

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF EXPRESSING COUNCIL) RESOLUTION NO. 95-2126
INTENT TO AMEND METRO'S URBAN GROWTH)
BOUNDARY FOR CONTESTED CASE NO. 94-1:)
RICHARDS) Introduced by: Mike Burton, Executive Officer

WHEREAS, Contested Case No. 94-1:Richards is an urban growth boundary locational adjustment petition for inclusion of a 1.3 acre parcel adjacent to Charbonneau at the I-5 interchange; and

WHEREAS, A hearing on this petition was held before an independent Hearings Officer on November 16, 1994, and the record was held open until February 16, 1995 at the request of the applicant, to receive additional evidence; and

WHEREAS, The Hearings Officer has issued his Report and Recommendations, attached as Exhibit A, and has prepared Findings, Conclusions and Final Order attached as Exhibit B; and

WHEREAS, The property is currently outside but contiguous with the Metro jurisdictional boundary, and

WHEREAS, The Metro Code Chapter 3.01.65(f) provides that action to approve a petition including land outside Metro's jurisdiction shall be by resolution expressing intent to amend the Urban Growth Boundary after the property is annexed to Metro; now, therefore,

BE IT RESOLVED,

That Metro, based on the findings in Exhibit B, attached, and incorporated herein, expresses its intent to adopt an Ordinance amending the Urban Growth Boundary for the subject property shown as tax lot 16100 in Exhibit C within 30 days of receiving notification that the property has been annexed to Metro, provided such notification is received within six (6) months of the date on which this resolution is adopted.

ADOPTED by the Metro Council this 20 day of April, 1995.


J. Ruth McFarland, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 95-2126 FOR THE PURPOSE OF EXPRESSING COUNCIL INTENT TO AMEND METRO'S URBAN GROWTH BOUNDARY FOR CONTESTED CASE NO. 94-1:RICHARDS

Date: April 3, 1995

Presented by: Stuart Todd

BACKGROUND

Metro accepts petitions for amendments to the boundary once a year on March 15. The Council can also waive the filing deadline (Metro Code 3.01.33(d); this action was taken by the Council in Resolution No. 94-2016 allowing the petitioner to file a complete application in September 1994 and to proceed to hearing in November. All non-legislative Urban Growth Boundary (UGB) amendments are considered contested cases and are heard first by an independent hearings officer before proceeding to Council for final action.

The Hearings Officer is required to prepare findings and a proposed order on the case and submit these to Metro. Parties of record who participated in the case either orally or in writing have the opportunity to take exception to the proposed order and findings, they must do this within 20 days of having the Hearings Officer proposed Findings, Conclusions and Final Order sent to them (exceptions are due April 11, 1995).

The Council may act to approve, remand or deny a petition in whole or in part. Comments before Council must refer specifically to any arguments presented in exceptions, if no party to the case has filed an exception, then Council shall decide whether to entertain public comment at the time that it takes final action on a petition.

UGB Case No. 94-1:Richards, involves the addition of 1.3 acres of land adjacent to the northeast corner of the I-5 interchange at Charbonneau. A parcel of land adjacent to this inside the UGB is owned by the petitioners who wish to develop both tax lots. They intend to construct professional offices on the properties. The Metro Code, Section 3.01.35(c), highlights the key criteria for a locational adjustment. The criteria place a burden of proof on the applicant to show there is a net improvement and efficiency accruing to existing urban land as defined by the existing comprehensive plans for land inside the boundary. The petitioner has satisfied this criteria according to the Hearings Officer who has recommended approval with conditions (see Findings, Conclusions and Final Order, Exhibit B). One of the key pieces of factual evidence cited in approving the case was the fact that gravity sewer to the commercially designated parcel inside the boundary could not be provided without crossing the rural tax lot outside the boundary. In this case urban services would have to cross rural property. The Hearings Officer findings address all the relevant criteria and can be found in Exhibit B, which document the recommendation for approving the amendment.

The approval is based on three conditions that reflect the evidence received in the hearing process from staff, petitioners and other parties - mostly neighbors in the adjacent Charbonneau

district. The conditions are: 1) the development be limited to professional offices or open space, 2) that any slopes over 20 percent be placed in open space designation, and 3) that the property be served by gravity sewer.

ACTION

This action is a resolution as opposed to an ordinance because the property is outside the Metro jurisdictional boundary. The Metro Code (3.01.65(f)(1)) expresses the action required of the Council as follows:

When the Council acts to approve in whole or in part a petition affecting land outside the District:

(1) Such action shall be by resolution expressing intent to amend the UGB if and when the affected property is annexed to the District within six months of the date of adoption of the Resolution

The Council is required to take final action by ordinance within thirty days of notice from the Boundary Commission that annexation to the District has been approved.

Resolution 95-2126 expresses the intent of the Council to amend the UGB for the petitioned property as shown in Exhibit C of the Resolution.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No.95-2126.

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1 BEFORE THE HEARINGS OFFICER OF THE
2 METROPOLITAN SERVICE DISTRICT

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4 In the matter of the petition of Donald P. Richards) HEARINGS OFFICER
5 and Roger A. Starr for a locational adjustment to) REPORT AND
6 the Urban Growth Boundary east of Interstate-5) RECOMMENDATION
7 and north of Miley Road in the Wilsonville area) Contested Case No. 94-01
8

9 I. Summary of Basic Facts

10
11 1. On September 12, 1994, Donald Richards and Roger Starr ("petitioners") filed a
12 petition for a locational adjustment to the Portland metropolitan area Urban Growth
13 Boundary ("UGB") to add to the urban area a 1.3-acre parcel (the "subject property")
14 which is identified as tax lot 16100.
15

16 a. The subject property is east of and abuts Interstate-5 and north of Miley
17 Road in the Wilsonville area. Land already in the UGB (in Wilsonville) abuts three sides
18 of the property, including a parcel owned by petitioners known as tax lot 15700.
19

20 b. The Clackamas County Comprehensive Plan designation and zoning for
21 the subject property is Rural and RRFF-5 (5 acre minimum lot size). The subject property
22 is in an exception area to Statewide Goals 3 and 4. Adjoining land in Wilsonville is
23 designated and zoned Planned Development Commercial, including tax lot 15700.
24

25 c. The south part of the subject property is relatively flat. The north part is
26 steep. North and east of petitioners' two parcels are 4.5 acres of designated open space
27 and wetlands. Storm water drains through the open space/wetland to a culvert under the
28 freeway. The steep sides of the open space are heavily forested, and help provide a visual
29 buffer between the freeway and single family homes in the Spring Ridge subdivision about
30 200 feet east of the subject property. South of Miley Road is a church that was included in
31 the UGB pursuant to the Council order regarding Contested Case 88-02 (St. Francis).
32

33 d. The subject property and tax lot 15700 are not served by water or
34 sanitary sewer or an engineered drainage system. Wilsonville testified it can provide water
35 service by extending a line in Miley Road. ODOT testified it would allow the subject
36 property and tax lot 15700 to be served by the sewer on the east side of the Interstate-5

1 right of way. A gravity flow sewer line can be used if the subject property is included in
2 the UGB. If it is not included, sewer service could be provided using a pump station.

3
4 e. The subject property does not have road frontage. But access to Miley
5 Road can be provided through tax lot 15700. ODOT and a traffic engineer testified the road
6 can accommodate traffic from the combined development on the properties.

7
8 f. Petitioners intend to develop the subject property and tax lot 15700
9 together for professional offices, and agreed to accept a condition of approval limiting the
10 use of the property for that purpose.

11
12 2. The petition was accompanied by comments from affected jurisdictions and
13 service providers. The Clackamas County Board adopted a resolution making no
14 recommendation on the merits of the petition. Wilsonville commented that approval of the
15 locational adjustment also would facilitate extension of water service to the St. Francis of
16 Assisi Church on the south side of Miley Road. The Tualatin Fire and Rescue District
17 commented that approval of the locational adjustment also would facilitate a more logical
18 boundary between the Tualatin and Aurora Districts. The Canby School District
19 commented with no recommendation, because approval of the petition will not generate
20 school age children.

21
22 3. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed
23 public hearing on November 16, 1994 to receive testimony and evidence in the matter of
24 the petition. Six witnesses testified in person, including a staff member from Metro and
25 Wilsonville, the petitioners, and two residents of the Spring Ridge subdivision. At the
26 conclusion of that hearing, the hearings officer held open the public record regarding the
27 petition until December 16, 1994. At the petitioners' written request on December 2, 1994,
28 the hearings officer issued an order dated December 6, 1994, in which he held open the
29 record until February 16, 1995. Notice of that order was mailed to parties of record.

30
31 **II. Summary of applicable standards and responsive findings**

32
33 1. A locational adjustment to add land to the UGB must comply with the relevant
34 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). Compliance with two of
35 these standards was not disputed (MC §§ 3.01.035(c)(5) and (f)(3)). The following
36 highlights the principal policy issues disputed in the case.

1
2 2. MC § 3.01.035(c)(1) requires the petitioner to show public facilities can serve
3 the area to be added and that the adjustment results in a net improvement in the efficiency of
4 public facilities and services for land already in the UGB. Petitioners showed that the
5 subject property can be served by the relevant public facilities. A significant issue in this
6 case is whether the petitioners complied with the second part of that standard.

7
8 3. Metro rules do not define how to calculate net efficiency of urban services.
9 Relying on past Council actions, the hearings officer found that merely using available
10 capacity does not constitute a net improvement in service efficiency. If use of available
11 capacity alone is enough to comply with MC § 3.01.035(c)(1), then the standard will not
12 achieve the purpose for which it was adopted.

13
14 4. The hearings officer found that the adjustment resulted in a net improvement in
15 the efficiency of sewer service, because it allows the subject property and tax lot 15700 to
16 be served by a gravity flow line. The hearings officer also relied on the unrebutted
17 statement of the Tualatin Fire and Rescue District that approving the locational adjustment
18 results in a more logical boundary between service districts.

19
20 a. If the petition is not approved, tax lot 15700 can be served by a pump
21 station. Relying on past Council actions, the hearings officer concluded that a locational
22 adjustment that allows use of a gravity flow line instead of a pump station constituted a net
23 improvement in sewer service efficiency and was enough to show the petition complies
24 with the second part of MC § 3.01.035(c)(1).

25
26 b. Because of the importance of this service efficiency to the whole
27 application, the hearings officer recommended a condition of approval requiring the subject
28 property and tax lot 15700 to be served by a gravity flow sewer line. Such conditions can
29 be imposed under MC § 3.01.40(a). Council has imposed a condition once before in
30 Contested Case 91-01 (Dammasch State Hospital).

31
32 5. MC § 3.01.035(c)(2) requires the amendment to facilitate permitted development
33 of adjacent land already in the UGB. The hearings officer found the petition complied with
34 this standard, because including the subject property in the UGB facilitates sewer service to
35 tax lot 15700 necessary for permitted development of that parcel.

1 6. MC 3.01.035(c)(3) requires consideration of environmental, energy, social and
2 economic consequences of the petition. It also requires hazards to be addressed.

3
4 a. The hearings officer found that the steep slopes on the subject property
5 constitute a hazard, and recommended a condition of approval to address it. That condition
6 would require the portion of the subject property with slopes of 20 percent or more to be
7 used for open space purposes, except for the sewer line and drainage facilities that comply
8 with city standards.

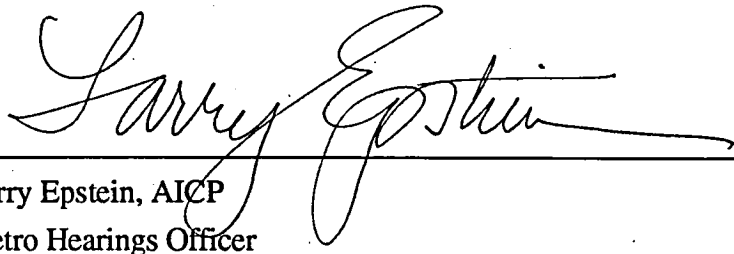
9
10 b. The hearings officer also found that some uses on the subject property
11 could cause significant adverse environmental, energy and social effects, but that use of the
12 property for open space and professional office purposes would not have those effects.
13 Therefore the hearings officer recommended a condition of approval allowing the subject
14 property to be used only for open space and professional office purposes.

15
16 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
17 UGB, but does not define what is superior. The hearings officer found the proposed UGB
18 is superior, because it achieves service efficiencies, helps reinforce Interstate-5 as a logical
19 boundary for the UGB in this area, and makes what is now an essentially inaccessible and
20 useless residual parcel developable with adjoining land already in the UGB.

21
22 III. Ultimate Conclusion and Recommendation

23
24 For the foregoing reasons, the hearings officer concludes the petition complies with the
25 relevant approval standards in Metro Code sections 3.01.035(c) and (f) for a locational
26 adjustment adding land to the UGB. Therefore the hearings officer recommends the Metro
27 Council grant the petition, based on this Report and Recommendation and the Findings,
28 Conclusions and Final Order attached hereto, subject to the conditions of approval therein.

29
30 Respectfully submitted this 16th day of March, 1995.

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34 _____
35 Larry Epstein, AICP
36 Metro Hearings Officer

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

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In the matter of the petition of Donald P. Richards) FINDINGS,
and Roger A. Starr for a locational adjustment to) CONCLUSIONS &
the Urban Growth Boundary east of Interstate-5) FINAL ORDER
and north of Miley Road in the Wilsonville area) Contested Case No. 94-01

I. Basic Facts

1. On September 12, 1994, Donald P. Richards and Roger A. Starr ("petitioners") completed filing a petition for a locational adjustment to the Urban Growth Boundary ("UGB"), including exhibits required by Metro rules for locational adjustments. See Exhibit 5 for the original petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The land to be added to the UGB is described as Tax Lot 16100, Section 25, T3S-R1W, WM, Clackamas County (the "subject property"). It is east of and adjoins the Interstate-5 freeway, which isolates the subject property from other land outside the UGB. The UGB forms the north and east edge of the subject property. Land to the north, east and south is inside the UGB and the City of Wilsonville. The subject property is about 30 feet north of the Miley Road right of way, but does not have frontage on that road. See Exhibits 1 and 40 for maps showing the subject property.

b. The subject property is an irregularly-shaped parcel about 575 feet north-south and about 100 feet wide, narrowing to a point at the south end. It contains 1.3 acres. It is in an exception area to Statewide Planning Goals 3 and 4. It is designated "Rural" on the acknowledged Clackamas County Comprehensive Plan Map and is zoned RRF-5 (Rural Residential Farm and Forest, 5 acre minimum lot size).

c. The subject property slopes down to the north from a high of about 121 feet above mean sea level ("msl") at the south edge to a low of about 85 feet msl at the north edge. The south portion of the subject property contains slopes of 5 to 10 percent. The north portion of the site contains slopes of up to 50 percent.

1 d. Most of the land immediately north and east of the site is in one of three
2 open space tracts totaling 4.5 acres. It is designated and zoned PDC (Planned Development
3 Commercial). Homes in the Spring Ridge subdivision are about 200 feet east of the subject
4 property measured "as the crow flies." But between the subject property and those homes
5 and north of the subject property, the land slopes down to a drainageway and associated
6 wetlands in the open space tracts. Storm water runoff from the subject property now
7 drains into the wetland and drainageway. Land to the west is designated "Rural" and zoned
8 RRRFF-5 and is used for the Interstate-5 freeway. Land to the south (across Miley Road)
9 was included in the UGB after approval of a locational adjustment in Contested Case 88-03
10 and annexed to Wilsonville. It is zoned PF (Public Facility). It is developed with the St.
11 Francis of Assisi Church. Further southeast are rural residences and a golf course.

12
13 e. East of the south half of the site is a roughly 1-acre parcel in the City of
14 Wilsonville identified as tax lot 15700. It is designated and zoned PDC. The petitioners
15 own that tax lot. They want to build a 40,000 square foot building for professional offices
16 on that tax lot and the south portion of the subject property. The petitioners testified that
17 they would accept conditions of approval of the petition limiting the use of the south
18 portion of the subject property to professional offices, and limiting the use of the north
19 portion of the subject property for open space, provided necessary storm water drainage
20 and sanitary sewer infrastructure can be installed in the open space area.

21
22 f. The subject property is not served by a sanitary waste system or water.

23
24 (1) The City of Wilsonville testified in writing it can provide water
25 service to the subject property, tax lot 15700 and the church on the south side of Miley
26 Road if the petitioners extend an 8-inch line from the existing main at Miley Road and
27 French Prairie Road. That line can serve tax lot 15700 and the church whether or not the
28 petition is approved; the line can serve the subject property with little or no additional cost.

29
30 (2) ODOT testified it can serve the subject property and tax lot
31 15700 with the sanitary sewer from a connection to a manhole at station 596+25 in the
32 Interstate-5 right of way west of the site. The ODOT line already serves the church across
33 Miley Road and the Baldock rest area. A gravity flow sewer line can be installed across the
34 subject property if the petition is approved and ODOT approves a connection north of the
35 subject property. If the petition is not approved, tax lot 15700 could be served by the city

1 or ODOT sewer system, but it would cost more to install and maintain, because a pump
2 station would be needed that will not be needed if the line can cross the subject property.

3
4 g. The subject property does not have access to a road except through tax
5 lot 15700. Tax lot 15700 has about 200 feet of frontage along Miley Road, a rural public
6 street with a 20-foot wide paved surface between gravel shoulders. The subject property is
7 not within 1/4-mile of a regional transit corridor, although the church property on the south
8 side of Miley Road contains a designated park and ride lot.

9
10 h. The petition was accompanied by comments from affected jurisdictions
11 and service providers. See Exhibits 6 through 10 and 16 through 18.

12
13 (1) The Clackamas County Board of Commissioners adopted a
14 board order in which it made no recommendation on the merits of the petition.

15
16 (2) Wilsonville commented that the city could serve the subject
17 property with sanitary sewer and water, but that approval of the petition would not improve
18 efficiency of service delivery in the UGB. The City Council adoption a motion to support
19 the petition, provided that the property is used only for offices, and that trees, wetlands and
20 stream corridors on the property be protected.

21
22 (3) The subject property is in the Aurora Rural Fire Protection
23 District. If the property is annexed following approval of the UGB petition, then it will be
24 served by the Tualatin District. The subject property is roughly equidistant between the
25 nearest stations of the two districts, and either district is likely to provide roughly the same
26 degree of protection and about the same response time to the subject property, although
27 response time for the Tualatin District may be somewhat quicker via Interstate-5. The
28 District commented that approval of the petition would improve service efficiency.

29
30 (4) The Subject Property is in Canby High School District #1 and
31 Elementary School District #86. Granting the petition would not affect school services,
32 because the site is not used for a residential purpose. No change in school district
33 boundaries are planned or reasonably expected as a result of granting the petition.

34
35 2. On October 25, 1994, Metro staff mailed notices of a hearing to consider the
36 petition by certified mail to the owners of property within 250 feet of the subject property,

1 to the petitioner, to Clackamas County, and to the City of Wilsonville. The notice and
2 certificate of mailing are included as Exhibit 20. A notice of the hearing also was published
3 in *The Oregonian* at least 10 days before the hearing.
4

5 3. On November 16, 1994, Metro hearings officer Larry Epstein (the "hearings
6 officer") held a public hearing at the Wilsonville Community Development Annex to
7 consider the petition. After the hearings officer described the rules for the hearing and the
8 relevant standards for the petition, six witnesses testified in person.
9

10 a. Metro planner Stuart Todd verified the contents of the record and
11 introduced certain exhibits into the record. He summarized the staff report, (Exhibit 21),
12 including basic facts about the site, the UGB and urban services, and comments from
13 Wilsonville and Clackamas County. He testified that the petitioners failed to show that the
14 proposed amendment would increase the efficiency of urban service delivery to or facilitate
15 development of land already in the UGB; failed to introduce substantial evidence to support
16 conclusions that the amendment would not have adverse environmental impacts or would
17 have a positive social impact; and, failed to show why the amended UGB is better than the
18 existing UGB based on the locational adjustment approval standards.
19

20 b. The petitioners testified on their own behalf. Mr. Richards argued that
21 the subject property should have been included in the UGB when it was adopted in 1979;
22 but the owner at that time wanted it to be outside the UGB; that the property is situated in a
23 location convenient to city residents south of the Willamette River (the "river"); that there is
24 a need for the amendment; and that the amendment is consistent with the locational
25 adjustment for St. Francis of Assisi Church (Contested Case 88-03). He also introduced
26 certain exhibits. Mr. Starr argued that the amended UGB is better, because it facilitates
27 more development when combined with petitioners' land already inside the UGB
28 (adjoining the subject property) in a manner that reduces vehicle miles traveled for city
29 residents south of the river and reduces the impact of that traffic on the Interstate-
30 5/Wilsonville Road interchange.
31

32 c. Peter E. Morgan and Max Paschall opposed the petition, because the
33 property could be used for a highway commercial purpose with high light and noise levels
34 or for a land extensive commercial use that requires extensive grading and tree removal and
35 would not reduce noise levels to the east. Mr. Morgan also expressed concern that the
36 amendment would increase development that could adversely affect wildlife habitat and

1 wetlands in the canyon area on and adjoining the site. He also expressed concern about
2 water service.

3
4 d. Wilsonville Councilman Dean Sempert characterized his testimony as
5 neutral. He argued that, if the amendment results in the subject property and the adjoining
6 property already in the UGB being developed for uses that serve principally the city
7 residents south of the river, then it could reduce vehicle miles traveled and enhance access
8 by foot and bicycle. If it developed for uses that serve principally highway traffic or for
9 certain other uses, such as auto sales or auto-oriented uses, he argued there would be no
10 such benefits from the amendment. He argued that it would reduce the cost of water
11 service to the church south of Miley Road if the applicant extends it through the subject
12 property and/or their adjoining property already in the UGB. He argued a suitably oriented
13 building could have a positive environmental impact by blocking highway noise. He
14 expressed concern about preservation of trees on the subject property if the amendment is
15 approved. In response to Mr. Morgan's concern about water service, Mr. Sempert testified
16 there are six wells that serve Wilsonville, including two in Charbonneau. A pipeline carries
17 water from the area north of the river to the Charbonneau area when the city has to
18 supplement water from the two wells south of the river to serve Charbonneau.

19
20 e. Mr. Todd responded that the amendment is not necessary to enhance
21 urban services by extending the water line to Miley Road, because the water line will have
22 to be extended to Miley Road before the petitioner's parcel adjoining the subject site and
23 already inside the UGB can be developed. He conceded it may be more economical to the
24 petitioners, because they could spread the cost of the water line extension over a larger
25 development, but that is not more efficient. He argued the petitioners failed to show there
26 is a market demand for a given use or uses in the area of the city south of the river, or that
27 there is an insufficient supply of vacant land for any use in the city generally or south of the
28 river. He recommended limiting use of the property if the amendment is approved.

29
30 f. In their closing statement, petitioners argued the commercial area of
31 Charbonneau is developed; none of it has been used for professional offices except in the
32 Towncenter area of Charbonneau. They agreed to accept a condition limiting use of the
33 property to professional offices. They also agreed to identify the steeply sloped area on the
34 property and to accept an open space designation for that land.

35

1 4. At the close of the November 16 hearing, the hearings officer left the record
2 open until December 16 to receive additional written evidence and testimony. By letter
3 dated December 2, 1994, petitioners requested that the hearings officer hold open the public
4 record regarding the petition until February 16, 1995. Metro staff concur with the
5 petitioners' request. By written order dated December 6, 1994, incorporated herein by
6 reference, the hearings officer held open the record until February 16, 1995.

7
8 5. Between November 16 and February 16, 1995, the hearings officer received
9 other written evidence and testimony including the following:

10
11 a. Carol and John Kincaid testified in favor of the petition only if the use of
12 the subject property is limited to a professional office. See Exhibit 27.

13
14 b. Max Paschall testified that the petition should be approved if the subject
15 property and the adjoining land owned by the petitioners is developed for a multi-story
16 professional office building oriented to block noise from the highway. He also reported
17 noise levels along lots east of the subject property. See Exhibit 28.

18
19 c. Marshall and Linda Watkins testified against the petition, arguing there is
20 no need for more commercial land in Wilsonville generally or in Charbonneau specifically;
21 the subject property is environmentally sensitive; development on the subject property will
22 increase noise levels from the highway and other nonresidential uses. See Exhibit 32.

23
24 d. The petitioners submitted a letter and five attachments, much of which
25 repeat information and conclusions in the petition and petitioners' oral testimony. See
26 Exhibits 33 through 38. In terms of new information, the petitioners include the following:

27
28 (1) A report by a professional engineer that sewer service can be
29 provided to the petitioners' property already inside the UGB in three ways. Two of those
30 alternatives require use of a pump station and installation costs of \$63,000 to \$67,000.
31 The third alternative involves extending a gravity sewer north across the subject property to
32 a connection with the ODOT sanitary sewer line in the Interstate-5 right of way at a cost of
33 \$18,000. This alternative also could serve the subject property. The petitioners argue that
34 approving the petition so that the sewer line can cross the subject property is the most
35 efficient means of providing service to their land already inside the UGB, because the

1 installation costs can be spread over a larger development reducing per unit costs, and
2 because a gravity system requires less maintenance than a system with a pump station.

3
4 (2) Information about population and commercial zoning and land
5 uses in Wilsonville south of the river. About one-third of the population of Wilsonville
6 lives south of the river (3384 out of a population of 9680). About 40 acres of land in
7 Wilsonville south of the river is zoned Planned Development Commercial ("PDC"), but
8 about half that area is developed or approved for housing and most of the other half is
9 developed with commercial or office uses. Existing commercial and office structures are
10 fully leased. Only one 9500 square foot pad is available for commercial development in the
11 area south of the river, and it is constrained by limited parking. The petitioners argue this
12 shows there is a need for more commercial land in the city south of the river, and granting
13 the petition would help fulfill that need by allowing petitioners to build about twice as large
14 a professional office building as they can build if the subject property is outside the UGB.

15
16 (3) A traffic study describing the impact on area roads of a 40,000
17 square foot office use on the subject property and the adjoining land owned by petitioners.
18 The study notes that the Wilsonville Road/Interstate-5 interchange operates at a Level of
19 Service "F". The petitioner argue that by increasing the availability of professional offices
20 in the city south of the river, the petition will reduce the volume of traffic traveling from the
21 area south of the river to the area north of the river to receive office and commercial
22 services, and, therefore will reduce existing road service inefficiencies.

23
24 (4) A written statement from the Tualatin Fire and Rescue District in
25 which the District states that approval of the petition would make service delivery more
26 efficient, because it would be less expensive on a per unit basis, and because it would
27 establish a more logical boundary between the Tualatin and Aurora Districts.

28
29 6. On March 16, 1995, the hearings officer filed with the Council a report,
30 recommendation, and draft final order granting the petition for the reasons provided
31 therein. Copies of the report and recommendation were timely mailed to parties of record
32 together with an explanation of rights to file exceptions thereto and notice of the Council
33 hearing to consider the matter. Timely exceptions were filed with the Council by _____.

34
35 7. On April ____, 1995, the Council held a duly noticed public hearing to consider
36 testimony and timely exceptions to the report and recommendation. After considering the

1 testimony and discussion, the Council voted to grant the petition for Contested Case No.
2 94-01 (Starr/Richards), based on the findings in this final order, the report and
3 recommendation of the hearings officer in this matter, and the public record in this matter.
4 The record includes an audio tape of the public hearing on November 16, 1994 and the
5 exhibits on the list attached to the final order.

6 7 II. Applicable Approval Standards and Responsive Findings

8
9 1. Metro Code section 3.01.035(c) contains approval criteria for all locational
10 adjustments. Metro Code section 3.01.035(f) contains additional approval criteria for
11 locational adjustments to add land to the UGB. The relevant criteria from those sections are
12 reprinted below in italic font. Following each criterion are findings explaining how the
13 petition does or does not comply with that criterion.

14
15 *Orderly and economic provisions of public facilities and*
16 *services. A locational adjustment shall result in a net improvement in the*
17 *efficiency of public facilities and services, including but not limited to,*
18 *water, sewerage, storm drainage, transportation, parks and open space in*
19 *the adjoining areas within the UGB; and any area to be added must be*
20 *capable of being served in an orderly and economical fashion.*

21 Metro Code section 3.01.035(c)(1)

22
23 2. The subject property can be served by public water, based on the comment from
24 the City of Wilsonville. The subject property can be served by sanitary sewer and roads,
25 based on the comment from ODOT. Based on the Wilsonville City Code, storm drainage
26 plans must be approved before the city will approve permits for development on the subject
27 property. The proximity of the drainageway east and north of the subject property and the
28 slopes on the property make it feasible for development to comply with city drainage
29 regulations, including water quality enhancement regulations, by discharging storm water
30 into the drainageway. Because of the relatively small size of the subject property, the
31 proposed restriction on use, and the relatively large open space tracts adjoining the
32 property, approval of the amendment does not create a need for more parks and open
33 space. Therefore, the area to be added is capable of being served in an orderly and
34 economical fashion.

1 3. Metro rules do not define how to calculate net efficiency of urban services. In
2 the absence of such rules, the Council must construe the words in practice. It does so
3 consistent with the manner in which it has construed those words in past locational
4 adjustments, Particularly contested case . The Council concludes that the locational
5 adjustment results in a net improvement in the efficiency of sewer services sufficient to
6 comply with Metro Code section 3.01.035(c)(1), based on the following findings:
7

8 a. Including the subject property in the UGB does not increase the net
9 efficiency of transportation services, because it does not result in any road improvements or
10 dedications, necessary connections or realignment of existing roads, or other direct benefit
11 to roads, such as was found to occur in the locational adjustment approved in Contested
12 Case 90-01 (Wagner).
13

14 (1) The Council has found in past locational adjustment cases that
15 the benefit to the petitioner of being able to amortize the cost of required road improvements
16 over a larger development area does not constitute an improvement in efficiency. See
17 Contested Case 88-02 (Mt. Tahoma).
18

19 (2) Based on the traffic study in the record, the traffic from a
20 development on the subject property and tax lot 15700 will not reduce the level of service
21 of affected intersections or cause affected streets to exceed their engineered capacity.
22 Therefore, the Council finds that the locational adjustment has no net effect on the
23 efficiency of roads.
24

25 b. Including the subject property in the UGB does not increase the net
26 efficiency of water service, because it does not result in any water facilities or substantially
27 greater water system efficiencies that could not otherwise be provided. See the Council
28 Final Order in the matter of Contested Case 88-04 (Bean) for an example of where a
29 locational adjustment improves the efficiency of water services (in that case, by creating a
30 looped water system and providing water to land already in the UGB).
31

32 (1) The petitioners would have to extend the same size line in the
33 same location to serve tax lot 15700 as it will have to extend to serve the subject property
34 and tax lot 15700. It could be argued that including the subject property increases the
35 economic feasibility of extending the water line to serve tax lot 15700, and to the church,

1 because installation costs can be spread over a larger development, but that is not relevant
2 to efficiency.¹

3
4 (2) Based on the written comment from Wilsonville and the
5 testimony by Compass Engineering, including the subject property in the UGB does not
6 have an adverse impact on the efficiency of water services. Therefore, the Council finds
7 that the locational adjustment has no net effect on the efficiency of water service.

8
9 c. Including the subject property in the UGB increases the net efficiency of
10 sewer service, because it enables the petitioners to serve tax lot 15700 and the subject
11 property with a gravity flow sewer line. If the subject property is not included in the UGB,
12 then tax lot 15700 would have to be served with a pump station. That is inherently less
13 efficient than a gravity flow line, because a pump station contains mechanical and hydraulic
14 parts that require maintenance and repair and relies on electricity to operate instead of
15 gravity. This finding is consistent with the Council action in Contested Case 8-04 (Bean)
16 where a locational adjustment allowed a gravity flow system instead of pump stations.
17 Because of the importance of this service efficiency to the petition, Council finds that a
18 condition of approval is warranted requiring the subject property and tax lot 15700 to be
19 served by a gravity flow sewer system.

20
21 d. The petitioners failed to show that the locational adjustment results in a
22 net improvement in the efficiency of storm drainage. Based on the topographic map in the
23 record, storm water from the subject property will drain to the north and to the east across
24 tax lot 15700. The natural grade of tax lot 15700 is to the east, so it will drain into the
25 existing urban area. It is not necessary to include the subject property in the UGB to
26 provide storm drainage to land already in the UGB.

¹ In a number of cases in the past, the Council has recognized that a locational adjustment that allows a public water or sewer system with excess capacity to serve the property in question results in a very small incremental increase in system efficiency, because the system is used more to its capacity. See, e.g., Contested Case 88-03 (St. Francis of Assisi) and Contested Case 87-04 (Brennt). However, such recognition often has been dicta, because the locational adjustment in question clearly achieved other, more significant efficiencies. Council also has recognized that the incremental increase in system efficiency achieved simply as a result of using available capacity is not sufficient by itself to warrant a conclusion that a locational adjustment results in a net increase in system efficiency. See, e.g., Contested Case 88-02 (Mt. Tahoma) and Contested Case 90-01 (Wagner). Council finds the latter is the better rule. To hold otherwise would mean that every locational adjustment would comply with Section 3.01.035(1) if the property could be served with water or sewer by a system with more capacity. That would render the rule meaningless and would be inconsistent with the policy and legislative history regarding the rules for locational adjustments, incorporated herein. See, e.g., the discussion at pp. 7-9 of the Council Final Order in the matter of Contested Case 88-02. Council construes Section 3.01.035(1) to require more than the incremental increase in efficiency that could be construed to result from any use of excess system capacity.

1
2 e. The subject property can be served by Tualatin Valley Fire and Rescue
3 District, and including the subject property in the UGB increases the net efficiency of fire
4 protection services, based on the written statement from the District (Exhibit 9). The
5 efficiency results from a more logical division between the Tualatin and Aurora Districts.
6 The subject property is the only property served by the Aurora District north of Miley Road
7 east of the freeway. The church south of Miley Road is served by Tualatin. This
8 circumstance was identified as a system inefficiency by the Aurora District in the matter of
9 Contested Case 88-03 (St. Francis).

10
11 f. If conditioned, including the subject property in the UGB can increase
12 the area designated "open space" on a comprehensive plan or zoning map, because the
13 petitioners agreed to accept such a designation on the steeply sloped portion of the subject
14 property, and such a designation is consistent with Wilsonville regulations. Increasing the
15 area of open space increases the efficiency of open space services for purposes of this
16 section. However the Council also recognizes that, under existing zoning, use of the
17 subject property is so constrained that it is reasonably likely to remain open space if it is not
18 included in the UGB. Therefore, including the subject property in the UGB actually may
19 reduce the area of open space in fact if not in designation. Given these facts, the Council
20 concludes including the subject property has no net effect on open space efficiency.

21
22 *Maximum efficiency of land uses. The amendment shall facilitate*
23 *needed development on adjacent existing urban land. Needed development,*
24 *for the purposes of this section, shall mean consistent with the local*
25 *comprehensive plan and/or applicable regional plans.*

26 Metro Code section 3.01.035(c)(2)

27
28 4. Including the subject property in the UGB facilitates needed development on
29 adjacent existing urban land, (i.e., tax lot 15700), because it makes it possible to serve that
30 property with a gravity flow sewer. Any use of the adjoining land in the UGB requires
31 sewer service, including uses permitted in Wilsonville's PDC zone.

32
33 a. The Council acknowledges that it is not necessary to include the subject
34 property in the UGB to provide any form of sewer service to tax lot 15700. It could be
35 served by extending a sewer line east or west along Miley Road, but sewage would have to
36 be pumped.

1
2 b. Given the importance of the efficiency of service delivery in section
3 3.01.035(c)(1), the Council finds that the availability of a less efficient means of sewer
4 service, (i.e., a system that relies on a pump station), does not preclude and is not
5 inconsistent with a finding that the locational adjustment in this case facilitates development
6 on tax lot 15700 by enabling it to be served with a more efficient sewer system. This is
7 consistent with and similar to the Council's action in the matter of Contested Case 88-04
8 (Bean).

9
10 5. This section introduces the concept of the need for a given kind of development
11 into the analysis of the locational adjustment.

12
13 a. The petitioners have asserted that there is a need for professional offices
14 to serve the portion of the City south of the river, and have introduced substantial evidence
15 in support of that assertion.

16
17 b. Citizens of the adjoining area have testified that a professional office
18 building could have positive social and environmental impacts by reducing noise levels
19 from the highway among other things.

20
21 c. Council finds that, although need for more land in the UGB is not a
22 relevant criterion for a locational adjustment, it is not inconsistent with Metro Code section
23 3.01.035(c)(2) to limit uses permitted on the subject to a subset of the uses permitted by the
24 anticipated urban plan map designation for the property. In fact, Metro Code section
25 3.01.40(a) expressly authorizes it.²

26

² Metro Code section 3.01.40(a) provides:

The District may attach conditions of approval which may be needed to assure compliance of the developed use with statewide planning goals and regional land use planning, including but not limited to the following:

(1) Conditions which may relate to findings of need for a particular type of use and for which the District finds a need to protect the opportunity for development of this type of use at the proposed site...

Council first applied this provision to a locational adjustment in the matter of Contested Case 91-01 (Dammasch State Hospital) when it required public sewer to be extended to serve that property along a particular route.

1 d. Therefore, Council finds that the approval of the locational adjustment in
2 this case should be subject to a condition that prohibits the subject property from being
3 used for any purpose except open space and professional offices, because such a condition
4 is needed to assure compliance of the developed use with the statewide planning goals and
5 regional land use plans as implemented by the rules for locational adjustments. See
6 additional discussion in the ESEE analysis following.

7
8 *Environmental, energy, social & economic consequences. Any*
9 *impact on regional transit corridor development must be positive and any*
10 *limitations imposed by the presence of hazard or resource lands must be*
11 *addressed. Metro Code section 3.01.035(c)(3)*

12
13 6. Council finds the subject property is not in a regional transit corridor and,
14 because of its location at the extreme south end of the urban area of the metropolitan region,
15 it is unlikely to be included in such a corridor in the future. Therefore the locational
16 adjustment does not have an impact on regional transit corridor development.

17
18 7. Council further finds that the plan amendment could result in development that
19 would cause significant adverse energy, social and environmental impacts.

20
21 a. Adverse energy, social and environmental effects could result if the
22 amendment allows the property to be used for highway commercial purposes or for land
23 extensive commercial purposes. Social impacts would be reasonably likely to include high
24 noise levels that would adversely affect dwellings in the adjoining subdivision.
25 Environmental impacts would be likely to include higher storm water runoff volumes and
26 less landscaping and preservation of trees. Energy effects would include the potential for
27 increasing vehicle miles traveled, rather than serving principally City residents south of the
28 river. To address these potential effects, the Council finds that a condition of approval
29 should be imposed limiting use of the property to professional offices and open space as
30 defined by the City of Wilsonville land use regulations.

31
32 b. Adverse environmental effects could result if hazards affect development
33 of the subject property. Council finds the subject property is affected by hazards, including
34 steep slopes. To address that hazard, Council finds that a condition of approval should be
35 imposed limiting use of the portion of the property with slopes of twenty percent or more to
36 open space; provided, that such a limitation does not preclude sanitary sewer and storm

1 drainage facilities in that area if approved by the City of Wilsonville consistent with
2 applicable City standards.

3
4 *Compatibility of proposed urban uses with nearby agricultural*
5 *activities. When a proposed adjustment would allow an urban use in*
6 *proximity to existing agricultural activities, the justification in terms of this*
7 *subsection must clearly outweigh the adverse impact of any incompatibility.*
8 Metro Code section 3.01.035(c)(5)

9
10 8. Council finds there are no agricultural activities in proximity to the subject
11 property, based on the findings regarding surrounding uses in this Final Order.

12
13 *Superiority. [T]he proposed UGB must be superior to the UGB as*
14 *presently located based on a consideration of the factors in subsection (c) of*
15 *this section. Metro Code section 3.01.035(f)(2)*

16
17 9. Council finds that the proposed UGB would be superior to the UGB as
18 presently located, because:

19
20 a. Public sanitary sewer could be provided to the subject site and land
21 already within the UGB more efficiently by a gravity flow system.

22
23 b. The amended UGB creates a more logical and consistent boundary
24 between the Tualatin and Aurora Fire Districts.

25
26 c. The amended UGB helps reinforce the Interstate-5 freeway as the edge
27 of the urban area.

28
29 d. The subject property is an essentially inaccessible and useless residual
30 parcel under the existing UGB. It cannot be used practicably for a resource purpose other
31 than passive open space and does not buffer resource lands from urban lands. The
32 amended UGB allows this residual piece to be put to a productive use without adverse
33 impacts on or loss of resource lands in a manner that increases the efficiency of urban
34 services and provides those services to land already in the UGB in a manner in which they
35 could not be provided.

1 **Similarly situated land. The proposed UGB amendment must include**
2 **all similarly situated contiguous land which could also be appropriately**
3 **included within the UGB as an addition based on the factors above. Metro**
4 **Code section 3.01.035(f)(3)**
5

6 10. The subject property is isolated from other land outside the UGB by the
7 Interstate-5 freeway. Therefore there is no similarly situated property which could also be
8 appropriately included within the UGB based on the factors above.
9

10 **III. Conclusions and Decision.**

11
12 1. Public services and facilities, including water, sewer, storm drainage,
13 transportation, schools, and police and fire protection, can be provided to the site in an
14 orderly and economical fashion.
15

16 2. Addition of the site would result in a slight improvement in the efficiency of
17 public sewer and fire protection services, because the public sewer system can be extended
18 to serve the subject property and adjoining land already in the UGB using a gravity system
19 instead of using a pump stations, and because the amendment results in a more logical
20 boundary between fire protection districts. Because of the importance of this service
21 efficiency to the petition, Council further concludes that a condition of approval is
22 warranted requiring that the subject property and tax lot 15700 be served by a gravity flow
23 sewer line.
24

25 3. The locational adjustment facilitates development of land within the UGB
26 consistent with the Wilsonville Comprehensive Plan and land use regulations by providing
27 more efficient sewer service to that property.
28

29 4. The locational adjustment will not have an impact on regional transit corridor
30 development. The subject property contains potential hazardous steep slopes. Council
31 concludes a condition is warranted requiring the portion of the subject property within
32 slopes of twenty (20) percent or more to be used only for open space purposes and sewer
33 and storm drainage features. Including the subject property in the UGB could cause
34 significant adverse energy, social and environmental consequences if the property is
35 developed for certain uses. Council concludes a condition of approval is warranted limiting
36 use of the subject property to professional offices.

1
2 5. The subject property does not include agricultural land, and is not in proximity
3 to existing agricultural activities. Therefore, the location adjustment will not remove
4 agricultural land or conflict with agricultural activities on nearby land.
5

6 6. The locational adjustment will result in a superior UGB, because it results in the
7 service efficiencies noted herein, reinforces a major physical features (Interstate-5) as the
8 edge of the UGB, and allows the subject property to be used productively.
9

10 7. The petition includes all similarly situated contiguous land outside the UGB.
11

12 8. For the foregoing reasons, the petition in Contested Case 94-01 is approved,
13 subject to the following conditions:
14

15 a. The subject property may be used only for open space and professional
16 office purposes as defined by the City of Wilsonville land use regulations.
17

18 b. The portion of the subject property with slopes of twenty (20) percent or
19 more may be used only for open space purposes; provided, a sanitary sewer line may cross
20 the sloped area, and storm drainage facilities may be established in the sloped area if
21 approved by the City of Wilsonville.
22

23 c. The subject property and tax lot 15700 shall be served by a gravity flow
24 sewer line.
25

26 DATED: _____
27

28 By Order of the Metropolitan
29 Service District Council
30

31 By
32 _____

ATTACHMENT "A" TO THE FINAL ORDER
IN THE MATTER OF CONTESTED CASE 94-01:
EXHIBITS

<u>Exhibit No.</u>	<u>Subject matter</u>
1	Tax Assessor Map, Sec. 26, T3S, R1W, WM, Clackamas County
2	Notice of public hearing and attached maps
3	Certificates of mailing of public notices
4	List of property owners within 500 feet
5	Petition for locational adjustment dated March 14, 1994
6	Clackamas County Board of Commissioners Order No. 94-287
7	Comment from Wayne Sorenson (Wilsonville) dated June 24, 1994
8	Comment from B. Applegarth (Canby Elem Sch Dist) dated March 9, 1994
9	Comment from Tualatin Rural Fire Protection District dated March 8, 1994
10	Letter from John Grassman (ODOT) dated June 11, 1993
11	Statement of intent to file annexation petition dated June 29, 1994
12	Memorandum from Denise Won (PMALGBC) dated March 4, 1994
13	PMALGBC petition and forms #1, #1a, #3, #4, #5 and #6
14	Affidavit of Donald Richards dated June 17, 1994 (re: notice list)
15	Letter from Vera Rojas (Wilsonville) dated June 17, 1994
16	Minutes of April 11, 1994 Wilsonville Planning Commission hearing
17	Wilsonville Staff Report dated May 16, 1994 with attachments
18	Minutes of May 16, 1994 Wilsonville City Council hearing
19	Metro Council Resolution 94-2016 with attachments
20	Hearing notice and certification of mailing
21	Metro Staff Report dated November 1, 1994 with attachments
22	<i>Wilsonville Spokesman</i> dated November 8, 1994
23	Response dated November 15, 1994 by Donald Richards to staff report
24	Site access analysis by DKS Associates dated October 20, 1993
25	Letter from Debra Iguchi (Friends of Goal 5) dated November 1, 1994 with handwritten note dated November 16, 1994
26	Memorandum from Stuart Todd dated November 22, 1995 with copy of Clackamas County tax assessor map 86-12 and UGB map
27	Letter from Carol and John Kincaid dated November 25, 1994
28	Letter from Max Paschall dated November 28, 1994
29	Letter from Donald Richards dated December 2, 1994
30	Order to Hold Record Open dated December 6, 1994
31	Memorandum from Stuart Todd dated December 12, 1994
32	Letter from Marshall and Linda Watkins dated December 14, 1994
33	Traffic data and analysis by DKS Associates (various dates)
34	Supplemental analysis of locational adjustment criteria by applicant
35	Evidence regarding Wilsonville population with certificate from Susan Johnson dated January 27, 1994
36	Letter from Bruce Goldson (Compass Engineering) dated February 3, 1995
37	Letter from Donald Richards and Mike Rumpakis dated February 3, 1995
38	Letter from Donald Richards dated February 15, 1995
39	Letter from Stuart Todd dated February 15, 1995
40	Map showing topography and property lines

UGB Contested Case 94-1:Richards Zoning

- General Agricultural District
- Planned Development Commercial
- Planned Development Residential
- Public Facility
- Rural Residential Farm Forest 5
- Urban Growth Boundary

