Staff Finding: Lora Price, Regional Parks and Greenspaces Planner, was consulted about the proposed exchange. She concluded that proposed Lease would not interfere with foreseeable future park uses and that receiving the Conservation Easement in exchange for the Lease was beneficial to Metro, because it improves access to the Tualatin River and is part of an important natural area the Metro is planning to restore.

- C. Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.**

Staff Finding: No reasonable alternative is feasible.

- D. If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.**

Staff Finding: No significant negative impact on Metro property will occur.

- E. Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval. In no event shall construction of a project commence prior to formal approval of a proposal.**

Staff Finding: Construction is contingent upon approval.

- F. Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way, or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.**

Staff Finding: Except for applicant's share of the survey costs, Metro will not bill applicant for reimbursements because the Lease is consideration for the acquisition of a 5.3-acre Conservation Easement.

- G. Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state, or local jurisdiction requirements.**

Staff Finding: Criterion satisfied.

Resolution No. 02-3245, For the Purpose of Making Citizen Appointments to the Transportation Policy Advisory Committee (TPAC) and the Transportation Demand Management Subcommittee (TDM)

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF MAKING CITIZEN) RESOLUTION NO. 02-3245
APPOINTMENTS TO THE TRANSPORTATION)
POLICY ALTERNATIVES COMMITTEE (TPAC)) Introduced by Councilor Rod Monroe
AND THE TRANSPORTATION DEMAND
MANAGEMENT SUBCOMMITTEE (TDM)

WHEREAS, the Transportation Policy Alternatives Committee (TPAC) is in need of five new citizen members; and

WHEREAS, the Transportation Demand Management Subcommittee of TPAC is in need of three new citizen members; and

WHEREAS, the Council's Nomination Committee nominated and the Council Transportation Committee recommended citizens to serve;

BE IT RESOLVED that the Metro Council approves the following citizen members and their alternates to terms on TPAC and the TDM Subcommittee, as follows:

APPOINTEES TO THE TRANSPORTATION POLICY ALTERNATIVES COMMITTEE:

TPAC TERM OF OFFICE: November 2002 to November 2004

John S. Lynch, Milwaukie; Sales & Marketing Manager at W. E. Braunex, Inc. (first term)

Alternate: Bonnie Lile, Oregon City; Retired Accountant for Forest Products Company

Scott Bricker, North Portland; Education Director at Bicycle Transportation Alliance (first term)

Alternate: Tom Miller, Environmental Lawyer at Columbia River Intertribal Fish Commission, BTA
Board Member

Elizabeth Wemple, P.E., Southeast Portland; Transportation Planner, Kittelson & Assoc. (first term)

Alternate: Julia Kuhn, Transportation Planner, Kittelson & Associates

TPAC TERM OF OFFICE: November 2001 to November 2003

Completing a term of office created when Gary Katsion left the committee:

Frank Angelo, Southwest Portland; Planning Consultant, Angelo, Eaton & Associates (first partial term)

Alternate: Howard Roll, P.E., Transportation Planner and Traffic Engineer, Parametrix

Completing a term of office created when John Putman left the committee:

Christopher P. Smith, Northwest Portland; Internet Technologist, Xerox (first partial term)

Alternate: Rick Browning, Architect, Browning-Shono, Architects

APPOINTEES TO THE TDM SUBCOMMITTEE OF TPAC:

TDM TERM OF OFFICE: November 2002 to November 2004

Linda (Odekirk) Bainbridge, Beaverton; Transportation Specialist, NIKE (second term)

Alternate: Dan Aberg, Executive Director, Westside Transportation Alliance

Frank M. Orem, Lake Oswego; Engineer, ACEx Technologies, Inc. (second term)

Alternate: Scott Chapman, Transit Planner, Nelson-Nygaard

Louis A. Ornelas, Northeast Portland; Transportation Director, OHSU (first term)

Alternate: Dan Zalkow, Southwest Portland; Transportation and Parking Manager, PSU

ADOPTED by the Metro Council this 14th day of November, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3245 FOR THE PURPOSE OF MAKING CITIZEN APPOINTMENTS TO THE TRANSPORTATION POLICY ALTERNATIVES COMMITTEE (TPAC) AND THE TRANSPORTATION DEMAND MANAGEMENT (TDM) SUBCOMMITTEE OF TPAC

Date: October 29, 2002

Prepared by: Marilyn Matteson

BACKGROUND

Three of six TPAC citizen positions have expired terms, and two other citizen members resigned prior to the end of their terms. Therefore, five citizen vacancies exist on TPAC. All three TDM Subcommittee citizen member positions have expired. An extensive public notification process included advertisements in four newspapers, post card notices, letters and packets mailed to interested parties, web page information, and the transportation hotline message. As a result, Metro received 31 applications for TPAC and the TDM Subcommittee and 18 citizens were interviewed by the Nomination Committee.

EXISTING LAW

Metro Code (reference Ordinance No. 00-860A) Section 2.19.003 (a) and (b) and 2.19.018 (b) (6) states that citizen representatives be nominated through a public application process, confirmed by the Metro Council and appointed by the Presiding Officer of the Metro Council. Citizen members serve for two years upon appointment. Citizen members are limited to two consecutive 2-year terms.

ANALYSIS/INFORMATION

1. **Known Opposition** – None
2. **Legal Antecedents** – Metro code and TPAC bylaws
3. **Anticipated Effects** – Citizen participation on TPAC and TDM Subcommittee
4. **Budget Impacts** – None

RECOMMENDED ACTION

This resolution approves appointment of five citizen members and their alternates to the Transportation Policy Alternatives Committee (TPAC) and three citizen members and their alternates to the Transportation Demand Management Subcommittee of TPAC in response to citizen member vacancies. TPAC terms will be staggered so that half the positions on TPAC will expire in November 2003 and half will expire in November 2004.

The Council's Nomination Committee recommended and the Transportation Committee reviewed the nominations at the November 7, 2002 meeting and recommend appointment of the following members and alternates:

NOMINEES FOR THE TRANSPORTATION POLICY ALTERNATIVES COMMITTEE:

TPAC TERM OF OFFICE: November 2002 to November 2004

John S. Lynch, Milwaukie; Sales & Marketing Manager at W. E. Braunex, Inc. (first term)
Alternate: Bonnie Lile, Oregon City; Retired Accountant for Forest Products Company

Scott Bricker, North Portland; Education Director at Bicycle Transportation Alliance (first term)
Alternate: Tom Miller, Environmental Lawyer at Columbia River Intertribal Fish Commission, BTA Board Member

Elizabeth Wemple, P.E., Southeast Portland; Transportation Planner, Kittelson & Assoc. (first term)
Alternate: Julia Kuhn, Transportation Planner, Kittelson & Associates

TPAC TERM OF OFFICE: November 2001 to November 2003

Completing a term of office created when Gary Katsion left the committee:

Frank Angelo, Southwest Portland; Planning Consultant, Angelo, Eaton & Associates (first partial term)
Alternate: Howard Roll, P.E., Transportation Planner and Traffic Engineer, Parametrix

Completing a term of office created when John Putman left the committee:

Christopher P. Smith, Northwest Portland; Internet Technologist, Xerox (first partial term)
Alternate: Rick Browning, Architect, Browning – Shono Architects

NOMINEES FOR THE TDM SUBCOMMITTEE OF TPAC:

TDM TERM OF OFFICE: November 2002 to November 2004

Linda (Odekirk) Bainbridge, Beaverton; Transportation Specialist, NIKE (second term)
Alternate: Dan Aberg, Executive Director, Westside Transportation Alliance

Frank M. Orem, Lake Oswego; Engineer, ACEX Technologies, Inc. (second term)
Alternate: Scott Chapman, Transit Planner, Nelson-Nygaard

Louis A. Ornelas, Northeast Portland; Transportation Director, OHSU (first term)
Alternate: Dan Zalkow, Southwest Portland; Transportation and Parking Manager, PSU

Agenda Item Number 8.1

Resolution No. 02-3239, For the Purpose of Authorizing Release of RFB #03-1032-REM for the Provision of Diesel Fuel and Authorizing the Executive Officer to Execute the Resulting Contract.

Contract Review Board

**Metro Council Meeting
Thursday, November 14, 2002
Metro Council Chamber**

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 02-3239
RELEASE OF RFB #03-1032-REM FOR)	
THE PROVISION OF DIESEL FUEL AND	)	Introduced by
AUTHORIZING THE EXECUTIVE OFFICER	)	Mike Burton, Executive Officer
TO EXECUTE THE RESULTING CONTRACT)	

WHEREAS, Metro currently purchases the diesel fuel used by the Waste Transport Services Contractor in order to realize savings due to avoidance of the federal excise tax on the fuel; and,

WHEREAS, the current supply agreement for an eastern Oregon cardlock expires February 22, 2003; and,

WHEREAS, RFB #03-1032-REM attached as Exhibit "A" will procure a replacement supply agreement so that Metro may continue to realize savings of at least twenty-four cents per gallon; and,

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

BE IT RESOLVED,

1. That the Metro Council authorizes issuance of RFB #03-1032-REM attached hereto as Exhibit "A".
2. That the Metro Council, pursuant to Section 2.04.026(b) of the Metro Code, authorizes the Executive Officer to execute a contract with the lowest responsible bidder.

ADOPTED by the Metro Contract Review Board this ____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

**EXHIBIT A
Resolution No. 02-3239**

**REQUEST FOR BIDS
FOR
THE PROVISION OF DIESEL FUEL**

RFB #03-1032-REM

Metro
Regional Environmental Management Department
600 N.E. Grand Avenue
Portland, OR 97232-2736

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INVITATION TO BID

Metro is requesting bids for supplying approximately 5.3 million gallons of No.2, low sulfur branded diesel fuel over a five year period (RFB #03-1032-REM) at a commercial cardlock located on HWY 19 between the City of Arlington, Oregon and the Columbia Ridge Regional Landfill, 18177 Cedar Springs Lane, Gilliam County, Oregon. Potential bidders may obtain bid documents by contacting the Regional Environmental Management Department of Metro at (503) 797-1650. Sealed bids must be delivered to the Department at Metro, 600 NE Grand, Portland, Oregon 97232-2736; to the attention of Chuck Geyer no later than 3:00 p.m., _____, at which time they will be publicly opened and read in _____.

INSTRUCTIONS TO BIDDERS

BID

Metro is requesting bids for supplying approximately 5.3 million gallons of No.2, low sulfur branded diesel fuel over a 70 month period (RFB #03-1032-REM) at a commercial cardlock located on HWY 19 between the City of Arlington, Oregon and the Columbia Ridge Regional Landfill, 18177 Cedar Springs Lane, Gilliam County, Oregon.

Bids must be enclosed in a sealed envelope and mailed or delivered to the Metro Regional Environmental Management Department (REM), 600 NE Grand, Portland, Oregon 97232-2736, Attention, Chuck Geyer, no later than 3:00 p.m., _____, 20____, when they will be publicly opened in _____. A bid may not be submitted by Facsimile (FAX) transmittal.

The outside of the envelope shall plainly identify the subject of the Bid, the opening date, and the Bid number.

All bids must be clearly and distinctly typed or written with ink or indelible pencil. All blank spaces must be completed. No erasures are permitted. Mistakes must be crossed out and corrections typewritten or written in ink adjacent thereto, and initialed in ink by the party signing the Bid, or his authorized representative.

Written amounts shall be shown in both words and figures. Words shall govern in cases of discrepancy between the amounts stated in words and the amounts stated in figures.

All bids must be on the forms furnished by Metro or they may be rejected by Metro. **The forms should be accompanied by technical information, including site plans, demonstrating compliance with the requirements of the Scope of Work.**

COST OF BID

This invitation to Bid does not commit Metro to pay any costs incurred by any Bidder in the submission of a bid, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the invitation to bid.

ERRORS/OMISSIONS

Any Bid may be deemed non-responsive by the Procurement Officer if it is: not on the Bid forms provided; contains errors or omissions, erasures, alterations, or additions of any kind; proposes prices which are unsolicited or obviously unbalanced; or not in complete conformance with any and all conditions of the bidding documents, including

but not limited to the requirements of the Scope of Work, as determined at the sole discretion of Metro.

ADDENDA TO PLANS OR SPECIFICATIONS

Requests for additional information or interpretation of the contract documents shall be delivered to the Project Manager, in writing, at least five (5) business days prior to the Bid opening date and time. If, in the opinion of the Project Manager, additional information or interpretation is needed by the Bidders, an addendum will be issued to all known specification holders. The provisions of any written addenda issued by the Procurement Officer or Project Manager at least seventy two (72) hours prior to the Bid opening date and time shall be binding upon the Bidders, and failure of a Bidder to obtain such addenda shall not excuse compliance therewith by the successful bidder.

MODIFICATION OF BID

An offer to modify the bid which is received from the successful Bidder after award of contract which makes the terms of the Bid more favorable or advantageous to Metro will be considered, and may thereafter be accepted. To be effective, every modification must be made in writing over the signature of the Bidder.

WITHDRAWAL OF BIDS

A Bidder may withdraw its bid in person, or by written or telegraphic request which is received prior to the scheduled 3:00 p.m. closing time for filing Bids. A bid may not be withdrawn by FAX. Negligence on the part of the Bidder in preparing his bid confers no right to withdraw the bid after the scheduled closing time for filing Bids.

LATE BID

Bids received after the scheduled closing time for filing Bids will be returned to the Bidder unopened, unless such closing time is extended by Metro.

EXECUTION

Each Bid shall give the Bidder's full business address and bear its legal signature.

Bids by partnerships must list the full name of all partners and be signed by a partner or agent authorized to execute the contract on behalf of the partnership and identified by printed name and title.

Bids by corporations must bear the legal name of the corporation, the name of the state of incorporation, and the signature of the officer or agent authorized to legally bind the corporation.

Upon request by Metro, satisfactory evidence of the authority of the partner or officer shall be furnished.

If the Bid is signed by an agent who is not an officer of the corporation or a member of the partnership, a notarized Power of Attorney must be on file with Metro prior to the opening of Bids or be submitted with the Bid. Without such notice of authority, the Bid shall be considered improperly executed, defective and therefore nonresponsive.

A Bid submitted by a joint venture must include a certified copy of the terms and conditions of the agreement creating the joint venture.

EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK

It is understood that the Bidder, before submitting a Bid, has made a careful examination of the plans, specifications, and contract; that it has fully informed itself as to the quality and quantity of materials and the character of the work required; and that it has made a careful examination of the location and condition of the work and the sources of supply for materials.

COMPLIANCE

Each Bidder shall inform itself of, and the Bidder awarded a contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, waste reduction and recycling, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees and similar subjects.

ELIGIBILITY

Prior to submitting a Bid, all Bidders on public works/construction projects are required to be registered with the State of Oregon Construction Contractors Board, pursuant to ORS 701.035.

This project is not considered a public works/construction project.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of the contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.

PERMITS AND LICENSES

Each Bidder shall obtain and include in his Bid the cost for all permits and licenses which may be required to perform the contract.

CONFLICT OF INTEREST

A Bidder filing a bid thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this Bid or has participated in contract negotiations on behalf of Metro; that the bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same call for Bids; the Bidder is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

IMMATERIAL VARIANCES

Metro reserves the right to determine whether equipment or materials that comply substantially in quality and performance with the specifications are acceptable to Metro, and whether any variance listed by the Bidder in a bid is material or immaterial.

LATEST MODEL

Parts and materials must be new, of latest model, of current date, and meet specifications. This provision excludes all surplus, remanufactured, and used products, unless such material is proposed in lieu of items specified.

RECYCLABLE PRODUCTS

Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the work set forth in this contract document.

RECYCLED PRODUCTS AS BID ITEMS

Oregon Law (ORS 279-570) requires Metro and all public agencies to give preference to materials and supplies manufactured from recycled materials.

All Bidders are therefore required to specify the exact or minimum percentage of recycled paper and fiber type in all paper products or recycled content in all other products offered, plus both the post-consumer and secondary waste content of the products offered.

Only Bids submitted with such information shall receive preference consideration and post Bid declaration or discovery shall not be allowed.

Definitions of "recycled product," "post-consumer" and "secondary" waste material and other explanatory notes are included in Chapter 385 and available from the Metro Contract Management Division at (503) 797-1613.

QUANTITIES

Metro makes no guarantees as to the exact quantities to be purchased. The figures provided are intended merely as guides and Bidders are warned not to construe them as a guarantee to purchase any amount.

Payment will be made only for quantities actually ordered, delivered, and accepted whether greater or less than the stated amounts.

TERMS

A Bid may be rejected if it requires payment in less than the time period specified in the Scope of Work.

PRICES

All prices submitted shall be firm during the contract period. If unit prices are requested, they should be provided for each unit on which there is a Bid. In case of mistake in extension of price, unit prices shall govern. All prices shall be F.O.B. the destination designated by Metro.

WARRANTY/GUARANTY

Each Bid for the furnishing of materials and equipment shall provide an explanation of both the Bidder's and manufacturer's warranties on materials and workmanship if requested by Metro subsequent to bid opening.

Every Bid shall indicate any warranty costs to Metro, including but not limited to, all parts, labor, and shipping costs required for compliance with any specific requirement(s) contained in the special conditions.

Each Bidder on a public works/ construction project shall provide at minimum a one-year's guaranty on all materials and workmanship.

SERVICE

Each Bidder shall furnish detailed information on any service facilities, locations, and procedures as well as information on any maintenance agreements or contracts available to Metro. This includes submission of information sufficient to demonstrate compliance with the requirements of the Scope of Work, at the time of bid opening, to Metro's sole satisfaction. Noncompliance with the requirements of the Scope of Work, in Metro's sole opinion, shall result in rejection of the Bid as nonresponsive.

DELIVERY

The successful Bidder shall notify Metro, in writing, within two (2) business days of bid opening if fuel will not be available as required.

Upon receipt of such notice from the successful Bidder, Metro reserves the right to cancel the order and make the purchase from the second lowest, responsible Bidder.

If Metro does not elect to cancel the contract initially, subsequent failure to meet the then current delivery requirement does not foreclose Metro's option for later cancellation.

BID SECURITY

All Bids in excess of \$25,000 must be accompanied by a Bid deposit in the form of cashier's check or certified check drawn on a bank in good standing, or a Bid bond issued by a surety authorized to conduct such business in the state of Oregon. **The deposit will be \$500.00.** The deposit shall serve as a guarantee that the Bidder will not withdraw the Bid for a period of sixty (60) days after Bid opening, and if awarded the Contract will execute the Metro contract and furnish all bond(s) as required and within the time frame specified herein.

The Attorney-in-Fact (Resident Agent) who executes any bond on behalf of the Surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the Surety on the date of execution of the bond.

Bid security is not required for food products and may be waived by the Metro Council if expressly deleted by the special conditions attached.

RESIDENT/NON-RESIDENT BIDDER

Oregon law requires Metro, in determining the lowest responsive Bidder, to add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Therefore, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid that it is a "resident Bidder."

BASIS OF AWARD

The award shall be made to the responsible Bidder(s) submitting the most responsive Bid to Metro. Any determination of the responsible Bidder(s) submitting the most advantageous Bid and the award are subject to review and determination by the Metro Legal Counsel as to legal sufficiency of any Bid submitted. Metro reserves the right to reject any and/or all Bids in whole or in part, and to waive irregularities not affecting substantial rights.

Bids will be evaluated for responsiveness using the following criteria:

- Compliance with all instructions specified in the request for bids related to bid preparation and documentation (see in particular "Errors/Omissions");
- Cost (per Schedule of Bid Prices);
- Compliance with the Scope of Work (see in particular "OR APPROVED EQUAL CLAUSE"). Metro will utilize the technical materials submitted with the bid, as well as any additional investigations necessary, in making this determination – at its sole discretion.

GENERAL CONDITIONS

NOTICE OF AWARD

Within 60 calendar days after the opening of Bids, Metro will accept one of the Bids, or combination of Bids, or reject all Bids in accordance with the Basis of Award. The acceptance of the Bid will be by written Notice of Award, mailed or delivered to the office designated in the Bid. The Notice of Award shall not entitle the party to whom it is delivered to any rights whatsoever.

CONTRACT

Within 10 business days of receipt of the contract from Metro, the Successful Bidder shall sign and deliver the Contract to Metro.

BID SECURITY

Bid securities will be held until the Contract has been finally executed, after which all Bid securities, other than those which have been forfeited, will be returned to the respective Bidders whose Bid they accompanied.

FOREIGN CONTRACTOR

A Contractor that is not domiciled in or registered to do business in the State of Oregon shall, upon execution of a contract in excess of \$10,000, promptly report the total contract price, terms of payment, length of contract and all other required information to the Oregon Department of Revenue. Compliance shall be documented and Metro shall be fully satisfied as to complete compliance prior to release of final payment.

INSURANCE

(or as indicated in attached contract)

The Contractor shall purchase and maintain at his expense the following types of insurance covering the Contractor, and his employees and agents.

1. Broad form comprehensive general liability insurance covering bodily injury, property damage, and personal injury with automatic coverage for premises and operations and product liability. The policy must be endorsed with contractual liability coverage.
2. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be a minimum of \$1,000,000 per occurrence. Metro, its councilors, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change.

The Contractor shall comply with ORS 656.017 for all employees who work in the state of Oregon for more than 10 days. The Contractor shall provide Metro with certification of workers' compensation insurance including employer's liability.

WORKERS' COMPENSATION

The Contractor, and all subsequent subcontractors and suppliers performing work pursuant to this contract shall provide Workers' Compensation benefits as required by and in accordance with all applicable state and federal laws.

NOTICE OF ASSIGNMENT

Metro will not recognize any assignment or transfer of any interest in this contract without written notice to the Procurement Officer by the new vendor.

HAZARD COMMUNICATION

The Contractor shall be required to strictly adhere to, coordinate with Metro and document full compliance with the policies and procedures of the Oregon Occupational Health and Safety Code, OAR Chapter 437, Division 155, Hazard Communication.

Therefore, the Contractor and all subcontractors and suppliers within his control shall notify Metro and all parties to the agreement as to:

- Hazardous materials to which they may be exposed on site.
- Employee measures to lessen the possibility of exposure.
- All contractor measures to reduce the risk.
- Procedures to follow if exposed.

The Contractor shall provide Metro with all Material Safety Data Sheets (MSDS) prior to delivery or introduction of the material on site.

For further information or clarification, contact the Metro Risk Management Division at (503) 797-1615.

DELIVERY TIMES

The Contractor shall deliver the fuel as described in the Scope of Work.

FAILURE TO PERFORM

Should the Contractor fail to meet the agreed upon delivery schedule, thereby making it necessary for Metro to purchase urgently-needed items from another source, the low Bidder shall pay the difference between the accepted low Bid price and the purchase price or accept an offset against any monies then owed by Metro.

PATENTS

The Contractor agrees to protect, to defend (if Metro requests) and save the agency harmless against any demand for payment for wrongful or unauthorized use of any patented material, process, article, or device that may enter into manufacture, construction, or forms a part of the work covered by this contract.

INVOICES

Invoices shall be prepared and submitted unless otherwise specified. Invoices shall contain the information as described in the Scope of Work.

LAW OF STATE OF OREGON

This contract is entered into within the state of Oregon, and the law of said State, whether substantive or procedural, shall apply and be followed with respect to this contract.

SPECIAL CONDITIONS

MINORITY, ESB AND WOMEN-OWNED BUSINESS PROGRAM

In the event that any subcontracts are to be utilized in the performance of this agreement, the Bidder's attention is directed to Metro Code Section 2.04.100.

Copies of that document are available from the Contract Management Division, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232 or by calling (503) 797-1816.

SCOPE OF WORK

I. BACKGROUND/HISTORY OF PROJECT

In 1991, Metro began transporting solid waste generated in the region to the Columbia Ridge Landfill located in Gilliam County, Oregon approximately 150 miles east of Portland, Oregon. Transport of the waste is provided through a contract with CSU, Inc..

Loads of waste to be transported are prepared at Metro transfer stations by compactors. One transfer station is located in Oregon City (Metro South Station) and the other in northwest Portland (Metro Central Station). A load of waste is 7 x 7 x 39 feet in size and weighs about 30.6 tons. In calendar year 2001, CSU transported 19,460 loads of waste from the transfer stations to the Columbia Ridge Landfill.

The typical CSU driver transports two loads per day. Beginning at the landfill, a driver takes an empty trailer to a transfer station, picks up a full trailer which is transported to a staging area located in Rufus. At the staging area, an empty trailer is picked up for another trip to a transfer station, where a full trailer is picked up and transported to the landfill. Full trailers left at the staging area in Rufus are shuttled to the landfill. Several tractors are based at the Metro Central Station, the rest are based at the landfill.

From March through October, the tractors are generally fueled at the beginning of a driver's shift at a cardlock located on HWY 19 between the landfill and the city of Arlington. During winter conditions, the landfill-based vehicles are fueled after leaving the staging area so that they are fully fueled during the night at the landfill. This helps prevent fuel system problems due to freezing temperatures.

CSU utilizes approximately 32 tractors and 200 trailers. The tractors are Standard Peterbilt 378 three-axle conventionals with a 262 inch wheel base, plus a drop axle. The trailers are 48 foot Fruehaufs. Engines are a combination of 425 hp Cat 3406C ATAAC mechanical diesels and Cat's new electronic 3406-rated 435 hp with 1,650 pounds per foot of torque. They drive through Fuller Super 10 transmissions and Rockwell 3.90 rearends. Each tractor is equipped with one, 120 gallon fuel tank which is accessed from the driver's side. A drawing of the tractor and trailer is contained in the Appendix.

The original waste transport contract provided that the waste transport contractor purchase all the fuel to be used in performance of the work. In April 1994, Metro began to purchase the fuel used by the transport contractor for its over-the-road vehicles through a modification of the contract. Metro proposed this modification to realize substantial cost savings. These cost savings are incurred because Metro is a political subdivision of the state of Oregon and as such is exempt from payment of federal fuel excise taxes.

As part of this modification to the waste transport contract, Metro agreed to provide the fuel to waste transport contractor "in a manner ... reasonably consistent with historical service levels.:" In 1993, the waste transport contractor purchased approximately 1.4

million gallons of fuel for use by its over-the-road vehicles. About 95% of the fuel was purchased from a cardlock located in Gilliam County, on HWY 19 between the City of Arlington and the landfill. The remaining amount was purchased from cardlocks in Troutdale and Oregon City, Oregon. Metro has continued to purchase fuel in the same proportions since 1994, and plans to do so under this contract.

Since the cardlocks currently in use also supply fuel to customers who must pay the federal excise tax, the cardlock must pay the excise tax on Metro fuel when purchased from a terminal and request a refund of the tax from the federal government. The vendor must therefore be a "registered ultimate vendor" under IRS rules and comply with all IRS rules.

Detailed information on fuel purchases is located in the Appendix. While fuel has been, and still must be in the future, available on a 24 hour, seven day a week basis, most of the fuel purchases occur during the weekday. No. 2 low sulfur diesel fuel is used exclusively, except when weather conditions require "blending" to achieve non-gel operation.

The current agreements for the provision of fuel expire February 22, 2003. This RFB is intended to result in replacement agreements taking effect on February 23, 2003.

II. SCOPE OF WORK/SCHEDULE

Metro is seeking bids from qualified firms to perform the following services and to deliver the products described below.

1. Low sulfur, branded No. 2 diesel fuel shall be available 24 hours per day, seven days a week, from a commercial cardlock. The cardlock must be located on HWY 19, between the City of Arlington and Cedar Springs Road.
2. All fuel provided shall be filtered and free from impurities that might cause damage or impairment to vehicle operation. Contractor shall be liable for damages caused by fuel that is contaminated or otherwise does not meet specifications.
3. Fuel shall be winterized during cold weather to ensure 100% non-gel operation by blending with low sulfur heating fuel #1 or use of chemical additives. Contractor shall be liable for damages caused by fuel that is not properly winterized.
4. If the cardlock is disabled, Contractor shall provide fuel through a delivery truck with a meter and issue hand written receipts until the cardlock is operational. The delivery truck shall dispense fuel either at the cardlock or another location acceptable to Metro and CSU. The cost and quality of fuel supplied in this manner shall be the same as if the cardlock was available, except that the Contractor may pass through to Metro any additional, documented costs due to

this alternative fueling method, if the disabling of the cardlock was beyond the control of the Contractor, as determined by Metro in its sole opinion.

5. The site proposed in the Bid must be a commercial cardlock in compliance with all applicable regulations and of sufficient size to accommodate CSU tractor trailer combinations as described in the Appendix. The site must have restrooms, water, and emergency phone services available; be well lit, clean and be in an open area as to provide a safe environment for 24-hour use by CSU drivers.
6. The site shall have a minimum of two high pressure pumps available for fueling on the driver's side of the tractor regardless of the point of entry (i.e. accessing the site from the north or south). These pumps must be accessible for simultaneous fueling by a minimum of two CSU vehicles. Wait times, for these two vehicles, to access pumps should not exceed 10 minutes.
7. Queuing for four CSU vehicles shall be available at all times on property owned or controlled by the Bidder at the proposed site. Two of the four CSU vehicles may be fueling as required under item #6 in satisfaction of this queuing requirement. Queuing, for the four vehicles, must be available at all times at the site to ensure no CSU vehicles are queued on HWY 19 at any time.
8. Fuel shall be accessed through the use of a card assigned to a specific tractor. The system shall be programmable to limit purchases per use and to record the invoice information described below. Contractor shall be able to cancel access to fuel within 24 hours notice from Metro, either system-wide or on an individual card basis. Contractor shall provide cards to Metro (or a designated party at CSU) to access the system within 4 working days of a request.
9. Contractor's invoice shall contain the following information:
 - ◆ For each transaction by card:

Date / time / tractor # / odometer reading / m.p.g. / # of gallons / price per gallon / total price
 - ◆ At the end of the invoice the following summary information for the invoice period shall be included: **Total gallons / total charge**

10. Payment/Bid Assumptions:

- ◆ No excise tax will be charged to Metro (contractor will have to pay excise tax if applicable and obtain a refund from IRS)
- ◆ Metro payment within 10 working days of receipt of an invoice

- ◆ Payment to the Contractor shall be based upon the "base cost" for #2 low sulfur diesel, plus the "markup" as bid on the bid sheet, plus winterization costs
- ◆ For the purposes of payment, the "base cost" for #2 low sulfur diesel during any given week Thursday through Wednesday) shall be as published in the weekly newsletter of the Oil Price Information Service, for the City of Portland for branded #2 low sulfur diesel¹. The newsletter price is available electronically on Friday, and the published price shall apply to the period beginning with the preceding Thursday. Metro will make this price available to the Contractor.

Example: Metro receives the OPIS newsletter on Friday, July 10th, and the appropriate branded #2 low sulfur diesel average is \$.65/gal. This is the "base cost" to which Metro will add the "markup" bid, to make payment for fuel purchases during the period July 9th through and including July 15th.

- ◆ The "markup" price bid on the bid sheet shall be added to the "base cost" as reimbursement for each gallon of fuel purchased under this contract. The markup price should include all freight, overhead, profit, load fees, any applicable taxes (except federal excise) and lifting fees, the Contractor wishes to be reimbursed for above the base cost of fuel. The markup shall be no more than 3 decimal places. The markup price will not change during the contract period, except for cost changes due to State or Federal fuel taxes or fees (except the federal excise tax) which will increase or decrease the markup price upon implementation.

Example: Contractor has the following costs \$0.048 (freight from Portland) + \$0.030 (profit and overhead) + \$0.010 (applicable taxes and lifting fees). The "markup" bid would be \$.088/gallon. Total reimbursement (except in the case of winterization costs) would be the markup plus the OPIS price for the week. Using the example for the base cost above of \$.650, the Contractor would receive \$.738 per gallon for each gallon supplied to Metro during the example period of July 9th through July 15th.

- ◆ Contractor shall be reimbursed for costs incurred to meet the following winterization specifications. Contractor shall winterize the fuel as appropriate and determine the corresponding "blend" of #1 low sulfur heating oil which would have been required for the period (Thursday through Wednesday). Utilizing the price published in the weekly newsletter of the Oil Price Information Service, for the City of Portland - "Average", Metro will compensate the Contractor for its winterization costs. An example of the OPIS index is contained in the Appendix.

¹ See Appendix for an example of the index.

Example: If a blend of 30% #1 low sulfur heating oil would have been needed (even if chemical additives were substituted), and the published cost of this fuel was \$.12 per gallon more than #2 low sulfur diesel, the Contractor would receive an additional \$.036 per gallon payment for the week.

11. Within 10 business days from the initial provision of fuel to Metro by Contractor under this Contract, Metro shall provide the Contractor with a deposit in the amount of \$25,000. The entire deposit shall be applied as partial payment to the final payment due under this Contract.
12. Price Escalation- No increase in the markup price will be granted during the contract term.
13. Term - The term of this agreement shall be for a period of February 23, 2003 to December 31, 2007.

III. Payment, Billing and Term.

Contractor shall provide services for a maximum price not to exceed _____ AND NO/100 DOLLARS (\$_____). The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing statements will include an itemized statement as specified in the Scope of Work and will be sent to Metro, Attention Regional Environmental Management Department. Metro will pay Contractor within 10 working days of receipt of an approved billing statement.

In the event Metro wishes for Contractor to provide services or materials after the maximum contract price has been reached, Contractor shall provide such services or materials pursuant to amendment at the same unit prices that Contractor utilized as of the date of this Agreement, and which Contractor utilizes to submit requests for payment pursuant to this Scope of Work. Metro may, in its sole discretion and upon written notice to Contractor, extend the term of this contract for a period not to exceed 24 months. During such extended term all terms and conditions of this contract shall continue in full force and effect.

APPENDIX TO SCOPE OF WORK

- Fuel Consumption History
- Vehicle Drawing
- OPIS Index
- Sample Public Contract
- Bid Forms

M:\rem\od\projects\Legislation\fuelRFB exhibit.doc

Fuel Consumption History

**TOTAL FUEL PAYMENTS AND CONSUMPTION - FY 2000-2001
DEVIN OIL ONLY**

DATE	TOTAL PAYMENTS	GALLONS
Jul-00	\$99,161.21	105,558.67
Aug-00	\$109,117.99	109,320.13
Sep-00	\$125,317.24	96,310.80
Oct-00	\$125,420.22	97,057.84
Nov-00	\$105,325.65	88,437.92
Dec-00	\$109,578.86	84,861.34
Jan-01	\$96,526.19	93,656.30
Feb-01	\$85,166.13	81,055.33
Mar-01	\$81,108.90	85,261.50
Apr-01	\$86,655.03	88,282.00
May-01	\$100,964.92	99,557.40
Jun-01	\$93,391.54	95,355.70
TOTAL	\$1,217,733.88	1,124,714.930

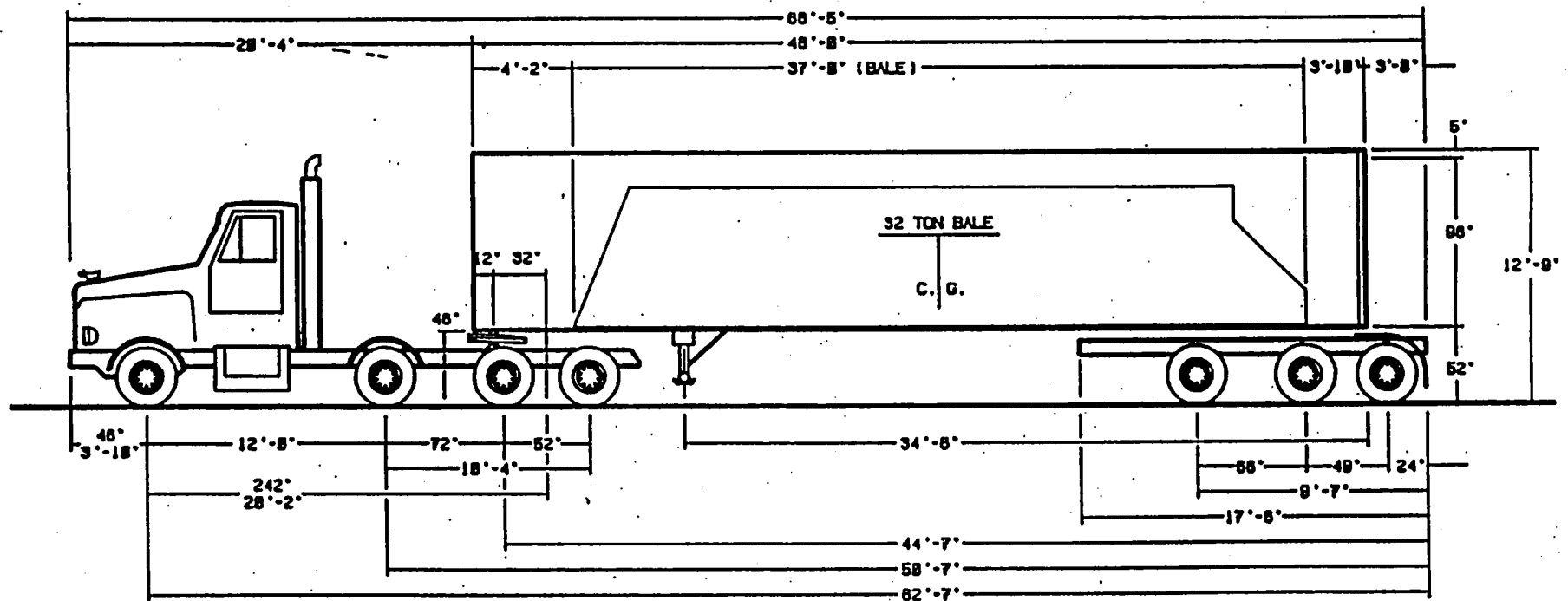
**TOTAL FUEL PAYMENTS AND CONSUMPTION - FY 2001-2002
DEVIN OIL ONLY**

DATE	TOTAL PAYMENTS	GALLONS
Jul-01	\$75,786.30	97,048.10
Aug-01	\$90,237.57	101,917.60
Sep-01	\$82,577.49	87,497.40
Oct-01	\$73,831.74	95,548.90
Nov-01	\$66,091.29	93,561.10
Dec-01	\$54,985.56	84,438.50
Jan-02	\$58,734.93	93,531.10
Feb-02	\$45,816.96	71,517.30
Mar-02	\$61,683.73	79,937.60
Apr-02	\$69,580.96	86,221.40
May-02	\$72,863.57	89,866.60
Jun-02	\$60,519.74	79,769.10
TOTAL	\$812,709.84	1,060,854.700

VEHICLE DRAWING

STS, Inc. (45 ft. semitrailer)

APPROVED BY TOM BRADD FOR OVER-WEIGHT PERMIT ON JUNE 23, 1989



9588	1588	6588	TRACTOR	17588
388	1888	3788	TRAILER	14588
1788	6888	22888	PAYLOAD	64888
11588	8588	33888	GROSS	96888
				9888
				34888

OPIS INDEX

(Underlined items are used to calculate "base cost")

Oil Price Information Service

Vol 22, No.39 OPIS Issue Date: Sep. 30, 2002

OPIS FAX-A-RACK

OPIS Fax-A-Rack is published weekly by United Communications Group, 11300 Rockville Pike, Suite 1100, Rockville, MD 20852-3030. Reproduction without permission is prohibited. Cost: \$128/city/12 weeks. All prices are the same as those that appear in the Monday OPIS issue. Prices shown are FOB terminal in ct/gal, excluding taxes, discounts and Superfund line items, except where noted. b=branded; r=leaded regular; m=89 octane no-lead; l=low sulfur No. 2; d=prices not included in the average. OPIS does not guarantee the accuracy of these prices. Pricing/Editorial Office: 732-901-8800. To order additional cities call 301-816-8950 ext. 2645.

Prices confirmed through September 26, 2002
PORTLAND, OR

OPIS CLEAR GROSS GASOLINE PRICES				
	Terms	Unl	Reg/Mid	Pre Unl
76	1-10	94.25b	101.25m	109.25
Cenex	N-Rpt	82.00b	88.00m	94.00
Chevron	N-10	93.80b	100.80m	108.80
Duke	N-10	81.00u	84.50m	93.50
New West	N-10	82.00u	88.00m	94.00
Shell	N-10	93.80b	99.60m	107.80
TRAMMO	N-10	83.50u	88.50m	94.50
Tesoro	N-10	92.80b	98.80m	106.80
Tesoro	N-10	83.00u	88.00m	95.00
Texaco	N-10	93.80b	99.60m	107.80
Tosco	N-10	83.00u	87.50m	94.75
Valero	N-10	82.50u	87.50m	92.50
XOM	1-10	93.75b	99.55m	107.75
XOM	1-10	85.70u	90.20m	96.70
RANGE -LOW		81.00	84.50m	92.50
-HIGH		94.25	101.25m	109.25
AVERAGE		87.49	92.99m	100.23
BRND AVG		92.03	98.23m	106.03
UNBRND AVG		82.96	87.74m	94.42
5-DAY AVERAGE		87.99	93.57m	100.72

Prices confirmed through September 26, 2002
PORTLAND, OR

OPIS GROSS DISTILLATE PRICES							
	Terms	Lo Sul	Hi Sul	Lo Sul	Lo Sul	Hi Sul	Lo Sul
		No2	No2	Red No2	No1	No1	Red No1
76	b 1-10	83.76	-- --	89.51	93.27	-- --	-- --
BP	u Net	83.50	83.50	83.75	-- --	-- --	-- --
Cenex	b N-Rpt	82.00	-- --	82.35	94.00	-- --	94.35
Chevron	b N-10	81.60	-- --	-- --	-- --	-- --	-- --
Duke	u N-10	82.50	-- --	-- --	-- --	-- --	-- --
New West	u N-10	82.50	-- --	-- --	-- --	-- --	-- --
Shell	u N-10	83.70	82.95	-- --	-- --	-- --	-- --
TRAMMO	u N-10	82.25	-- --	-- --	-- --	-- --	-- --
Tesoro	b N-10	83.50	-- --	-- --	-- --	-- --	-- --
Tesoro	u N-10	83.50	-- --	83.80	94.75	-- --	95.25
Texaco	b N-10	84.70	83.20	-- --	93.20	-- --	-- --
Tosco	u N-10	82.75	83.00	83.00	92.25	-- --	92.75
Valero	u N-10	82.75o	-- --	83.25o	-- --	-- --	-- --
XOM	b 1-10	83.55	-- --	-- --	-- --	-- --	-- --
RANGE -LOW		81.60	82.95	82.35	92.25	-- --	92.75
-HIGH		84.70	83.50	89.51	94.75	-- --	95.25
AVERAGE		83.06	83.16	84.48	93.49	-- --	94.12
BRND AVG		83.19	83.20	85.93	93.49	-- --	94.35
UNBRND AVG		82.96	83.15	83.52	93.50	-- --	94.00
5-DAY AVERAGE		82.74	82.56	84.18	94.27	-- --	94.35

Sample Contract

NOTICE TO ALL BIDDERS

The public contract included herein is a standard agreement approved for use by Metro's General Counsel. This is the contract the successful bidder will enter into with Metro; it is included for your review prior to submitting a bid.

Contract No. _____

PUBLIC CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and _____ whose address is _____, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing _____, 20____, through and including _____, 20____.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those that are specifically included in the Scope of Work.

ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

ARTICLE V TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect or consequential damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence.. The policy must be endorsed with contractual liability coverage. **Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279.348 to 279.365, the Contractor shall pay prevailing wages and shall pay an administrative fee to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279.314. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment the person may file a complaint with the Construction Contractors Board unless to a good faith dispute as defined by ORS 297.445. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to OR 316.167.

For public improvement work, all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII ATTORNEY'S FEES

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

ARTICLE IX QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to

CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

ARTICLE X OWNERSHIP OF DOCUMENTS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this agreement are the property of METRO and it is agreed by the parties hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

ARTICLE XI SUBCONTRACTORS

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may result from CONTRACTOR's performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE XIII SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XVI ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

CONTRACTOR NAME

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

BID FORMS FOR RFB #1032

(To be submitted with Bid)

SCHEDULE OF BID PRICES- For Fuel RFB

1. Per gallon markup bid for cardlock on HWY 19 between Arlington and Columbia Ridge Landfill

a.\$.
(figures)

b. _____
(words)

- 2. Please provide the name and address of the site and contact person:**

name of location

address

contact

phone #

3. Please enclose with the bid any materials demonstrating compliance with the Scope of Work requirements. Metro reserves the right to make any additional investigations necessary to demonstrate compliance, including but not limited to site visits. Compliance with the requirements of the Scope of Work will be made by Metro, in its sole discretion.

CHECKLIST

BIDDER REPRESENTS/CERTIFIES/ACKNOWLEDGES AS PART OF THIS OFFER THAT:

(Check or complete all applicable boxes or blocks.)

- ☐ 1. **BID SECURITY:** Bidder has complied with Metro's requirements for \$500.00 bid surety and guarantees that this bid is irrevocable for the period specified herein;
- ☒ 2. **PERFORMANCE BOND:** Cost of the Bond, if required, will be: _____ (\$ _____). This amount will be reimbursed by Metro over and above the contract bid price.
- ☐ 3. **CONFLICT OF INTEREST:** Bidder hereby certifies that no officer, agent, or employee of Metro has participated on behalf of Metro in preparation of this bid, that the bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same work, and the Bidder is competing solely in its own behalf without connection or obligation to any undisclosed person or firm.
- ☐ 4. **RESIDENT/NON-RESIDENT:** Undersigned Bidder states that it is a ☐ resident or ☐ non-resident of the state of Oregon. State in which Bidder resides: _____.
- ☐ 5. **TYPE OF BUSINESS ORGANIZATION:** Bidder operates as ☐ an individual, ☐ a corporation, incorporated under the laws of the state of _____, ☐ a non-profit organization, ☐ a partnership. (If partnership, list/attach names of the partners)
- ☐ 6. **OREGON LICENSE:** If a corporation, ☐ it is, or ☐ is not, licensed with Oregon Corporation Commission.
- ☒ 7. **REGISTRATION NO:** _____ with Construction Contractors Board.
- ☐ 8. **DOING BUSINESS AS:** Provide any assumed names utilized:

FIRM OR CORPORATION NAME: _____

NAME OF LOCAL REPRESENTATIVE: _____

MAILING ADDRESS: _____

STREET CITY STATE ZIP

TELEPHONE NUMBER: ()

FAX NUMBER: ()

NAME AND TITLE OF PERSON AUTHORIZED TO CONTRACT/SIGN OFFER (TYPE OR PRINT)	SIGNATURE OF AUTHORIZED PERSON:
--	---------------------------------

Bids must be enclosed in a sealed envelope, endorsed on the outside, indicate the bid subject, Request for Bid number and opening date, and delivered to Metro on or before the date and time of the bid opening.
(See Instructions to Bidders)

BIDDER SIGNATURE Print Name of Bidder _____

Signature _____

Print Name and Title _____

BID BOND

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____
hereinafter called the PRINCIPAL, and _____
a corporation duly organized under the laws of the State of _____, having its principal
place of business at _____ in the state of _____
_____, and authorized to do business in the state of Oregon, as SURETY, are held and firmly
bound unto _____ hereinafter called the OBLIGEE, in the penal sum of _____
_____ DOLLARS (\$ _____) for the payment of which we bind ourselves, our heirs,
executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS PRINCIPAL IS SUCH THAT:

WHEREAS the PRINCIPAL is herewith submitting a **BID FOR** _____ said Bid, by
reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the Bid submitted by the PRINCIPAL is accepted, and the Contract
awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and
shall furnish any bond(s) required by the Contract Documents within the time fixed by the
Documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the
proposed Contract and furnish the bond(s), the SURETY hereby agrees to pay to the OBLIGEE
the penal sum as liquidated damages, within ten (10) days of such failure.

Signed and sealed this _____ of _____, 20____.

PRINCIPAL

By _____

SURETY

By _____
Attorney-in-Fact

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3239 FOR THE PURPOSE OF AUTHORIZING RELEASE OF RFB #03-1032-REM FOR THE PROVISION OF DIESEL FUEL AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE RESULTING CONTRACT

October 1, 2002

Drafted by: Chuck Geyer

BACKGROUND

In April 1994, Metro began purchasing the diesel fuel required to transport waste from the Metro South and Metro Central transfer stations to the Columbia Ridge Landfill per Change Order No. 15 to the Waste Transport Services Contract with CSU Transport, Inc. Prior to execution of the change order, beginning with the start of transport operations in January 1990, CSU was responsible for purchasing fuel for its operations.

Metro wished to purchase the fuel for transport operations because it is exempt from paying the federal excise tax on fuel. The tax is \$.244 per gallon. Fuel consumption over the last two fiscal years has averaged approximately 1 million gallons. The annual savings have therefore averaged about \$244,000. A private contractor such as CSU cannot obtain this exemption even if it is performing work for the government.

CSU was willing to enter into the change order for two main reasons. First, because it lowered its risk due to large increases in fuel prices. Secondly, CSU required that "Metro shall make fuel available in a manner reasonably acceptable to Contractor (CSU) and reasonably consistent with historical service levels obtained by Contractor." Historically, CSU had purchased the majority of fuel from a commercial cardlock on HWY 19 between the city of Arlington and the Columbia Ridge Landfill, with smaller amounts (less than 1%) purchased in Oregon City. Metro currently provides this level of service through a contract with a commercial cardlock on HWY 19 and a cardlock in Oregon City.

The original contract was procured through a request for proposals process and had an initial term of two years. The structure of the contract paid the contractor a fixed markup ("base cost") over the average published price of fuel, and the latter was then paid as a passthrough by Metro. This method was retained in the subsequent contract and in the proposed RFB.

A proposal process was used because Metro had little experience in purchasing large quantities of fuel and this process provided the ability to negotiate with prospective vendors. The contract was subsequently extended for three years.

The current contract with the Devin Oil Co., Inc., to provide fuel at its cardlock on HWY 19 expires February 22, 2003, and a replacement agreement is needed. This contract was procured through a request for bids process. The initial term was for two years and it was subsequently extended for an additional two years. Adoption of Resolution No. 02-3239 would authorize release of RFB #03-1032-REM (attached to the resolution as Exhibit A) and authorize execution of a contract with the low, responsive, responsible bidder to replace the existing contract upon its expiration.

The RFB is essentially the same as that used in 1998, except that the initial term of February 23, 2003, to December 31, 2007, (four years 10 months) is longer. The December 31st termination date was selected

to coincide with the termination date in the Waste Transport Contract. The RFB also includes a two-year extension at Metro's option.

As noted above, the previous procurements resulted in contracts with an initial term of two years. Staff feels a longer initial contract period (together with a two-year extension at Metro option) is justified for the following reasons:

- The previous contracts have always been extended, resulting in four years terms without causing any significant contractual or operational problems
- The only increase in price paid to the contractor (base cost) has occurred when the contract has been rebid. Past contracts, and the one proposed in this RFB, have no escalator clauses. This provides Metro price stability whereas rebidding appears to lead to incremental price increases (the price increase was \$.008/gal the last time or about \$8,000 annually.)
- Rebidding contracts costs Metro time and money to conduct the procurement. Metro has expended significant resources in the past to procure fuel without significant benefits.
- There is little risk to Metro in entering into a longer-term contract. Metro would retain the ability to cancel the contract within seven days, at its discretion.
- The term of the contract, together with exercise of the extension, would make the contract coincidental with the Waste Transport Contract.

Staff forwarded a draft RFB to interested parties identified from the previous procurement. Comments are attached as Attachment No. 1 to this report and summarized below.

Devin Oil Co., Inc.- This firm is the current supplier of fuel. The firm contacted staff by phone and indicated that the draft RFB was acceptable to their firm without changes. They subsequently emailed an offer to extend their existing contract with Metro at no increase in price (see attachment 1).

CSU Transport, Inc.- CSU indicated it was satisfied with the current arrangement and level of service, and stated its views regarding the safety of fueling operations (see attachment 2). It also tested and rejected an alternative fueling location as too costly (see attachment 3).

Hattenhauer Distributing Co.- The firm made three main points (see attachment 4). First, it requested that Metro permit fueling at locations other than on HWY 19 and offered information on sites to which the firm has access. Secondly the firm requested that the queuing requirement for the fueling site be lessened from the requirement of room for four CSU vehicles to queue at any one time. Thirdly it requested that the requirement for separation between commercial and noncommercial traffic be deleted. Below are staff's responses to these requests.

- RFP #03-1032-REM still requires that fuel be provided on HWY 19. CSU has indicated that the provision of fuel on HWY 19 is necessary to comply with the historical levels of service required by Change Order 15. In addition, Metro has made a commitment to Gilliam County to "make best efforts to purchase supplies ...from local vendors." (SOURCE: Waste Transport Agreement). None of the additional sites off HWY 19 mentioned by Mr. Hattenhauer are in Gilliam County.
- RFP #03-1032-REM still requires room to queue four CSU vehicles (two of which can be assumed to be fueling at pumps). This is a safety requirement. If onsite queuing is not available at the cardlock, vehicles (68 feet in length) will be forced to stop on HWY 19 -a state highway with a posted speed limit of 55mph. This is not acceptable.

- RFP #03-1032-REM has been modified to remove the separation requirement between commercial and noncommercial customers.

ANALYSIS/INFORMATION

1. Known Opposition

Hattenhauer Distributing Co. has indicated opposition to several of the provisions of the RFB, although it does favor some form of procurement. Devin Oil Co., Inc. would prefer an extension to the existing contract, but has no opposition to the provisions of RFB #03-1032-REM.

2. Legal Antecedents

Metro Code section 2.04.026(b) requires Council authorization of request for bids of the magnitude of RFB #03-1032-REM.

3. Anticipated Effects

By adopting this resolution, the Council authorizes release of a RFB for a new agreement for the provision of diesel fuel.

4. Budget Impacts

Metro would continue to save the avoided federal excise tax.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 02-3239.

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ATTACHMENT 1
RESOLUTION 02-3239

From: "Phillips Family" <dankelly@centurytel.net>
To: <geyer@metro.dst.or.us>
Date: 9/6/02 1:50PM
Subject: Devin Oil Company

Dear Chuck,

09/06/02

Per our phone conversation, we would welcome the opportunity to extend the project for five years. We have enjoyed working with you and look forward to serving you in the future.

Sincerely,

Dick Devin

CSU Transport, Inc.

17701 Cedar Springs Lane, P.O. Box 40
Arlington, Oregon 97812

Phone: (541) 454-2797
Fax: (541) 454-2185

September 6, 2002

ATTACHMENT 2

RESOLUTION 02-3239

Chuck Geyer, Principal Planner
Metro
600 N. E. Grand Avenue
Portland, Oregon 97232

Dear Chuck:

Thanks for giving me an opportunity to comment on the RFB.

There are two items that are important to CSU Transport, Inc. The first is the level of service and the second is safety.

For the last several years, the service received has been as good as anyone could possibly want. If our drivers had a problem with their card when fueling, or the card lock facility had a mechanical failure, problems were always taken care of immediately.

The other item is safety. As you and I have discussed previously, it is very important that at any given time we are able to get three to four trucks off Highway 19 when stopping for fuel. The current card lock facility we are using is the only one in the area that allows us to do that when it is necessary.

Thank you again for this opportunity to comment. If you have any questions, please call me.

Sincerely,



Dennis Gronquist
Terminal Manager

02 SEP -9 AM 10:19
METRO
R.E.M. DEPT.

CSU Transport, Inc.

17701 Cedar Springs Lane, P.O. Box 40
Arlington, Oregon 97812

Phone: (541) 454-2797
Fax: (541) 454-2185

October 22, 2002

ATTACHMENT 3
RESOLUTION NO. 02-3239
Page 1 of 2

Chuck Geyer
Metro
600 N. E Grand Avenue
Portland, Oregon 97232

Dear Chuck:

In an attempt to fairly judge the assessability of the Pacific Pride Card Lock in Biggs Junction, I recently asked several of our senior drivers to exit Interstate 84 at Biggs Junction and proceed to the card lock. After reaching the Card Lock they returned to Interstate 84. In response to my request to time these trips, the drivers involved reported that these trips took approximately five minutes each. As the trucks did not actual fuel, the time spent was only for travel.

In case you are not familiar with the exits from Interstate 84 into Biggs Junction, there is a great deal of truck and passenger car traffic. In addition to traffic from the Interstate, there is also traffic from the bridge there that connects with Washington as well as traffic to and from Highway 97. With the heavy amount of daily truck traffic in Biggs Junction, we can certainly expect the fueling time to increase significantly. We will also use more fuel traveling to and from the Card Lock and while waiting in line to refuel.

It takes no more than 15 seconds for CSU trucks to exit from Highway 19 into the Devin Card Lock south of Arlington and then to reenter Highway 19. Fueling can be done quickly as there is rarely a wait on other trucks to fuel. Using the Devin Card Lock does not necessitate any additional mileage or fuel usage as it is on the same route as that used to travel to and from Columbia Ridge Landfill.

Page 2.

Perhaps it would be advantageous for you to travel to Biggs Junction and see for yourself exactly what the fueling conditions would be for CSU trucks. After continuing east to Arlington and seeing our current procedures I am certain you would agree that CSU trucks can more safely and efficiently fuel in Arlington at the Devin Card Lock, and that this procedure should continue in the future.

If you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Gronquist". The signature is fluid and cursive, with a large loop at the end.

Dennis Gronquist
Terminal Manager

cc: Jim Watkins, Metro

9/10/02 via fax

ATTACHMENT 43
RESOLUTION NO. 02-3239
Page 1 of 2

MR. CHUCK GEYER
PRINCIPAL PLANNER-METRO
600 NORTHEAST GRAND AVENUE
PORTLAND, OREGON 97232

DEAR MR. GEYER:

THANK YOU IN ADVANCE FOR THE OPPORTUNITY TO RESPOND AND COMMENT AS TO YOUR REQUEST FOR BIDS FOR YOUR CONTRACTOR THAT HAULS SOLID WASTE TO THE COLUMBIA RIDGE LANDFILL.

THE PROPOSAL TO CHANGE TO FIVE YEARS SEEMS TOO LONG OF A DURATION BUT POSSIBLY ALLOWABLE UNDER YOUR BIDDING REQUIREMENTS. MY RECOMMENDATION IS EVERY TWO YEARS.

AS TO THE ULTRA LOW SULFUR REQUIREMENT IT MAY BE REQUIRED SOMETIME DURING THE LIFE OF THE CONTRACT BUT MAY NOT BE AVAILABLE AT THE BEGINNING OF THE CONTRACT PERIOD. IF IT BECOMES A REQUIREMENT THEN IT WOULD BE AVAILABLE. YOUR BID MAY HAVE TO HAVE FLEXIBILITY TO ACCOMMODATE THE REQUIREMENTS OF LOW SULFUR DIESEL AND FUTURE REQUIREMENTS OF ULTRA LOW SULFUR DIESEL.

AS YOU ARE AWARE THE CLOSER FUEL IS PURCHASED TO PORTLAND THE CHEAPER THE FUEL WOULD BE. THE REQUIREMENT THAT FUEL ONLY BE PURCHASED BETWEEN CITY OF ARLINGTON AND CEDAR SPRINGS ROAD LIMITS YOUR PURCHASING OPPORTUNITIES. AS YOU ARE AWARE THERE ARE PRESENTLY ONLY TWO CARDLOCKS IN THIS AREA. OUR SITE HAS BEEN ELIMINATED AS YOUR CRITERIA IS TOO RESTRICTIVE AND EVEN THOUGH WE HAVE BEEN LOW BIDDER OUR SITE IS RULED NON-COMPLIANCE BY YOUR SCOPE OF WORK/SCHEDULE.

WHEN JACK GRAY WAS AWARDED THE BID THEY FUELED AT THE LANDFILL SITE BEFORE YOU TOOK OVER THE PURCHASING OF FUEL. THEY ALSO FUELED AT A COMPETITORS CARDLOCK. FUELING ALSO TOOK PLACE AT CARDLOCKS IN TROUTDALE AND OREGON CITY. THERE IS A HISTORY OF FUELING AT OTHER LOCATIONS THAN HWY 19 AND CEDAR SPRINGS ROAD. THERE WAS ALSO FUELING OF VEHICLES IN RUFUS, OREGON AT A CARDLOCK THERE. THE SITES IN OREGON CITY, TROUTDALE, AND RUFUS WERE FUELED AT PACIFIC PRIDE SITES.

FOR YOUR INFORMATION THERE IS A NEW PACIFIC PRIDE SITE AT BIGGS JUNCTION IN SHERMAN COUNTY THAT WOULD MEET YOUR FUELING REQUIREMENTS.

METRO
R.E.H. DEPT.

02 SEP 12 AM 11:02

AS YOU ARE AWARE THE CONTRACTOR CURRENTLY HAULING FUEL IS A COUPLE OF TIMES REMOVED FROM THE ORIGINAL CONTRACTOR. THERE HAVE BEEN MANY CHANGE ORDERS AS TO THE ORIGINAL CONTRACT.

THE REQUIREMENT THAT IF THE CARDLOCK IS DISABLED NEEDS TO BE ADDRESSED AS THE ONLY OPTION IS TO HAVE A TRUCK BE ON STANDBY WHEN THERE ARE OTHER OPTIONS SUCH AS OTHER CARDLOCK USAGE NEARBY WOULD BE A BETTER SOLUTION. CURRENTLY BOTH CFN AND PACIFIC PRIDE IS AVAILABLE AS FUELING SITES.

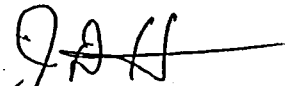
PACIFIC PRIDE HAS SITES IN ARLINGTON, BIGGS JUNCTION, THE DALLES, HOOD RIVER, AND OREGON CITY THAT WOULD BE ALTERNATE OR PRIMARY FUELING SITES. THE SITES ARE ALL CONVENIENTLY LOCATED ON YOUR CONTRACTOR HAULING ROUTES. ALL SITES ARE OPEN 24 HOURS.

THERE HAS NEVER BEEN ANY FACTS AS TO THE QUEUING REQUIREMENT. IF THIS HAPPENS IT WOULD BE VERY RARE AND SHOULD NOT BE A REQUIREMENT. THERE IS NO WRITTEN REQUIREMENT FOUND THAT I AM AWARE WHERE QUEUING IS REQUIRED IN THE CONTRACT. THERE NEEDS TO BE WRITTEN DOCUMENTATION OF WHEN THIS OCCURS AND HOW OFTEN AS THIS REQUIREMENT IS RESTRICTIVE TO THE CURRENT BID REQUIREMENTS.

THE REQUIREMENT THAT NONCOMMERCIAL CUSTOMERS UTILIZE THE SITE IS DISCRIMINATORY. YOUR CURRENT SUPPLIER HAS NONCOMMERCIAL CUSTOMERS USING THE SITE WHERE YOU CURRENTLY FUEL YOUR VEHICLES BUT HAS NEVER BEEN ADDRESSED. OUR SITE WOULD PROVIDE AN ATTENDANT TO FUEL YOUR VEHICLES DURING OUR NONCOMMERCIAL CUSTOMER FUELING TIMES. THIS WOULD BE SAFER AND A SERVICE THAT IS NOT CURRENTLY OFFERED BY YOUR PRESENT SUPPLIER. THIS CRITERIA NEEDS TO BE ELIMINATED.

IF YOU HAVE ANY QUESTIONS PLEASE FEEL FREE TO CALL AND THANK YOU IN ADVANCE FOR THIS OPPORTUNITY.

REGARDS,


J. D. HATTENHAUER PRESIDENT
HATTENHAUER DISTRIBUTING CO.
P. O. BOX 1397
THE DALLES, OREGON 97058