

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RECOMMENDING ) RESOLUTION NO. 93-1826  
AN URBAN SERVICE BOUNDARY INTERIM )  
AGREEMENT ) Introduced by Rena Cusma,  
) Executive Officer

WHEREAS, Beaverton's November 1992 adoption of the Washington County line at its Urban Service Boundary (USB) remains on appeal at the Land Use Board of Appeals (LUBA); and

WHEREAS, Metro's state-funded mediation grant ended June 30, 1993, with Beaverton and Portland "agreeing to disagree" on a final USB; and

WHEREAS, Washington County's July 2, 1993, proposed ordinance on a Beaverton-Portland USB based on Beaverton's adopted USB is scheduled for hearings in early August; and

WHEREAS, Portland has stated its intention to adopt its own recommended USB to submit to Washington County as amendments to their county's USB ordinance; and

WHEREAS, Any Washington County decision on a Beaverton-Portland USB that is not based on some new consensus will be appealed to LUBA and, possibly, the Court of Appeals, by some parties; and

WHEREAS, Metro has supported mediation for cooperative solutions to avoid further litigation; and

WHEREAS, The mediator has suggested a detailed interim agreement that avoids further litigation pending incremental progress towards resolving the USB and related issues; now, therefore,

**BE IT RESOLVED,**

1. That Metro hereby recommends that Beaverton, Portland, and Washington County consider an interim agreement that provides the legal protection and accomplishes the purposes suggested by the mediator in the "Interim USB Agreement Proposal" attached as Exhibit "A" to this Resolution.

2. That Metro is willing to participate and assist in multi-party discussions to seek an interim agreement to avoid further litigation over a Beaverton-Portland USB.

ADOPTED by the Metro Council this \_\_\_\_ day of July, 1993.

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Judy Wyers, Presiding Officer

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## Exhibit A

### Interim USB Agreement Proposal

**PROBLEM:** Lack of an Urban Service Boundary (USB) line between Portland and Beaverton to (1) allow planning for urban services, (2) avoid piecemeal annexations to either city, and (3) avoid lawsuits over ultimate annexation areas.

**USB DEFINITION:** The ultimate potential annexation area for which a city does urban services planning prior to annexation for direct provision of service by that city or by a service provider contracting with that city after annexation.

**INTERIM AGREEMENT NEEDED:** Beaverton and Portland have "agreed to cordially disagree" on the USB line. Beaverton continues to recommend the county line as the USB and Portland is likely to recommend a new alternative USB line to Washington County for amendment of the county plan. No matter what lines they choose, the Portland recommendation and county adoption of a USB other than one developed by consensus, are likely to result in protracted lawsuits for the cities to protect their interests. The Beaverton line currently remains on appeal to LUBA. Each of these cases, and any annexation proposals may end up in the Court of Appeals in addition to LUBA. A formal interim "agreement to disagree" with key provisions could amend the county and cities' comprehensive plans. Such amendments should prevent the need for cities to appeal to protect their interests, avoid piecemeal annexations, and allow most planning for future urban services.

**INTERIM URBAN PLANNING AREA AGREEMENT (UPAA):** Washington County has a 1981 UPAA with Portland and 1988 UPAA with Beaverton. Both agreements are part of Washington County's acknowledged comprehensive plan which names the county as Public Facilities Plan agency for the area in question. The Boundary Commission is required by law to make annexation decisions consistent with the county and cities' comprehensive plans. Therefore, clear policies in UPAA agreements among the cities and the county are comprehensive plan provisions that would bind the Boundary Commission in its decisions on annexation. This could protect county and cities' interests and avoid piecemeal annexations. The purpose of an interim UPAA for some time period would be to use the years and resources that litigation would use up to try "Dialogue Groups" and further planning to seek settlement of parts or all of the area remaining in dispute.

**INTERIM UPAA OUTLINE:** Most of the following provisions were discussed in concept at the June 24 mediation session. They attempt to provide solutions for the three part problem stated above during the interim period.

1. **Agree to Disagree on USB.** Portland's recommended line and Beaverton's recommended line are both drawn on an exhibit map. The overlapping area of disagreement is labeled an "Area of Mutual Interest" for (three to five) years. The unincorporated areas north and east of Beaverton up to this "Area of Mutual Interest" are considered within Beaverton's Urban Services Area.
2. **No Annexation in "Area of Mutual Interest"** for (three to five) years. Citizens seem satisfied with current service providers and the cities have no current annexation

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programs in this area. The provision in comprehensive plans prohibiting annexation during the interim period will prevent piecemeal annexation petitions. During the interim period, urban service provision in the area will be reviewed by the local governments to include alternative impacts on special districts. The current acknowledged Washington County plan would apply during this interim, including the Public Facilities Plan.

3. "Status Quo" Services and Planning Authority for (three to five) years. Current service providers continue for all services. Washington County remains the Public Facilities Plan agency for the "Area of Mutual Interest" and planning approval authority for the unincorporated area.
4. Beaverton - PFP Authority. Beaverton shall become the Public Facilities Plan agency for the area within its Urban Services Area (outside its city limits to the "Area of Mutual Interest" line) in accordance with a time schedule and other considerations developed per agreement with Washington County.
5. "Area of Mutual Interests". As soon as possible, Beaverton and Portland shall propose amendments to the Washington County Public Facilities Plan and to other agreements relating to services in the "Area of Mutual Interest" which describe how urban services would be provided. The cities shall seek to cooperate to develop joint urban service proposals for the area, but if unable or unwilling to do so by the end of the term of this Agreement, they each shall submit proposals.

During the term of this Agreement, the parties may agree to amend the "Area of Mutual Interest" boundary or Washington County Public Facilities Plan provisions or propose other agreements.

6. Related Issues Review During Interim. Portland has identified during the mediation process, several important issues. Beaverton and Portland have agreed that these issues can be reviewed and discussed together even with their "agreement to disagree" on the USB line. These issues include, but are not limited to: transportation issues, i.e., Cornell Road classification, individual services such as fire protection in "Area of Mutual Interest, and Forest Park corridor issues. Near Forest Heights Subdivision, for example, Portland's new line is near the Washington County line with a new urban services picture created by that new subdivision inside Portland. Resolution of Cornell Road issues may point to USB agreement in that vicinity. The southernmost portion of Portland's new line is similar to Beaverton's recommendation. The land use impacts and impacts on urban services of construction of the Westside Light Rail line and station may need to be more fully understood. The current two-year Station Area Planning program will be completed during the term of this agreement.

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7. Public Participation Process. Review of the "Area of Mutual Interest" and related issues during the interim period by affected agencies shall include participation of affected CPOs. Working groups and other processes shall be developed to involve CPOs. Any amendments to UPAAAs or Public Facilities Plans shall use the public hearing processes for comprehensive plan amendments.
8. Review at End of Interim Period. By the end of the interim period, significant additional information will be developed. Results of related issues review may include partial agreements on a USB.

**METRO**

Date: July 7, 1993  
To: Rena Cusma, Executive Officer  
Metro Council  
From: Larry Shaw, Senior Assistant Counsel  
Regarding: BEAVERTON-PORTLAND URBAN SERVICE BOUNDARY (USB)  
Our file: 7.§13.B

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**Mediation Status**

Mediation continued in a June 24 joint meeting, following mediator discussions with all parties since the June 11 joint meeting and Beaverton-Portland elected officials meetings. The cities announced their "agreement to disagree" on the USB line and make separate USB recommendations to Washington County. The parties reviewed a new USB that Councilor Hales will recommend to Portland and discussed a possible interim agreement. DLCD, Metro, and the mediator prepared the written interim proposal attached to Resolution No. 93-1826. Given the end of the DLCD grant funds and the impact of a newly-drawn Portland USB, mediation is suspended pending further funding and substantive developments.

**Mediation Progress**

Metro objectives in mediation were to (1) avoid further USB litigation, (2) seek as much resolution of issues as possible, (3) enhance intergovernmental cooperation in the N.W. sector of the region, and (4) avoid negative impact on Station Area Planning at the Sunset Transit Center.

Clearly, Beaverton-Portland cooperation has been enhanced and the Peterkort property now seems to be outside the narrowed area in dispute from Portland's new line. However, further litigation seems certain without a formal interim agreement. The USB dispute, itself, may only have been narrowed in the disputed area. Related issues have been identified for further discussion based on a new, better relationship between Beaverton and Portland. The last few days of the mediator's contract were spent working on the interim proposal.

**Interim USB Agreement Proposal**

At the table Metro supported DLCD's Jim Sitzman proposal for an interim agreement. In it Washington County could adopt an urban service boundary policy that would give Beaverton the planning area no longer contested by Portland's new line and leave the small disputed area outside either city's planning area for an interim period. The key part of the idea omitted from the June 28 Oregonian article was including a policy against annexations in the

Rena Cusma  
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disputed area for the interim period in the county comprehensive plan, as well. This would make any Boundary Commission approval of an annexation in the disputed area subject to a successful appeal to LUBA.

#### **Washington County Action - July 2 Ordinance**

The county instructed its staff to prepare an ordinance to address Beaverton's adopted USB, the county line, by an amendment to the county comprehensive plan. That ordinance was filed on July 2 for early August hearings.

Portland intends to protect its position by adopting its USB line (probably Councilman Hales' new line) during July to present it as an amendment to the county's July 2 USB ordinance in August hearings. Beaverton or the county may appeal Portland's line to LUBA within 21 days after its adoption. However, they may choose to treat Portland's USB as a nonfinal recommendation to the county.

If Washington County acts consistently with its past position and its CPOs' requests, Beaverton's USB will be adopted by September or October. Portland will have to appeal if the county does that. It is likely that such a county action would be remanded to the county, possibly after a year-plus trip to the Court of Appeals. LUBA still has not ruled on Portland's December 1992 appeal of Beaverton's USB action.

#### **Recommended Metro Action**

As the seemingly inevitable chain of litigation events begin, Metro needs to evaluate its regional coordination role here. Metro has obtained the mediation grant, participated in mediation, and assisted the mediator in drafting a proposed interim settlement. There are likely to be legal issues in the litigation that impact Metro. Decisions will be needed on whether to join these cases to protect Metro interests in the legal interpretations as the appeals develop.

However, with Metro's assistance, the mediator has distributed a written version of Jim Sitzman's proposal that includes the limited policy prohibiting annexation in the disputed area. This proposal seems to be consistent with Metro's interests. It should eliminate the need for litigation by the cities and county to protect their interests, keep the county plan in goal compliance, and encourage the two cities to use their improved relations to coordinate public facilities planning.

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cc: Daniel B. Cooper, Andy Cotugno, John Fregonese