

Metro | Agenda

MEETING: METRO COUNCIL
DATE: February 4, 2010
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the January 28, 2010 Metro Council Regular Meeting.

3.2 **Resolution No. 10-4104**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Final Order Imposing a Civil Penalty on Dave Wacker Sanitary Service for Violation of Metro Code Section 5.05.025(a).

3.3 **Resolution No. 10-4121**, For the Purpose of Authorizing the Chief Operating Officer to Purchase Trail and Greenway Easements in the Fanno Creek Linkages Target Area and Subject to Unusual Circumstances.

3.4 **Resolution No. 10-4122**, For the Purpose of Amending the Natural Areas Implementation Work Plan to Authorize the Chief Operating Officer to More Efficiently Acquire and Assign Trail Easements.

4. ORDINANCES - FIRST READING

4.1 **Ordinance No. 10-1231**, For the Purpose of Determining that Providing Financial Resources to Increase the Supply of Affordable Housing is a Matter of Metropolitan Concern. Liberty

4.2 **Ordinance No. 10-1233**, For the Purpose of Establishing an Audit Committee and Amending Metro Code Section 2.15.080 External Audits and Adding a New Metro Code Section 2.19.250 Audit Committee. Park

5. RESOLUTIONS

5.1 **Resolution No. 10-4110**, For the Purpose of Metro Council's Acceptance of the Results of the Independent Audit Report For Financial Activity During Fiscal Year 2008-2009. Park

5.2 **Resolution No. 10-4120**, For the Purpose of Confirming the Appointment of Members of the Metro Solid Waste Advisory Committee (SWAC).

Harrington

6. **CHIEF OPERATING OFFICER COMMUNICATION**

7. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for February 4, 2010 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 – Community Access Network www.tvctv.org – (503) 629-8534 2 p.m. Thursday, Feb. 4 (Live)	Portland Channel 30 (CityNet 30) – Portland Community Media www.pcmtv.org – (503) 288-1515 8:30 p.m. Sunday, Feb. 7 2 p.m. Monday, Feb. 8
Gresham Channel 30 – MCTV www.mctv.org – (503) 491-7636 2 p.m. Monday, Feb. 8	Washington County Channel 30 – TVC-TV www.tvctv.org – (503) 629-8534 11 p.m. Saturday, Feb. 6 11 p.m. Sunday, Feb. 8 6 a.m. Tuesday, Feb. 9 4 p.m. Wednesday, Feb. 10
Oregon City, Gladstone Channel 28 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office @ (503) 797-1540. 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 included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.oregonmetro.gov and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 3.1

Consideration of Minutes for the January 28, 2010 Metro Council Regular Meeting.

Consent Agenda

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

Agenda Item Number 3.2

Resolution No. 10-4104, For the Purpose of Authorizing the Chief Operating Officer to Issue a Final Order Imposing a Civil Penalty on Dave Wacker Sanitary Service for Violation of Metro Code Section 5.05.025(a).

Consent Agenda

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING) RESOLUTION NO. 10-4104
OFFICER TO ISSUE A FINAL ORDER IMPOSING) Introduced by Michael Jordan,
A CIVIL PENALTY ON DAVE WACKER) Chief Operating Officer, with the
SANITARY SERVICE FOR VIOLATION OF) concurrence of David Bragdon,
METRO CODE SECTION 5.05.025(a)) Council President

WHEREAS, on August 19, 2009, the Director of the Metro Finance and Regulatory Services Department (“Director”) issued Notice of Violation No. NOV-231-09 to Dave Wacker Sanitary Service (“DWS”); and

WHEREAS, NOV-231-09 stated that the Director had found that from July 23 through August 4, 2009, DWS violated Metro Code Sections 5.01.045(a)(3) and 5.05.025(a) by operating an unauthorized yard debris reload facility and delivering yard debris to that facility; and

WHEREAS, included with NOV-231-09 was a contested case notice providing DWS with an opportunity to have a hearing regarding the NOV; and

WHEREAS, DWS submitted a timely request for a contested case hearing and such hearing was held before Metro Hearings Officer Robert Shoemaker on October 23, 2009; and

WHEREAS, on November 17, 2009, the Hearings Officer issued a proposed order requiring DWS to pay to Metro \$860 in penalties; and

WHEREAS, in accordance with Metro Code Section 2.035(a), the Chief Operating Officer mailed a copy of the proposed order to DWS and informed Metro and DWS of the deadline for filing written exceptions to the proposed order; and

WHEREAS, neither Metro nor DWS filed exceptions to the proposed order; and

WHEREAS, Metro Code 2.05.045(b) provides that the Metro Council shall (1) adopt the Hearings Officer’s proposed order; (2) revise or replace the findings of fact or conclusions of law in the order; or (3) remand the matter to the Hearings Officer; and

WHEREAS, the Chief Operating Officer has reviewed the proposed order and recommends that the Council authorize the Chief Operating Officer to issue the proposed order as a final order in substantially the form as that attached as Exhibit A to this resolution; and

WHEREAS, in accordance with Metro Code Section 2.05.035, the Metro Council has been provided with a copy of the record in this matter for its review as it considers this resolution; and

WHEREAS, the Council has considered the proposed order, the record in this matter, and the exhibit attached to this resolution; now therefore

BE IT RESOLVED that the Metro Council adopts the proposed order issued by Hearings Officer Robert Shoemaker in the matter of Notice of Violation No. NOV-231-09 issued to DWS in the form of a

final order as provided in Exhibit A to this resolution, and authorizes the Chief Operating Officer to issue a final order substantially similar to Exhibit A to this resolution.

ADOPTED by the Metro Council this ____ day of February, 2010.

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

SK:bjl
S:\REM\kraten\Enforcement\Flow Control\Wacker Sanitary Service\Resolution.doc

600 NE Grand Ave.
Portland, OR 97232-2736
503-797-1700
503-797-1804 TDD
503-797-1797 fax



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BEFORE THE METRO REGIONAL GOVERNMENT

In The Matter of Notice of Violations and)	
Imposition of Civil Penalty NOV-231-09)	
Issued to	)	FINAL ORDER
DAVE WACKER SANITARY SERVICE,)	
Respondent)	

On August 20, 2009, Metro through its Solid Waste Regulatory Division, served Notice of Violations and Imposition of Civil Penalty #NOV-231-09 on Respondent by certified mail. The Notice charged Respondent with violating Metro Code Section 5.05.025(a) by delivering yard debris to, and operating a solid waste disposal site, without a license to do so from Metro. The Notice advised Respondent of its procedural rights. Respondent requested a contested case hearing.

A hearing was held in the Metro Council Chambers on October 23, 2009, from 9:15 until 10:15 a.m. Metro was represented at the hearing by Metro Solid Waste Enforcement Coordinator, Steven Kraten. Also testifying for Metro were Warren Johnson, Solid Waste Compliance Supervisor, and Duane Altig, Solid Waste Facility Inspector. David A. Wacker, owner and authorized representative of Respondent, attended the hearing and testified on behalf of Respondent. Presiding over the hearing was Hearings Officer Robert Shoemaker.

SUBMISSION OF DOCUMENTARY EVIDENCE BY METRO

Metro submitted the following items of evidence:
Exhibit A.

1 Pages 1-2: Notice of Violations and Imposition of Civil Penalty, # NOV-231-09, dated
2 August 19, 2009.

3 Page 3: Contested Case Notice and Certificate of Service, dated August 19, 2009.

4 Pages 4 and 5: Penalty Worksheet showing a total penalty of \$860, and Invoice to
5 Respondent for that amount.

6 Page 6: Certified Mail Receipt by Respondent, signed by Sherry Wacker and dated
7 August 20, 2009.

8 Exhibit B. Facility Inspection Notes, by Inspector Will Ennis, dated August 19, 2009.
9 These notes included five photographs showing compacted yard debris awaiting reloading.

10 Exhibit C. Investigation Report by Inspector Duane Altig, dated August 4, 2009.
11 This report included 13 photographs showing compacted yard debris awaiting reloading and the
12 tipping of compacted yard debris by a Dave Wacker Sanitary Service compactor truck.

13 Exhibit D. Letter to Respondent from Warren Johnson, solid waste compliance
14 supervisor, dated August 17, 2009.

15 Exhibit E. A copy of Exhibit A with a hand written request for a contested case hearing,
16 signed by David A. Wacker.

17 18 **TESTIMONY**

19
20 Metro Inspector Duane Altig testified to the facts alleged in Exhibits A and C, particularly
21 as follows: On July 23, 2009, he inspected a site located at 6433 NW St Helens Road
22 in Portland and observed a number of loads of compacted yard debris apparently awaiting
23 reloading. On July 27 he spoke with David Wacker by phone and learned that Respondent
24 owned the site, and that Respondent's trucks had deposited the yard debris at the site with the
25 intention of utilizing the site as a yard debris reloading facility. In that call he informed Mr.
26 Wacker that it was illegal to use that site as a reloading facility without a license from Metro. Mr.
27 Altig further testified that in that call Mr. Wacker stated that he was under the impression that
28 yard debris was not regulated, but agreed to promptly reload the material and take it to an
29 appropriate facility, and that he would cease tipping any further loads to the site. Mr. Altig
30 further testified that on August 4, he revisited the site and observed that no yard debris had been
31 removed from the site, one additional load appeared to have been dumped, and that later that day

1 he observed a Dave Wacker Sanitary Service compactor truck tipping yard waste onto the site and
2 that the driver of the truck stated that he was employed by Respondent.

3 David A. Wacker, representing Respondent, admitted that Respondent's compactor trucks
4 tipped compacted yard debris onto Respondent's property for reloading and ultimate disposition
5 at a solid waste facility. Mr. Wacker testified that, until he talked to Mr. Altig on July 27, he did
6 not believe that a Metro license was required to tip solid waste onto your own property for
7 reloading. Mr. Wacker acknowledged receiving, and still possessing, A Solid Waste Hauler
8 Informational Bulletin on Metro Regulated Material Recovery & Reloading Activities, dated July
9 2007. Upon questioning by the hearings officer, he admitted that Respondent's activities fell
10 within the paragraph entitled "Regulated reload", which specifically apply to yard debris
11 reloading, but that until this was pointed out to him by Mr. Altig on July 27, he thought
12 Respondent's activities fell within the "Exempt" reload paragraph. When questioned by the
13 hearings officer why the site had not been cleared as promised and that additional loads had been
14 dumped there since that date despite his promise that they would not be, he acknowledged that
15 this was his mistake. Mr. Wacker also admitted that he had made a mistake in not reading the
16 Bulletin more carefully, and acknowledged that ignorance of the law is not an excuse.

17 Mr. Wacker's copy of Metro's Bulletin described above was admitted into evidence as
18 Exhibit 1.

19 Warren Johnson, Metro's solid waste compliance supervisor, advised Mr. Wacker through
20 his testimony the reasons why a license is required before any site may be used for the tipping and
21 reloading of yard debris.

22 23 **FINDINGS OF FACT** 24

25 Following up on a telephone call to Metro, on July 23, 2009, Inspector Duane Altig
26 observed approximately six compacted loads of yard debris on an unlicensed reloading site owned
27 by Respondent, located at 6433 NW St. Helens Road, in Portland, Oregon.

28 On July 27, 2009, David Wacker, was advised by Mr. Altig that it was illegal to dump
29 yard debris on any site not licensed by Metro. At that time, Mr Wacker agreed to promptly
30 remove the loads at the site and to cease any further dumping at the site without a license to do so.
31 On August 4, 2009, a further inspection of the site found one new compacted load of yard debris,
32 and the inspector observed a compactor truck owned by Respondent tip an additional load of

1 compacted yard debris at the site. On August 19, 2009, the compacted yard debris previously
2 observed remained at the site. Subsequent to that date, all yard debris was removed from the site.

3 The Penalty of \$860 as set forth on the Penalty Worksheet and charged to Respondent is
4 reasonable.

5
6 **ULTIMATE FINDINGS OF FACT,**
7 **REASONING, AND CONCLUSIONS OF LAW**
8

9 Metro Illegal Dumping Ordinance, Section 5.05.025(a) prohibits any waste hauler to
10 utilize for the disposal of solid waste any facility or disposal site without an appropriate license
11 from Metro. Solid waste includes compacted yard debris,

12 Respondent is a waste hauler. Respondent utilized a site owned by it as a reloading
13 facility for compacted yard debris, without a Metro license. Respondent's authorized
14 representative admitted, under oath, that Respondent was guilty of that illegal dumping.

15 Respondent, Dave Wacker Sanitary Service, is legally liable for violating Metro
16 Ordinance 5.05.025(a).

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18 **ORDER**
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20 Based upon the above findings of fact, ultimate findings of fact, reasoning, and
21 conclusions of law, Respondent Dave Wacker Sanitary Service is liable for and is required to pay
22 Metro its invoiced penalty of \$860.

23 Pursuant to ORS 34.010 to 34.102, appeal of this Final Order may be initiated by filing a
24 petition for writ of review with the Circuit Court of the State of Oregon for Multnomah County
25 within 60 days of the date of this Final Order.

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27 METRO REGIONAL GOVERNMENT
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31 Dated February 4, 2010

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Michael Jordan
Chief Operating Officer

METRO ILLEGAL DISPOSAL ORDINANCE
BEFORE
ROBERT C. SHOEMAKER, JR., HEARINGS OFFICER

In The Matter of Notice of Violations and) PROPOSED FINAL ORDER
Imposition of Civil Penalty, # NOV-231-09)
Issued to) MET # NOV-231-09
DAVE WACKER SANITARY SERVICE)
 Respondent
_____)

On August 20, 2009, Metro through its Solid Waste Regulatory Division, served Notice of Violations and Imposition of Civil Penalty #NOV-231-09 on Respondent by certified mail. The Notice charged Respondent with violating Metro Code Section 5.05.025(a) by delivering yard debris to, and operating a solid waste disposal site, without a license to do so from Metro. The Notice advised Respondent of its procedural rights. Respondent requested a contested case hearing.

A hearing was held in the Metro Council Chambers on October 23, 2009, from 9:15 until 10:15 a.m.. Metro was represented at the hearing by Metro Solid Waste Enforcement Coordinator, Steven Kraten. Also testifying for Metro were Warren Johnson, Solid Waste Compliance Supervisor, and Duane Altig, Solid Waste Facility Inspector. David A. Wacker, owner and authorized representative of Respondent, attended the hearing and testified on behalf of Respondent.

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Exhibit B. Facility Inspection Notes, by Inspector Will Ennis, dated August 19, 2009. These notes included five photographs showing compacted yard debris awaiting reloading.

Exhibit C. Investigation Report by Inspector Duane Altig, dated August 4, 2009. This report included 13 photographs showing compacted yard debris awaiting reloading and the tipping of compacted yard debris by a Dave Wacker Sanitary Service compactor truck.

Exhibit D. Letter to Respondent from Warren Johnson, solid waste compliance supervisor, dated August 17, 2009.

Exhibit E. A copy of Exhibit A with a hand written request for a contested case hearing, signed by David A. Wacker.

TESTIMONY

Metro Inspector Duane Altig testified to the facts alleged in Exhibits A and C, particularly as follows: On July 23, 2009, he inspected a site located at 6433 NW St Helens Road
/////

in Portland and observed a number of loads of compacted yard debris apparently awaiting reloading. On July 27 he spoke with David Wacker by phone and learned that Respondent owned the site, and that Respondent's trucks had deposited the yard debris at the site with the intention of utilizing the site as a yard debris reloading facility. In that call he informed Mr. Wacker that it was illegal to use that site as a reloading facility without a license from Metro. Mr. Altig further testified that in that call Mr. Wacker stated that he was under the impression that yard debris was not regulated, but agreed to promptly reload the material and take it to an appropriate facility, and that he would cease tipping any further loads to the site. Mr. Altig further testified that on August 4, he revisited the site and observed that no yard debris had been removed from the site, one additional load appeared to have been dumped, and that later that day he observed a Dave Wacker Sanitary Service compactor truck tipping yard waste onto the site and that the driver of the truck stated that he was employed by Respondent.

David A. Wacker, representing Respondent, admitted that Respondent's compactor trucks tipped compacted yard debris onto Respondent's property for reloading and ultimate disposition at a solid waste facility. Mr. Wacker testified that, until he talked to Mr. Altig on July 27, he did not believe that a Metro license was required to tip solid waste onto your own property for reloading. Mr. Wacker acknowledged receiving, and still possessing, A Solid Waste Hauler Informational Bulletin on Metro Regulated Material Recovery & Reloading Activities, dated July 2007. Upon questioning by the hearings officer, he admitted that Respondent's activities fell within the paragraph entitled "Regulated reload", which specifically apply to yard debris reloading, but that until this was pointed out to him by Mr. Altig on July 27, he thought Respondent's activities fell within the "Exempt" reload paragraph. When questioned by the hearings officer why the site had not been cleared as promised and that additional loads had been

/////

dumped there since that date despite his promise that they would not be, he acknowledged that this was his mistake. Mr. Wacker also admitted that he had made a mistake in not reading the Bulletin more carefully, and acknowledged that ignorance of the law is not an excuse.

Mr. Wacker's copy of Metro's Bulletin described above was admitted into evidence as Exhibit 1.

Warren Johnson, Metro's solid waste compliance supervisor, advised Mr. Wacker through his testimony the reasons why a license is required before any site may be used for the tipping and reloading of yard debris.

FINDINGS OF FACT

Following up on a telephone call to Metro, on July 23, 2009, Inspector Duane Altig observed approximately six compacted loads of yard debris on an unlicensed reloading site owned by Respondent, located at 6433 NW St. Helens Road, in Portland, Oregon.

On July 27, 2009, David Wacker, was advised by Mr. Altig that it was illegal to dump yard debris on any site not licensed by Metro. At that time, Mr Wacker agreed to promptly remove the loads at the site and to cease any further dumping at the site without a license to do so. On August 4, 2009, a further inspection of the site found one new compacted load of yard debris, and the inspector observed a compactor truck owned by Respondent tip an additional load of compacted yard debris at the site. On August 19, 2009, the compacted yard debris previously observed remained at the site. Subsequent to that date, all yard debris was removed from the site.

The Penalty of \$860 as set forth on the Penalty Worksheet and charged to Respondent is reasonable.

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4. FINAL ORDER

ULTIMATE FINDINGS OF FACT,
REASONING, AND CONCLUSIONS OF LAW

Metro Illegal Dumping Ordinance, Section 5.05.025(a) prohibits any waste hauler to utilize for the disposal of solid waste any facility or disposal site without an appropriate license from Metro. Solid waste includes compacted yard debris,

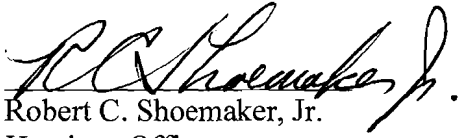
Respondent is a waste hauler. Respondent utilized a site owned by it as a reloading facility for compacted yard debris, without a Metro license. Respondent's authorized representative admitted, under oath, that Respondent was guilty of that illegal dumping.

Respondent, Dave Wacker Sanitary Service, is legally liable for violating Metro Ordinance 5.05.025(a).

ORDER

Based upon the above findings of fact, ultimate findings of fact, reasoning, and conclusions of law, Respondent Dave Wacker Sanitary Service is liable for and is required to pay Metro its invoiced penalty of \$860.

November 17, 2009.

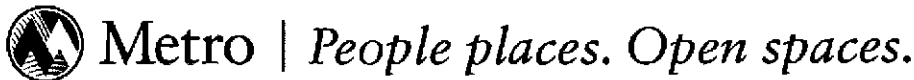

Robert C. Shoemaker, Jr.
Hearings Officer

PROPOSED ORDER AS FINAL ORDER:

ANY MOTION TO RECONSIDER THIS ORDER MUST BE FILED WITHIN TEN DAYS OF THE ORIGINAL ORDER. IF RESPONDENT FAILS TO OBJECT OR FILE A MOTION FOR RECONSIDERATION, THEN THIS ORDER BECOMES THE FINAL ORDER. THE HEARINGS OFFICER MAY RECONSIDER THE FINAL ORDER WITH OR WITHOUT FURTHER BRIEFING OR HEARINGS. IF ALLOWED, RECONSIDERATION SHALL RESULT IN REAFFIRMANCE, MODIFICATION OR REVERSAL. FILING A MOTION FOR RECONSIDERATION DOES NOT TOLL THE PERIOD FOR FILING AN APPEAL IN COURT.

RIGHT OF APPEAL:

A PERSON MAY APPEAL A FINAL ADVERSE RULING BY WRIT OF REVIEW AS PROVIDED IN ORS 34.010 THROUGH 34.100.



September 21, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Dave Wacker
Dave Wacker Sanitary Service
13001 SE 197th Avenue
Damascus, OR 97089

Dear Mr. Wacker:

You have been cited for violating a provision of the Metro Code, and have requested a hearing in order to explain the circumstances behind the alleged violation. A person cited with an infraction may retain an attorney to represent them provided that written notice of such representation is received by Metro legal counsel at least five working days in advance of the scheduled hearing.

Your hearing is scheduled for October 7, 2009 at 9:30 AM in the Council Chambers at Metro Center, 600 NE Grand Avenue, Portland, Oregon 97232.

Please arrive promptly. Your testimony may not be heard if you fail to arrive in time. If you require a translator, please notify Metro at least two weeks in advance of the hearing.

If an emergency prevents you from being present at the scheduled time, please call (503) 797-1835.

Notice #	<u>NOV-231-09</u>
Hearing Date	<u>10/7/2009</u>
Hearing Time	9:30 AM
Location:	Metro Center 600 NE Grand Avenue Portland, Oregon 97232 COUNCIL CHAMBERS

Enclosed with this notice are the following documents, which the Agency will rely on in your case and be offered to the Hearings Officer at the Hearing:

- (a) Copy of Notice of Violations(NOV) issued
- (b) Metro Facility Inspection Note dated August 19, 2009
- (c) Email to Warren Johnson from Duane Altig Dated August 4, 2009
- (d) Email to dswac2009@yahoo.com dated August 17, 2009
- (e) Request for hearing received 9/17/2009

5.09.100 Representation at Hearing

(a) A cited person may be represented by a retained attorney provided that written notice of such representation is received by the Metro Attorney five working days in advance of the hearing. The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.

(b) When a cited person is not represented by legal counsel at the hearing, then Metro shall not be represented by legal counsel at the hearing. In such case, Metro legal counsel may advise Metro staff in preparation of the case and may be present at the hearing for the purpose of consulting with and advising Metro staff.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)



Metro | *People places. Open spaces.*

EXHIBIT A

NOTICE OF VIOLATIONS and IMPOSITION OF CIVIL PENALTY No. NOV-231-09

To: Dave Wacker, Authorized Representative
Dave Wacker Sanitary Service ("DWS")
13001 SE 197th Ave.
Damascus, OR 97089

Location of Unauthorized Facility: 6433 NW St. Helens Road
Portland, OR 97210

Operating Instrument: None

Dates of Violations: July 23, 2009 through August 4, 2009

Code Violations - Chapter 5.01: Metro Code Section 5.01.045(a)(3) stipulates that a Metro solid waste license shall be required of the person owning or controlling a facility where yard debris reloading is performed.

On July 23, 2009, Metro conducted an inspection of a facility located at 6433 NW St. Helens Road. The facility consisted of a rock-surfaced lot on which the inspector found a stockpile of approximately six loads of compacted yard debris from curbside collection. The inspector spoke with Dave Wacker by phone on July 27, 2009 and determined that the facility was under the control of DWS and that one or more DWS trucks had deposited the yard debris at the location with the intention of utilizing the lot as a yard debris reloading facility. DWS is therefore operating an unauthorized yard debris facility without an appropriate license from Metro in violation of Code Section 5.01.045(a)(3). Each day that yard debris remains on the site constitutes a separate violation, potentially subject to a penalty of \$500 per day.

Code Violations - Chapter 5.05: Metro Code Section 5.05.025(a) stipulates that: *Except as otherwise provided in this chapter, it shall be unlawful for any waste hauler or other person to transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the District, any solid waste*

facility or disposal site without an appropriate license from Metro.

DWS delivered yard debris to an unauthorized facility without an appropriate license from Metro in violation of Code Section 5.05.025(a). Each load of yard debris delivered to the facility constitutes a separate violation.

Additional Information:

On July 27, 2009, Solid Waste inspector Duane Altig informed Dave Wacker by phone that DWS must discontinue tipping yard debris at the site and must remove the yard debris that was currently on site. Mr. Wacker stated that he would remove the yard debris by July 31. On August 4, 2009, Metro staff re-inspected the facility. DWS had failed to remove the yard debris previously deposited there. In addition the inspector observed a DWS packer truck dumping additional yard debris at the site.

Civil Penalties:

Civil penalties totaling EIGHT HUNDRED SIXTY- AND 00/100 DOLLARS (\$860.00) are imposed for the violations described in this Notice (see attached Penalty Worksheet). Subsequent violations shall make DWS subject to additional penalties of up to \$500 for each additional load. An invoice for the penalties is enclosed with this Notice.

Actions required to abate the violations:

DWS must immediately cease accepting yard debris at the site and remove all of the yard debris currently on site by August 31, 2009. The site will be re-inspected for compliance on or after September 1, 2009. Failure to cure the violations shall make DWS subject to penalties of up to \$500 for each day that yard debris remains on site and an additional \$500 for each additional load that DWS delivers to the site.

8/19/09
Date

Margo Norton
Margo Norton

Finance and Regulatory Services Director

CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapters 2.05, 5.01, and 5.05 provide Metro's authority and jurisdiction for the hearing.

cc: Roy Brower, Solid Waste Compliance and Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
Will Ennis, Solid Waste Facility Inspector
Michelle Bellia, Senior Metro Attorney
Stephanie Rawson, DEQ
Bruce Walker, City of Portland

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

Dave Wacker, Authorized Representative
Dave Wacker Sanitary Service
13001 SE 197th Ave.
Damascus, OR 97089

On August 19th, 2009, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.



Roy W. Brower

Solid Waste Compliance and Cleanup Manager



Metro

Penalty Worksheet

Licensee/Hauler Name

License Number

Dave Wacker Sanitary Service

None

Brief Description

Hauler delivered compactor truck loads of curbside yard debris to a vacant lot that is not authorized as a solid waste facility. After being verbally warned by Metro to cease such deliveries and to remove the yard debris from the site, the hauler failed to remove the material and delivered an additional load to the site. Metro estimates that DWS delivered a total of 6-7 loads to the site as of the dates indicated.

NOV Number	Date(s) of Violation(s)	Violations	Incidences*	Units involved
NOV-231-09	July 23 - Aug. 4, 2009	6	1	6.00

Direct Cost/Revenue Loss

1 Administrative cost				\$500.00
2 Unpaid Regional System Fees:	NA	tons at \$0.00		\$0.00
3 Unpaid Excise Taxes:	NA	tons at \$0.00		\$0.00
4 Metro disposal costs (disposal contract)				\$0.00
5 Yard debris reload facility license application fee				\$300.00
6 Specify other direct cost/revenue loss				
7 Add lines 1 through 6.....	Equals Direct Recovery			\$800.00

Indirect Cost/Revenue Loss

1 Specify indirect cost/revenue loss				
2 Specify other indirect cost/revenue loss				
3 Specify other indirect cost/revenue loss				
4 Specify other indirect cost/revenue loss				
5 Add lines 1 through 4.....	Equals Indirect Recovery			\$0.00

Compliance Component

1 Base penalty per load delivered to unauthorized facility	\$10.00	
2 Additional penalty at \$1 per violation per repeat incident	\$0.00	
3 Add lines 1 and 2	\$10.00	
4 25% penalty on unpaid Regional System Fees	\$0.00	
5 25% penalty on unpaid Excise Taxes	\$0.00	
6 Specify other aggravating/mitigating compliance factors		
7 Specify other aggravating/mitigating compliance factors		
8 Sum lines 3 through 7	\$10.00	
9 Total tons involved in current incident	6.00	
10 Multiply lines 8 and 9.....	Equals Compliance Component	\$60.00

Total Penalty **\$860.00**

Worksheet prepared by

Date

Steve Kraten

August 18, 2009

* Incidences within the last three years including current incident

Code check: total penalty per violation \$143.33.

INVOICE

Please Remit To:

Metro
Accounts Receivable
600 NE Grand Avenue
Portland OR 97232-2736



Page: 1
Invoice No: REM-01070
Invoice Date: 08/19/2009
Customer Number: REM1431
Payment Terms: Net 30
Due Date: 09/18/2009

Bill To:

Dave Wacker Sanitary Service
13001 SE 197th Avenue
Damascus OR 97089

AMOUNT DUE: 860.00 USD

Amount Remitted



For billing questions, please call 503-797-1620

Line	Adj	Identifier	Description	Quantity	Unit Amt	Net Amount
		Violation NOV-231-09				
1			Violation NOV-231-09	1.00	860.00	860.00
SUBTOTAL:						860.00
TOTAL AMOUNT DUE :						860.00

Inspection Information

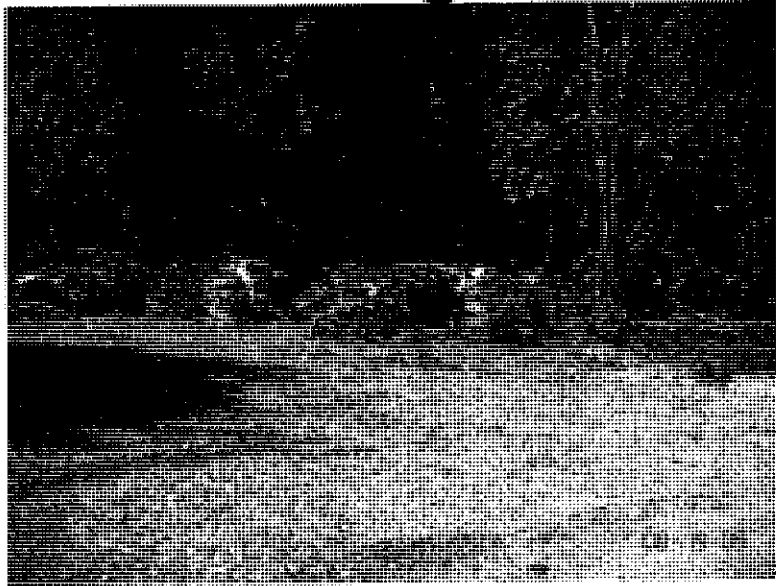
Facility Name:	<u>Wacker Sanitary Service</u>	Date of Inspection:	<u>August 19, 2009</u>								
	<u>6433 NW St. Helens Road</u>	Time of Inspection:	<u>11:45-12:05</u>								
	<u>Portland, OR 97210</u>	Weather:	<u>87° F, clear</u>								
Inspector(s)	<u>Will Ennis</u>	Site Photographs:	<table border="1"> <tr> <td><input checked="" type="checkbox"/></td> <td>Yes</td> <td><input type="checkbox"/></td> <td>No</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Yes</td> <td><input checked="" type="checkbox"/></td> <td>No</td> </tr> </table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No								
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No								
		Samples Collected:									
		If yes, material type:									

This inspection of 6433 NW St. Helens Road was conducted to observe conditions of unauthorized yard debris reload. Yard debris is deposited at the subject site by Dave Wacker Sanitary Service.

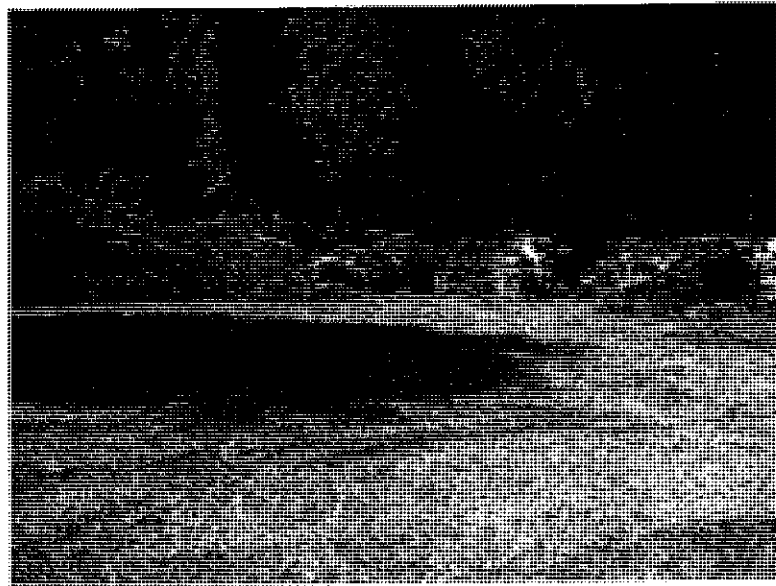
I entered the site at 11:45 and remained for 20 minutes. I did not observe anyone deposit yard debris at the site during this time. Yard debris already present on the site did not appear to have been recently deposited. I did not observe drop boxes or other containers on the site. I took several pictures of yard debris staged at the site before leaving (see photographs #1- #5).

End of notes by Will Ennis

1. Wacker Sanitary: Unauthorized yard debris reload. (WE)



2. Wacker Sanitary: Unauthorized yard debris reload. (WE)



3. Wacker Sanitary: Unauthorized yard debris reload. (WE)



4. Wacker Sanitary: Unauthorized yard debris reload. (WE)



5. Wacker Sanitary: Unauthorized yard debris reload. (WE)



Duane Altig

From: Duane Altig
Sent: Tuesday, August 04, 2009 2:54 PM
To: Warren Johnson; Steve Kraten
Subject: Update on Wacker Site
Attachments: Wacker.04AUG09.dka.pdf

04AUG09: I visited the Dave Wacker site, located at **6433 NW St. Helens Rd.**, on two different times during this day. The first visit was at **9:40 AM until 10:30 AM**. During this visit I had hoped to document that the site had been cleaned up of all the yard debris wastes tipped during the previous week. I instead observed and photographed what appeared to have been a recently tipped load of compacted yard debris. This recent load was noticeably greener and fresher than the surrounding wastes (see photographs). I did not observe any activity during this visit. I waited for a total of **50 minutes** and then I left the site.

12:30: I returned to the Wacker site after receiving a phone tip that a Wacker Compactor truck may be arriving within the hour. Upon arrival to the site I took up a position located just NW of the site. I waited for approximately 40 minutes at which time I observed a Wacker Compactor truck arrive from the south on St. Helens Road and pull onto the vacant lot. I pulled onto the site a few moments later and observed the driver of the Wacker truck preparing to dump the contents of the compactor truck onto the lot. I introduced myself and asked if he was Mr. Wacker. He answered that he was not but was an employee of his (no name was given). I informed him that dumping waste on this site was not allowed to which he stated "why not Dave owns this property" I stated that this activity still needs to be licensed by Metro and that this was all explained to Mr. Wacker early last week. I stated that all this material was suppose to have been reloaded and hauled off this site by last Friday. The driver did not know about any of this. I retrieved my business card and gave it to the driver and informed him to tell Mr. Wacker that Metro will be in contact with him soon. I told him to continue with what he was doing and I photographed him dumping the contents of the compactor truck next to the recently tipped load of yard debris.

I called Steve Kraten from the site and informed him of what I had observed and about the brief encounter with the driver and I if there was anything else he wished me to do. He did not require anything else so I left the site.

Duane Altig

Metro

Solid Waste Facility Inspector
Solid Waste Compliance & Cleanup

503 797-1694

Fax: 503 813-7544

duane.altig@oregonmetro.gov

www.oregonmetro.gov

Metro | People places. Open Spaces.

From: Duane Altig
Sent: Monday, July 27, 2009 3:26 PM
To: Warren Johnson; Steve Kraten
Subject: Update

27JULY09 at 2:30 I called and spoke to David Wacker owner operator of Wacker Sanitary and the current owner of the piece of property located at 6433 NW St. Helens Rd. I asked Mr. Wacker about the yard debris that had recently been tipped on this property. He stated that he was tipping it there temporarily and then was going to reload it to either Wood Waste Management, Quick Stop Recycling or McFarlane's Bark. He added that he was under the impression that yard debris was not regulated by anyone. I informed him that Metro regulated all solid waste facilities within the region and that included yard debris reloads. I asked if his intention was to open a yard debris reload facility at this location and he stated that it was and maybe even a MRF. I informed him that he would first need to obtain a license to operate any solid waste facility from Metro. I gave him Warren Johnson's phone number and informed him that he was the person he needed to speak with if he wished to operate a solid waste facility within the Metro region.

I informed him that he was to discontinue any further tipping of yard debris at this location and that he was to also reload the material currently on site and take it to an appropriate facility. He stated that he would haul it to McFarlane's before the end of the week. He added that he would cease any further loads to the site.

He normally hauls yard debris on Tuesday, Wednesday and Thursdays only and stated that they would not be hauling YD this week. He estimated that there was approximately 40 to 50 cubic yards of yard debris on site.

I thanked him for his time and ended the call.

Duane Altig

Metro

Solid Waste Facility Inspector
Solid Waste Compliance & Cleanup

503 797-1694

Fax: 503 813-7544

duane.altig@oregonmetro.gov

www.oregonmetro.gov

Metro | People places. Open Spaces.

From: Duane Altig
Sent: Monday, July 27, 2009 11:28 AM

To: Warren Johnson; Steve Kraten
Subject: RE: Possible unregulated yard debris facility

Update for this site. Saturday (July 25th) I arrived at the site at approximately 9:40 AM and took up a position just north of the site with an unimpeded view of the subject site. I observed the site until 11:15 AM. During that time I did NOT observe any activity at the site. I also did NOT observe any additional waste loads tipped since the previous visit.

Monday July 27th at 8:40 AM I received a call from Steve Hilgedick, listed property owner, at which time he informed me that he no longer owns the property and that the new owner was David Wacker of Wacker Sanitary Services.

Shortly after receiving this call I drove to the site arriving at 9:15 and observed the site for 30 minutes. No activity was observed at this time.

Wacker Sanitary Service home office is located at 13105 SE 197th Ave Boring, OR 97089, Phone is 503-658-3347 or 503-820-1125. Wacker is currently franchised to the area east and across the Willamette from this particular site location. As suggested by Steve and the fact that a witness observed a packer truck tipping a load on a Thursday, I think I should revisit the site this Thursday morning (July 30th). The hope would be to actually witness this violation and document the parties involved.

Any suggestions would be appreciated.

I have not made contact with the Wacker company

Duane Altig

Metro
Solid Waste Facility Inspector
Solid Waste Compliance & Cleanup
503 797-1694
Fax: 503 813-7544
duane.altig@oregonmetro.gov

www.oregonmetro.gov
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From: Warren Johnson
Sent: Thursday, July 23, 2009 2:46 PM
To: Duane Altig
Subject: FW: Possible unregulated yard debris facility

FYI. Roy also received a complaint from the city of Portland regarding this site.

Please check out this site as soon as possible. Let me know what you find. Thanks.

Warren Johnson
Metro

503-797-1836

From: Steve Kraten
Sent: Thursday, July 23, 2009 11:04 AM
To: Warren Johnson
Cc: Roy Brower
Subject: Possible unregulated yard debris facility

Terrell just called. He says that there is an unfenced, unpaved (rock only) yard on Hwy 30 near Metro Central and next to A Bear Box where someone has dumped a number of loads of curbside compacted residential yard debris. We should probably have an inspector check it out.

Steve Kraten, Solid Waste Enforcement Coordinator
METRO
(503) 797-1678
steve.kraten@oregonmetro.gov

www.oregonmetro.gov

Metro | People places. Open spaces.

Wacker.04AUG09.dka.p01
Photo of recently tipped yard
debris load. Circled in yellow.



Wacker.04AUG09.dka.p02
Photo of recently tipped yard
debris load.



Wacker.04AUG09.dka.p03
Approaching driver of
compactor truck getting
prepared to tip yard debris



Wacker.04AUG09.dka.p04
Compactor truck tipping
yard debris.



Wacker.04AUG09.dka.p05
Compactor truck tipping
yard debris. Note Dave Wacker
name on truck



Wacker.04AUG09.dka.p06
Front view of compactor
truck and License Plate



YardDebris.23JULY09.dka.p01
Site facing NW.



YardDebris.23JULY09.dka.p02
Recently tipped yard debris
on back portion of site. Facing
north.



YardDebris.23JULY09.dka.p03
Recently tipped yard debris
on back portion of site. Facing
SW. Back of debris pile.



YardDebris.23JULY09.dka.p04
Recently tipped yard debris
on back portion of site.



YardDebris.23JULY09.dka.p05
Recently tipped yard debris
on back portion of site.



YardDebris.23JULY09.dka.p06
View of Metro Central from debris
site.



YardDebris.23JULY09.dka.p07
View of site facing south. A Bear
Box Company in background.



EXHIBIT D

Warren Johnson

From: Warren Johnson
Sent: Monday, August 17, 2009 11:44 AM
To: dswac2009@yahoo.com
Cc: Steve Kraten; Duane Altig; Roy Brower; Warren Johnson
Subject: Solid Waste Facility Requirements
Attachments: MRF Standards.ADM PROC.SHORT.pdf; YD Reload appform.pdf; MRF_Application_2008.pdf

Hello David. As we discussed on August 10, 2009, Metro regulates material recovery facilities and yard debris reload operations located within the Metro region. You are currently operating an unauthorized solid waste facility at your property located at 6433 NW St. Helens Rd in Portland. Therefore, you must immediately cease all deliveries of yard debris to that site and deliver all the debris currently stockpiled there to an authorized yard debris reload or composting facility. In order to operate a solid waste facility at the above referenced property, you must first apply for and obtain a Metro Solid Waste Facility License (a DEQ permit may also be required). Metro Code Chapter 5.01 governs the regulation of solid waste facilities within the Metro region. Chapter 5.01 can be found online at the following link:

http://library.oregonmetro.gov/files/chap501.effective_122408.pdf

In addition to the above web link, I have attached electronic copies of Metro's material recovery facility standards and its application forms for yard debris reload and material recovery facilities. Please let me know if you have any questions or require additional information. Thank you.

Warren Johnson, compliance supervisor
Solid waste compliance & cleanup
Metro
600 NE Grand Avenue
Portland, OR 97232
503-797-1836
503-813-7544 (fax)
warren.johnson@oregonmetro.gov

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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797



METRO

www.oregonmetro.gov

SOLID WASTE LICENSE APPLICATION

YARD DEBRIS RELOAD FACILITY



METRO SOLID WASTE FACILITY APPLICATION PACKET

METRO (FOR A SOLID WASTE LICENSE)

Issued:
June 2008

This packet contains an application for a Metro Solid Waste Facility License. You may also want to review a copy of the relevant sections of the Metro Code. The Metro Code can be accessed via the Metro web site at www.oregonmetro.gov. Solid waste facilities within the Metro boundary generally may operate only under the authorization of a License or Franchise.

Application for a new Solid Waste Facility License

Those wishing to apply for a new Metro Solid Waste Facility License must schedule a pre-application conference prior to submitting a final application form. Applicants should prepare for the pre-application conference by reviewing the application forms and drafting answers prior to the conference with Metro. To schedule the pre-application conference, contact Metro's Solid Waste & Recycling Department at (503) 797-1835. The purpose of the pre-application conference is to determine what parts of the Metro Solid Waste Facility Application you will need to submit, and to identify any potential issues specific to your proposal. Applications for new Licenses are generally granted or denied within 120 days of the filing of a complete application. (See Metro Code section 5.01.060.) The fee for filing a license application is \$300.

Renewal of an Existing License

Those wishing to renew an existing authorization without substantive changes to the current authorization must submit a completed *Renewal Application Form*, unless otherwise directed by Metro staff. License renewal applications must be submitted not less than 60 days prior to expiration of the existing license. Failure to submit applications in a timely fashion may result in a lapse of authority to operate. (See Metro Code section 5.01.087.) The fee for filing a license renewal application is \$300.

Change of Authorization to an Existing License

A change in authorization of an existing License requires an application for a formal License amendment. The applicant cannot implement the change of authorization until it has been approved by Metro. (See Metro Code section 5.01.095.) The fee for filing an application for a change of authorization or limits is \$100.

Change of Ownership or Control of an Existing License

To transfer ownership or control of an existing License an application for a formal License amendment is required. The applicant cannot transfer ownership or control of an existing License until it has been approved by Metro. (See Metro Code section 5.01.090.)



METRO

MAIL THIS APPLICATION TO:

DATE RECEIVED BY METRO:

Metro Finance and Administrative Services
Solid Waste Compliance and Cleanup
600 NE Grand Avenue
Portland, OR 97232-2736
(503) 797-1835

Date of Pre-Application Conference: _____

YARD DEBRIS RELOAD FACILITY
METRO SOLID WASTE LICENSE APPLICATION FORM

PART 1 – Standard License Application Information

Applicants applying to receive yard debris for reloading (other than composting) must provide the following information:

1. Applicant (Proposed Licensee)	
Facility Name:	
Company Name:	
Street Address:	
Mailing Address:	
City/State/Zip:	
Contact Person:	
Phone Number:	
Fax Number:	
E-mail Address:	

2. Proposed Licensee's Owner or Parent Company (provide information for all owners)	
Company Name:	
Address:	
City/State/Zip:	
Phone Number:	
Fax Number:	
E-mail Address:	

3. Site Operator (If different from Proposed Licensee)	
Company Name:	
Contact Person:	
Street Address:	
Mailing Address:	
City/State/Zip:	
Phone Number:	
Fax Number:	
E-mail Address:	

4. Site Description			
Tax Lot(s):	Section:	Township:	Range:

5. Land Use	
Present Land Use Zone:	
Is proposed use permitted outright?	
<input type="checkbox"/> If yes, attach a copy of the Land Use Compatibility Statement.	
Is a conditional use permit (CUP) necessary for the facility?	
<input type="checkbox"/> If yes, attach a copy of the CUP.	
Are there any land use issues presently pending?	
If yes, explain:	
Are any DEQ permits required?	
<input type="checkbox"/> If yes, list them and attach copies with this application. (See also, Attachment D requirements.)	
Are any other local permits required? If yes, list them and attach copies:	

6. Land Owner	
Is the applicant the sole owner of the property on which the facility is located?	<input type="checkbox"/> YES <input type="checkbox"/> NO (If you answer "NO", complete the rest of the information requested in this section and attach a copy of the Property Use Consent Form, signed by the owner(s) of the property.)
Name:	
Mailing Address:	
City/State/Zip:	
Phone Number:	

7. Public/Commercial Operations			
Will the facility be open to the public?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
Will the facility be open to non-affiliated commercial solid waste collectors?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
Will the facility be open to solid waste collection companies that collect waste from outside the boundary of Metro?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
Operating Hours and Traffic Volume:	PUBLIC	COMMERCIAL AFFILIATED	COMMERCIAL NON-AFFILIATED
Operating Hours			
Estimated Vehicles Per Day			

8. Solid Waste To Be Accepted and Activities Conducted			
For each material type accepted at the facility, list the expected posted tip fee: (attach additional pages if necessary)			
WASTES / MATERIALS TO BE ACCEPTED	EXPECTED TIP FEE		
Describe the purpose (activities to be performed and waste types to be received) of the proposed facility, include an estimate of the quantity of waste to be received annually.			
WASTE TYPE	PURPOSE	QUANTITY	
Solid Waste, and/or Solid Waste Residual from processing of Solid Waste, delivered to this facility will be reloaded for transport to the following facility or facilities: (Please list all facilities and include additional pages if necessary.)			
FACILITY NAME	WASTE TYPE	WASTE QUANTITY	PURPOSE *

* For example: Disposal, Inert Fill, or Useful Material

PART 2 - Reload Process Management (License application form continued)

Applicants proposing to conduct yard debris reloading must provide the following information:

1. Reloading practices. (Attach additional pages as necessary)

<p>a) A detailed description of how the materials will be managed and the type of equipment that will be used (from delivery to reload and transport to a processing facility):</p>	
<p>b) Methods of measuring and keeping records of incoming loads of yard debris and other materials:</p>	

2. Storm water management. A description of how storm water is managed at the facility, including:

<p>a) A description of how precipitation run-on is diverted around the yard debris storage area:</p>	
<p>b) A description of how run-off from the facility is controlled:</p>	

3. Anticipated quantity of yard debris and other materials to be accepted monthly and annually.

BY WASTE TYPE:		Monthly Cubic Yards or Tons	Annually Cubic Yards or Tons
• Yard Debris:	Compost:		
	Hogged fuel:		
• Clean Wood Waste:	Compost:		
	Hogged fuel:		
• Painted or Treated Wood Waste:	Hogged fuel:		
• Other:			

4. Odor Minimization Plan. The applicant must provide an odor minimization plan that describes how odors will be minimized, managed and monitored at the facility. The plan must include:

<p>a) Methods for minimizing and controlling odors from loads received and any chipping or grinding activities at the facility (including rotting grass that is generating odors upon delivery).</p>
<p>b) Procedures for receiving, recording, replying to, and remedying odor complaints or odor problems at the facility.</p>
<p>c) Procedures for avoiding delay in processing and managing yard debris during severe weather conditions.</p>

5. Operating Plan. The applicant is required to develop and maintain an operating plan for Metro review and approval prior to approval of the application. This section lists the procedures that must be included in the required facility operating plan, and submitted with the completed license application, subject to any additional elements as required in the license, if one is approved and issued. The operating plan shall describe:

a) Procedures for inspecting loads.

- Inspecting incoming loads for the presence of prohibited wastes.
- A set of objective criteria for accepting and rejecting loads.

b) Procedures for processing loads.

- Processing authorized solid wastes, including any chipping or grinding, and a description of how painted or treated wood waste will be kept separate from yard debris compost feedstocks.
- Minimizing storage times, avoiding delay in processing and managing yard debris and landscape waste during all weather conditions.
- Storing authorized solid wastes. Describe the maximum length time for retaining yard debris and grass clippings on-site.

c) Procedures for managing prohibited wastes. Describe procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the facility. The plan shall include procedures for managing:

- Hazardous wastes.
- Other prohibited solid wastes (i.e. food waste, putrescible waste).

d) Procedures for emergencies. Describe procedures to be followed in case of fire or other emergency.

e) Procedures for preventing and controlling nuisances, including noise, vectors, dust, and litter. Include a description of how you will encourage delivery of waste in covered loads.

f) Procedures for fire prevention, protection, and control measures used at the facility.

6. Applicant qualifications and experience. Provide a description of the relevant experience and qualifications of the yard debris reload facility owner and operator. (Attach additional pages as needed.)

PART 3 - Standard Attachments (License application form continued)

Applicants that have previously submitted copies of permits, site plans, facility design plans, or other attachments required herein, are not required to re-submit such documents if the documents on file at Metro are current.

Submit the following attachments:

ATTACHMENT A: SITE PLAN

Scaled maps, drawings or diagrams showing the location of the facility at a scale no smaller than one inch equals 100 feet. The following information must be provided:

- Boundaries of the facility.
- Property boundaries, if different.
- Boundaries of the sorting, processing or reload area.
- Location of all buildings on the property and other pertinent information with respect to the operation of the facility (e.g. scale locations, water supply, fencing, access roads, paved areas, etc.).
- Location of receiving, processing, and storage areas for solid waste, source-separated recyclable materials, recovered materials, waste residuals, hazardous waste, and other materials.

ATTACHMENT B: GENERAL FACILITY DESIGN PLAN

The following information must be provided:

- A description of any barriers that the facility has (or will have) to prevent unauthorized entry and dumping (fencing, gates, locks).
- A description of the facility signage to include: name of facility, address of facility, emergency number, operating hours, fees and charges, Metro's name and telephone number (503) 797-1650, and a list of authorized and prohibited wastes.
- The estimated capacity (cubic yards) of the facility storage area(s) for incoming solid waste waiting to be processed.
- The estimated capacity (cubic yards) for storage of recovered materials.
- On-site traffic flow patterns, including user type designation.

ATTACHMENT C: INSURANCE

Include proof of the following types of insurance, covering the applicant, its employees, and agents:

- Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage.
- Automobile bodily injury and property damage liability insurance.
- Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- Metro, its elected officials, departments, employees, and agents must be named as ADDITIONAL INSURED.

ATTACHMENT D: DEQ PERMIT APPLICATIONS AND INFORMATION

The following information must be provided:

- A duplicate copy of all permits or applications for necessary DEQ permits and any other information required by or submitted to DEQ, including closure plans, financial assurance for the costs of closure of the facility, and conditional use permit or land use compatibility statement, if applicable.

ATTACHMENT E: OTHER REQUIRED PERMITS

The following information must be provided:

- A copy of any required federal, state, county, city or other permits, licenses, or franchises that have been granted or issued, not including materials required by Attachment D, or a copy of any applications for such other permits, licenses, or franchises. Copies of correspondence pertaining to such permits, licenses or franchises may be requested.

ATTACHMENT F: CLOSURE PLAN AND FINANCIAL ASSURANCE

- If a closure plan and financial assurance are required by DEQ, copies of these documents should be included with the application per Attachment D.
- If DEQ did **not** require a closure plan for the facility, attach a closure document describing closure protocol.
- If DEQ did **not** require any financial assurance for the costs of closure of the facility, attach proof of financial assurance for the costs of closure of the facility.

ATTACHMENT G: LAND USE COMPATIBILITY STATEMENT (LUCS)

- If required by Section 5 of Part 1 of this application.

ATTACHMENT H: PROPERTY USE CONSENT FORM

- If required by Section 6 of Part 1 of this application.

Applicant Certification

This form cannot be processed without a signature

I certify under penalty of law that the information contained in this application is true and correct to the best of my knowledge. I agree to notify Metro within 10 days of any change in the information submitted as a part of this application.

Signature and title of person completing this application:

SIGNATURE _____ TITLE _____

PRINT NAME _____

DATE _____ PHONE _____

BM:bj
M:\vm\vegaff\projects\Forms\Application Forms\Solid Waste Facility\Solid Waste License Forms\YD Reload appform.doc

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797



METRO

www.metro-region.org

SOLID WASTE LICENSE APPLICATION

NON-PUTRESCIBLE WASTE MATERIAL RECOVERY FACILITY



METRO SOLID WASTE FACILITY LICENSE APPLICATION PACKET (FOR A SOLID WASTE LICENSE)

**Issued:
June 2008**

This packet contains an application for a Metro Solid Waste Facility License. You may also want to review the relevant sections of the Metro Code. The Metro Code can be accessed via the Metro web site at www.oregonmetro.gov. Solid waste facilities within the Metro boundary generally may operate only under the authorization of a License or Franchise.

Application for a new Solid Waste Facility License

Those wishing to apply for a new Metro Solid Waste Facility License must schedule a pre-application conference prior to submitting a final application form. Applicants should prepare for the pre-application conference by reviewing the application forms and drafting answers prior to the conference with Metro. To schedule the pre-application conference, contact Metro's Solid Waste & Recycling Department at (503) 797-1835. The purpose of the pre-application conference is to determine what parts of the Metro Solid Waste Facility License Application you will need to submit, and to identify any potential issues specific to your proposal. Applications for new licenses are generally granted or denied within 120 days of the filing of a complete application. (See Metro Code section 5.01.060.) The fee for filing a license application is \$300.

Renewal of an Existing License

Those wishing to renew an existing authorization without substantive changes to the current authorization must submit a completed *Renewal Application Form*, unless otherwise directed by Metro staff. License renewal applications must be submitted not less than 60 days prior to expiration of the existing license. Failure to submit applications in a timely fashion may result in a lapse of authority to operate. (See Metro Code section 5.01.087.) The fee for filing a license renewal application is \$300.

Change of Authorization to an Existing License

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Change of Ownership or Control of an Existing License

To transfer ownership or control of an existing license, an application for a formal license amendment is required. The applicant cannot transfer ownership or control of an existing license until it has been approved by Metro. (See Metro Code section 5.01.090.)



METRO

MAIL THIS APPLICATION TO:

DATE RECEIVED BY METRO:

Metro Finance and Administrative Services
Solid Waste Compliance and Cleanup
600 NE Grand Avenue
Portland, OR 97232-2736
(503) 797-1835

Date of Pre-Application Conference: _____

MATERIAL RECOVERY FACILITY METRO SOLID WASTE LICENSE APPLICATION FORM

PART 1 – Standard License Application Information

Applicants applying to conduct material recovery must provide the following information:

1. Applicant (Proposed Licensee)	
Facility Name:	
Company Name:	
Street Address:	
Mailing Address:	
City/State/Zip:	
Registered Agent	
Contact Person:	
Phone Number:	
Fax Number:	
E-mail Address:	

2. Proposed Licensee's Owner or Parent Company (provide information for all owners)	
Name:	
Address:	
City/State/Zip:	
Phone Number:	
Fax Number:	
E-mail Address:	

3. Site Operator (if different from Proposed Licensee)

Company Name:	
Contact Person:	
Street Address:	
Mailing Address:	
City/State/Zip:	
Phone Number:	
Fax Number and E-mail Address:	

4. Site Description

Tax Lot(s):	Section:	Township:	Range:
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5. Land Use

Present Land Use Zone:	
Is proposed use permitted outright?	
<input type="checkbox"/> If yes, attach a copy of a completed Metro or DEQ Land Use Compatibility Statement. (See also, Attachment F requirements)	
Is a conditional use permit (CUP) necessary for the facility?	
<input type="checkbox"/> If yes, attach a copy of the CUP.	
Are there any land use issues presently pending?	
If yes, explain:	
Are any DEQ permits required?	
<input type="checkbox"/> If yes, list them and attach copies with this application. (See also, Attachment G requirements)	
Are any other local permits required? If yes, list them (see Attachment H requirements).	

6. Land Owner

Is the applicant the sole owner of the property on which the facility is located?	<input type="checkbox"/> YES	<input type="checkbox"/> NO (If you answer "NO", complete the rest of the information requested in this section and attach a copy of the Property Use Consent Form, signed by the owner(s) of the property. See Attachment J)
Name of Property Owner:		
Mailing Address:		
City/State/Zip:		
Phone Number:		

7. Public/Commercial Operations			
Will the facility be open to the public?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
Will the facility be open to non-affiliated commercial solid waste collectors?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
Will the facility be open to solid waste collection companies that collect waste from outside the boundary of Metro?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
Operating Hours and Traffic Volume:	PUBLIC	COMMERCIAL AFFILIATED	COMMERCIAL NON-AFFILIATED
Operating Hours			
Estimated Vehicles Per Day			

8. Solid Waste To Be Accepted and Activities Conducted			
For each material type accepted at the facility, list the expected posted public tip fee: (attach additional pages if necessary)			
WASTES / MATERIALS TO BE ACCEPTED	EXPECTED PUBLIC TIP FEE		
Describe the purpose (activities to be performed and waste types to be received) of the proposed facility, include an estimate of the quantity of waste to be received annually.			
WASTE TYPE	PURPOSE	QUANTITY	
Solid Waste, and/or Solid Waste Residual from processing of Solid Waste, delivered to this facility will be reloaded for transport to the following facility or facilities: (Please list all facilities and include additional pages if necessary.)			
FACILITY NAME	WASTE TYPE	WASTE QUANTITY	PURPOSE *

* For example: Disposal, Inert Fill, or Useful Material

a) Provide the name, address and function of all subcontractors involved in the facility operations:

NAME	ADDRESS	FUNCTION

b) List the anticipated quantity of wastes to be accepted annually.

BY GENERATOR TYPE:

	Tons Received	Tons Recovered	Tons Residual
• Commercial:			
• Industrial:			
• Residential:			
TOTAL			

BY WASTE TYPE:

Will you recover materials from this waste?

	Tons	Will you recover materials from this waste?		Estimate of the maximum and typical lengths of time required to process each day's receipt of each waste / material type:
		YES	NO	
• Non-Putrescible Wastes:				
• Source-Separated Recyclables:				
• Source-Separated Yard Debris:				
• Special Wastes:				
• Inerts:				
• Petroleum Contaminated Soil:				
• Other:				

PART 2 – Standard Attachments to License Application (License application form continued)

- All of the following attachments (Attachments A – J) are required and must be submitted in order for a license application to be considered complete. Each attachment must be clearly labeled.
- Application submittals such as facility design, building plans, site plans and specifications must be prepared, as appropriate, by persons licensed in engineering, architecture, landscape design, traffic engineering, air quality control, and design of structures.
- Applicants who have previously submitted copies of permits, site plans, facility design plans, or other attachments required herein, are not required to re-submit such documents if the documents on file at Metro are current.

ATTACHMENT A: SITE PLAN	
The applicant must submit a facility site plan that includes scaled maps and drawings showing the location of the facility at an appropriate scale, and no smaller than one inch equals 30 feet. The following information must be provided:	
(1)	Boundaries of the facility.
(2)	Property boundaries, if different.
(3)	Location of all buildings on the property (existing and proposed) and other pertinent information with respect to the operation of the facility, to include: <ul style="list-style-type: none">a) scale locationb) scale housec) sorting line and other major materials recovery equipmentd) fencing and gatese) access roadsf) paved areas.
(4)	Location of receiving, processing, reload and storage areas, as applicable, for solid waste, source-separated recyclable materials, recovered materials, waste residuals, exterior stockpiles, hazardous waste, and other materials.
(5)	Identify any exterior stockpile footprints, the type of materials and the maximum height of each exterior material stockpile.
(6)	Identify water sources for fire suppression.
(7)	Designate the load checking areas on the facility site plan.
(8)	Designate the location for the storage of prohibited wastes removed during the load checking process that is separately secured or isolated. Containment areas shall be covered and enclosed and constructed to prevent leaking and contamination
(9)	Designate on-site traffic flow patterns.

(10) Identify where the sign(s) will be located on the facility site plan.

Signs must be posted at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information:

- General facility information
 - Name of the facility
 - Address of the facility;
 - Emergency telephone number for the facility;
 - Operating hours during which the facility is open for the receipt of authorized waste;
 - Fees and charges for public customers;
 - Metro's name and telephone number (503) 234-3000; and
 - A list of authorized and prohibited wastes.
- Vehicle / traffic flow information or diagram.
- Covered load requirements.

ATTACHMENT B: FACILITY DESIGN PLAN AND REPORT

The applicant shall submit a facility design plan and report that address the following:

(1) Dust, airborne debris and litter.

- a) Submit a proposed design providing a roofed structure enclosed on at least three sides and an impervious surface (e.g. asphalt, concrete) for the tipping floor, processing (sorting) areas, storage areas and reloading areas.
- b) Describe control measures to prevent fugitive dust, airborne debris and litter. Describe how the facility design will provide for shrouding and dust prevention for the receiving area, processing area, storage area, reload area, and all dry waste processing equipment and all conveyor transfer points where dust is generated.
- c) Describe any additional facility design measures and procedures for the control of dust, windblown materials, airborne debris, litter and for the handling of the waste in the case of major processing facility breakdown.

(2) Facility capacity.

- a) Provide engineering plans, reports and specifications to document that the size and configuration of the facility grounds, building and equipment, including the facility layout, drainage structures, building design, and major facility equipment, processing systems and storage areas are of sufficient capacity to accommodate seasonal throughput of all materials that will be delivered to and generated by the facility.
- b) Provide the estimated capacity (cubic yards) of the facility storage area(s) for incoming solid waste waiting to be processed, the estimated capacity (cubic yards) for storage of recovered materials, and the estimated capacity (cubic yards) for storage of processing residual.

(3) Fire prevention.

Submit proof of compliance with local and state fire codes.

(4) Adequate vehicle accommodation.

Provide documentation to demonstrate that adequate on-site area at the facility's entrance, scales, loading and unloading points and exit points shall be provided to allow the number and types of vehicles expected to use the facility during peak times to safely queue off the public roads and right-of-way.

(5) Water contaminated by solid waste and solid waste leachate.

Submit a DEQ (or equivalent) approved plan with pollution control measures to protect surface and ground waters, including runoff collection and discharge and equipment cleaning and washdown water.

ATTACHMENT C – MATERIAL RECOVERY PRACTICES Describe how material recovery will be conducted at the facility. Attach as many additional pages as necessary to address each of the following:

- (1) A detailed description of how the proposed facility will further recycling or materials recovery processing within the Metro region.
- (2) A detailed description of the methods you will use for measuring and keeping records of incoming solid waste.
- (3) A detailed description of the methods you will use to distinguish loads of incoming source-separated recyclables from other materials.
- (4) A detailed description of the steps you will take to recover materials from solid waste. Include the material recovery methods and equipment to be used on site (e.g., sorting lines, hand picking, magnets, etc.)
- (5) The general markets for the materials recovered at the facility.
- (6) A detailed description of the methods you will use for measuring and keeping records of materials received, recovered from processing, and solid waste disposed - consistent with Metro's reporting requirements.

ATTACHMENT D: OPERATING PLAN

The applicant is required to develop and submit an operating plan for review and approval by the Manager of the Metro Solid Waste Regulatory Affairs Division. This section lists the procedures that must be included in the required facility operating plan. A proposed facility operating plan must be submitted with the completed license application subject to any additional elements as required in the license - if one is approved and issued. The operating plan shall describe at a minimum:

- (1) The types of solid wastes to be accepted and handled at the facility.
- (2) A detailed description of how you will distinguish and manage loads of incoming source-separated recyclables from other materials.

- (3) Procedures for inspecting loads. The operating plan shall establish:
 - a) Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes.
 - b) A set of objective criteria for accepting and rejecting loads.
 - c) An asbestos testing protocol for all material that appears as if it may contain asbestos.
- (4) Procedures for processing and storage of loads. The operating plan shall establish procedures for:
 - a) Processing of all authorized solid wastes.
 - b) Reloading and transfer of authorized solid wastes.
 - c) Managing stockpiles.
 - d) Storing authorized solid wastes
 - e) Minimizing storage times, and avoiding delay in processing and managing of all authorized solid wastes and recovered materials.
- (5) Procedures for rejecting or managing prohibited wastes. The operating plan shall describe procedures for rejecting, managing reloading and transporting to appropriate facilities or disposal sites any prohibited or unauthorized wastes discovered at the facility. The plan shall include procedures for managing:
 - a) Hazardous wastes.
 - b) Other prohibited solid wastes (e.g., putrescible waste, special waste).
 - c) Procedures and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility.
- (6) Procedures for odor prevention. The operating plan shall establish procedures for preventing all objectionable odors for being detected off the premises of the facility. The plan must include:
 - a) A management plan that will be used to monitor and manage all objectionable odors of any derivation including malodorous loads delivered to the facility.
 - b) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.
- (7) Procedures for emergencies. The operating plan shall describe procedures to be followed in case of fire or other emergency.
- (8) Procedures for preventing and controlling nuisances, including noise, vectors, dust, litter, and odors. Include a description of how you will encourage delivery of waste in covered loads.
- (9) Procedures for fire prevention, protection, and control measures used at the facility.

ATTACHMENT E: INSURANCE

Include proof of the following types of insurance, covering the applicant, its employees, and agents:

- (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage.
- (2) Automobile bodily injury and property damage liability insurance.
- (3) Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- (4) Metro, its elected officials, departments, employees, and agents must be named as ADDITIONAL INSURED.

ATTACHMENT F: LAND USE COMPATIBILITY STATEMENT (LUCS)

The following information must be provided:

A copy of a completed Metro LUCS or DEQ LUCS.

ATTACHMENT G: DEQ PERMIT APPLICATIONS AND INFORMATION

The following information must be provided:

A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ, including closure plans, financial assurance for the costs of closure of the facility, and conditional use permit or land use compatibility statement, if applicable.

ATTACHMENT H: OTHER REQUIRED PERMITS

The following information must be provided:

A copy of any required federal, state, county, city or other permits, licenses, or franchises that have been granted or issued, not including materials required by Attachment G, or a copy of any applications for such other permits, licenses, or franchises. Copies of correspondence pertaining to such permits, licenses or franchises may be requested.

ATTACHMENT I: CLOSURE PLAN AND FINANCIAL ASSURANCE

The following information must be provided

- (1) If a closure plan and financial assurance are required by DEQ, copies of these documents should be included with the application per Attachment G.

(2) If DEQ does **not** require a closure plan for the facility, attach a closure document describing closure protocol and associated costs. Closure means those activities associated with restoring the site to its condition prior to engaging in the licensable activity. Closure may include, but is not limited to removal of all on-site solid waste stockpiles accumulated after being issued a Metro Solid Waste Facility License. The Closure protocol is the written protocol that specifies the activities required to properly close the facility and cease further solid waste activities.

(3) If DEQ does **not** require any financial assurance for the costs of closure of the facility, attach proof of financial assurance for the costs of closure of the facility. Cost of closure means the costs associated with restoring the site to its condition prior to engaging in the licensable activity.

These costs may include but are not limited to:

- a) the cost to load and transport accumulated solid waste stockpiles to an authorized disposal site or recycling facility;
- b) the cost to "tip" the waste at an authorized landfill or recycling facility; and
- c) other related costs such as site grading or additional disposal costs associated with restoring the site.

Examples of acceptable forms of financial assurance include, but are not limited to the following: surety bond, irrevocable letter of credit, closure insurance, escrow account.

If the DEQ does not issue a permit or require financial assurance, then the COO may waive the requirement for financial assurance if the applicant provides written documentation demonstrating that the cost to implement the closure plan will be less than \$10,000.

ATTACHMENT J: PROPERTY USE CONSENT FORM

If required by Section 6 of Part 1 of this application.

I certify under penalty of law that the information contained in this application is true and correct to the best of my knowledge. I agree to notify Metro within 10 days of any change in the information submitted as a part of this application.

Signature and title of person completing this application:

SIGNATURE _____ TITLE _____

PRINT NAME _____

DATE _____ PHONE _____

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METRO

**SOLID WASTE
ADMINISTRATIVE PROCEDURE
(AND PERFORMANCE STANDARDS)**

**AP NO. 501
Section 7**

**Standards for
Non-Putrescible Mixed Waste Material Recovery Facilities and
Non-Putrescible Mixed Waste Reload Facilities**

7.1 Policy and Legal Authority

- 7.1.1 Ordinance No. 07-1138 adopted by the Metro Council on February 22, 2007 amended the Metro Code Chapters 5.01 and 5.05 to ensure that mixed non-putrescible waste material recovery facilities and reload facilities are operated in accordance with Metro administrative procedures and performance standards issued by the Chief Operating Officer
- 7.1.2 These administrative procedures and performance standards are published under the authority of Metro Code section 5.01.132, which directs the Chief Operating Officer to issue administrative procedures and performance standards governing the obligations of licensees and franchisees under Chapter 5.01 and are in addition to all requirements and provisions in Metro Code Chapter 5.01.
- 7.1.3 These administrative procedures and performance standards are organized into the following parts:

General Administration

Definitions.
Applicability.
Variances.

Specific Performance Goals, Performance Standards and Operating Conditions

Issue Specific Performance Goals.
Facility Design Requirements.
Performance Standards and Standard Operating Conditions (license or franchise requirements)

General Administrative and Legal Obligations for Operating

Standard administrative and legal obligations included in a license

Attachment A – Standard Operating Condition Templates

Material recovery facility license or franchise requirements.
Reload facility license or franchise requirements.

Attachment B – Standard Application Form Templates

Material recovery facility application form.
Reload facility application form.

7.2 General Administration

7.2.1 Definitions

See Metro Code Chapter 5.01.010 for all applicable definitions.

7.2.2 Applicability

7.2.2.A New facilities. These administrative procedures and performance standards shall apply to all new non-putrescible mixed waste material recovery facilities and non-putrescible mixed waste reload facilities

7.2.2.B Existing facility phase-in and license/franchise renewal requirements. Upon adoption of the standards, existing facilities will have two years (until April, 2009) to demonstrate compliance with the requirement that all mixed non-putrescible waste tipping, sorting and reloading activities must occur on an asphalt or concrete surface and inside a roofed building that is enclosed on at least three sides. Other than that requirement, no additional design requirements will be required for existing facilities. However, any new or revised operating requirements will become part of a facility replacement license or franchise upon renewal for all facilities

7.2.3 Variances

7.2.3.A The Chief Operating Officer, upon recommendation of the Solid Waste and Recycling Department Director, may grant specific variances from particular requirements of the performance standards to applicants for licenses or to licensees upon such conditions as the Chief Operating Officer may deem necessary to protect public health, safety and welfare, if the Chief Operating Officer finds that the purpose and intent of the particular requirement can be achieved without compliance and that compliance with the particular requirement:

7.2.3.A.1 Is inappropriate because of conditions beyond the control of the applicant, or licensee requesting the variance; or

7.2.3.A.2 Due to special physical conditions or causes, will be rendered extremely burdensome or highly impractical.

7.2.3.B A variance must be requested by a license applicant, or a licensee, in writing and state in a concise manner facts to show cause why such variance should be granted. The Director of the Solid Waste and Recycling Department may make such investigation as the Director deems necessary and shall make a recommendation to the Chief Operating Officer to approve or deny the variance coincident with any recommendation made on approval or denial of any license application; or, upon a request for variance from an existing licensee, within 60 days after receipt of the variance request.

7.2.3.C A request for a variance shall not substitute for an application that would otherwise be required under Section 5.01.045 of the Metro Code.

7.2.3.D If the Chief Operating Officer denies a variance request, the Director of the Solid Waste and Recycling Department shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.

7.2.3.E If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six months from the date of denial.

7.3 Specific Performance Goals, Performance Standards and Operating Conditions

This section identifies issue specific facility performance goals and the corresponding performance standards and operating conditions (license or franchise requirements).

7.3.1 Material Recovery

7.3.1.A Specific Performance Goal

7.3.1.A.1 Facilities that perform material recovery must be designed and operated to achieve the level of material recovery from mixed non-putrescible waste as specified in Metro Code.

7.3.1.A.2 Facility design and operations shall ensure that unprocessed mixed non-putrescible wastes and recyclables are protected from contamination from other solid wastes or degradation from wind and precipitation.

7.3.1.B Design requirement (to be addressed in application)

7.3.1.B.1 Describe how material recovery will be conducted at the facility. For example:

7.3.1.B.1.a waste sources (e.g. commercial, residential), expected incoming tonnage, and characteristics, and expected tons recovered, including commodities, and tons of waste to be disposed;

7.3.1.B.1.b the material recovery methods and equipment to be used on site (e.g., sorting lines, hand picking, magnets, etc.) ; and

7.3.1.B.1.c the general markets for the materials recovered at the facility (subject to confidential information provisions in Section 2 X).

7.3.1.B.2 Submit a proposed facility design providing asphalt or concrete surfaces and a roofed building that is enclosed on at least three sides for the tipping floor, processing (sorting) areas, storage and reloading areas.

7.3.1.C Performance Standards and Operating Requirements

7.3.1.C.1 The facility shall perform material recovery on mixed non-putrescible wastes. Recovery must be performed at no less than the minimum level stipulated in Metro Code Chapter 5.01 (at least 25% by weight of non-putrescible waste accepted at the facility).

7.3.1.C.2 Source-separated recyclable materials, including source-separated yard debris or wood wastes brought to the facility shall not be mixed with any other solid wastes.

7.3.1.C.3 Source-separated recyclable materials may not be disposed of by incineration or landfilling.

7.3.1.C.4 All mixed non-putrescible waste tipping, storage, sorting and reloading activities must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are

moved under cover prior to processing, or reloading within 12 hours of receipt, or by the end of the business day, whichever is earlier.

- 7.3.1.C.5 Mixed non-putrescible solid waste shall at all times be kept physically separated from, and shall not be mixed or allowed to commingle at any time with source-separated recyclable materials, including wood waste, yard debris and other recyclables.

7.3.2 Reloading non-putrescible waste

7.3.2.A Specific Performance Goal

- 7.3.2.A.1 Non-putrescible waste reload facilities shall be designed and operated to assure that the reloading and transfer of non-putrescible waste to a Metro authorized processing facility is conducted rapidly and efficiently.
- 7.3.2.A.2 Facility design and operations shall ensure that unprocessed non-putrescible wastes and recyclables are protected from contamination from other solid wastes or degradation from wind and precipitation.

7.3.2.B Design requirement (to be addressed in application)

- 7.3.2.B.1 Submit a facility design that supports the rapid and efficient reloading of solid waste. Describe the equipment and methods that will be used.
- 7.3.2.B.2 Submit a proposed design providing asphalt or concrete surfaces and a roofed structure, that is enclosed on at least three sides for the tipping floor, storage and reloading areas.

7.3.2.C Performance Standards and Operating Requirements

- 7.3.2.C.1 All mixed non-putrescible waste must be reloaded and transferred to a Metro authorized facility that conducts material recovery.
- 7.3.2.C.2 All unprocessed mixed non-putrescible waste must be removed from the site within 48 hours after it has been received.
- 7.3.2.C.3 All mixed non-putrescible waste tipping, storage and reloading activities must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover prior to reloading, within 12-hours of receipt, or by the end of the business day, whichever is earlier.

7.3.3 Dust, airborne debris and litter

7.3.3.A Specific Performance Goal

- 7.3.3.A.1 Minimize and mitigate the generation of dust, airborne debris and litter on-site and prevent its migration beyond property boundaries.

7.3.3.B Design requirement (to be addressed in application)

- 7.3.3.B.1 Submit a proposed design providing a roofed structure enclosed on at least three sides for the tipping floor, processing (sorting)

areas, and reloading areas. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover for processing within 12-hours of receipt or the end of the business day whichever is earlier.

7.3.3.B.2 Describe control measures to prevent fugitive dust, airborne debris and litter. The design shall provide for shrouding and dust prevention for the receiving area, processing area, reload area, and all dry processing equipment and all conveyor transfer points where dust is generated.

7.3.3.B.3 Provide a discussion of any additional facility design measures and procedures for the control of dust, windblown materials, airborne debris, litter and for the handling of the waste in the case of major processing facility breakdown.

7.3.3.C Performance Standards and Operating Requirements

7.3.3.C.1 The facility shall be operated in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries. The facility shall:

Take reasonable steps, including signage, to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.

7.3.3.C.2 Maintain and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.

Maintain, and operate all access roads, receiving, processing (including grinding), storage, and reload areas in such a manner as to minimize and mitigate dust and debris from being generated on-site and prevent such dust and debris from blowing or settling off-site.

7.3.3.C.3 Keep all areas within the site and all vehicle access roads within 1/4 mile of the site free of litter and debris generated directly or indirectly as a result of the facility's operation.

7.3.3.C.4 All mixed non-putrescible waste tipping, storage, sorting and reloading activities must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover prior to processing within 12-hours of receipt.

7.3.3.C.5 Mixed non-putrescible waste and processing residual may not be stored unless it is on an impervious surface (e.g. asphalt or concrete) within a covered building or alternatively, inside water tight covered or tarped containers or within covered or tarped transport trailers.

7.3.3.C.6 On-site facility access roads shall be maintained to prevent or control dust and to prevent or control the tracking of mud off-site.

7.3.4 Facility capacity

7.3.4.A Specific Performance Goal

7.3.4.A.1 The operational capacity of the facility or site shall not be exceeded.

7.3.4.B Design requirement (to be addressed in application)

7.3.4.B.1 Provide engineering plans/reports and specifications to document that the size and configuration of the facility grounds, building and equipment, including the facility layout, drainage structures, building design, and major facility equipment, processing systems and storage areas are of sufficient capacity to accommodate seasonal throughput of all materials that will be delivered to and generated by the facility.

7.3.4.C Performance Standards and Operating Requirements

7.3.4.C.1 Applicable standards are addressed in other sections.

7.3.5 Storage and exterior stockpiles

7.3.5.A Specific Performance Goal

7.3.5.A.1 Stored materials and solid wastes shall be suitably managed, contained and removed at sufficient frequency to avoid creating nuisance conditions, vector or bird attraction or harborage, or safety hazards.

7.3.5.B Design requirement (to be addressed in application)

7.3.5.B.1 The facility site plan shall identify stockpile footprints, the type of materials and the maximum height of each material stockpile.

7.3.5.B.2 The facility design must include processing systems and storage areas of sufficient capacity to accommodate seasonal throughput of all materials that are delivered to and generated by the facility.

7.3.5.C Performance Standards and Operating Requirements

7.3.5.C.1 Exterior stockpiles shall be positioned within footprints identified on the facility site plan. Stored materials and solid wastes shall be suitably managed, contained and removed at sufficient frequency to avoid creating nuisance conditions, vector or bird attraction or harborage, or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.

7.3.5.C.2 Materials may not be stockpiled for longer than 180 days (6 months). Exceptions may be granted provided the facility has received written authority to store materials for longer periods of time based on a demonstrated need and the materials will be used productively and provided that such stockpiles will not create nuisances, health, safety or environmental problems.

7.3.5.C.3 Mixed non-putrescible waste or processing residual may not be stored on-site unless it is on an impervious surface (e.g. asphalt or concrete) within a covered building or alternatively, inside water tight covered or tarped containers or within covered or tarped

transport trailers.

- 7.3.5.C.4 All non-putrescible waste processing residual shall at all times be kept physically separated from, and shall not be mixed or allowed to commingle at any time with, other source-separated recyclable or recovered materials, including wood waste, yard debris and other recyclables.

7.3.6 Fire prevention

7.3.6.A Specific Performance Goal

- 7.3.6.A.1 Provide adequate fire prevention, protection, and control measures.

7.3.6.B Design requirement (to be addressed in application)

- 7.3.6.B.1 Submit proof of compliance with local and state fire codes. Stockpiles shall be located, sized and configured as required by local fire authorities.
- 7.3.6.B.2 Identify water sources for fire suppression and layout that allows for isolation of potential heat sources.

7.3.6.C Performance Standards and Operating Requirements

- 7.3.6.C.1 The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.

7.3.7 Qualified operator

7.3.7.A Specific Performance Goal

- 7.3.7.A.1 Provide a qualified operator on-site during all hours of operation to carry out the functions required by the license and operating plan.

7.3.7.B Design requirement (to be addressed in application)

- 7.3.7.B.1 Not applicable.

7.3.7.C Performance Standards and Operating Requirements

- 7.3.7.C.1 The facility shall, during all hours of operation, provide a qualified and competent operating staff.
- 7.3.7.C.2 Facility personnel, as relevant to their job duties and responsibilities, shall be familiar with the relevant provisions of the license and the relevant procedures contained within the facility's operating plan.
- 7.3.7.C.3 A qualified operator must be an employee of the facility with training and authority to reject prohibited loads and properly manage prohibited waste that is inadvertently received.

7.3.8 Prohibited waste

7.3.8.A Specific Performance Goal

- 7.3.8.A.1 Prevent the acceptance of prohibited waste, including but not

- limited to putrescible waste, hazardous waste and asbestos.
 - 7.3.8.A.2 Prohibited waste shall be properly managed and disposed when inadvertently received.
- 7.3.8.B Design requirement (to be addressed in application)
 - 7.3.8.B.1 Designate a load checking area on the facility site plan and a location for the storage of prohibited wastes removed during the load checking process that is separately secured or isolated.
 - 7.3.8.B.2 Containment areas shall be covered and enclosed and constructed to prevent leaking and contamination.
- 7.3.8.C Performance Standards and Operating Requirements
 - 7.3.8.C.1 The facility shall provide qualified operators on-site during all hours of operation.
 - 7.3.8.C.2 The facility shall not accept prohibited waste, including but not limited to putrescible waste, hazardous waste and asbestos. Prohibited loads must be rejected upon discovery. Prohibited waste shall be properly managed and disposed when inadvertently received.
 - 7.3.8.C.3 The facility shall implement a load checking program to prevent the acceptance of waste which is prohibited by the license. This program must include at a minimum:
 - 7.3.8.C.3.a Visual inspection. Ensure that as each load is tipped, it is visually inspected by a qualified operator to prevent the acceptance of waste that is prohibited by the license; and
 - 7.3.8.C.3.b A secured or isolated containment area for the storage of prohibited wastes that are inadvertently received. Containment areas shall be covered and enclosed to prevent leaking and contamination.
 - 7.3.8.C.4 Records of the training of personnel in the recognition, proper handling, and disposition of prohibited waste shall be maintained in the operating record and be available for review by Metro.

7.3.9 Measurement of waste

- 7.3.9.A Specific Performance Goal
 - 7.3.9.A.1 All non-putrescible waste and source-separated recyclable materials shall be accurately weighed when they are received, transferred to market or intra-facility, and transported from the facility.
- 7.3.9.B Design requirement (to be addressed in application)
 - 7.3.9.B.1 The location of scales shall be designated on the facility site plan.
- 7.3.9.C Performance Standards and Operating Requirements
 - 7.3.9.C.1 The facility operator shall weigh all non-putrescible waste and source-separated recyclable material when it is received, transferred to market or intra-facility, and transported from the facility.

7.3.9.C.2 The scale used to weigh all solid waste shall be licensed by the state of Oregon (Weights and Measures Act).

7.3.10 Transaction records and reporting

7.3.10.A Specific Performance Goal

7.3.10.A.1 Maintain complete and accurate transaction records on the weights and types of all solid wastes and recyclable materials received, recovered, reloaded, removed or disposed from the facility.

7.3.10.B Design requirement (to be addressed in application)

7.3.10.B.1 Not applicable.

7.3.10.C Performance Standards and Operating Requirements

7.3.10.C.1 Record transmittals. Records required shall be transmitted to Metro no later than fifteen days following the end of each month in electronic format prescribed by Metro.

7.3.10.C.2 Hauler account number listing. Within 5 business days of Metro's request, licensee shall provide Metro with a computer listing that cross references the incoming hauler account number with the hauling company's name and address.

7.3.10.C.3 Transactions to be based on scale weights. Except for minimum fee transactions for small, light-weight loads, the licensee shall record each transaction electronically based on actual and accurate scale weights using the licensee's on-site scales.

7.3.10.C.4 For all solid waste the licensee is authorized to receive, including all non-putrescible waste, source-separated recyclables, inert materials, and yard debris, the licensee shall keep and maintain accurate records of the amount of such materials the licensee receives, recovers, recycles, reloads, and disposes.

7.3.10.C.5 The licensee shall keep and maintain complete and accurate records of the following for all transactions:

7.3.10.C.5.a Ticket Number (should be the same as the ticket number on the weight slips);

7.3.10.C.5.b Account Number or Business Name: Incoming hauler account number on all incoming transactions and outgoing destination account number on all outgoing transactions. For incoming cash commercial customers, incoming hauler business name for all incoming commercial cash transactions;

7.3.10.C.5.c Material category: Code designating the following types of material (more detail, such as differentiating yard debris, is acceptable): (1) incoming source-separated recyclable materials by type; (2) incoming mixed dry waste; (3) outgoing recyclable materials by type; (4) outgoing mixed dry waste;

- 7.3.10.C.5.d Origin: Code designating the following origin of material: (1) from inside Metro boundaries; (2) from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (3) from out-of-state;

Any load containing any amount of waste from within the Metro region shall be reported as if the entire load was generated from inside the Metro region.

If the Licensee elects to report all loads delivered to the facility as being generated from inside the Metro region, then the Licensee is not required to designate the origin of loads in (d)(2) and (3) above.
- 7.3.10.C.5.e Date the load was received at, transferred within, or transmitted from the facility;
- 7.3.10.C.5.f Time the load was received at, transferred within, or transmitted from the facility;
- 7.3.10.C.5.g Indicate whether Licensee or Franchisee accepted or rejected the load;
- 7.3.10.C.5.h Net weight of the load;
- 7.3.10.C.5.i The fee charged to the generator of the load.

7.3.11 Access control

- 7.3.11.A Specific Performance Goal
 - 7.3.11.A.1 Control access and prevent unauthorized pedestrian and vehicular traffic and illegal dumping.
- 7.3.11.B Design requirement (to be addressed in application)
 - 7.3.11.B.1 Control pedestrian and vehicular access to the proposed facility by means of fencing, gates which may be locked, natural barriers or security guards.
- 7.3.11.C Performance Standards and Operating Requirements
 - 7.3.11.C.1 Access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
 - 7.3.11.C.2 A gate or other suitable barrier shall be maintained at potential vehicular access points to prevent unauthorized access to the site when an attendant is not on duty.

7.3.12 Adequate vehicle accommodation

- 7.3.12.A Specific Performance Goal
 - 7.3.12.A.1 Provide and maintain access roads to allow the orderly egress and ingress of vehicular traffic.
- 7.3.12.B Design requirement (to be addressed in application)
 - 7.3.12.B.1 Access roads shall be provided from the public highways or roads,

to and within the facility site and shall be designed and maintained to prevent traffic congestion and traffic hazards.

7.3.12.B.2 Adequate on-site area at the facility's entrance, scales, loading and unloading points and exit points shall be provided to allow the number and types of vehicles expected to use the facility during peak times to safely queue off the public roads and right-of-way.

7.3.12.C Performance Standards and Operating Requirements

7.3.12.C.1 Provide access roads of sufficient capacity to adequately accommodate all on-site vehicular traffic. Access roads shall be maintained to allow the orderly egress and ingress of vehicular traffic when the facility is in operation, including during inclement weather.

7.3.12.C.2 Take reasonable steps to notify and remind persons delivering solid waste to the facility that vehicles shall not park or queue on public streets or roads except under emergency conditions or in accordance with local traffic ordinances.

7.3.12.C.3 Signs shall be posted to inform customers not to queue on public roadways.

7.3.12.C.4 Adequate off-street parking and queuing for vehicles shall be provided, including adequate space for on-site tarping and untarping of loads.

7.3.13 Water contaminated by solid waste and solid waste leachate

7.3.13.A Specific Performance Goal

7.3.13.A.1 Provide pollution control measures to protect surface and ground waters from contamination from solid waste.

7.3.13.B Design requirement (to be addressed in application)

7.3.13.B.1 Submit a DEQ approved stormwater management plan (or equivalent) with pollution control measures to protect surface and ground waters, including runoff collection and discharge and equipment cleaning and washdown water.

7.3.13.C Performance Standards and Operating Requirements

7.3.13.C.1 The facility shall be operated consistent with an approved DEQ stormwater management plan (or equivalent), and shall:

Operate and maintain the facility to prevent contact of solid wastes with storm water runoff and precipitation; and

7.3.13.C.2 Dispose of or treat water contaminated by solid waste generated onsite in a manner complying with local, state, and federal laws and regulations.

7.3.13.C.3 All mixed non-putrescible waste tipping, storing, sorting and reloading activities must occur on an asphalt or concrete surface and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover for processing within 12-hours of receipt or by the end of the business

day whichever is earlier.

7.3.14 Vectors (e.g.: birds, rodents, insects)

7.3.14.A Specific Performance Goal

7.3.14.A.1 Prevent the attraction or harborage of rodents, birds, insects and other vectors.

7.3.14.B Design requirement (to be addressed in application)

7.3.14.B.1 Describe facility design features that will prevent vectors.

7.3.14.C Performance Standards and Operating Requirements

7.3.14.C.1 The facility shall be operated in a manner that is not conducive to the harborage of rodents, birds, insects or other vectors capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

7.3.14.C.2 If vectors are present or detected at the facility, vector control measures shall be implemented.

7.3.15 Nuisance complaints

7.3.15.A Specific Performance Goal

7.3.15.A.1 Respond to all nuisance complaints in a timely manner, and keep a record of such complaints, and any action taken to respond to the complaints, including actions to remedy the conditions that caused the complaint.

7.3.15.B Design requirement (to be addressed in application)

7.3.15.B.1 Not applicable.

7.3.15.C Performance Standards and Operating Requirements

7.3.15.C.1 The facility operator shall respond to all nuisance complaints in timely manner (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors), and shall keep a record of such complaints and any action taken to respond to the complaints, including actions to remedy the conditions that caused the complaint.

7.3.15.C.2 If the facility receives a complaint, the operator shall:

Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of its attempts (whether successful or unsuccessful); and log all such complaints as provided by the recordkeeping and reporting standards. Each log entry shall be retained for one year and shall be available for inspection by Metro.

7.3.16 Noise

7.3.16.A Specific Performance Goal

7.3.16.A.1 Prevent excessive noise that creates adverse off-site impacts.

7.3.16.B Design requirement (to be addressed in application)

7.3.16.B.1 Identify noise abatement design features on the facility site plan, if proposed.

7.3.16.C Performance Standards and Operating Requirements

7.3.16.C.1 The facility shall be operated in a manner that prevents the creation of noise sufficient to cause adverse off-site impacts and to the extent necessary to meet applicable regulatory standards and land-use regulations.

7.3.17 Odor

7.3.17.A Specific Performance Goal

7.3.17.A.1 Prevent odors that create off-site impacts.

7.3.17.B Design requirement (to be addressed in application)

7.3.17.B.1 Identify odor abatement design features on the facility site plan, if proposed

7.3.17.C Performance Standards and Operating Requirements

7.3.17.C.1 The facility shall be operated in a manner that prevents the generation of odors that create off-site impacts. Odors from the facility shall not be detectable off-site.

7.3.17.C.2 The Licensee shall establish and follow procedures in the operating plan for minimizing odor at the facility.

7.3.18 Signage

7.3.18.A Specific Performance Goal

7.3.18.A.1 Have signage that identifies the facility, shows the required information, and is posted in locations as required.

7.3.18.B Design requirement (to be addressed in application)

7.3.18.B.1 Identify where the sign(s) will be located on the facility site plan.

7.3.18.C Performance Standards and Operating Requirements

7.3.18.C.1 The Licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information:

- 7.3.18.C.1.a General facility information to include:
- Name of the facility
 - Address of the facility;
 - Emergency telephone number for the facility;
 - Operating hours during which the facility is open for the receipt of authorized waste;
 - Fees and charges;
 - Metro's name and telephone number (503) 234-3000;
 - A list of authorized and prohibited wastes;

- 7.3.18.C.1.b Directions not to queue on public roadways.
- 7.3.18.C.1.c Vehicle / traffic flow information or diagram.
- 7.3.18.C.1.c Covered load requirements.

7.3.19 Operating plan

- 7.3.19.A Specific Performance Goal
 - 7.3.19.A.1 Develop, keep and abide by a Metro approved operating plan.
- 7.3.19.B Design requirement (to be addressed in application)
 - 7.3.19.B.1 Not applicable.
- 7.3.19.C Performance Standards and Operating Requirements
 - 7.3.19.C.1 Plan compliance-The Licensee must operate the facility in accordance with an operating plan approved by the Manager of the Metro Solid Waste Regulatory Affairs Division. The operating plan must include sufficient detail to demonstrate that the facility will be operated in compliance with this license. The operating plan may be amended from time to time, subject to approval by the Manager of the Metro Solid Waste Regulatory Affairs Division.
 - 7.3.19.C.2 Plan maintenance-The Licensee must revise the operating plan as necessary to keep it current with facility conditions, procedures, and requirements. The Licensee must submit revisions of the operating plan to the Manager of the Metro Solid Waste Regulatory Affairs Division for written approval prior to implementation.
 - 7.3.19.C.3 Access to operating plan-The Licensee shall maintain a copy of the operating plan on the facility premises and in a location where facility personnel and Metro representatives have ready access to it.
 - 7.3.19.C.4 The operating plan shall establish:
 - 7.3.19.C.4.a Procedures for inspecting loads
Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes;
A set of objective criteria for accepting and rejecting loads; and
An asbestos testing protocol for all material that appears as if it may contain friable asbestos.
 - 7.3.19.C.4.b Procedures for processing and storage of loads
Processing authorized solid wastes,
Reloading and transfer of authorized solid wastes,
Managing stockpiles.
Storing authorized solid wastes; and
Minimizing storage times and avoiding delay in processing of authorized solid wastes.
 - 7.3.19.C.5 Procedures for managing prohibited wastes
 - 7.3.19.C.5.a The operating plan shall establish procedures

for managing, reloading, and transporting to appropriate facilities or disposal sites each of the prohibited or unauthorized wastes if they are discovered at the facility. In addition, the operating plan shall establish procedures and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility.

7.3.19.C.6 Procedures for odor prevention

The operating plan shall establish procedures for preventing all objectionable odors from being detected off the premises of the facility. The plan must include:

7.3.19.C.6.a A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; and

7.3.19.C.6.b Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.

7.3.19.C.7 Procedures for dust prevention

The operating plan shall establish procedures for preventing the production of dust from blowing or falling off the premises of the facility. The plan must include:

7.3.19.C.7.a A management plan that will be used to monitor and manage dust of any derivation; and

7.3.19.C.7.b Procedures for receiving and recording dust complaints, immediately investigating any dust complaints to determine the cause of dust emissions, and remedying promptly any dust problem at the facility.

7.3.19.C.8 Procedures for emergencies

The operating plan shall establish procedures to be followed in case of fire or other emergency.

7.3.19.C.9 Procedures for nuisance complaints

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

7.3.19.C.9.a The nature of the complaint;

7.3.19.C.9.b The date the complaint was received;

7.3.19.C.9.c The name, address and telephone number of the person or persons making the complaint; and

7.3.19.C.9.d Any actions taken by the operator in response to the complaint (whether successful or

unsuccessful).

- 7.3.19.C.9.e Records of such information shall be made available to Metro upon request. The Licensee shall retain each complaint record for a period of not less than two years.

7.3.20 Pre-Operating conditions (for new construction or new authorizations)

7.3.20.A Specific Performance Goal

- 7.3.20.A.1 The facility shall not be permitted to accept solid waste until it has demonstrated that construction is complete and the facility will likely be able to comply with all license conditions.

7.3.20.B Performance Standards and Operating Requirements

- 7.3.20.B.1 The facility may not accept any solid waste until the Director of the Solid Waste and Recycling Department has approved in writing that:

- 7.3.20.B.1.a The facility construction is complete according to plans submitted by the facility and approved by Metro. Any amendments or alterations to such plans must be approved by the Director of the Solid Waste and Recycling Department.
- 7.3.20.B.1.b The storm water management system must be constructed and in proper working order in accordance with the plans submitted to Metro and approved by the DEQ. Any amendments or alterations to such plans must be approved by the Director of the Solid Waste and Recycling Department.
- 7.3.20.B.1.c An adequate operating plan has been submitted and approved by the Director of the Solid Waste and Recycling Department.

- 7.3.20.B.2 Such written approval shall be based upon the Licensee's compliance with license provisions, including the Director's inspection of the facility and the documents submitted to the Director by the Licensee. Prior to the required construction inspection, the Licensee shall submit to the Director of the Solid Waste and Recycling Department "as constructed" facility plans which note any changes from the original plans submitted to Metro.

- 7.3.20.B.3 When construction is complete or nearly complete, the Licensee shall notify the Director of the Solid Waste and Recycling Department so that an inspection can be made before acceptance of any solid waste.

7.3.21 General Recordkeeping and Reporting

7.3.21.A Specific Performance Goal

- 7.3.21.A.1 Maintain complete and accurate records and report such information to Metro.

7.3.21.B Performance Standards and Operating Requirements

- 7.3.21.B.1 DEQ submittals. Licensee shall provide Metro with copies of all correspondence, exhibits, or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this license within two business days of providing such information.
- 7.3.21.B.2 Copies of enforcement actions provided to Metro. Licensee shall send to Metro, upon receipt, copies of any notice of violation or non-compliance, citation, or any other similar enforcement actions issued to licensee by any federal, state, or local government other than Metro, and related to the operation of the facility.
- 7.3.21.B.3 Unusual occurrences. Licensee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation, and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. If a breakdown of the operator's equipment occurs that will substantially impact the ability of the facility to remain in compliance, or create off-site impacts, the operator shall notify Metro within 24-hours. The licensee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 234-3000 within 12 hours of the discovery of their occurrence.
- 7.3.21.B.4 Nuisance complaints. For every nuisance complaint (e.g. odor, noise, dust, vibrations, litter) received, the licensee shall record: a) the nature of the complaint, b) the date the complaint was received, c) the name, address and telephone number of the person or persons making the complaint; and d) any actions taken by the operator in response to the complaint (whether successful or unsuccessful). Records of such information shall be maintained on-site and made available to Metro upon request. The licensee shall retain each complaint record for a period not less than one year.
- 7.3.21.B.5 Changes in ownership. The licensee must, in accordance with Metro Code Section 5.01.090, submit a new license application to Metro if the licensee proposes to transfer ownership or control of (1) the license, (2) the facility property, or (3) the name and address of the operator.

7.4 General Administrative and Legal Obligations for Operating

This section identifies standard administrative and legal obligations, required by the Metro Code, for all solid waste facility licenses and franchises. These requirements are not unique to a mixed non-putrescible waste material recovery facility or to a mixed non-putrescible waste reload facility.

7.4.1 Compliance by agents

7.4.1.A Operating Requirement (license / franchise provision)

7.4.1.A.1 Compliance by agents. The Licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this license.

7.4.2 Compliance with law

7.4.2.A Operating Requirement (license / franchise provision)

7.4.2.A.1 Compliance with law. The Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this license as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the license document, as well as any existing at the time of the issuance of the license but not cited or attached, and permits or conditions issued or modified during the term of the license.

7.4.3 Confidential information

7.4.3.A Operating Requirement (license / franchise provision)

7.4.3.A.1 Confidential information. The Licensee may identify as confidential any reports, books, records, maps, plans, income tax returns, financial statements, contracts and other similar written materials of the Licensee that are directly related to the operation of the facility and that are submitted to or reviewed by Metro. Licensee shall prominently mark any information that it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. Within five (5) days of Metro's receipt of a request for disclosure of information identified by Licensee as confidential, Metro shall provide Licensee written notice of the request. Licensee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Licensee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact any such confidential information from documents that Metro produces in response to a public records request. Nothing in this Section 13.0 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith

efforts not to disclose such information.

7.4.4 Deliver waste to appropriate destinations

7.4.4.A Operating Requirement (license / franchise provision)

7.4.4.A.1 Deliver waste to appropriate destinations. The Licensee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.

7.4.5 Enforcement

7.4.5.A Operating Requirement (license / franchise provision)

7.4.5.A.1 Generally. Enforcement of the license shall be as specified in Metro Code.

7.4.5.A.2 Authority vested in Metro. The power and right to regulate, in the public interest, the exercise of the privileges granted by this license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against Licensee.

7.4.5.A.3 No Enforcement Limitations. Nothing in this license shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this license be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this license or the Licensee's operation of the facility.

7.4.6 Indemnification

7.4.6.A Operating Requirement (license / franchise provision)

7.4.6.A.1 Indemnification. The Licensee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the Licensee's performance or failure to perform under this license, including patent infringement and any claims or disputes involving subcontractors.

7.4.7 Modifications

7.4.7.A Operating Requirement (license / franchise provision)

7.4.7.A.1 Modification. At any time during the term of the license, either the Chief Operating Officer or the Licensee may propose amendments or modifications to this license. The Chief Operating Officer has the authority to approve or deny any such amendments or modifications provided that the activities authorized in the amended or modified license do not require a Metro Solid Waste

Facility Franchise under Metro Code Chapter 5.01. No amendment or modification pursuant to this section shall be effective unless in writing and executed by the Chief Operating Officer.

7.4.7.A.2 Modification, suspension or revocation by Metro. The Chief Operating Officer may, at any time before the expiration date, modify, suspend, or revoke this license in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

- 7.4.7.A.2.a Violation of the terms or conditions of this license, Metro Code, or any applicable statute, rule, or standard;
- 7.4.7.A.2.b Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this license;
- 7.4.7.A.2.c Failure to disclose fully all relevant facts;
- 7.4.7.A.2.d A significant release into the environment from the facility;
- 7.4.7.A.2.e Significant change in the character of solid waste received or in the operation of the facility;
- 7.4.7.A.2.f Any change in ownership or control, excluding transfers among subsidiaries of the Licensee or Licensee's parent corporation;
- 7.4.7.A.2.g A request from the local government stemming from impacts resulting from facility operations.
- 7.4.7.A.2.h Compliance history of the Licensee.

7.4.8 Right of inspection and audit

7.4.8.A Operating Requirement (license / franchise provision)

7.4.8.A.1 Right of inspection and audit. Authorized representatives of Metro may take photographs, collect samples of materials, and perform such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times upon giving reasonable advance notice (not less than 24 hours). Metro inspection reports, including site photographs, are public records subject to disclosure under Oregon Public Records Law. Subject to the confidentiality provisions in Section 13.5 of this license, Metro's right to inspect shall include the right to review all information from which all required reports are derived including all books, maps, plans, income tax returns, financial statements, contracts, and other similar written materials of Licensee that are directly related to the operation of the Facility.

7.4.9 Insurance

7.4.9.A Operating Requirement (license / franchise provision)

- 7.4.9.A.1 General liability. The Licensee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.
- 7.4.9.A.2 Automobile. The Licensee shall carry automobile bodily injury and property damage liability insurance.
- 7.4.9.A.3 Coverage Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 7.4.9.A.4 Additional insureds. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.
- 7.4.9.A.5 Worker's Compensation Insurance. The Licensee, its subcontractors, if any, and all employers working under this license, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Licensee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation.
- 7.4.9.A.6 Notification. The Licensee shall give at least 30 days written notice to the Director of the Solid Waste and Recycling Department of any lapse or proposed cancellation of insurance coverage.

7.4.10 Financial assurance

7.4.10.A Operating Requirement (license / franchise provision)

- 7.4.10.A.1 Financial assurance The Licensee shall maintain financial assurance in an amount adequate for the cost of the facility's closure and in a form approved by Metro for the term of the license, as provided in Metro Code section 5.01.060(c)(4).

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EXHIBIT E

600 NE Grand Ave.
Portland, OR 97232-2736
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Due 9-18-09

SEP 17 09 10:03:25 ACCT

NOTICE OF VIOLATIONS and IMPOSITION OF CIVIL PENALTY No. NOV-231-09

To: Dave Wacker, Authorized Representative
Dave Wacker Sanitary Service ("DWS")
13001 SE 197th Ave.
Damascus, OR 97089

Location of Unauthorized Facility: 6433 NW St. Helens Road
Portland, OR 97210

Operating Instrument: None

Dates of Violations: July 23, 2009 through August 4, 2009

Code Violations - Chapter 5.01: Metro Code Section 5.01.045(a)(3) stipulates that a Metro solid waste license shall be required of the person owning or controlling a facility where yard debris reloading is performed.

On July 23, 2009, Metro conducted an inspection of a facility located at 6433 NW St. Helens Road. The facility consisted of a rock-surfaced lot on which the inspector found a stockpile of approximately six loads of compacted yard debris from curbside collection. The inspector spoke with Dave Wacker by phone on July 27, 2009 and determined that the facility was under the control of DWS and that one or more DWS trucks had deposited the yard debris at the location with the intention of utilizing the lot as a yard debris reloading facility. DWS is therefore operating an unauthorized yard debris facility without an appropriate license from Metro in violation of Code Section 5.01.045(a)(3). Each day that yard debris remains on the site constitutes a separate violation, potentially subject to a penalty of \$500 per day.

Code Violations - Chapter 5.05: Metro Code Section 5.05.025(a) stipulates that: *Except as otherwise provided in this chapter, it shall be unlawful for any waste hauler or other person to transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the District, any solid waste*

facility or disposal site without an appropriate license from Metro.

DWS delivered yard debris to an unauthorized facility without an appropriate license from Metro in violation of Code Section 5.05.025(a). Each load of yard debris delivered to the facility constitutes a separate violation.

Additional Information:

On July 27, 2009, Solid Waste inspector Duane Altig informed Dave Wacker by phone that DWS must discontinue tipping yard debris at the site and must remove the yard debris that was currently on site. Mr. Wacker stated that he would remove the yard debris by July 31. On August 4, 2009, Metro staff re-inspected the facility. DWS had failed to remove the yard debris previously deposited there. In addition the inspector observed a DWS packer truck dumping additional yard debris at the site.

Civil Penalties:

Civil penalties totaling EIGHT HUNDRED SIXTY- AND 00/100 DOLLARS (\$860.00) are imposed for the violations described in this Notice (see attached Penalty Worksheet). Subsequent violations shall make DWS subject to additional penalties of up to \$500 for each additional load. An invoice for the penalties is enclosed with this Notice.

Actions required to abate the violations:

DWS must immediately cease accepting yard debris at the site and remove all of the yard debris currently on site by August 31, 2009. The site will be re-inspected for compliance on or after September 1, 2009. Failure to cure the violations shall make DWS subject to penalties of up to \$500 for each day that yard debris remains on site and an additional \$500 for each additional load that DWS delivers to the site.

8/19/09
Date

Margo Norton
Margo Norton
Finance and Regulatory Services Director

DEAR SIRs;

I REQUEST a CONTESTED CASE HEARINGS. SO I CAN EXPLAIN
MY SIDE OF THE STORY. THANK YOU

David A. Wacker

DAVE WACKER

CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapters 2.05, 5.01, and 5.05 provide Metro's authority and jurisdiction for the hearing.

cc: Roy Brower, Solid Waste Compliance and Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
Will Ennis, Solid Waste Facility Inspector
Michelle Bellia, Senior Metro Attorney
Stephanie Rawson, DEQ
Bruce Walker, City of Portland

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including
CONTESTED CASE NOTICE on the following:

Dave Wacker, Authorized Representative
Dave Wacker Sanitary Service
13001 SE 197th Ave.
Damascus, OR 97089

On August 19th, 2009, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.

Roy W. Brower

Roy W. Brower
Solid Waste Compliance and Cleanup Manager



Metro

Penalty Worksheet

Licensee/Hauler Name	License Number
Dave Wacker Sanitary Service	None

Brief Description				
Hauler delivered compactor truck loads of curbside yard debris to a vacant lot that is not authorized as a solid waste facility. After being verbally warned by Metro to cease such deliveries and to remove the yard debris from the site, the hauler failed to remove the material and delivered an additional load to the site. Metro estimates that DWS delivered a total of 6-7 loads to the site as of the dates indicated.				
NOV Number	Date(s) of Violation(s)	Violations	Incidences*	Units involved
NOV-231-09	July 23 - Aug. 4, 2009	6	1	6.00

Direct Cost/Revenue Loss

1 Administrative cost			\$500.00
2 Unpaid Regional System Fees:	NA	tons at \$0.00	\$0.00
3 Unpaid Excise Taxes:	NA	tons at \$0.00	\$0.00
4 Metro disposal costs (disposal contract)			\$0.00
5 Yard debris reload facility license application fee			\$300.00
6 Specify other direct cost/revenue loss			
7 Add lines 1 through 6.....	Equals Direct Recovery		\$800.00

Indirect Cost/Revenue Loss

1 Specify indirect cost/revenue loss			
2 Specify other indirect cost/revenue loss			
3 Specify other indirect cost/revenue loss			
4 Specify other indirect cost/revenue loss			
5 Add lines 1 through 4.....	Equals Indirect Recovery		\$0.00

Compliance Component

1 Base penalty per load delivered to unauthorized facility	\$10.00
2 Additional penalty at \$1 per violation per repeat incident	\$0.00
3 Add lines 1 and 2	\$10.00
4 25% penalty on unpaid Regional System Fees	\$0.00
5 25% penalty on unpaid Excise Taxes	\$0.00
6 Specify other aggravating/mitigating compliance factors	
7 Specify other aggravating/mitigating compliance factors	
8 Sum lines 3 through 7	\$10.00
9 Total tons involved in current incident	6.00
10 Multiply lines 8 and 9.....	Equals Compliance Component

Total Penalty **\$860.00**

Worksheet prepared by Steve Kraten Date August 18, 2009

* Incidences within the last three years including current incident

Code check: total penalty per violation \$143.33.

INVOICE

Please Remit To:

Metro
Accounts Receivable
600 NE Grand Avenue
Portland OR 97232-2736



Page: 1
Invoice No: REM-01070
Invoice Date: 08/19/2009
Customer Number: REM1431
Payment Terms: Net 30
Due Date: 09/18/2009

Bill To:

Dave Wacker Sanitary Service
13001 SE 197th Avenue
Damascus OR 97089

AMOUNT DUE: 860.00 USD

Amount Remitted



For billing questions, please call 503-797-1620

Line	Adj	Identifier	Description	Quantity	Unit Amt	Net Amount
		Violation NOV-231-09				
1			Violation NOV-231-09	1.00	860.00	860.00
SUBTOTAL:						860.00
TOTAL AMOUNT DUE :						860.00

DEAR SIRs:

I request a contested case hearing, so I can explain my side of the story. Thank You

Dave Wacker

DAVE WACKER

Agenda Item Number 3.3

Resolution No. 10-4121, For the Purpose of Authorizing the Chief Operating Officer to Purchase Trail and Greenway Easements in the Fanno Creek Linkages Target Area and Subject to Unusual Circumstances.

Consent Agenda

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 10-4121
THE CHIEF OPERATING OFFICER TO)
PURCHASE TRAIL AND GREENWAY) Introduced by Chief Operating Officer Michael
EASEMENTS IN THE FANNO CREEK) J. Jordan, with the concurrence of Council
LINKAGES TARGET AREA AND SUBJECT) President David Bragdon
TO UNUSUAL CIRCUMSTANCES)

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure”); and

WHEREAS, on March 1, 2007, the Metro Council adopted Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan” which included acquisition parameters for a pre-approved set of criteria under which the Chief Operating Officer and his/her designees are authorized to negotiate and complete land acquisition transactions; and

WHEREAS, on September 6, 2007, the Metro Council adopted Resolution No. 07-3837, “Approving the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area,” with a goal to “Complete a continuous greenway trail from the Tualatin River into a highly urbanized “walker-challenged” area of Portland, and further protect water quality along Fanno Creek and its tributaries;” and

WHEREAS, a Partnership Objective of the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area is to pursue partnership opportunities with the City of Tigard and Clean Water Services, among others, to leverage the regional investment in the Fanno Creek Linkages target area with local share funds and for management of purchased properties; and

WHEREAS, Metro and the City of Tigard have identified certain properties that constitute unbuilt “gaps” in the current Fanno Creek Trail Greenway and have prioritized acquisition of these properties as Tier One properties in the Refinement Plan for the Fanno Creek Linkages Target Area; and

WHEREAS, Metro staff have one signed agreement and expect the other agreement signed soon with two adjacent landowners for the purchase of trail easements on “gap” properties, further described in Exhibit A to this Resolution, that would complete a key segment of the Greenway; and

WHEREAS, the purchase price for each of these easement interests is greater than the market value determined by Metro’s appraiser in order to fairly compensate the landowners for fencing allowances and other related transaction costs; and

WHEREAS, paying more than the appraised market value for the easements represents an “unusual circumstance” under the Natural Areas Implementation Work Plan, requiring the Council to approve these acquisitions; and

WHEREAS, in addition, the due diligence work contemplated under the proposed agreements does not include a Phase 1 environmental site assessment (“ESA”), which also constitutes an unusual circumstance under the Work Plan, and the Council therefore must approve acquisition of these easements; and

WHEREAS, it is intended that the City of Tigard will be responsible for the design, construction, management, and maintenance of the future trail and that Tigard will work with Clean Water Services in the design and construction to ensure that environmentally appropriate improvements are carried out; and

WHEREAS, the acquisition of the Trail Easements is in the public interest as it facilitates construction of an important Fanno Creek Greenway Trail segment, building on several recent trail construction projects in the target area; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to acquire trail and greenway easements on the properties identified in Exhibit A located in the Fanno Creek Linkages Target Area at the negotiated purchase prices and without completing Phase I environmental site assessments prior to closing on these easement acquisitions.

ADOPTED by the Metro Council this _____ day of _____ 2010.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 10-4121

Target Area: Fanno Creek Linkages
Trail Parcels 1 and 2

Description: Within the city of Tigard, the Fanno Creek Trail alignment runs along Fanno Creek from SW Scholls Ferry Road for 4.25 miles to the southern city limits located near SW Durham Road. Staff has identified an opportunity to acquire two adjacent trail easements in Tigard in the Fanno Creek Linkages Target Area. The easements are located on two separately-owned industrially zoned properties on SW Tigard Street and primarily cover the lowland Fanno Creek floodplain portion of the properties. These parcels represent two of the final three properties needed for acquisition to create a seamless alignment of the Fanno Creek Trail within the city of Tigard. The parcels are located in the heart of the city of Tigard and would create an important community connection to Woodard Park.

The two easements together will create a 3.3 acre corridor through which the Fanno Creek Greenway trail can be built, connecting from the existing trail from Woodard Park to the north, and completing the connection to another completed trail through an adjacent trail easement to the south. The trail segment will be built by the City of Tigard with oversight by Clean Water Services to ensure protection of the creek's riparian habitat. Completion of the trail in this area will reroute the trail users from an on-street temporary route to this off-street natural trail experience.

Bond Criteria Addressed:

- Provides an opportunity to fill a key gap identified in the Fanno Creek Linkages Target Area Refinement Plan, helping to create a continuous greenway from the Tualatin River into a highly urbanized, "walker challenged: area of Portland.
- Protection and possible improvement of water quality in Fanno Creek through the anticipated clean-up and restoration activities mandated by typical trail construction approval processes.
- Fulfills refinement plan partnership objectives of working with the City of Tigard and Clean Water Services as it is contemplated that Tigard will manage the property and build the trail in the future.
- Fulfills the refinement plan partnership objective of working with private landowners to explore opportunities for conservation easements.

Property Identification: A portion of each of Tax Lots 00300, 00302, 00304 and 00501, Map 2S102BA, Willamette Meridian; Clackamas County

Sellers: Private Parties

Size: 2.23 acres and 1.07 acres (easement areas on properties)

Stream Frontage: Fanno Creek, approximately 1,250 ft.

Conditions: Unusual circumstance of purchase price above the appraised values, and the lack of a Phase I environmental site assessment in the due diligence period.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4121, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO PURCHASE TRAIL AND GREENWAY EASEMENTS IN THE FANNO CREEK LINKAGES TARGET AREA AND SUBJECT TO UNUSUAL CIRCUMSTANCES

Date: February 4, 2010

Prepared by: Kathleen Brennan-Hunter
503-797-1948

BACKGROUND

Resolution No. 10-4121 requests authorization for the Chief Operating Officer to purchase trail and greenway easements using regional funds from the 2006 Natural Areas Bond Measure. The easements on two separate parcels in the Fanno Creek Linkages Target Area are described in Exhibit A to the resolution (the "Trail Parcels").

The Fanno Creek Linkages was identified as a target area of the 2006 Natural Areas Bond Measure. The Fanno Creek Linkages Refinement Plan, approved by the Metro Council in Resolution No. 07-3837 (adopted September 6, 2007), identified a goal to "Complete a continuous greenway trail from the Tualatin River into a highly urbanized 'walker-challenged' area of Portland, and further protect water quality along Fanno Creek and its tributaries." The refinement process included background research from a 2003 "Fanno Creek Greenway Trail Action Plan" (the "Action Plan") prepared for Metro focused on completing the gaps in the trail. The refinement plan identified the Tier One Objective as "Connect publicly owned land along the mainstem of Fanno Creek between Cook Park and Woodard Park to complete the corridor and enhance habitat and water quality protection in this area." There are a total of three (3) parcels needed for the completion of the Fanno Creek Trail within the city of Tigard. These parcels represent two of the final three properties needed for acquisition. Pursuing partnerships with the City of Tigard and Clean Water Services, among others, to leverage the regional investment in the Fanno Creek Linkages target area with local share funds and for management of purchased properties was identified as a Partnership Objective in the Refinement Plan.

The Trail Parcels, located in the Gap #4 area of the Action Plan (see attached map), are owned by two separate entities in the City of Tigard. They are just south of Woodard Park and bisected by Fanno Creek. Adjacent to the Trail Parcels to the north is an existing segment of the trail, and adjacent to the south is an existing trail easement leading to a completed trail segment. The first area, Trail Parcel 1, is a 2.23 acre easement area in a 9.16 acre property. The adjacent Trail Parcel 2 is a 1.07 acre easement Area in a 2.26 acre property. Both are depicted in Attachment 1 to this staff report and both are unimproved portions lying in the floodplain of developed industrial lands.

Metro staff have negotiated with the owners of the Trail Parcels in accordance with the guidelines established to ensure that federal funds may be used for trail construction. The property owners were contacted, Metro obtained permission for an appraisal to be performed on the properties, the appraisals were completed by a qualified appraiser and reviewed by a second qualified appraiser, and the appraisal was included in an Offer-Benefit package given to the landowners. The owners of the Trail Parcels were each offered the appraised value of the easements. The landowners, in both cases, took exception to portions of the appraisal conclusions regarding the need for privacy fencing. They disagreed with the appraiser's comment that the desire for privacy at the commercial setting was not comparable with the desire for privacy in a residential setting. Also, the properties are not currently fenced, thus indicating that security is not an overriding concern at

this location. Both owners felt that security is not presently a concern because the public is not allowed on the proposed easement area, but if a trail were built, the business tenants would have a security concern. The owner of Trail Parcel 2 noted that he would be losing a parking area currently used by his business tenants and would not be compensated for that loss, and both owners declared that they would be incurring legal fees to have their attorneys involved in the proposed transactions.

Metro staff believe that a fencing allowance is justified because, of the six comparable properties used in the appraisal, none were acquired for trail purposes, and only one was on an industrially zoned property. The review appraiser felt that the flood plain sales were somewhat dissimilar from the Tigard properties, because they were not related or connected with industrially-zoned upland, with the exception of one sale. He also noted that sales of this property type are not frequent in the market. In other words, with respect to whether a fencing allowance would be appropriate, the comparables used by the appraiser were not comparable to the subject easement acquisitions.

Metro staff obtained fencing bids to arrive at a reasonable reimbursement for a fence to separate the future trail from the commercial areas of the larger properties, and revised the offers accordingly. Metro staff concluded that fencing allowances of \$19,200 for Trail Parcel 1 and \$7,450 for Trail Parcel 2 are appropriate, which is a cost of \$23.50 per linear foot of fence needed on each property. An amount in addition to the fencing allowance is recommended to be added to Parcel 2 for the intangible value of the easement to the landowners in the form of legal expenses and unknown future effects on the remainder property. Metro staff recommend an additional amount of \$19,200 for Trail Parcel 1 and \$13,100 for Trail Parcel 2, which represents the recommended settlement amounts minus the fencing allowances and additional compensation to the owner of Parcel 2 for expected legal fees. In order to make every effort to ensure that trail acquisitions such as these were consistent with the federal acquisition guidelines, Metro staff consulted generally with right-of-way acquisition staff with the Oregon Department of Transportation and the City of Portland for guidance in arriving at final offers of just compensation to address issues such as these.

Metro staff seeks the Metro Council's approval of these acquisitions for two reasons. First, in order to pay more than the appraised value of these easement property interests as determined by a third party appraiser, and second, to authorize acquisition of these easements even though Metro has not undertaken a Phase I environmental site assessment ("ESA") for these properties. The Council-approved Natural Areas Implementation Workplan states that, "The Chief Operating Officer and his/her designees may complete a land acquisition transaction that does not meet all of the *acquisition parameters* only with specific Council review and approval." The contemplated transactions do not meet the acquisition parameters as the recommended amount to be paid to the landowners exceeds the appraisal value and Metro has not undertaken Phase I environmental site assessments for these properties. In the case of Trail Parcel 1, the recommended settlement amount represents a \$19,200 increase, to a total of \$32,300 for the easement. The Trail Parcel 2 recommended settlement amount represents a \$13,100 increase for a total of \$20,000 for the easement. Metro staff expect to shortly enter into an agreement with the owner of Trail Parcel 1 and have entered into a Purchase and Sale Agreement for Trail Parcel 2 at the revised easement prices of \$32,200 and \$20,000, respectively, subject to the approval of this Resolution 10-4121 by the Metro Council.

Regarding the request to proceed with these easement acquisitions without obtaining a Phase I ESA, the Office of the Metro Attorney ("OMA") has advised and determined that, although the potential liability is not zero, the chances of an easement holder being held liable for

environmental contamination on a property are extremely low, and that indemnifications within the purchase agreement and the recorded easement will provide protection from such liability (unless, of course, the contamination was directly caused by or exacerbated by the actions of the easement holder). The easement language provides the easement holder the right to undertake a Phase I ESA prior to trail construction, in order to ensure that trail construction will not create any such liability. To the extent any Phase 1 ESA reports exist on the subject properties, acquisition staff will make every effort to obtain copies during Metro's due diligence, to help inform the decision of whether to proceed with a trail easement acquisition.

Introduced concurrent with this resolution is a proposed resolution to amend the Natural Areas Implementation Work Plan to provide staff authority to proceed with similar acquisitions in the future.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection," adopted on March 9, 2006.

The voters' approval of Metro's 2006 Natural Areas Bond Measure at the general election held on November 7, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3837, "Approving the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area," adopted by the Metro Council on September 6, 2007.

3. Anticipated Effects

Metro will enter into a Purchase and Sale Agreement with the owner of Trail Parcel 2 at the above stated Purchase Price and complete due diligence during the contract period; provided, however, that such due diligence will not include obtaining a Phase I environmental site assessment for these acquisitions.

4. Budget Impacts

Metro's purchase of these easements shall be funded utilizing 2006 Regional Bond proceeds. Trail design, permitting and construction will be the responsibility of the City of Tigard.








RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 10-4121.

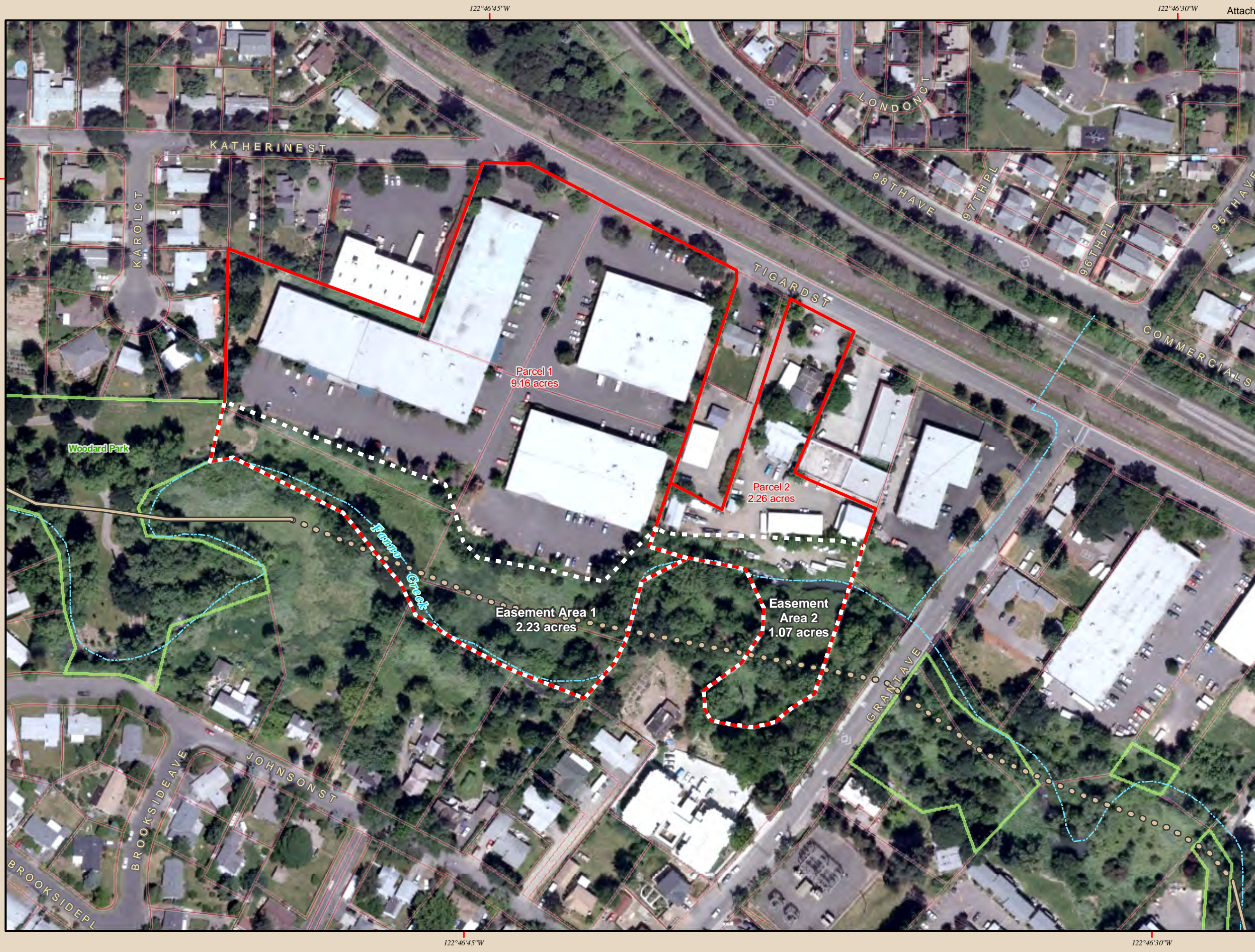
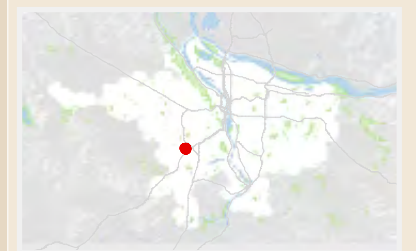
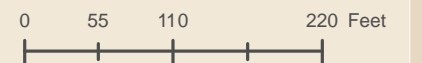
ATTACHMENT 1

Trail Easements

Target Area:
Fanno Creek Linkages

-  Easement Areas
-  Parcel Boundaries
-  Public Parks
-  Taxlots
-  Existing Trails
-  Proposed Trails
-  Streams

1 inch = 141.7 feet



Parcel 1
9.16 acres

Parcel 2
2.26 acres

Easement Area 1
2.23 acres

Easement Area 2
1.07 acres

Woodard Park

Fanno Creek

Agenda Item Number 3.4

Resolution No. 10-4122, For the Purpose of Amending the Natural Areas Implementation Work Plan to Authorize the Chief Operating Officer to More Efficiently Acquire and Assign Trail Easements.

Consent Agenda

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE	)	RESOLUTION NO. 10-4122
NATURAL AREAS IMPLEMENTATION)	
WORK PLAN TO AUTHORIZE THE CHIEF	)	Introduced by Chief Operating Officer Michael
OPERATING OFFICER TO MORE	)	J. Jordan, with the concurrence of Council
EFFICIENTLY ACQUIRE AND ASSIGN	)	President David Bragdon
TRAIL EASEMENTS.)	

WHEREAS, in November 2006 regional voters approved a \$227.4 million Natural Areas Bond Measure (“2006 Natural Areas Bond Measure”); and

WHEREAS, several of the target areas identified in the 2006 Natural Areas Bond Measure are regional trails in which the goal is to complete property acquisitions sufficient to allow for the construction of bicycle and pedestrian trails and, in most instances, the property interest needed to achieve such goal is the acquisition of a trail easement; and

WHEREAS, in order to ensure that such trail projects will ultimately qualify for federal transportation funding for construction, such acquisitions must comply with federal property acquisition rules, administered by the Oregon Department of Transportation; and

WHEREAS, on March 1, 2007, the Metro Council adopted Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan” which included acquisition parameters for a pre-approved set of criteria under which the Chief Operating Officer and his/her designees are authorized to negotiate and complete land acquisition transactions (the “Natural Areas Implementation Work Plan”); and

WHEREAS, in the process of executing the Work Plan in the trail target areas, staff have identified various circumstances in which the acquisition of trail easements, or in some instances fee title of trail properties, require different considerations than the standard acquisition practices as put forth in the Natural Areas Implementation Work Plan; now, therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to acquire trail property interests subject to the Acquisition Parameters and Due Diligence Guidelines for Trail Easement Properties, attached hereto as "Exhibit A," and hereby incorporated by reference.

ADOPTED by the Metro Council this _____ day of _____ 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

TRAIL EASEMENT ACQUISITION PARAMETERS

Definition:

"*Trail Easement Acquisition Parameters*" are the Metro Council-approved criteria and conditions under which the Chief Operating Officer and his/her designees are authorized to negotiate and complete Trail Easement Property acquisition transactions without further Council review and approval. The Chief Operating Officer and his/her designees may complete a trail easement acquisition transaction that does not meet all of the following acquisition parameters only with specific Council review and approval. A "*Trail Easement*" acquisition in this work plan refers also to acquisition of fee property interests when acquired for the main purpose of establishing a trail on the property.

Rationale:

The creation of pre-approved *Trail Easement Property Acquisition Parameters* will permit the agency to deal with willing sellers/grantors in an effective and efficient manner and allow the Metro Council to focus on policy level issues.

Intent:

Metro intends to pay no more than market value for property, it being acknowledged, however, that the Metro area real estate market is dynamic and the process of identifying market value is not exact. Metro's acquisition process should provide flexibility to achieve the goals of the Natural Area Bond Measure and to reflect the actual market conditions affecting the market value of properties targeted for natural areas acquisition. With respect to Trail Easement Property, market value does not always compensate landowners for certain impacts of trail development on their property that are difficult to quantify. These potential concerns are often related to security, privacy and costs related to owner attorney's review and advice. Their concerns provide barriers and objections to granting easements or selling suitable Trail Easement Property to Metro.

Acquisition of trail easements, in most cases will be governed by Federal Acquisition Guidelines as administered by the Oregon Department of Transportation. To address landowners' concerns about acquisition impacts related to security, privacy and costs related to owner attorney's review and advice, these guidelines provide the opportunity for offering greater compensation than the approved amount as determined by the property appraisal ("Administrative Settlements"). Following the Federal Acquisition Guidelines process assures that the governing body holding Trail Easement Property is eligible for future federal funding to assist or finance local or regional trail construction. For justified cases, Metro's Trail Easement Acquisition process may incorporate the option to offer Administrative Settlements in order to provide flexibility to achieve the goals of the Natural Areas Bond Measure.

Trail Easement Acquisition Parameters:

The Metro Council authorizes the Chief Operating Officer and his/her designees to negotiate and close Trail Easement Property transactions related to the 2006 Natural Areas Bond Measure provided all of the following criteria/conditions are met:

- The landowner is a willing seller/grantor.
- The tax lot is identified on a Council-adopted target area "confidential refinement map."
- The Real Estate Negotiator and a planning team representative have inspected the easement area, they and the Natural Areas Program Director have approved the purchase, and an acknowledgement of such visits and approvals has been completed.

- The negotiated purchase price for the easement is either:
 1. Equal to the fair market value as established by the appraisal and appraisal review processes described below (note that Metro will actively solicit donations and bargain sales); or
 2. Not more than 25% or \$20,000, whichever is greater, above such fair market value and the Natural Areas Program Director has authorized acquisition of the trail easement at such price after finding that acquisition of the easement above the initially offered purchase price is in the public interest. In order to conclude that such a purchase is in the public interest, the Program Director must conclude and document that:
 - The seller/grantor has rejected the fair market value as established by the appraisal and appraisal review processes described below and has provided a reasonable basis for the additional compensation;
 - The failure to acquire the easement will significantly compromise Metro's ability to achieve the goals described in the applicable adopted Refinement Plan for that target area. Staff will document the total compensation to the property owner including, but not limited to, future design and construction consideration such as landscaping, fencing, lighting or signage; and
 - The purchase will not reduce the amount of funds available to purchase other critical, high priority target properties nor will it compromise Metro's ability to achieve the goals described in the applicable adopted Refinement Plan for that target area.

- **Appraisal**

An independent certified appraiser has completed an appraisal of the easement area that states a conclusion of the fair market value of the property. The appraisal must generally comply with the Oregon Department of Transportation's appraisal guidelines. The appraiser shall state in the appraisal any assumptions that he/she relied upon to determine the easement's fair market value; however, the appraisal shall not be based upon any "extraordinary assumptions" made by the appraiser that materially affect the easement's fair market value.

- **Appraisal Review**

An independent certified appraiser has completed a review of the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and general appraisal standards. If the review appraiser determines that the appraisal does not meet USPAP or other general appraisal standards, the review appraiser, after consultation with and at the direction of the Office of the Metro Attorney, may either (a) work with the appraiser to correct the deficiencies, (b) order a second appraisal to be reviewed in the manner set forth herein, or (c) make a final determination of the value for the property.

- *"Trail Easement Due Diligence"* has been completed in conformance with the *due diligence* section below and no unusual circumstances have been found to exist.

Notices and Reports to Council Regarding Completed Transactions

The Natural Areas Program Director or his/her designees shall notify the Council promptly following the closing of any real estate transaction. The Chief Operating Officer or his/her designees shall prepare and present to the Council quarterly updates summarizing acquisition activity distinguished by target area.

TRAIL EASEMENT DUE DILIGENCE GUIDELINES

Definition:

"*Trail Easement Due Diligence*" is the systematic inspection of the legal title and physical condition of an easement area before the easement is purchased to assure protection of public investment in trail properties. *Trail Easement Due Diligence* should be conducted in advance of closing so that resolvable problems can be adequately addressed prior to closing. A "*Trail Easement*" acquisition in this work plan refers also to acquisition of fee property when acquired for the main purpose of establishing a trail on the property.

Components:

The primary areas of *Trail Easement Due Diligence* are described below. A more detailed list of items examined may be found in the Appendix under "Due Diligence and Closing Checklist." The Metro Attorney may amend the checklist as determined necessary and appropriate at his/her discretion.

The Due Diligence Team is comprised of the Real Estate Negotiator, Metro Attorney staff, and assigned planner for each property.

- **Meeting Federal Guidelines:** Each Trail Easement acquisition shall be evaluated to determine if future federal funding for design and construction is potentially possible. If federal funding is possible, in order to safeguard eligibility for this funding, Metro staff will adhere to the trail acquisition guidelines as required by the Oregon Department of Transportation, and updated from time to time to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (the "Uniform Act") and with Oregon law (ORS 35.510).
- **Appraisal:** An appraisal of the easement area must be completed to determine the easement's market value and provide other useful information about the property. The appraisal shall be in the format described in the previous section regarding *trail easement acquisition parameters* and shall be reviewed in the manner set forth therein.
- **Examination of Title:**
 1. Metro must satisfy itself that the seller/grantor has authority to sell the easement, that Metro understands what rights will be conveyed, that all parties necessary for the grant are involved, and that any rights that are not a part of the transaction will not defeat the purpose of the acquisition.
 2. *Trail Easement Due Diligence* requires the review and inspection of the title report and related documents, including the deed to the current owner, recorded easements and other encumbrances, water rights, access rights, taxes, liens, etc.
 3. Other documents that need to be inspected include unrecorded leases with existing tenants or farmers, management agreements, records pertaining to personal property included in the sale, surveys, and agreements the seller may have entered into that may not be of record.
- **Inspection of the Property:**
 1. Location of Boundaries. *Trail easement due diligence* requires the review of any existing survey of the property. Metro should also identify the boundaries of the easement area. If such boundary identification is not possible, a survey of the easement area will be conducted unless deemed unnecessary or uneconomical by the Due Diligence Team. Additionally, Metro must identify that both legal and physical access to the easement area exist and are usable. Legal and physical access by the public will be secured unless the nature of the property is such that access restrictions are acceptable for that property.
 2. Physical Inspection. Metro or its contractors and agents must physically inspect the easement area

for general environmental assessment purposes and to identify possible hazards, unrecorded easements and trespassers, and to make a preliminary evaluation of the condition of the property for future development of a trail. If there are any structures and improvements (roads, fences, utilities, etc.), that are part of the Trail Easement acquisition, these shall be further evaluated. Any encroachments, potential property boundary disputes, or unrecorded use of the easement area identified either during property inspection or in title search will be resolved prior to closure unless deemed impractical by the Due Diligence Team and the Natural Areas Program Director has authorized closing notwithstanding such circumstances(s).

3. Environmental Inspection. A Phase I ESA is not necessary on all potential easement acquisitions unless (a) the Metro Attorney determines that a Phase I is advisable based on information learned in the course of its due diligence, (b) the Trail Easement is purchased in fee title, or (c) such assessment is required by the local jurisdiction to which Metro will assign its interest in the Trail Easement at closing. The Office of the Metro Attorney has determined that, while potential liability is not zero, the chances of an easement holder being held liable for environmental contamination on a property are extremely low, and that provisions within the Purchase Agreement will provide sufficient protection from such liability (unless, of course, the contamination was directly caused by or exacerbated by the actions of the easement holder). To the extent any Phase I ESA reports exist on the subject Trail Easement property, acquisition staff will make every effort to obtain copies to help inform the decision of whether to proceed with the easement acquisition.
- Unusual Circumstances. If, in the course of *Trail Easement Due Diligence*, the Due Diligence Team discovers any unusual deed or title restrictions, encumbrances, or other conditions that may prohibit or unduly restrict Metro's ability to use the property as a trail or that may create a liability to Metro, such restrictions, encumbrances, or conditions shall be considered "unusual circumstances." As provided in the section of this Work Plan regarding *trail easement acquisition parameters*, the Chief Operating Officer and his/her designees may not complete the purchase of an easement with such unusual circumstances without obtaining the Metro Council's specific approval prior to such acquisition.
 - Ownership: When agreed to by the local jurisdiction in which the trail will be located, built, and maintained, Metro may assign its interest in the Trail Easement at closing to such local jurisdiction.
 - Document Retention. Documents related to acquisitions shall be retained as determined appropriate by the Metro Attorney and in accordance with the Uniform Act when required.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4122, FOR PURPOSES OF AMENDING THE NATURAL AREAS IMPLEMENTATION WORK PLAN TO AUTHORIZE THE CHIEF OPERATING OFFICER TO MORE EFFICIENTLY ACQUIRE AND ASSIGN TRAIL EASEMENTS.

Date: February 4, 2010

Prepared by: Kathleen Brennan-Hunter
503-797-1948

BACKGROUND

The 2006 Natural Areas Bond Implementation Work Plan (“Work Plan”) describes a comprehensive contractual, due diligence and closing process for the acquisition of property under the 2006 Natural Areas Bond.

Metro’s Natural Areas Program Work Plan is designed to create an effective process for purchasing and protecting natural areas and trails at the regional, local and neighborhood levels. Metro’s acquisition efforts include the purchase of fee interests or right-of-way easements for trails in order to assemble corridors for future trail projects.

The acquisition of right-of-way easements for trails is the most efficient and common method of obtaining the desired property interests necessary for future trails. A trail right-of-way easement is a non-possessory interest acquired for the stated purpose of building and maintaining trails. With right-of-way easements, a property owner retains the ownership of the entire property, is responsible for the property taxes, and continues to assume liability for damages and claims on the property. The easement holder secures the rights required for the desired use.

Fee title ownership acquisitions are a lesser used method of obtaining the property interests necessary for future trails. Fee title transactions entitle Metro to ownership of the entire property where the future trail will be located. In the case of a fee title acquisition, the property owner relinquishes ownership rights in the entire property.

Once Metro acquires the necessary property interests to accommodate the proposed trail or trail segment, future federal transportation funding will likely finance trail design and construction. Metro must follow federal and Oregon Department of Transportation (ODOT) right-of-way acquisition guidelines because federal funds may be used to purchase, design or construct some part of the future trail.

In the process of implementing acquisition in various target areas, guided by refinement plan priorities, staff have identified various circumstances in which the acquisition of trail easements, or fee title property for which trails are the primary basis for a purchase (“Trail Easement Property”), require different consideration than the standard acquisition practices as put forth in the Work Plan Sections on Acquisition Parameters and Due Diligence Guidelines.

Metro staff has prepared supplemental Work Plan Acquisition Parameters and Due Diligence Guidelines to the Work Plan in order to permit staff to more effectively and efficiently execute Trail Easement Property transactions with willing sellers/grantors in a timely, effective, and consistent manner.

Metro staff is recommending the following additions to the Work Plan to more efficiently and effectively facilitate trail easement acquisitions.

1. As previously set forth in Amended Exhibit A to Resolution No. 07-3766A, Metro intends to pay no more than market value for property, it being acknowledged, however, that the Metro area real estate market is dynamic and the process of identifying fair market value is not exact. Metro's Acquisition process should provide flexibility to achieve the goals of the Natural Area Bond Measure and to reflect the actual market conditions affecting the market value of properties targeted for natural areas acquisition. With respect to Trail Easement Property, market value does not always compensate landowners for certain impacts of trail development on their property that are difficult to quantify. These potential concerns are often related to security, privacy and costs related to owner attorney's review and advice. Their concerns provide barriers and objections to granting easements or selling suitable Trail Easement Property to Metro.

It is proposed that the purchase price for the Trail Easement Property may be negotiated by Metro staff within the following parameters:

- a. Equal to market value as established by the prescribed appraisal and appraisal review process (note that Metro will actively solicit Trail Easement Property donations and bargain sales); or
 - b. Not more than 25% or up to \$20,000 above such market value and the Natural Areas Program Director has authorized acquisition of the property at such price after finding that acquisition of the property at the negotiated purchase price is in the public interest. In order to conclude that such a purchase is in the public interest, the Natural Areas Program Director must conclude that:
 - The seller/grantor has rejected the fair market value as established by the appraisal and appraisal review processes described below and has provided a reasonable basis for the additional compensation;
 - The failure to acquire the property will significantly compromise Metro's ability to achieve the goals described in the applicable adopted Refinement Plan for that target area; and
 - The purchase will not reduce the amount of funds available to purchase other critical, high priority target properties in a manner that will significantly compromise Metro's ability to achieve the goals described in the applicable adopted Refinement Plan for that target area.
2. Acquisition of trail easements, in most cases will be governed by Federal Acquisition Guidelines as administered by the Oregon Department of Transportation. To address landowners concerns of acquisition impacts related to security, privacy and costs related to owner attorney's review and advice, these guidelines provide the opportunity for offering greater compensation than the approved amount as determined by the property appraisal ("Administrative Settlements"). Following the Federal Acquisition Guidelines process assures that the governing body holding Trail Easement Property is eligible for future federal funding to assist or finance local or regional trail construction. For justified cases, Metro's Trail Easement Acquisition process should incorporate the option to offer Administrative Settlements in order to provide flexibility to achieve the goals of the Natural Areas Bond Measure.
 3. In most cases, Metro will not be the long term developer or operator of the regional trails. The Metro Council at its discretion may assign its interest in acquired Trail Easement Property to

another park-providing entity. This new Work Plan will allow Metro's Chief Operating Officer to assign all of Metro's interest in Trail Easement Property to the local jurisdiction in which the future, proposed trail is to be located, constructed and maintained in perpetuity, without requiring further Metro Council approval. In the event a regional trail is located in an area where no local operator exists, Metro will hold the easement.

4. It is proposed that the original Environmental Review requirement for property acquisition as referenced in Amended Exhibit A to Resolution No. 07-3766A, be optional and at the discretion of the Metro Attorney within the process of trail easement acquisition. Unless required by the local jurisdiction to which Metro will assign its interest in the Trail Easement Property at Closing, the Office of the Metro Attorney ("Metro Attorney") has advised that Phase I Environmental Site Assessments ("Phase I ESA") are not necessary on potential easement only acquisitions. Further, the Metro Attorney has determined that, while potential liability is not zero, the chances of an Easement holder being held liable for environmental contamination on a property are extremely low, and that provisions within the Purchase Agreement and the recorded Easement will provide sufficient protection from such liability (unless, of course, the contamination was directly caused by or exacerbated by the actions of the Easement holder). To the extent any Phase 1 ESA reports exist on the subject Easement property, acquisition staff will make every effort to obtain copies to help inform the decision of whether to proceed with the trail easement acquisition. The option of Phase I ESA step in the easement acquisition process will also alleviate a common owner/grantor concern that a Phase I ESA could create expensive liabilities and burden the owner with the knowledge of potential environmental contamination on their property, and create a significant impediment to successful acquisition. Trail Easement Property purchased in fee title will require a Phase 1 ESA, like all other fee purchases and the due diligence guidelines as defined in Resolution No. 07-3766A will apply.

This resolution is recommended in order to permit staff to more effectively and efficiently execute trail easement transactions with willing sellers.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection," was adopted on March 9, 2006.

The voters' approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 7, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 08-3963 "Amending the Natural Areas Implementation Work Plan to Authorize the Chief Operating Officer to Acquire Certain Properties when the Purchase Price is equal to or less than \$5,000," was adopted by the Metro Council on July 24, 2008, and established the Acquisition

Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. Anticipated Effects

Assuming that no unusual circumstances arise, Metro will close on the Acquisition of Trail Easement Property that meet the above-referenced criteria. In the rare case that Metro acquires Fee Title to Trail Easement Property for a future Trail site, the Due Diligence Guidelines as provided within Resolution No. 07-3766A, requiring completion of a Phase 1 Environmental Assessment, will be followed.

4. Budget Impacts

Expenditures for purchases and related due diligence are budgeted in the Natural Areas Bond Fund.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 10-4122.

Agenda Item Number 4.1

Ordinance No. 10-1231, For the Purpose of Determining that Providing
Financial Resources to Increase the Supply of Affordable Housing is
a Matter of Metropolitan Concern.

COUNCILOR LIBERTY
ORDINANCES – FIRST READING

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DETERMINING THAT) ORDINANCE NO. 10-1231
PROVIDING FINANCIAL RESOURCES TO)
INCREASE THE SUPPLY OF AFFORDABLE)
HOUSING IS A MATTER OF METROPOLITAN) Introduced by Councilor Robert Liberty
CONCERN)

WHEREAS, Section 4 of the Metro Charter, entitled “Jurisdiction of Metro,” provides that, “Metro has jurisdiction over matters of metropolitan concern. Matters of metropolitan concern include the powers granted to and duties imposed on Metro by current and future state law and those matters the Council by ordinance determines to be of metropolitan concern. The Council shall specify by ordinance the extent to which Metro exercises jurisdiction over matters of metropolitan concern”; and

WHEREAS, Section 7 (1) of the Metro Charter, entitled “Assumption Ordinance,” provides that “The Council shall approve by ordinance the undertaking by Metro of any function not authorized by Sections 5 and 6 of this charter. The ordinance shall contain a finding that the function is of metropolitan concern and the reasons it is appropriate for Metro to undertake it”; and

WHEREAS, Fundamental 7 of the Metro Council’s Regional Framework Plan charges Metro to “Enable communities to provide diverse housing options for all residents by providing a mix of housing types as well as affordable housing in every jurisdiction”; and

WHEREAS, Chapter 1.3.1 Housing Choice of Metro’s Regional Framework Plan states that it is the policy of the Metro Council to encourage affordable housing opportunities in the Metro Area by addressing current and future supply of affordable housing production goals; and

WHEREAS, Title 7 Housing Choice of Metro Code Chapter 3.07 Urban Growth Management Functional Plan, Metro Code Section 3.07.750 Technical Assistance, encourages cities and counties to take advantage of the programs of technical and financial assistance provided by Metro to help achieve the goal; and

WHEREAS, on January 25, 2007, the Metro Council amended and adopted the Regional Framework Plan and the Metro Code, via Ordinance No. 06-1129B, which took effect on April 25, 2007 (“For the Purpose of Amending the Regional Framework Plan to Revise Metro Policies on Housing Choice and Affordable Housing and Amending Metro Code Sections 3.07.710 through 3.07.760 to Implement the New Policies”); and

WHEREAS, the Metro Council has acknowledged that continued and accelerated population growth is likely to negatively affect the availability and affordability of housing in the Metro Area, and that the lack of sufficient funding for affordable housing remains a major barrier to the production of affordable housing; and

WHEREAS, it is the Metro Council’s goal that the Metro Area grow and reinvest in ways that assure a high quality of life for residents of all incomes, races and ethnicity, including the development and preservation of housing affordable to families and individuals of modest means in mixed-use, walkable neighborhoods close to services and public transit; and

WHEREAS, on June 26, 2008, the Metro Council adopted Metro Resolution No. 08-3940 (“For the Purpose of Affirming a Definition of a “Successful Region” and Committing Metro to Work with Regional Partners to Identify Performance Indicators and Targets and to Develop a Decision-Making Process to Create Successful Communities”), establishing six defining measures of a successful region, one of which seeks to minimize geographic concentrations of poverty, by providing affordable housing choices in centers and corridors, such that the benefits and the burdens of growth and change are distributed equally; and

WHEREAS, at regular meetings on November 28, 2007 and February 13, 2008, MPAC [Metro Policy Advisory Committee] discussed Metro’s Housing Need Study, the Metro Region’s Affordable Housing Inventory, and the proposed \$10 million Regional Housing Choice Revolving Fund, which was later established by Metro Council ordinance adopting a June, 2008 budget amendment, and committing \$1 million in seed money from Metro limited duration funds, contingent on a \$9-19 million match from public, private, and charitable partners, and

WHEREAS, the national economic crisis and associated collapse of the housing boom made it impossible to complete the matching program needed to establish the Regional Housing Choice Revolving Fund; and

WHEREAS, on June 25, 2009, the Metro Council adopted the Metro FY 2009-10 budget via Resolution No. 09-1215B (“Adopting the Annual Budget for Fiscal Year 2009-10, Making Appropriations, Levying Ad Valorem Taxes, Authorizing an Interfund Loan and Declaring an Emergency”), and determined to use the remaining limited duration fund to provide regional funding for affordable housing, to accomplish some key objectives of the regional housing choice implementation strategy; and

WHEREAS, the Metro Council has identified \$850,000 of limited duration funds that is available for loans for a term up to five years that aid in the construction of ownership or rental housing for persons and families of below average incomes in the centers, corridors and station areas designated for growth in Metro’s 2040 Regional Framework Plan, with such available for uses such as pre-development work, land acquisition and construction; and

WHEREAS, in determining that providing regional funding for affordable housing is a matter of metropolitan concern, Metro will not exercise any authority to direct or regulate local government efforts to provide such funding, in order to avoid providing or regulating any existing service provided by local governments; and

WHEREAS, pursuant to Section 7(3) of the Metro Charter, “Assumption of Other Service Functions, the [Metro] Council shall seek the advice of the [Metro Policy Advisory Committee] MPAC before adopting an ordinance authorizing provision or regulation by Metro of a service, which is not a local government service”; and

WHEREAS, in accord with the provisions of the Metro Charter, MPAC’s advice has been sought for this ordinance, and MPAC advises approval; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. In accord with Section 4 of the Metro Charter, Metro Council finds that providing Metro funding for increasing the Metro Area’s supply of affordable housing is a function of metropolitan concern.

2. In accord with Section 7(1) of the Metro Charter, this finding is supported and justified by the legislation cited in the preceding recitals and by Metro Council's findings contained in the Regional Housing Choices Implementation Strategy report accepted by the Metro Council in March 2006, which recommended that Metro should direct effort towards development of new resources for affordable housing and advocate for increased funding at the Federal, State, and regional levels.

3. The Metro Council directs that Metro should not exercise any authority to direct or regulate local government efforts to provide such funding and therefore finds that Metro is not providing or regulating any existing service provided by local governments. In accord with Section 7(2) of the Metro Charter, Metro Council finds that this ordinance is therefore not subject to approval by either the Metro Policy Advisory Committee or the voters of the Metro Area.

4. In accord with Sections 4 and 7 of the Metro Charter, Metro Council hereby undertakes jurisdiction over increasing the Metro Area's supply of affordable housing, by utilizing Metro funds to provide short-term loans to assist in the development of additional affordable housing in the Metro Area.

ADOPTED by the Metro Council this _____ day of _____ 2010.

David Bragdon, Council President

Attest:

Approved as to Form:

Tony Andersen, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

Date: January 26, 2009

Prepared by: Kayla Mullis and Ina Zucker

813-7554; 797-1543

BACKGROUND

This ordinance declares affordable housing an issue of metropolitan concern, and authorizes Metro to spend funds to provide short-term loans to assist in the development of additional affordable housing in the Metro area.

The funds in question were approved when the Metro Council adopted the FY2009-10 budget which included the use of remaining limited duration funds to provide regional funding for affordable housing. Specifically the use of these funds was approved to accomplish key objectives of the Regional Housing Choice Implementation Strategy report, accepted by the Metro Council in March 2006, which recommended that Metro develop new resources for affordable housing and advocate for increased funding at federal, state and regional levels. The funds were originally part of \$1 million in seed money that the Metro Council approved for the FY2008-09 budget, and were contingent on finding matching fund of \$9-19 million from public, private and charitable partners. This was known as the Regional Housing Choice Revolving Fund. When the expected matching contributions were not forthcoming, the Metro Council approved use of \$850,000 of the original \$1 million to establish a revolving loan fund for affordable housing that will provide short-term loans for pre-development work, land acquisition and construction. This is now known as the Regional Housing Choice Revolving Loan Fund.

The Metro Council's decision to allocate these funds was rooted in a series of actions that recognize affordable housing supply as an important issue in the region and include:

- Fundamental 7 of the Metro Council's Regional Framework Plan which charges Metro to "enable communities to provide diverse housing options for all residents by providing a mix of housing types as well as affordable housing."
- Chapter 1.3.1 of the Regional Framework Plan which states that it is the policy of the Metro Council to encourage affordable housing opportunities by addressing current and future supply of affordable housing production goals.
- Resolution No. 08-3940, adopted by the Metro Council in June 2008, which established six defining measures of a successful region, one of which seeks to minimize geographic concentrations of poverty by providing affordable housing choices in centers and corridors in order to equitably distribute the benefits and burdens of growth and change.
- Title 7 of the Urban Growth Management Functional Plan, codified to be part of the Metro code in 2007, entitled Housing Choice which establishes voluntary affordable housing production goals to be adopted by local governments, and encourages cities and counties to take advantage of Metro programs to help "achieve the goal of increased production and preservation of housing choices and affordable housing."

Ordinance No. 10-1231 will officially recognize affordable housing as a matter of metropolitan concern, and directs the Metro Council to undertake jurisdiction over increasing the Metro area's supply of affordable housing by utilizing Metro funds to provide short-term loans to assist in developing affordable housing.

ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** Sections 4 and 7 of the Metro Charter provide that Metro has jurisdiction over "matters of metropolitan concern," including those matters the Council determines to be of metropolitan concern by ordinance. Such an ordinance shall contain a finding that a function is of metropolitan concern and the reasons for which it is appropriate to be undertaken by Metro. As outlined above, the Metro Council has approved legislation supporting affordable housing in accepting the Regional Housing Choices Implementation Strategy report in March 2006, including Fundamental 7 and chapter 1.3 in the Metro Council's Regional Framework Plan, amending the Regional Framework Plan by adopting Title 7 on Housing Choice by ordinance in 2007, by adopting six defining measures of a successful region in 2008 and including a measure that focuses on affordable housing, and by approving the Regional Housing Choice Revolving Fund in the FY 2008-09 budget.
3. **Anticipated Effects:** The Metro Council will undertake jurisdiction over increasing the Metro area's supply of affordable housing by utilizing Metro funds to provide short-term loans to assist in the development of additional affordable housing in the Metro area.
4. **Budget Impacts:** Future revenues and expenditures associated with the implementation of a short-term loan program to assist in development of affordable housing will be determined as part of the budget process.

RECOMMENDED ACTION

The Office of the Metro Attorney and staff recommend the adoption of Ordinance No. 10-1231.

Agenda Item Number 4.2

Ordinance No. 10-1233, For the Purpose of Establishing an Audit Committee and Amending Metro Code Section 2.15.080 External Audits and Adding a New Metro Code Section 2.19.250 Audit Committee.

COUNCILOR PARK
ORDINANCES – FIRST READING

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING AN	)	ORDINANCE NO. 10-1233
AUDIT COMMITTEE AND AMENDING)	
METRO CODE SECTION 2.15.080 EXTERNAL	)	Introduced by Suzanne Flynn, Metro Auditor,
AUDITS AND ADDING A NEW METRO CODE	)	with consent by David Bragdon, Council
SECTION 2.19.250 AUDIT COMMITTEE	)	President

WHEREAS, pursuant to Metro Code Chapter 2.15 Metro Auditor, the Office of Auditor provides financial and performance audits of Metro; and

WHEREAS, the Office of Auditor is committed to ensuring the independence of the external auditor; and

WHEREAS, an audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management’s practices, and that the independent auditors, through their own review, objectively and independently assess the government’s financial reporting practices.; and

WHEREAS, Metro Code Section 2.15.080 External Audits is amended as shown in the attached Exhibit “A”; and

WHEREAS, a new Metro Code Section 2.19.250 Audit Committee is added to Metro Code Chapter 2.19; as shown in the attached Exhibit “B”; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- Section 1. Metro Code Section 2.15.080 External Audits is hereby amended, attached hereto as Exhibit “A.”
- Section 2. Metro Code Chapter 2.19.250 Audit Committee is hereby added to Metro Code Chapter 2.19, attached hereto as Exhibit “B.”

ADOPTED by the Metro Council this _____ day of _____ 2010.

David Bragdon, Council President

Attest:

Approved as to Form:

Tony Andersen, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 10-1233
Amendments to Metro Code Chapter 2.15 Metro Auditor
Section 2.15.080 External Audits

2.15.080 External Audits

Subject to the requirements of the Metro Code pertaining to contracts, the Metro Auditor shall appoint external certified public accountants to conduct certified financial statement audits, as specified by state or local law. The Metro Auditor will monitor the process for the annual financial audit with the advice of the Audit Committee provided for in Section 2.19.250. The Metro Auditor shall coordinate and monitor the conduct of and the responses to external financial statement audits. The Metro Auditor shall work toward the elimination of duplicative audit work through cooperation with state, federal and external auditors. The Metro Auditor may also, within budgeted appropriations, contract with other professionals to assist in the performance of the audit function. The Metro Auditor will coordinate and monitor audit related assistance provided by such professionals.

(Ordinance No. 95-610A, Sec. 1.)

2.19.250 Audit Committee

(a) Committee Established. There is established an Audit Committee to serve as a liaison between the Metro Council, the independent external auditor, the Metro Auditor and management, as their duties relate to financial accounting, reporting, and internal controls and compliance.

(b) Duties. The Committee assists the Metro Council in reviewing Metro Council accounting policies and reporting practices as they relate to the Metro Council's Comprehensive Annual Financial Report. The Committee is the Metro Council's agent in assuring the independence of the Council's external auditors, the integrity of management, and the adequacy of disclosures to the public.

(c) Meetings. The Committee meets at least twice annually and as many times as it deems necessary to:

- (1) Review, prior to the annual audit, the scope and general extent of the external auditor's planned examination, including their engagement letter.
- (2) Review with management, the Metro Auditor and the external auditor, upon completion of their audit, financial results for the year prior to the presentation to the Metro Council. This review should encompass:
 - (A) The Metro Council's Comprehensive Annual Financial Report and Supplemental Disclosures required by General Accepted Accounting Principles (GAAP).
 - (B) Significant transactions not a normal part of the Metro Council's operations.
 - (C) Selection of and changes, if any during the year, in the Metro Council's accounting principles or their application.
 - (D) Significant adjustment proposed by the external auditor.
 - (E) Any disagreements between the external

Exhibit B to Ordinance No. 10-1233
Metro Code Chapter 2.19 Metro Advisory Committees
New Metro Code Section 2.19.250 Audit Committee

auditor and management about matters that could be significant to the Metro Council's financial statement or the Metro Auditor's report.

- (F) Difficulties encountered in performance of the audit.
 - (G) Violation of federal and state law, Metro Council ordinance, and contractual agreements reported by the external auditor.
- (3) Request comments from management regarding the responsiveness of the external auditor to the Metro Council's needs. Inquire of the Metro Auditor whether there have been any disagreements with management that, if not satisfactorily resolved, would have caused them to issue a nonstandard report on the Metro Council's financial statements.
 - (4) Review with the external auditor the performance of the Metro Council's financial and accounting personnel and any recommendations that the external auditor may have. Topics to be considered during this discussion include improving internal financial controls, controls over compliance, the selection of accounting principles, and financial reporting systems.
 - (5) Review written responses of management to "letter of comments and commendations" from the external auditor and discuss with management the status of implementation of prior period recommendations and corrective action plans.
 - (6) Ensure the final report is presented to the Metro Council within 90 days of completion of the audit. Upon presentation to the Metro Council, the audit will be considered complete.
 - (7) Recommend to the Metro Council revisions that should be made to the Metro Council's financial policies or internal controls.

Exhibit B to Ordinance No. 10-1233
Metro Code Chapter 2.19 Metro Advisory Committees
New Metro Code Section 2.19.250 Audit Committee

- (8) Recommend to the Metro Council appropriate extensions or changes in the duties of the Committee.
- (9) Assist with external auditor selection:
 - (A) The selection of the external auditor by the Metro Auditor shall be made according to Oregon Revised Statutes (ORS) and Metro procurement procedures, rules and regulations concerning proper selection procedures.
 - (B) The Metro Auditor shall, after consultation with the Committee, procure a request for proposals for the external auditor at least every five (5) years for the Metro Council's Comprehensive Annual Financial Report.
 - (C) The Committee will review the responses to the requests for proposals and make a recommendation to the Metro Auditor on the selection of the external auditor.
- (10) Adopt rules or bylaws consistent with this section and all state and federal laws for its operation.

(d) Membership. The Committee is composed of:

- (A) A Metro Councilor.
- (B) A MERC Commissioner.
- (C) The Metro Auditor (Non-Voting Capacity).
- (D) Four (4) citizens recommended by the Metro Auditor.
- (E) Metro's head finance staff person as designated by the Metro Chief Operating Officer (Non-Voting Capacity).

(e) Appointments. Appointments of voting members shall be made by the Metro Council President subject to confirmation by

Exhibit B to Ordinance No. 10-1233
Metro Code Chapter 2.19 Metro Advisory Committees
New Metro Code Section 2.19.250 Audit Committee

the Metro Council.

(f) Selection. Selection of the Audit Committee will be designed to ensure the maximum degree of independence for the audit management process. At least two (2) of the four (4) independent citizen members should have financial expertise. Voting members must reside in the jurisdictional Metro Area in the counties of Multnomah, Clackamas and Washington. The citizen members shall serve four (4) year terms, with the terms of the initial members being staggered so that in any one year only one term expires. In the event of a vacancy, the appointment shall be only for the remainder of the term.

(g) Members of the Committee must have no monetary or investment interest in any matters concerning the selection of the external auditor.

(h) Metro employees and employees of any organization providing or competing for audit contract services to Metro are not eligible for membership on the Committee.

(i) The Committee elects or appoints a chairperson to preside at all meetings. The chairperson's duties rotate annually, with no chairperson presiding for more than one year in any term. The Committee designates a person as chair-elect to preside as vice-chair.

(j) The Office of Metro Auditor provides technical and clerical support to the Committee and arranges meetings for the Committee.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 10-1233 FOR THE PURPOSE OF
ESTABLISHING AN AUDIT COMMITTEE AND AMENDING METRO CODE SECTION
2.15.080 EXTERNAL AUDITS AND ADDING A NEW METRO CODE SECTION 2.19.250
AUDIT COMMITTEE

Date: February 4, 2009

Prepared by: Suzanne Flynn
Metro Auditor
503-797-1891

BACKGROUND

The Government Finance Officers Association and the American Institute of Certified Public Accountants recommend an audit committee as a best practice. It is a practical means for a governing body to provide independent review and oversight of the government's financial reporting processes, internal controls, and independent auditors. An audit committee also provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns.

Since 2007, the Office of the Metro Auditor has appointed an audit committee to assist in monitoring the activities of the external audit, reviewing the response of management, and selecting the external auditor. This support has been extraordinarily valuable but creating an audit committee as an agent of the Metro Council would strengthen and clarify their role.

ANALYSIS/INFORMATION

1. **Known Opposition:** None Known
2. **Legal Antecedents:** Metro Code Chapters 2.15 and 2.19 provide authority for the Metro Auditor and for the creation of advisory committees.
3. **Anticipated Effects:** The establishment of an audit committee as an agent of the Metro Council will increase the ability of the external auditor to maintain independence and objectivity. It will provide additional assurance to the Metro Council that financial reporting processes are strong.
4. **Budget Impacts:** None. The Metro Auditor has supported meetings of an auditor-appointed audit committee since 2007 within the current Office's budget.

RECOMMENDED ACTION

It is recommended that the Council approve amendment to Metro Code Chapter 2.15 Metro Auditor Section 2.15.080 External Audits and the addition of a new Metro Code Section 2.19.250 Audit Committee to Metro Code Chapter 2.19 Metro Advisory Committees.

Agenda Item Number 5.1

Resolution No. 10-4110, For the Purpose of Metro Council's Acceptance of
the Results of the Independent Audit Report For Financial Activity
During Fiscal Year 2008-2009.

COUNCILOR PARK
RESOLUTIONS

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF METRO COUNCIL'S) RESOLUTION NO. 10-4110
ACCEPTANCE OF THE RESULTS OF THE)
INDEPENDENT AUDIT REPORT FOR) Introduced by
FINANCIAL ACTIVITY DURING FISCAL) Suzanne Flynn, Metro Auditor
YEAR 2008-2009)

WHEREAS, Oregon Revised Statute 297.465 requires an annual independent audit of Metro's financial statements; and

WHEREAS, Metro Code Section 2.15.80 requires the Metro Auditor to appoint the external certified public accountant to conduct certified financial statement audits as specified in state and local laws; and

WHEREAS, Metro engaged in Contract No. 927943 with Moss Adams LLP, independent Certified Public Accountants to provide the following audit services:

- 1. Audit of Metro's financial statements (including all costs associated with the Comprehensive Annual Financial Report and applicable management recommendations and comments);
- 2. MERC (a component unit of Metro) financial statements and applicable management recommendations and comments;
- 3. Single Audit and applicable management recommendations and comments;
- 4. Metro Natural Areas Bond Measure Expenditures and applicable management recommendations and comments; and
- 5. Oregon Zoo Construction Bond Measure Expenditures and applicable management recommendations and comments.

WHEREAS, the annual independent audit has been completed and an unqualified opinion received from Moss Adams LLP; and

WHEREAS, a separate letter was delivered to management and a management plan of action completed; now, therefore,

BE IT RESOLVED that the Metro Council hereby acknowledges and accepts the results of the independent audit report for fiscal year FY 2008-2009 (Exhibit A).

ADOPTED by the Metro Council this ____ day of _____ 2010.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4110 FOR THE PURPOSE OF THE METRO COUNCIL'S ACCEPTANCE OF THE RESULTS OF THE INDEPENDENT AUDIT REPORT FOR FINANCIAL ACTIVITY DURING FISCAL YEAR 2008-2009

Date: January 15, 2010

Prepared by: Suzanne Flynn
Metro Auditor
503/797-1891

BACKGROUND

State ORS provision 297.465 requires an annual independent audit of Metro's financial statements. The current contract was awarded to Moss Adams LLP for audit services and is effective May 18, 2007 through June 30, 2010.

Metro Code Chapter 2.15 specifies at Section 2.15.80 that the Auditor shall appoint external certified public accountants to conduct certified financial statement audits. The Metro Charter Section 18 also specifies that the auditor shall be responsible for financial auditing of all aspects of Metro's operations.

The Comprehensive Annual Financial Report (CAFR) has been completed by the Finance and Regulatory Services. Moss Adams LLP has audited the financial statements and issued an opinion that these statements fairly represent Metro's financial position as of June 30, 2009. Moss Adams also compiled a separate letter to management with recommendations, referred to as "Exhibit A." Finance and Regulatory Services has responded to the recommendations. The results have been reviewed by the Metro Auditor and Metro Audit Committee members.

ANALYSIS/INFORMATION

1. **Known Opposition** none

2. **Legal Antecedents**

State ORS provision 297.465 requires an annual independent audit of Metro's financial statements. The Metro contract No. 927943 with Moss Adams LLP for audit services will expire on June 30, 2010.

Metro Code Chapter 2.15 specifies at Section 2.15.80 that the Auditor shall appoint external certified public accountants to conduct certified financial statement audits. The Metro Charter Section 18 also specifies that the auditor shall be responsible for financial auditing of all aspects of Metro's operations.

3. **Anticipated Effects**

Recommendations made by Moss Adams shall be noted and implemented by Finance and Regulatory Services management and staff.

4. **Budget Impacts** None known at this time.

RECOMMENDED ACTION

The Metro Auditor recommends approval of Resolution No. 10-4110.

December 22, 2009

To Margo Norton, Director of Finance and Administration
Metro
Portland, Oregon

**Exhibit "A" to Resolution
10-4110**

Dear Ms Norton:

We have completed our audit of the financial statements of Metro for the year ended June 30, 2009 and have issued our report thereon dated December 7, 2009. In planning and performing our audit of the financial statements of Metro as of and for the year ended June 30, 2009, in accordance with auditing standards generally accepted in the United States of America, we considered Metro's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Metro's internal control. Accordingly, we do not express an opinion on the effectiveness of Metro's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

FINDINGS FROM LAST YEAR - MATERIAL WEAKNESSES

None

FINDINGS FROM LAST YEAR - SIGNIFICANT DEFICIENCIES

Health insurance payable - resolved: Last year, we found that Metro had accrued the July employee health insurance premium in error. During the current year, Metro developed a programmatic solution through the accounting software to correct the timing of the accrual for health insurance premiums that effectively resolved this control deficiency. We expanded our procedures this year over year-end accrued expenses and noted that the health insurance premiums that covered July 2009 were correctly excluded from year-end accrued expenses.

Federal contract language – repeat finding: In our testing of Metro’s compliance with federal grant provisions last year, we identified five out of 15 instances where vendor contracts did not contain the necessary federal clauses informing the vendor of the federal source funding the project and that there were additional federal compliance requirements. During the current year, the Planning Department implemented a review process and began using a checklist for new and amended contracts to ensure all proper language is included when appropriate. This change appears to only be effectively implemented for projects administered by the Planning department, as we noted two more instances in our current year testing related to the Parks department where federally sourced projects did not contain the necessary federal clauses.

Recommendation: We recommend that Metro provide some training to departments outside of Planning on federal grant compliance requirements, establishing effective internal controls, and on the use of checklists or other procedures to assist in meeting federal compliance requirements.

OBSERVATIONS FROM LAST YEAR - MANAGEMENT ADVISORY COMMENTS

Cash controls at Blue Lake – resolved: Last year, we determined there was a lack of adequate segregation of duties over the handling and accounting for cash. In the current year, we found that improvements were made effectively addressing the issue.

Payroll timecard approval - resolved: In our testing of payroll last year, we found 325 occurrences out of roughly 50,000 records where certain management employees approved their own time cards. Effective for the April 15, 2009 payroll run, Metro had changes made to its Kronos time entry system such that managers must have their time reviewed by another person. During our payroll control testing, we noted no instances in which an employee approved their own time.

Splitting of purchasing card transactions – partially resolved: We tested the use of purchase cards in each of the prior two fiscal year audits and found that certain purchase transactions were split to circumvent the \$5,000 limit on individual purchases primarily to avoid the additional approval processes required. During the current year, we learned that in light of our findings, the Metro Auditor’s Office conducted a P-card audit to expand the number of P-card transactions tested. That audit resulted in additional recommendations made by the Auditor’s office.

Recommendation: We recommend management implement improvements as suggested by the Metro Auditor and report the status periodically to the Auditor’s Office as well as the Audit Committee.

Opportunity to improve Zoo cash controls - resolved: In each of the past two audits, we identified certain lack of segregation of duties over handling cash at the Zoo received for educational classes. In the current year, the Oregon Zoo purchased a web-based system to track classes and receive payments for educational classes. All classes, whether paid by mail or paid online are entered into the new system. We found that attendees are cross-checked with payments received to ensure the Zoo received payment.

Opportunity to improve the accounting for grant revenues and expenditures - resolved: In our prior year testing of grant receivables and related payables, we found that grant receivables and revenues were being recorded prior to the determination that all eligibility requirements had been met. In our discussions with Metro’s Accounting Compliance Officer, we found that Finance and Planning have

significantly improved communication of grant activity, and our testing of grant receivables did not result in any such findings in the current year.

CURRENT YEAR OBSERVATIONS AND RECOMMENDATIONS

SIGNIFICANT DEFICIENCIES

The following significant deficiencies were identified during our audit of the June 30, 2009 financial statements.

Accuracy of the Schedule of Expenditures of Federal Awards: Metro is required to identify all expenditures for programs funded with federal grants sufficient to prepare an accurate Schedule of Expenditures of Federal Awards (SEFA). The SEFA is required to be filed with the Federal Government when total federally funded program expenditures exceed certain thresholds. In addition, the SEFA becomes the basis for Metro's external auditor to determine which grants are required to be tested under the Single Audit Act and OMB Circular A-133. During our testing of the current year SEFA and related grant records, we identified two additional grant programs that were federally sourced, that were not identified by management as federal grants, and were therefore, originally omitted from the SEFA in error.

Recommendation: As noted earlier, we recommend that Metro provide training to its managers and personnel responsible for administering federal grants on the development and implementation of policies to assist in the preparation of an accurate SEFA. Such policies should include mechanisms for the timely and accurate identification of federal funds received from all sources along with necessary communications to accounting staff responsible recording grants in the general ledger.

MANAGEMENT ADVISORY COMMENTS

In addition to the significant deficiencies noted above, during our audit we also became aware of several matters that are opportunities for strengthening internal controls and operating efficiency. These matters are noted below as management advisory comments.

PeopleSoft Access: During our review of access controls to PeopleSoft, we noted that twelve employees have access to create and post a journal entry in the general ledger. We did find that Metro had previously implemented manual procedures including the recording of all adjusting journal entries into a Journal Entry log by the initiator of the entry, the posting of the entry into the general ledger by a second person, and the review monthly of all adjusting journal entries by a third person.

Recommendation: The manual procedures implemented by Metro will be effective in mitigating the access control weakness identified provided the procedures are routinely followed. We recommend that Metro evaluate the merits of implementing an additional automated control through the PeopleSoft system that limits roles within the system so that the initiator of an entry is not also able to post the entry into the general ledger.

Payables cut off: During our search for unrecorded liabilities, we noted three exceptions in which invoices relating to goods or services received prior to the year-end were not recorded as payables in the proper period. Performing an accurate cutoff of accounts payable is critical for recording goods and services in the year for which they were budgeted to demonstrate Oregon legal compliance, as well as proper matching of expenses against the revenues to which they relate to comply with applicable governmental accounting standards. Two of the errors appeared to be the result of the late receipt of invoices from suppliers, and one appeared to be the result of an error in determining the correct period for recording an invoice received timely.

Recommendation: We recommend that Metro revise its controls over purchases so that receipt of vendor invoices is not required to start the expenditure recognition process in the accounting system. Instead, purchase orders and receiving reports could be used to verify that a purchase transaction has been completed and a liability has been incurred sufficient to start the accounting entries

Implementing new accounting pronouncements:

We would like to highlight two accounting pronouncements that will be effective for Metro over the next two years. Both of these new standards will require significant staff time and resources to implement, as well as the development of additional policies and procedures.

GASB Statement No. 51. GASB 51 on Accounting and Financial Reporting for Intangible Assets is effective for the year ending June 30, 2010. This statement outlines accounting and financial reporting requirements for intangible assets such as water rights, patents and internally generated assets like computer software. It is required to be applied retroactively. The standard will require that Metro meet certain criteria before it can begin capitalizing costs incurred. It would be prudent for Metro to adopt certain policies and procedures to assist in its efforts to properly comply with requirements of this standard. In addition, given the standard is to be adopted retroactively for certain intangibles acquired in prior years, there will be significant time and effort required to conduct the studies and analysis of prior year transactions to properly determine if any require capitalization under the standard.

Recommendation: We recommend that Metro establish a formal plan to address the requirements of this standard, determine the effort involved, and secure the resources necessary to perform the required analysis. Any adjustments found to be necessary could be posted well before the year-end closing process to remove the risk to the timing of completing the accounting and financial statements for the year.

GASB Statement No. 54. GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions, will be effective for Metro for fiscal year ended June 30, 2011. This standard provides clearer fund balance classifications in order to allow for consistency in accounting and reporting. It also clarifies the proper use of special revenue, debt service, and capital projects funds, that may be different from Metro's current use of these fund types. This statement will require management to more closely review governmental fund resources and establish a formalized decision hierarchy on the level of restriction associated with resources based primarily on the extent to which a government is bound to observe constraints imposed by external parties. It will also require Metro to formalize certain policies about the highest decision making level of authority required to internally restrict a resource, the bodies or individuals that can create 'assigned resources', and certain other policies to properly meet the requirements of this standard.

Recommendation: We recommend that Metro establish a formal plan to address the requirements of this standard, determine the effort involved, and secure the resources necessary. Implementing this standard will require the creation of certain policies and procedures, as well as an analysis of the current use of governmental funds to identify changes to current reporting that will be required. Any changes to the use of existing funds will likely require changes in budget practices as well.

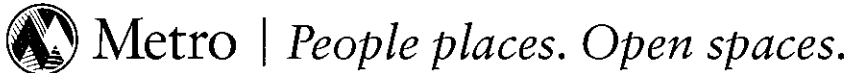
This report is intended solely for the information and use of the management of Metro and is not intended to be and should not be used by anyone other than these specified parties. We would be happy to further discuss any of the items in this letter with you at your convenience.

Moss Adams, LLP

Eugene, Oregon
December 22, 2009

600 NE Grand Ave.
Portland, OR 97232-2736
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503-797-1804 TDD
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January 12, 2010

Ms. Suzanne Flynn
Metro Auditor

The independent audit firm of Moss Adams LLP, certified public accountants, has completed the audit of the financial statements of Metro for the year ended June 30, 2009. The financial statements for MERC are incorporated in the Metro report and are an integral part of the review. As part of that audit Moss Adams reviewed accounting policies and procedures, evaluated the effectiveness of the existing system of internal control, and made findings, observations and recommendations relating to this review. Moss Adams reviewed the Natural Areas Bond program and the Oregon Zoo Infrastructure and Animal Welfare Bond program, as required by the bond ordinances, and performed a separate review of federal grants for federal compliance reporting purposes.

The independent auditor's responsibility under the auditing standards generally accepted in the United States has become increasingly rigorous in both the private and public sectors. The Governmental Accounting Standards Board (GASB), now in its 25th year, issues standards that help Metro demonstrate to the region our accountability and stewardship over public resources. This year Metro successfully implemented the new pollution remediation standard (GASB 49) and issued its first updated calculation of Other Post Employment Benefits obligations (GASB 43 and 45), a new standard implemented successfully last year. I am deeply appreciative that our accounting group, led by Don Cox, CPA, CGFM, Accounting Manager and Accounting Compliance Officer, and Karla Lenox, CPA, Financial Reporting and Control Supervisor, continues to ensure that Metro meets these new standards, receives an unqualified audit opinion and produces an award winning Comprehensive Annual Financial Report. I also appreciate the professional work of the MERC accounting group, led by Kathy Taylor, CPA, MERC Chief Operating Officer, and Julia Fennell, Controller. We also thank the audit staff of Moss Adams LLP for its careful and professional review. Each year we gain new insights into maintaining and sustaining best practices through the audit process and our professional discussions with Moss Adams.

Moss Adams made recommendations to management in its letter dated December 22, 2009. In addition Moss Adams reviews the prior year's report and comments on Metro's excellent progress. We have reported this "management letter" to the Audit Committee and to the Metro Council with management's response.

We wish to thank the Audit Committee, an external professional review body organized by your office to assist both you and me in evaluating and improving our business and accounting processes.

Finally, we wish to thank you personally for your attention and support during the audit process. We look forward to continuing our work with you to assure both the Metro Council and the region's citizens that Metro operates with the highest standards of fiscal prudence, accountability, transparency and integrity.

Sincerely,

A handwritten signature in black ink that reads "Margo Norton". The signature is written in a cursive, flowing style.

Margo Norton
Finance and Regulatory Services Director

For the reader's convenience, the findings, observations and recommendations of Moss Adams are reproduced in their entirety, modified only by the numbering of the recommendations. Metro's response follows each recommendation with the same numbering system.

FINDINGS FROM LAST YEAR (FY 2007-08) - MATERIAL WEAKNESSES

None

FINDINGS FROM LAST YEAR (FY 2007-08) - SIGNIFICANT DEFICIENCIES

Health insurance payable - resolved: Last year, we found that Metro had accrued the July employee health insurance premium in error. During the current year, Metro developed a programmatic solution through the accounting software to correct the timing of the accrual for health insurance premiums that effectively resolved this control deficiency. We expanded our procedures this year over year-end accrued expenses and noted that the health insurance premiums that covered July 2009 were correctly excluded from year-end accrued expenses.

Federal contract language – repeat finding: In our testing of Metro's compliance with federal grant provisions last year, we identified five out of 15 instances where vendor contracts did not contain the necessary federal clauses informing the vendor of the federal source funding the project and that there were additional federal compliance requirements. During the current year, the Planning Department implemented a review process and began using a checklist for new and amended contracts to ensure all proper language is included when appropriate. This change appears to only be effectively implemented for projects administered by the Planning department, as we noted two more instances in our current year testing related to the Parks department where federally sourced projects did not contain the necessary federal clauses.

Recommendation # 1: We recommend that Metro provide some training to departments outside of Planning on federal grant compliance requirements, establishing effective internal controls, and on the use of checklists or other procedures to assist in meeting federal compliance requirements.

Response # 1: The contract process checklist developed and used by the Planning Department for contracts using federal funds has worked successfully this year and will be offered to other departments who utilize federal grants. This will also be incorporated into contract training classes offered by Finance and Regulatory Services. The specific instances arose

because Parks and Environmental Services contracts were not initially classified as using federal funding grants (see Recommendation #3). Once correcting this misclassification, the checklist will become effective. Parks and Environmental Services has also implemented new procedures for federal grant compliance to ensure that correct language is associated with contracts using federal grants.

OBSERVATIONS FROM LAST YEAR (FY 2007-08) - MANAGEMENT ADVISORY COMMENTS

Cash controls at Blue Lake – resolved: Last year, we determined there was a lack of adequate segregation of duties over the handling and accounting for cash. In the current year, we found that improvements were made effectively addressing the issue.

Payroll timecard approval - resolved: In our testing of payroll last year, we found 325 occurrences out of roughly 50,000 records where certain management employees approved their own time cards. Effective for the April 15, 2009 payroll run, Metro had changes made to its Kronos time entry system such that managers must have their time reviewed by another person. During our payroll control testing, we noted no instances in which an employee approved their own time.

Splitting of purchasing card transactions – partially resolved: We tested the use of purchase cards in each of the prior two fiscal year audits and found that certain purchase transactions were split to circumvent the \$5,000 limit on individual purchases primarily to avoid the additional approval processes required. During the current year, we learned that in light of our findings, the Metro Auditor's Office conducted a P-card audit to expand the number of P-card transactions tested. That audit resulted in additional recommendations made by the Auditor's office.

Recommendation # 2: We recommend management implement improvements as suggested by the Metro Auditor and report the status periodically to the Auditor's Office as well as the Audit Committee.

Response #2: Metro responded to the internal audit's finding in May 2009, agreeing that improvements were needed within the procurement card program, including the development of new policies suggested by the Metro Auditor. In March 2009 the Director of Finance and Regulatory Services issued a special notice to all P-card holders reaffirming the rules for food and beverage expense, meeting expense, cash refunds and personal reimbursements. In April 2009 the Procurement Officer issued a special notice to all P-card holders and P-card approvers, defining a split transaction, restating Metro's prohibition of such transactions, and describing the action that would be taken if future split transactions were discovered. Metro will continue to utilize the Bank of America's

reporting software to identify and remedy any split transactions in the future. These reminders have been emphasized in subsequent periodic trainings of users and approvers. Finance and Regulatory Services has drafted revised policies for 2010 and will be communicating these to all Metro departments.

Opportunity to improve Zoo cash controls - resolved: In each of the past two audits, we identified certain lack of segregation of duties over handling cash at the Zoo received for educational classes. In the current year, the Oregon Zoo purchased a web-based system to track classes and receive payments for educational classes. All classes, whether paid by mail or paid online are entered into the new system. We found that attendees are cross-checked with payments received to ensure the Zoo received payment.

Opportunity to improve the accounting for grant revenues and expenditures - resolved: In our prior year testing of grant receivables and related payables, we found that grant receivables and revenues were being recorded prior to the determination that all eligibility requirements had been met. In our discussions with Metro's Accounting Compliance Officer, we found that Finance and Planning have significantly improved communication of grant activity, and our testing of grant receivables did not result in any such findings in the current year.

MATERIAL WEAKNESSES (FY 2008-09)

No material weaknesses were reported in the current audit.

SIGNIFICANT DEFICIENCIES (FY 2008-09)

The following significant deficiencies were identified during our audit of the June 30, 2009 financial statements.

Accuracy of the Schedule of Expenditures of Federal Awards: Metro is required to identify all expenditures for programs funded with federal grants sufficient to prepare an accurate Schedule of Expenditures of Federal Awards (SEFA). The SEFA is required to be filed with the Federal Government when total federally funded program expenditures exceed certain thresholds. In addition, the SEFA becomes the basis for Metro's external auditor to determine which grants are required to be tested under the Single Audit Act and OMB Circular A-133. During our testing of the current year SEFA and related grant records, we identified two additional grant programs that were federally sourced, that were not identified by management as federal grants, and were therefore, originally omitted from the SEFA in error.

Recommendation #3: As noted earlier, we recommend that Metro provide training to its managers and personnel responsible for administering federal grants on the development and implementation of policies to assist in the preparation of an accurate SEFA. Such policies should include mechanisms for the timely and accurate identification of federal funds received from all sources along with necessary communications to accounting staff responsible recording grants in the general ledger.

Response #3: The primary and initial source for recording grant revenues is the responsibility of the operating department which receives the funds and is aware of the specific contract and grant requirements. Finance and Regulatory Services provides chart of accounts and consultative assistance and written definitions for department staff to classify transactions correctly. For the FY 2009 transactions that led to this recommendation, Parks and Environmental Services staff found it necessary to contact the granting entity to ascertain the specific source of funding as it was unclear from the grant award documents. Upon receiving confirmation from the grantor agency, the classification was corrected in Metro's reporting. Any open contracts related to these grants were amended to incorporate the necessary federal contract language (see Recommendation #1). Management will work with staff to assure funding sources are more clearly identified in contract documents to enable the initial recording of transactions to be correct. Parks and Environmental Services has implemented steps to ensure that state agencies are contacted at the beginning of the grant process for the correct identification of the sources of funds.

MANAGEMENT ADVISORY COMMENTS (FY 2008-09)

In addition to the significant deficiencies noted above, during our audit we also became aware of several matters that are opportunities for strengthening internal controls and operating efficiency. These matters are noted below as management advisory comments.

PeopleSoft Access: During our review of access controls to PeopleSoft, we noted that twelve employees have access to create and post a journal entry in the general ledger. We did find that Metro had previously implemented manual procedures including the recording of all adjusting journal entries into a Journal Entry log by the initiator of the entry, the posting of the entry into the general ledger by a second person, and the review monthly of all adjusting journal entries by a third person.

Recommendation #4: The manual procedures implemented by Metro will be effective in mitigating the access control weakness identified provided the procedures are routinely followed. We recommend that Metro evaluate

the merits of implementing an additional automated control through the PeopleSoft system that limits roles within the system so that the initiator of an entry is not also able to post the entry into the general ledger.

Response #4: Metro has established policy and procedure that the individual who prepares and initially enters a journal entry (JE) cannot also post the JE. The detective controls, while only partially automated, are effective. Accounting Services will continue to investigate any available system controls or reviews that could be implemented as appropriate. Business process efficiencies and limited staff size do not make it possible to segregate all job duties and processes across the board.

Payables cut off: During our search for unrecorded liabilities, we noted three exceptions in which invoices relating to goods or services received prior to the year-end were not recorded as payables in the proper period. Performing an accurate cutoff of accounts payable is critical for recording goods and services in the year for which they were budgeted to demonstrate Oregon legal compliance, as well as proper matching of expenses against the revenues to which they relate to comply with applicable governmental accounting standards. Two of the errors appeared to be the result of the late receipt of invoices from suppliers, and one appeared to be the result of an error in determining the correct period for recording an invoice received timely.

Recommendation #5: We recommend that Metro revise its controls over purchases so that receipt of vendor invoices is not required to start the expenditure recognition process in the accounting system. Instead, purchase orders and receiving reports could be used to verify that a purchase transaction has been completed and a liability has been incurred sufficient to start the accounting entries

Response #5: The Accounting Compliance Officer and agency Finance Managers have reviewed the identified transactions and circumstances. The transactions in question were expenditures under formal contracts which do not result in "purchase orders" or "receiving reports," but rather require the project manager's awareness of contractor work performance and billing status. The Finance Managers will conduct additional training of staff to have them monitor and solicit expenditure data from contractors on a timelier basis at fiscal year end, with increased emphasis and attention to fiscal period cutoff dates. Accounting Services will continue to issue instructions on year end cutoff and accrual procedures and will continue to review post-year end transactions for accrual.

In its management letter, Moss Adams also included advice about two new accounting standards that will be implemented. Metro has an excellent record of implementing new standards timely, and we have already considered our strategy.

Implementing new accounting pronouncements:

We would like to highlight two accounting pronouncements that will be effective for Metro over the next two years. Both of these new standards will require significant staff time and resources to implement, as well as the development of additional policies and procedures.

GASB Statement No. 51. GASB 51 on Accounting and Financial Reporting for Intangible Assets is effective for the year ending June 30, 2010. This statement outlines accounting and financial reporting requirements for intangible assets such as water rights, patents and internally generated assets like computer software. It is required to be applied retroactively. The standard will require that Metro meet certain criteria before it can begin capitalizing costs incurred. It would be prudent for Metro to adopt certain policies and procedures to assist in its efforts to properly comply with requirements of this standard. In addition, given the standard is to be adopted retroactively for certain intangibles acquired in prior years, there will be significant time and effort required to conduct the studies and analysis of prior year transactions to properly determine if any require capitalization under the standard.

Recommendation # 6: We recommend that Metro establish a formal plan to address the requirements of this standard, determine the effort involved, and secure the resources necessary to perform the required analysis. Any adjustments found to be necessary could be posted well before the year-end closing process to remove the risk to the timing of completing the accounting and financial statements for the year.

GASB Statement No. 54. GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions, will be effective for Metro for fiscal year ended June 30, 2011. This standard provides clearer fund balance classifications in order to allow for consistency in accounting and reporting. It also clarifies the proper use of special revenue, debt service, and capital projects funds, that may be different from Metro's current use of these fund types. This statement will require management to more closely review governmental fund resources and establish a formalized decision hierarchy on the level of restriction associated with resources based primarily on the extent to which a government is bound to observe constraints imposed by external parties. It will also require Metro to formalize certain policies about the highest decision making level of authority required to internally restrict a resource, the bodies or individuals that can create 'assigned resources', and certain other policies to properly meet the requirements of this standard.

Recommendation # 7: We recommend that Metro establish a formal plan to address the requirements of this standard, determine the effort involved, and secure the resources necessary. Implementing this standard will require the creation of certain policies and procedures, as well as an analysis of the current use of governmental funds to identify changes to current reporting that will be required. Any changes to the use of existing funds will likely require changes in budget practices as well.

Response #6 and #7: Metro began its policy work for the upcoming GASB Statements last year, including direct consultation with GASB regarding the unusual aspects of TOD easements. FRS staff has reviewed the GASB statements and has advised agency Finance Managers of the provisions and necessary requirements. Accounting Services will develop a written accounting policy incorporating GASB 51 requirements and will assist operating departments in identifying and accounting for intangible assets. Accounting Services staff will work with Financial Planning staff to develop appropriate fund balance budget policies as part of the development of the FY 2010-11 budget. Accounting Services has worked with Financial Planning staff in prior years to correctly classify funds by type in anticipation of the final statement issued by GASB. The most recent result was the segregation of the General Renewal and Replacement Fund budgetary fund from Metro's Capital Fund and its consolidation within the General Fund on a GAAP-reporting basis in order to be in compliance with this statement. Governmental accounting continues to become increasingly complex and requires increased resources to assure Metro continues to comply with generally accepted accounting principles for all its diversified activities.

Note: Single Audit

In addition to the audit of the financial statements, Moss Adams also performed a separate audit of federal grant funds and has issued a report on compliance with requirements applicable to each major program and internal control over compliance with OMB circular A-133, often referred to as the "Single Audit" for federal compliance.

The report provided an unqualified opinion in the financial reporting, identified no questioned costs, and disclosed essentially the same findings of "significant deficiency" as those included above. The management response to those findings is included in the Schedule of Findings and Questioned Costs, a part of the single audit.

Metro CAFR

Comprehensive Annual Financial Report

For the year ended June 30, 2009

*Front cover only - entire report
may be downloaded from Metro's
website (184 pages)*

Finance and Regulatory Services Department

Director of Finance and Regulatory Services
Margaret Norton

Prepared by
Accounting Services Division

Accounting Compliance Officer
Donald R. Cox Jr., CPA, CGFM

Financial Reporting Supervisor
Karla J. Lenox, CPA



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600 NE Grand Ave., Portland, Oregon 97232

**METRO
FEDERAL GRANT PROGRAMS
INDEPENDENT AUDITOR'S REPORTS
AND
SCHEDULE OF EXPENDITURES OF
FEDERAL AWARDS**

JUNE 30, 2009

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* Incorporated by reference only

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON
COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL
STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING
STANDARDS***

Metro Council and Metro Auditor
Portland, Oregon

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Metro as of and for the year ended June 30, 2009, which collectively comprise Metro's basic financial statements and have issued our report thereon dated December 7, 2009. Our report was modified to include a reference to other auditors. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Other auditors audited the financial statements of the Oregon Zoo Foundation, a discretely presented component unit, as described in our report on Metro's financial statements. The financial statements of the Oregon Zoo Foundation were not audited in accordance with *Governmental Auditing Standards*.

Internal Control over Financial Reporting

In planning and performing our audit, we considered Metro's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Metro's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of Metro's internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON
COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL
STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING
STANDARDS* – (continued)**

Compliance and Other Matters

As part of obtaining reasonable assurance about whether Metro's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of the audit committee; management; the Council; the Secretary of State, Divisions of Audits, of the State of Oregon; federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Moss Adams, LLP

Eugene, Oregon
December 7, 2009

**REPORT ON COMPLIANCE WITH REQUIREMENTS APPLICABLE TO EACH
MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE IN
ACCORDANCE WITH OMB CIRCULAR A-133 AND ON THE SCHEDULE OF
EXPENDITURES OF FEDERAL AWARDS**

Metro Council and Metro Auditor
Portland, Oregon

Compliance

We have audited the compliance of Metro with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) *Circular A-133 Compliance Supplement* that are applicable to each of its major federal programs for the year ended June 30, 2009. Metro's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts, and grants applicable to each of its major federal programs is the responsibility of Metro's management. Our responsibility is to express an opinion on Metro's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about Metro's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of Metro's compliance with those requirements

In our opinion, Metro complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended June 30, 2009. However, the results of our auditing procedures disclosed instances of noncompliance with those requirements, which are required to be reported in accordance with OMB Circular A-133 and which are described in the accompanying schedule of findings and questioned costs as items 2009-01 and 2009-02.

Internal Control Over Compliance

The management of Metro is responsible for establishing and maintaining effective internal control over compliance with the requirements of laws, regulations, contracts, and grants applicable to federal programs. In planning and performing our audit, we considered Metro's internal control over compliance with the requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of Metro's internal control over compliance.

REPORT ON COMPLIANCE WITH REQUIREMENTS APPLICABLE TO EACH MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE IN ACCORDANCE WITH OMB CIRCULAR A-133 AND ON THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS – (continued)

Our consideration of internal control over compliance was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in the entity's internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control over compliance that we consider to be significant deficiencies and another that we consider to be a material weakness.

A *control deficiency* in an entity's internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect noncompliance with a type of compliance requirement of a federal program on a timely basis. A *significant deficiency* is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to administer a federal program such that there is more than a remote likelihood that noncompliance with a type of compliance requirement of a federal program that is more than inconsequential will not be prevented or detected by the entity's internal control. We consider the deficiencies in internal control over compliance described in the accompanying schedule of findings and questioned costs as items 2009-01 and 2009-02 to be significant deficiencies.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that material noncompliance with a type of compliance requirement of a federal program will not be prevented or detected by the entity's internal control. Of the significant deficiencies in internal control over compliance described in the accompanying schedule of findings and questioned costs, we considered item 2009-01 to be a material weakness.

Metro's response to the finding identified in our audit is described in the accompanying schedule of findings and questioned costs. We did not audit Metro's response and, accordingly, we express no opinion on it.

Schedule of Expenditures of Federal Awards

We have audited the basic financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Metro as of and for the year ended June 30, 2009, which collectively comprise Metro's basic financial statements and have issued our report thereon dated December 7, 2009. Our report was modified to include a reference to other auditors. Other auditors audited the financial statements of the Oregon Zoo Foundation, a discretely presented component unit, as described in our report on Metro's financial statements. Our audit was performed for the purpose of forming an opinion on the financial statements taken as a whole. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

REPORT ON COMPLIANCE WITH REQUIREMENTS APPLICABLE TO EACH MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE IN ACCORDANCE WITH OMB CIRCULAR A-133 AND ON THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS – (continued)

This report is intended solely for the information and use of the audit committee; management; the Council; the Secretary of State, Divisions of Audits, of the State of Oregon; federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Moss Adams, LLP

Eugene, Oregon
January 19, 2010
(Except for the schedule of expenditures of federal awards, to which the date is December 7, 2009)

METRO
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS (Continued)
YEAR ENDED JUNE 30, 2009

<u>Grantor and program title</u>	<u>Federal CFDA number</u>	<u>Grant number</u>	<u>Federal Expenditures</u>
<u>U. S. Department of Agriculture</u>			
Natural Resources Conservation Service-			
Wetlands Reserve Program-Forest Grove Habitat	10.072	66-0436-8-060	\$ 51,018
Wetlands Reserve Program-Lovejoy Restoration	10.072	66-0436-3-026	59,447
Wetlands Reserve Program-Lovejoy Restoration	10.072	unknown	7,928
Subtotal Wetlands Reserve Program			<u>118,393</u>
Wildlife Habitat Incentives Program	10.914	7204365C165	106,812
Wildlife Habitat Incentives Program	10.914	7204366B517	11,294
Mt Hood National Forest	10.914	7204360714R	7,000
Subtotal Wildlife Habitat Incentives Program			<u>125,106</u>
Forest Service-			
UNO Program	10.XXX	06-CS-11062200-007	<u>15,000</u>
Total U. S. Department of Agriculture			<u>258,499</u>
<u>U.S. Department of Defense</u>			
Passed through Washington Department of Fish & Wildlife			
Water Resources Development Act	12.110	WDFW # 06-1337	19,000
Water Resources Development Act	12.110	WDFW # 07-1660	10,000
Subtotal Planning Assistance to States program			<u>29,000</u>
Total U.S. Department of Defense			<u>29,000</u>
<u>U. S. Department of the Interior</u>			
Bureau of Land Management-			
Federal Land Policy and Management Act (FLPMA)	15.XXX	HAA059Q00	<u>40,000</u>
U. S. Fish and Wildlife -			
National Fish and Wildlife Service			
National Fish & Wildlife Foundation	15.XXX	N/A	<u>95,510</u>
Passed through Oregon Department of Fish and Wildlife			
Sport Fish Restoration Program (Fish & Wildlife cluster)	15.605	SFR F-111-D-262	<u>300,000</u>
Passed through The Department of State Lands:			
Cooperative Endangered Species Conservation Fund	15.615	USFWS Sec 6 grant E6-43	10,000
Cooperative Endangered Species Conservation Fund	15.615	USFWS Sec 6 grant E6-52	6,189
Subtotal Cooperative Endangered Species Conservation Fund			<u>16,189</u>

METRO

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS (Continued)
YEAR ENDED JUNE 30, 2009

Passed through Oregon State Marine Board:			
Clean Vessel Act Program	15.616	N/A	675
Clean Vessel Act Program	15.616	1311	112,500
Subtotal Clean Vessel Act Program			<u>113,175</u>
Sporting and Boating Safety Act	15.622	1311	<u>820,800</u>
Passed through Washington Department of Fish & Wildlife			
State Wildlife Grants Competitive Grant Program	15.634	08-1424	24,330
Passed through Oregon Department of Fish & Wildlife			
Oregon Conservation Strategy Grant	15.634	T-16, E-56	31,320
Subtotal State Wildlife Grants Competitive Grant Program			<u>55,650</u>
Passed through United States Geological Survey			
US Geological Survey - Digital Ortho-Imagery Grant	15.808	08WRAG0019	<u>70,000</u>
Total U. S. Department of the Interior			<u>1,511,324</u>

U. S. Department of Transportation

Federal Transit Administration			
Federal Highway Administration			
Highway Planning and Construction (Highway Planning and Construction Cluster):			
Direct programs			
FHWA - Transims II	20.205	DTFH61-02-X-0006	444
Passed through Oregon Department of Transportation			
2009 Planning Fund	20.205	ODOT # 25039	1,618,640
2007 STP Carryover funds	20.205	ODOT # 25039	227,821
2009 STP funds	20.205	ODOT # 25039	649,556
2009 Additional STP for PL Carryforward	20.205	ODOT # 25039	193,200
2007 STP Next Corridor Carryforward	20.205	ODOT # 25039	250,000
2009 STP Next Corridor	20.205	ODOT # 25039	500,748
2009 STP Freight	20.205	ODOT # 25039	75,000
Transportation Options Mass Marketing Campaign	20.205	ODOT # 22211	672,369
I-5 / 99W Connector Project	20.205	ODOT # 22445	29,459
RTO Vanpool	20.205	ODOT # 24352	110,352
Columbia River Crossing Loaned Executive	20.205	ODOT # 25288	31,010
Oregon Hwy 212 / Damascus Project	20.205	ODOT # 25218	14,841

METRO
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS (Continued)
YEAR ENDED JUNE 30, 2009

Passed through Washington Department of Transportation Columbia River Crossing II	20.205	GCA-5744	301,453
Passed through Multnomah County, Oregon Sellwood Bridge IGA	20.205	4600006289	25,445
Passed through Clackamas County, Oregon Sunrise Corridor EIS	20.205	Metro # 925507	26,494
Subtotal Highway Planning and Construction			<u>4,726,832</u>
Federal Transit Metropolitan Planning Grants			
Passed through Oregon Department of Transportation - 2008 Technical Studies (Sec 5303)	20.505	ODOT # 24249	96,806
2009 Technical Studies (Sec 5303)	20.505	ODOT # 24986	351,694
Subtotal Federal Transit Metropolitan Planning Grants			<u>448,500</u>
Federal Transit - Formula Grants (Federal Transit Cluster)			
Direct programs			
Federal Surface Transportation Program			
Milwaukie Light Rail EIS	20.507	OR95-X012	47
Congestion Mitigation & Air Quality Improvement Program (CMAQ)			
Regional Travel Options	20.507	OR95-X010	779,937
Passed through Clark County Public Transportation Benefit Area (C-TRAN)			
Vanpool Services Funding Agreement	20.507	Metro IGA # 929262	294,335
Passed through Tri-County Metropolitan Transportation District of Oregon (TriMet)			
Lake Oswego-Portland - DEIS Support - Task 1	20.507	GH090495TL	118,471
Subtotal Federal Transit Cluster			<u>1,192,790</u>
Alternative Analysis			
Direct program			
Streetcar/Eastside/LO-PDX (Sec 5339)	20.522	OR39-0002-01	290,400
Travel Forecasting Model Improvement (Sec 5339)	20.522	OR39-0004	13,698
Subtotal Alternative Analysis Grants			<u>304,098</u>
Total U.S. Department of Transportation			<u>6,672,220</u>

METRO

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS (Continued)
YEAR ENDED JUNE 30, 2009

U.S. Department of Education

Institute of Museum and Library Services - Museums for America	45.301	MA-04-08-0266-08	<u>67,181</u>
Total U.S. Department of Education			<u>67,181</u>

U.S. Environmental Protection Agency

Direct Program			
Brownfields Assessment and Cleanup Cooperative Agreements	66.818	BF-96044701	113,379
Brownfields Assessment and Cleanup Cooperative Agreements II	66.818	BF-96072301	<u>2,000</u>
Subtotal Brownfields Assessment Grants			<u>115,379</u>
Passed through Oregon DEQ:			
Nonpoint Source Implementation Grants	66.460	C9-000451-07	<u>32,203</u>
Total U.S. Environmental Protection Agency			<u>147,582</u>

U.S. Department of Health & Human Services

National Institute of Health			
National Institute of Environmental Health Sciences (NIEHS)			
Passed through Oregon Dept of Human Services			
Public Health Hazards	93.113	# 122132	6,172
Passed through Oregon Research Institute			
Biometry and Risk Est Health Risks from Enviro Exposure	93.113	R01 ES014252	<u>4,968</u>
Subtotal Environmental Health Programs			<u>11,140</u>
Passed through Oregon Health Sciences University			
Neighborhood Design and Obesity in Women	93.866	GPHPM0136A	9,123
S.W.E.A.T. Observation Project	93.866	AG024978	<u>105</u>
Subtotal Aging Research programs			<u>9,228</u>
Total U.S. Department of Health & Human Services			<u>20,368</u>

Total Expenditures of Federal Awards \$ 8,706,174

METRO
NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
YEAR ENDED JUNE 30, 2009

NOTE 1 - ACCOUNTING POLICIES

General - The accompanying Schedule of Expenditures of Federal Awards includes the federal grant activity of Metro. Metro's financial reporting entity is described in note 1 to Metro's basic financial statements. Financial assistance received directly from federal agencies as well as financial assistance passed through other government agencies is included in the accompanying schedule.

Basis of accounting - The accompanying Schedule of Expenditures of Federal Awards is presented using the modified accrual basis of accounting, which is described in note 3 to Metro's basic financial statements.

Relationship to basic financial statements - Federal assistance revenues are reported in Metro's basic financial statements included with revenues from federal and state sources, as described in note 3 to Metro's basic financial statements.

METRO
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
YEAR ENDED JUNE 30, 2009

YEAR ENDED JUNE 30, 2009

SECTION I - SUMMARY OF AUDITOR'S RESULTS

Consolidated financial statements

Type of auditor's report issued:	Unqualified	
Internal control over financial reporting:		
Material weakness(es) identified?	_____ yes	<u> X </u> no
Significant Deficiency(es) identified not considered to be material weaknesses?	_____ yes	<u> X </u> none reported
Noncompliance material to consolidated financial statements noted?	_____ yes	<u> X </u> no

Federal Awards

Internal control over major programs:		
Material weakness(es) identified?	<u> X </u> yes	_____ no
Significant Deficiency(es) identified Not considered to be material weaknesses?	<u> X </u> yes	_____ none reported

Type of auditor's report issued on compliance for major programs:	Unqualified	
Audit findings disclosed that are required to be reported in accordance with Circular A-133, Section .510(a)?	<u> X </u> yes	_____ no

Identification of major programs:

<u>CFDA Number(s)</u>	<u>Name of Federal Program or Cluster</u>
15.605	U.S. Department of the Interior – U.S. Fish and Wildlife Sport Fish Restoration Program
15.622	Sporting and Boating Safety Act
20.205	U.S. Department of Transportation Highway Planning and Construction
20.507	Federal Transit Cluster Federal Transit – Formula Grants
20.505	Federal Transit – Metropolitan Planning Grants

Dollar threshold used to distinguish between Type A and Type B programs: \$300,000

Auditee qualified as low-risk auditee? _____ yes X no

METRO
SCHEDULE OF FINDINGS AND QUESTIONED COSTS (Continued)
YEAR ENDED JUNE 30, 2009

Year Ended June 30, 2009

Section II – Financial Statement Findings

No matters were reported.

Section III – Federal Award Findings and Questioned Costs

Finding 2009-01 – Preparation of the Schedule of Expenditures of Federal Awards (SEFA) – Material Weakness in Internal Controls.

Federal Program: General—Schedule of Expenditures of Federal Awards

Federal Agency: US Department of the Interior, US Fish and Wildlife

Award Year: 2008-2009

Criteria: OMB Circular A-133, Section 300, requires a recipient of Federal awards to identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Additionally, Section 310 requires recipients to prepare a Schedule of Expenditures of Federal Awards for the period covered by the organization's financial statements.

Condition: Our testing of the schedule of expenditures of federal awards (SEFA) revealed that two additional grants were federal awards required to be audited under OMB Circular A-133, that were not properly identified by departmental staff as federal awards, and were initially omitted from the SEFA. Central accounting staff responsible for SEFA preparation rely on departmental information and the correct coding of federal awards in the general ledger. The existing processes and controls were insufficient to catch this error by Metro staff in the normal course of performing their accounting and reporting functions. Upon discovery of this, the SEFA was corrected to include these two programs.

Questioned Costs: None

Perspective Information: It was noted for one specific project that departmental staff did not appropriately identify the funding sources and report the federal portion on the SEFA. The subsequent identification of funding sources resulted in additional federal programs being reported on the SEFA.

Effect: The lack of identification of funding sources could under-state or over-state the amounts reported on the SEFA, and could result in the incorrect determination of major programs requiring testing under the Single Audit Act.

Recommendation: Moss Adams recommends that Metro develop and implement policies to ensure the preparation of the SEFA is complete and thorough. Such a policy should include mechanisms for the timely and accurate identification of federal funds received from all sources.

METRO
SCHEDULE OF FINDINGS AND QUESTIONED COSTS (Continued)
YEAR ENDED JUNE 30, 2009

Views of Responsible Officials (unaudited): The primary and initial source for recording grant revenues is the responsibility of the operating department which receives the funds and is aware of the specific contract and grant requirements. Finance and Regulatory Services provides chart of accounts and consultative assistance and written definitions for department staff to classify transactions correctly. For the FY 2009 transactions that led to this recommendation, Parks and Environmental Services staff found it necessary to contact the granting entity to ascertain the specific source of funding as it was unclear from the grant award documents. Upon receiving confirmation from the grantor agency, the classification was corrected in Metro's reporting. Any open contracts related to these grants were amended to incorporate the necessary federal contract language. Management will work with staff to assure funding sources are more clearly identified in contract documents to enable the initial recording of transactions to be correct. Parks and Environmental Services has implemented steps to ensure that state agencies are contacted at the beginning of the grant process for the correct identification of the sources of funds.

Finding 2009-02 Procurement, Suspension and Debarment – Significant Deficiency in Internal Control and Instances of Noncompliance (Unresolved Finding 2008-02)

Federal Program: Sport Fish Restoration Program, passed through the Oregon Department of Fish and Wildlife (Federal CFDA number 15.605) and Sporting and Boating Safety Act, passed through the Oregon State Marine Board (Federal CFDA number 15.622)

Federal Agency: US Department of the Interior, US Fish and Wildlife

Award Year: 2008-2009

Criteria: As noted in the A-102 Common Rule, Section 36, governmental subrecipients of States, shall use the same policies and procedures used for procurements from non-Federal funds. They also shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Per 43 CFR, Part 12 Section 76 (i) Contract provisions, a grantee's and subgrantee's contracts must contain provisions in paragraph (i) .43 CFR Subpart E requires Buy America compliance and Appendix A of Subpart F of 43 CFR Part 12 (8) requires debarment and suspension certifications in the contract provisions.

Condition: During our testing of procurement, we noted two instances in eleven contracts tested where a contract did not include any of the required federal clauses and certifications. The costs paid by the grant were allowable per the scope of the grant. Metro implemented a review process in the current year and uses a checklist for new and amended contracts to ensure all proper language is included for Planning department projects. However, this change appears to only be effectively implemented for projects applicable to the Planning department. The two instances noted in fiscal year 2009 were related to the Parks department.

Questioned Costs: None as discussed below.

Perspective Information: The procured contractor's contracts were not identified as being sourced with federal funds. This resulted in the contracts not being negotiated with the federal clauses and certifications.

METRO
SCHEDULE OF FINDINGS AND QUESTIONED COSTS (Continued)
YEAR ENDED JUNE 30, 2009

Effect: Federal funds were expended in procurement contracts missing required certifications and/or evidence of the Agency following established procurement procedures.

Recommendation: Moss Adams recommends Metro implement an agency wide tracking and review process of contracts to ensure appropriate language is included for all contracts that are receiving federal funds.

Views of Responsible Officials (unaudited): The contract process checklist developed and used by the Planning Department for contracts using federal funds has worked successfully this year and will be offered to other departments who utilize federal grants. This will also be incorporated into contract training classes offered by Finance and Regulatory Services. The specific instances arose because Parks and Environmental Services contracts were not initially classified as using federal funding grants (see Recommendation above). Once correcting this misclassification, the checklist will become effective. Parks and Environmental Services has also has implemented new procedures for federal grant compliance to ensure that correct language is associated with contracts using federal grants.

Section IV – Summary Schedule of Prior Federal Award Findings

FINDING 2008-02 – Procurement, Suspension and Debarment

Condition: During our testing of procurement, we noted five instances in fifteen contracts tested where a contract did not include any of the required federal clauses and certifications. Of those five contracts it was noted that two of the contracts did not go through an established procurement process.

Recommendation: Moss Adams recommends Metro implement a tracking and review process of contracts to ensure appropriate language is included for contracts that are receiving federal funds. Additionally, the review should include review of contract terms to ensure the contract is still current.

Current Status: The See Finding 2009-02.

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600 NE Grand Ave.
Portland, Oregon
97232-2736

CAFR

**Comprehensive Annual Financial Report
For the year ended June 30, 2009**

Metro | *People places. Open spaces.*

Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy and good transportation choices for people and businesses in our region. Voters have asked Metro to help with the challenges that cross those lines and affect the 25 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to protecting open space, caring for parks, planning for the best use of land, managing garbage disposal and increasing recycling. Metro oversees world-class facilities such as the Oregon Zoo, which contributes to conservation and education, and the Oregon Convention Center, which benefits the region's economy

Your Metro representatives

Metro Council President – David Bragdon

Metro Councilors – Rod Park, District 1; Carlotta Collette, District 2; Carl Hosticka, District 3; Kathryn Harrington, District 4; Rex Burkholder, District 5; Robert Liberty, District 6.

Auditor – Suzanne Flynn

www.oregonmetro.gov



Metro CAFR

Comprehensive Annual Financial Report

For the year ended June 30, 2009

Finance and Regulatory Services Department

Director of Finance and Regulatory Services
Margaret Norton

Prepared by
Accounting Services Division

Accounting Compliance Officer
Donald R. Cox Jr., CPA, CGFM

Financial Reporting Supervisor
Karla J. Lenox, CPA



Metro | *People places. Open spaces.*

600 NE Grand Ave., Portland, Oregon 97232

Agenda Item Number 5.2

Resolution No. 10-4120, For the Purpose of Confirming the Appointment of Members of the Metro Solid Waste Advisory Committee (SWAC).

COUNCILOR HARRINGTON
RESOLUTIONS

Metro Council Meeting
Thursday, February 4, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE	)	RESOLUTION NO. 10-4120
APPOINTMENT OF MEMBERS OF THE)	
METRO SOLID WASTE ADVISORY	)	Introduced by Councilor Kathryn Harrington
COMMITTEE (SWAC)		with consent by David Bragdon, Council President

WHEREAS, the Metro Council has adopted Ordinance No. 09-1222, “For the Purpose of Amending Metro Code Title II, Administration and Procedures, to Revise the Purpose and Membership of the Solid Waste Advisory Committee”; and

WHEREAS, the prospective members were nominated as detailed in the attached Staff Report, and the Metro Council President thereafter has appointed 13 members and an alternate member to the Solid Waste Advisory Committee as set forth in Exhibit “A” attached hereto; and

WHEREAS, the Metro Council desires to confirm the appointments; now therefore

BE IT RESOLVED that the Metro Council confirms the appointments to the Solid Waste Advisory Committee (SWAC) of the appointees set forth in Exhibit “A” attached hereto for the Committee positions and terms set forth therein.

ADOPTED by the Metro Council this _____ day of _____, 2010.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 10-4120

Solid Waste Advisory Committee (SWAC) Member Appointments

1. The following local government members shall serve for a term of two (2) years and shall be eligible to be reappointed for additional terms through the process outlined in Metro Code Title II, Chapter 2.19.130:

Local government, population under 50,000

Amy Pepper	Environmental Specialist, City of Troutdale
Susan Millhauser	Sustainability Coordinator, City of Lake Oswego
JoAnn Herrigel	Community Services Director, City of Milwaukie

Local government, population 50,000 to 500,000

Scott Keller	Program Manager for Sustainability and Recycling, City of Beaverton
Rick Winterhalter	Senior Sustainability Analyst, Clackamas County
Theresa Koppang	Solid Waste and Recycling Supervisor, Washington County

Local government, population over 500,000

Bruce Walker	Solid Waste and Recycling Program Manager, City of Portland
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2. The following industry members shall serve for a term of two (2) years and shall be eligible to be reappointed for a second consecutive two (2) year term:

Adam Winston	Director of Operations, Waste Management of Oregon
David White	Regional Representative, Oregon Refuse & Recycling Association
John Lucini	Vice President, SP Recycling Corporation

3. The following Oregon Department of Environmental Quality (DEQ) member shall serve until a replacement is nominated by DEQ's presiding executive:

Audrey O'Brien	Environmental Partnerships Program Manager, Northwest Region
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4. The following non-governmental organization member shall serve for a term of two (2) years and shall be eligible to be reappointed for a second consecutive two (2) year term:

Michelle Poyourow	Advocate & Educator, Bicycle Transportation Alliance
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5. The Metro member, serving until a replacement is nominated by the Metro Chief Operating Officer, shall be:

Matt Korot	Program Director, Resource Conservation & Recycling
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6. The Metro alternate member, serving until a replacement is nominated by the Metro Chief Operating Officer, shall be:

Paul Ehinger	Program Director, Solid Waste Operations
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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4120, FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF MEMBERS OF THE METRO SOLID WASTE ADVISORY COMMITTEE (SWAC)

Date: February 4, 2010

Prepared by: Matt Korot
503-797-1760

BACKGROUND

On November 12, 2009, the Metro Council adopted ordinance 09-1222 for the purpose of amending Metro Code, Title II, Administration and Procedures, to revise the purpose and membership of the Solid Waste Advisory Committee (SWAC). Following that action, Metro staff notified the public and interested parties of the opportunity to apply for membership on SWAC by notice through the Metro news feed and posting applications on the Metro website, direct e-mailing of applications to lists of interested parties, and direct e-mailing of applications to all city and county managers/administrators in the region.

The Metro Code establishes 13 member positions for SWAC, categorized as follows:

- Jurisdictions with population under 50,000 (3)
- Jurisdictions with population between 50,000 and 500,000 (3)
- Jurisdictions with a population over 500,000 (1)
- Solid waste industry (3)
- Non-governmental organization involved in sustainability (1)
- Oregon Department of Environmental Quality (1)
- Metro (1)

The prospective members listed in Exhibit A were nominated through the processes delineated in Metro Code Title II, Chapter 2.19.130 and thereafter appointed by Council President Bragdon.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Metro Code, as referenced above.

3. **Anticipated Effects**

SWAC will begin serving the purpose established for it in Metro Code.

4. **Budget Impacts**

None

RECOMMENDED ACTION

Metro Council confirmation of SWAC members.