

MSD BOARD OF DIRECTORS

PORTLAND WATER BUREAU
1800 SW 6TH AVE.
AUDITORIUM

MARCH 14, 1975
2:00 P.M.

A G E N D A

- I. MINUTES
- II. ACCOUNTS PAYABLE
- III. PUBLIC COMMUNICATION
- IV. NON-PROCESSABLE SOLID WASTE PROGRAM ORDINANCE NO. 27
SECOND PUBLIC HEARING - CONTINUED
AN ORDINANCE ESTABLISHING A NONPROCESSABLE SOLID WASTE PROGRAM; ESTABLISHING PROCEDURE FOR THE ISSUANCE OF CERTIFICATES FOR THE OPERATION OF WASTE DISPOSAL SITES; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT; AND PROVIDING FOR COLLECTION OF FEES.
- V. SUPPLEMENTAL BUDGET APPROVAL AND PUBLIC HEARING
- VI. CONTRACT APPROVAL FOR KCM-WRE/YTO - JOHNSON CREEK CONSULTANT SERVICES
- VII. OTHER BUSINESS

MARCH 7, 1975

TO: MSD BOARD OF DIRECTORS
FROM: MSD STAFF
SUBJECT: STAFF REPORT FOR MARCH 14, 1975

PRESENTED TO THE BOARD FOR TRANSMITTAL AND RECOMMENDED ACTION
ARE THE FOLLOWING ITEMS:

PAGE

- 1 I. MINUTES
Action - Approve the minutes of February 21,
1975 and February 28, 1975.
- 26 II. ACCOUNTS PAYABLE
Action - Approve the Accounts Payable in the
amount of \$2,479.98
- 28 III. PUBLIC COMMUNICATIONS
Action - Receive comments from the public on
items not specified on the agenda.

PAGE

- 29 IV. NON-PROCESSABLE SOLID WASTE PROGRAM ORDINANCE
 NO. 27 - SECOND PUBLIC HEARING - CONTINUED
 AN ORDINANCE ESTABLISHING A NONPROCESSABLE SOLID
 WASTE PROGRAM; ESTABLISHING PROCEDURE FOR THE
 ISSUANCE OF CERTIFICATES FOR THE OPERATION OF
 WASTE DISPOSAL SITES; PROVIDING FOR ADMINISTRATION
 AND ENFORCEMENT; AND PROVIDING FOR COLLECTION OF
 FEES
 Action - Continue Second Public Hearing, receive
 further testimony and adopt Ordinance
 No. 27.
- 44 V. SUPPLEMENTAL BUDGET APPROVAL AND PUBLIC HEARING
 Action - Hold public hearing and approve
 the Supplemental Budget for transmittal
 to the Tax Supervising and Conservation
 Commission
- 46 VI. CONTRACT APPROVAL FOR KCM-WRE/YTO - JOHNSON CREEK
 CONSULTANT SERVICES
 Action - Holdover to a later date.
- 47 VII. OTHER BUSINESS
 . AUTHORIZATION TO DEVELOP ENVIRONMENTAL
 ASSESSMENT INFORMATION FOR THE MERLO ROAD
 SITE.

I. MINUTES

THE FOLLOWING PAGES CONTAIN MINUTES FOR THE MSD BOARD MEETINGS OF FEBRUARY 21, 1975 AND FEBRUARY 28, 1975.

THE STAFF RECOMMENDS APPROVAL OF THE MINUTES.

COMMITTEE

DATE

MSD Board

3-14-75

NAME

AFFILIATION

Jack Herlan

Attorney

Leslie Burright

Oregon Recycling

Jack Brewer

Transtec - J-220

Henry Dick

LOCAL 220

David D. Phillips

Cochamers County P.W.

Bill Downing

SAL

Bob Brown

DEQ

Lee Kell

Consolidated Waste

Dick Weitzel

Local #220

DAVE Miller

WASH County

James Dwyer

Presid. Wash County

Richard Cyprian

Wash. Co.

Don Hamling

Washington County

Sam Miller

" "

Richard T. Ege

Matt. C.

Jack Schwab

CERDA

Al Roems

SALO

Margaret Hoard

EMCO - LWV

BUSS, LEICHNER, LINDSTEDT, BARKER & BUONO
ATTORNEYS AT LAW

1508 STANDARD PLAZA
PORTLAND, OREGON 97204

TELEPHONE 223-6368
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DONALD A. BUSS
CURTIS W. LEICHNER
NORMAN L. LINDSTEDT
RALPH C. BARKER
DAVID J. BUONO
RICHARD O. NESTING

March 14, 1975

Metropolitan Service District
527 S.W. Hall
Portland, Oregon 97201

Attention: Mr. Robert Schumacher
Chairman

Gentlemen:

I am unable to be present at today's hearing on Ordinance No. 27 of the MSD Solid Waste Program because of prior commitments in the Circuit Court of Multnomah County. However, after a careful review of the amendments submitted by the staff, I would like to submit the following recommendations and suggestions.

Section 2. Policy My clients again feel that this definition is too broad and ought to be narrowed to limit the flow of waste once it gets upon the site and extends to its flow after it leaves the site, but not before it gets there.

Section 4. Rules and Regulations This is worded so broad that it would tend to permit the flow of waste before reaching the site and it is, again, we feel, an expansion that goes beyond disposal. The Board has indicated in the past that it does not intend to become involved in collection with respect to this particular ordinance and it should be willing to say so.

Section 7. Requirements for Certificates 2) We again would request that this subsection be clarified to accept or exempt present certificate holders or certificate holders who are transferring their certificates. Perhaps the phrase, "Not applicable to existing certificate holders", would suffice.

Section 8. Board Decision on Application for Certificates C. 3) I would recommend that you delete this subsection as it appears to be a violation of an individual civil right. The State Legislature presently has a bill before it to delete any requirement to disclose prior criminal records of any application for employment. As an alternative, for laymen who are making application, a Class A or B misdemeanor or its equivalent should be spelled out.

Metropolitan Service District
March 14, 1975
Page Two

Section 10. Suspension, Modification, Revocation or Refusal to Renew a Certificate A 2) I would again suggest here that the term "Willfully misrepresented a material statement" be the wording used. Otherwise an individual could and would be penalized for an innocent misrepresentation.

Respectfully submitted,

C. W. Leichner

CWL:d

March 14, 1975

MR. ROBERT SCHUMACHER, Chairman
Board of Directors
Metropolitan Service District
527 S.W. Hall
Portland, Or., 97201

Re: SUMMARY OF LEGISLATIVE HISTORY OF SENATE BILL 494
Passed by the 1969 Oregon Legislature--as it relates to
Proposed Ordinance No. 27 and Metropolitan Service District generally.

Dear Mr. Schumacher and Members of the Board:

Probably because Oregon's Legislature is basically a citizen body serving at considerable sacrifice, and not a full time profession, the legislative history of most legislation passed by the Oregon Legislature is inadequate. This is certainly true of Senate Bill 494, which is the basis of the present Oregon Revised Statute Chapter 268 on Metropolitan Service Districts.

Apparently the legislation arose out of studies and recommendations by the Metropolitan Study Commission, which as I recall was created by the 1965 Session in which I served. I, also, served on the Metropolitan Study Commission.

A review of the legislative history, including testimony and committee meetings that can be found in the Oregon Archives leads to these comments and findings:

1. The Senate Local Government Committee held six hearings and the House Urban Affairs Committee held three hearings. No separate exhibit file was kept. Furthermore, the State Archivist indicates that no index was kept of the tapes of the meetings in the Senate, and anyone using the tapes would have trouble identifying dates and tape numbers.

2. However, the Committee Minutes are helpful, and it appears the main impetus for the legislation was the crisis in "sewerage", particularly in Washington County. Elton Hout, Chairman of the Washington County Board of Commissioners, testified that legislation was needed because 27 different plants were dumping sewerage in the Tualatin River. The Bill was supported by the State Sanitary Authority. The State Sanitary Authority ^{SUPPORT} seems almost entirely to be on the basis of the need for such a district for sewerage, with very little emphasis on solid waste and waste.

3. Some of the testimony was enlightening because it raises the same questions about the legislation as the Solid Waste Industry now raises. For instance, Marian Rushing, Portland City Attorney, testified in opposition to many sections of the Bill before the Senate Committee on 3/26/69. She stated, according to the official committee minutes that she "Testified in opposition to many sections of SB 494" because "it was unclear and created another level of government with wider boundaries--a super city." She felt that the Bill unconstitutionally limited the Initiative and Referendum, she objected to

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Service or User Charges with no limitations on amounts, and she pointed out that the Portland City Charter prohibited User Charges in excess of two-thirds of the water bill; she felt that the sections permitting a levy of taxes to finance capital and administrative functions were unconstitutional as they did not provide for "uniformity within a class", etc.

4. Mr. Orval Etter, Legal Counsel for the Portland Metropolitan Study Commission, raised questions about the governing body of MSD, and that provisions would not achieve equal protection of laws under the Fourteenth Amendment of the United States Constitution as the governing body was not proportional to population.

5. At the meeting of April 9th of the Senate Committee, Miss Rushing spoke to the Bill as re-drafted by Etter and McKay Rich, and Miss Rushing again spoke to the subject of assessments without benefits or without "adequate benefit".

6. As the Bill continued to be heard by the 1969 Legislature, it became obvious that the main impetus for the Bill, in the event Washington County solved its sewage problem, was Public Transportation. In that respect, the Senate Committee meeting of April 2, 1969, received a complete re-draft of the Bill, putting in most of the provisions concerning Public Transportation. Again, Solid Waste received only passing reference. The main concern wavered back and forth between whether the major stress of the legislation should be Sewage or Public Transportation. This was true, even though House Bill 1808 was before the Legislature, and eventually passed, and became Chapter 267 for Mass Transit Districts, the Legislation eventually implemented to created Tri-Met.

7. In checking the Legislative History of the legislation creating the basis for the Metropolitan Service District and the legislation encompassed in HB 1808 that created the basis for Tri-Met, I find frequent concern by the most experienced and learned members of the legislative committees that unconstitutional grants of power were being given. For instance, in the Senate Local Government Committee Minutes of May 8, 1969, in reference to HB 1808, Sen. Bateson expressed concern in that he felt the Bill "contained language permitting the broadest grant of power this legislature has ever given." Chairman Donald Husband expressed concern of the provisions permitting the governing body to be appointive rather than elective, over the governing body being appointive without reference to population, over the pledging of revenue on bond issues, and the limitations on the Referendum.

The net result is that I believe the Legislative History would indicate serious constitutional questions which should not be compounded by passing an Ordinance to impose a questionable User fee for questionable services. In addition, you will note that I have not indicated any discussion of the "User Fee" by the House or Senate Committees. There was none. So we have to resort to case law to determine the validity of such a User Fee. I have tried to do that in my Legal Opinions of February 7th and February 26, and I shall again deal with that in a separate letter to the Board.

Respectfully submitted,

DALE M. HARLAN, Attorney

DALE M. HARLAN
ATTORNEY, P.C.
2146 S.E. LAKE RD.
MILWAUKIE, OREGON 97222

654-9533

March 14, 1975

MR. ROBERT SCHUMACHER, Chairman
Board of Directors
Metropolitan Service District
527 SW Hall
Portland, Oregon, 97201

Re: LEGAL OPINION OF PROPOSED ORDINANCE NO. 27 ON USER FEES

Dear Mr. Schumacher and Members of the Board:

Your district's attorney has reported to you in Opinion Letter 15 dated February 12, 1975, that he believes the proposed User Fee Ordinance is valid and a proper exercise of the District's authority. I believe I could summarize his Opinion by stating that he relies on the following reasoning:

1. He says at the bottom of page 1. of his Opinion that the District has the authority under ORS Chapter 268 "to provide public services on a metropolitan basis in the area of Solid Waste Disposal." He relies on ORS 268.030 and 268.310(2). The first provision is a governing provision as it deals with the purpose of the chapter and says, "(1) This chapter is enacted in order to provide a method of making available in metropolitan areas public services not adequately available through previously authorized governmental agencies." (emphasis added by underlining)

COMMENT: There has been absolutely no proof before this Board that the Nonprocessable Solid Waste Program, which is the guise for the User Fee, is any kind of a service that is not already adequately available through previously enacted regulations that are implemented by the Department of Environmental Quality.

2. Your attorney says at page 5. of his Opinion Letter that the Ordinance and the User Charge "may be" justified by means of the District's authority to regulate and control Solid Waste Disposal.

COMMENT: I would refer you to my Opinion Letter of February 26th to the Board wherein I cite the most cogent Oregon case authority which is the case of Haugen v. Gleason, et al, 226 Or 99, wherein the Oregon Supreme Court, through Justice Goodwin, citing Oregon authority which has been accepted nationally, states:

"...Only those cases where regulation is the primary purpose can be specifically referred to the police power. If Revenue is the primary purpose and Regulation is merely incidental, the imposition is a tax..."

Then Justice Goodwin went on to say, quoting prior authority that:
"The power to tax is never inferred. Corbett v. City of Portland, 31 Or 407, 414, 48 P 428. Nor is the power to tax inherent in a local government. Eugene Theater et al v. Eugene et al, 194 Or 603, 617, 243 P2d 1060."

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3. Your attorney, Mr. Dean P. Gisvold, concedes on page 4. of his Opinion that "we think it is important to note that the charge or fees imposed by the District must be reasonably related to the cost of providing the services." The Solid Waste Industry does not agree that any services are going to be provided, that are not already available without a User Fee to the county, city, and state level of governments at the present time. But even if we concede the District's contention that some "service" is going to be rendered as a result of the Ordinance, I have not seen or heard any justification relating to a Fee Provision in Section 11 of "an annual fee equal to 2.15% of his gross cash receipts" to the so-called service to be rendered. The original intent of the Ordinance seemed to be a means of financing the administrative operations of MSD. The Ordinance is not saved by mere language inserted in Section 12.E saying that the fees will go only for "the administration, operation, and enforcement of this Ordinance and any rules and regulations promulgated thereunder." That is legalese for bureaucracy. If the services under this Ordinance justify imposition of a "fee" that is not even defined in the Ordinance, but which purportedly relates to the "user charges" allowed by the Statute for such things as those who benefit from the facilities to deal with sewerage, control of surface water, and public transportation, then anything could be justified. Certainly, there must be government agencies that could impose a "fee" for counting rainbows or comparing sunbeams from year to year. As mentioned previously, the purpose of the chapter that sets forth the enabling legislation is to allow districts to act only to "provide services not adequately available through previously authorized governmental agencies."

This Ordinance would be merely another step in what Portland City Attorney Marian Rushing called super government when she testified against the enabling legislation in 1969. It would merely create another layer of government upon government. The statute does not even purport to have anything to do with processible waste. The impetus of the nation and the state is to encourage recycling and resource recovery wherever possible, but all this Ordinance proposes to do is to charge an exorbitant fee for evaluating (studying) existing waste disposal sites, establishing "rules and regulations" governing standards of service to the public (is there any complaint justifying that?), deciding on criteria to determine the need and location of nonprocessible disposal sites, deciding on the number and priority of sites, and "criteria to determine" the orderly flow of processible and nonprocessible solid waste.

Most, if not all, of the answers to be arrived at from standards and criteria are already determined by the studies that have been performed for the district, by the district, or for or by some other local unit of government.

But policy decisions aside, and public demand being nonexistent, we still come back to the legality of the proposed Ordinance and User Fee. The District has no facilities for which to levy a User Charge. The District cannot levy what purports to be a User Charge but what is really a Tax. As Corbett v. City of Portland (31 Or 407) stated:

"The principle is universal whenever a municipality or other governmental agency of a state seeks to impose the burden of taxation upon a citizen or upon his property, it must be able to show the grant of such power by express words or necessary

March 14, 1975

implication. No doubtful inference from other powers granted or from obscure provisions of the law, nor mere matter of convenience, or even necessity, will answer the purpose. The grant relied upon must be evident and unmistakable, and all doubts will be resolved against its exercise, and in favor of the taxpayer..."

Once the District gets some facilities needed for Solid Waste Disposal, then and only then, will a reasonable User Fee be legal or even justified.

Respectfully submitted,

DH:e

DALE M. HARLAN, Attorney

DALE M. HARLAN
ATTORNEY, P.C.
2146 S.E. LAKE RD.
MILWAUKIE, OREGON 97222

654-9533

March 14, 1975

MR. ROBERT SCHUMACHER, Chairman
Board of Directors
Metropolitan Service District
527 SW Hall
Portland, Oregon, 97201

Subject: Ordinance No. 27 on Nonprocessible Solid Waste Program

Dear Mr. Schumacher and all Board Members:

It has been my pleasure to prepare a Legal Opinion dated February 7, 1975, (which was included with the Agenda and material handed out at the meeting of February 28th), and the further Legal Opinion of February 26, 1975, dealing with the police power claims of the District, which Opinion I presume is part of the material with today's Agenda. I would request that the Board again take time to read those Opinions before any action today, and also re-read Opinion Letter 15. of your attorney dated February 12, 1975.

The latest version of Ordinance No. 27, which has the date of March 4, 1975, on the front page reached my office last weekend. I must say that the joint effort of the Board, the Solid Waste Industry, your Staff, the Witnesses, and the Attorneys for the various Solid Waste groups have certainly improved the proposed Ordinance. But conceptually, I still think the Ordinance warrants further study, and such study should not delay the eventual implementation of a Nonprocessible Solid Waste Program. I can say that because Section 21. provides that the Ordinance shall not become effective until 60 days after completion and Board approval of several studies or evaluations. Those studies and evaluations could go ahead, probably with DEQ assistance (and thus probably financial help), without any undue hardship to the metropolitan area or the proposed program. In the meantime, the Oregon Legislature probably would have completed its work and all of us would know a little more about how the proposed program fits in with the obligations and prerogatives of all other levels of government.

I am submitting separate statements on various aspects of the proposed Ordinance.

I have been authorized to respond to and represent the Solid Waste Industry concerning the Ordinance by Clackamas County Refuse Disposal Association, Inc., Consolidated Waste Services, Inc., and Tri-County Solid Waste Management Council. I am basically in support of the proposals that have been made by Attorney DeMar Batchelor representing the Washington County Refuse Disposal Association, Inc., Curtis Leichner representing Portland Area Sanitary Operators, Inc. and Multnomah County Refuse Disposal Association, Inc., plus the testimony to your Board by representatives of Teamsters Local 220, Sanitary Truck Drivers Union.

Respectfully submitted,


DALE M. HARLAN, Attorney

II. ACCOUNTS PAYABLE

THE FOLLOWING PAGE CONTAINS A LIST OF ACCOUNTS PAYABLE ITEMS FOR PAYMENT FOR THE PERIOD FEBRUARY 20 TO MARCH 5, 1975, VOUCHER NUMBERS 98 TO 103, IN THE TOTAL AMOUNT OF \$2,479.98.

THE STAFF RECOMMENDS APPROVAL OF THE ACCOUNTS PAYABLE.

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACTION NO. 75-318

DATE 3-14-75

BY Jean McWooden
CLERK OF THE BOARD

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACCOUNTS PAYABLE
FEBRUARY 20 - MARCH 5, 1975

ACTION NO. 75-318
DATE 3-14-75
BY Jean M. Wood

VOUCHER	CHECK	PAYABLE TO	PURPOSE	AMOUNT OF	PROG. BOARD	OBJ. CD.
98	98	SANDRA BAUER	TRAVEL	7.20	Q201	305
99	99	BREWED HOT COFFEE	COFFEE @ BOARD MTG.	4.88	Q204	305
100	100	BOISE CASCADE	GEN. OFFICE SUPPLIES	165.20		
				114.80	Q201	350
				30.00	Q201	308
				20.40	Q204	308
101	101	DAILY JOURNAL Com.	PUBLIC NOTICES	27.20		
				20.00	Q201	318
				7.20	Q204	318
102	102	HARDY, BUTTLER, Mc- EWEN, WEISS, NEWMAN	ATTORNEYS FEES	2257.50		
				1865.50	Q201	331
				392.00	Q203	331
103	103	IBM	LARGE ELITE	18.00	Q201	308
TOTAL				\$ 2479.98		

III. PUBLIC COMMUNICATIONS

THIS AGENDA ITEM ALLOWS FOR THE MSD BOARD TO HEAR COMMENTS FROM THE PUBLIC ON ITEMS NOT CONTAINED ON THIS AGENDA.

IV. NON-PROCESSABLE SOLID WASTE PROGRAM ORDINANCE NO. 27
SECOND PUBLIC HEARING - CONTINUED

AN ORDINANCE ESTABLISHING A NONPROCESSABLE SOLID WASTE PROGRAM; ESTABLISHING PROCEDURE FOR THE ISSUANCE OF CERTIFICATES FOR THE OPERATION OF WASTE DISPOSAL SITES; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT; AND PROVIDING FOR COLLECTION OF FEES.

THE FOLLOWING PAGES CONTAIN ORDINANCE No. 27 AS AMENDED AND CODIFIED FROM TESTIMONY AT THE FEBRUARY 28, 1975 BOARD MEETING. THE STAFF RECOMMENDS CONTINUING THE SECOND PUBLIC HEARING, RECEIVING PUBLIC TESTIMONY, AND IF APPROPRIATE, ADOPT ORDINANCE No. 27.

March 4, 1975

METROPOLITAN SERVICE DISTRICT

ORDINANCE NO. 27

An ordinance establishing a nonprocessable solid waste program; establishing procedure for the issuance of certificates for the operation of waste disposal sites; providing for administration and enforcement; and providing for collection of fees.

ORDINANCE NO. 27

The Metropolitan Service District hereby ordains:

SECTION 1. Definitions

As used in this ordinance, unless the context requires otherwise:

1. BOARD. Board means the Board of Directors of the Metropolitan Service District.
2. DISTRICT. District means the Metropolitan Service District and all of the land and territory included within the boundaries of the Metropolitan Service District as established by the electorate.
3. MSD. MSD means the Metropolitan Service District, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.
4. MANAGER. Manager means the chief administrative officer of the MSD.
5. NONPROCESSABLE WASTE. Nonprocessable waste means any solid waste which cannot be processed for reclamation before final disposal.
6. OPERATOR. Operator means a person who has obtained and holds a waste disposal certificate issued by the MSD pursuant to this ordinance.
7. PERSON. Person means any individual, public or private corporation, industry, partnership, association, firm, trust, estate, city, county, special district or local governmental unit and any other legal entity.
8. PROCESSABLE WASTE. Processable waste means any solid waste which may be processed for reclamation before final disposal.

9. REASONABLE DISPOSAL SITE CHARGE. Reasonable disposal site charge means the average charge imposed by waste and disposal sites within the District to accept and dispose of solid wastes. The charge shall be based on fees for uncompacted material.
10. SOLID WASTE. Solid waste means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard, commercial, industrial, demolition and construction wastes, discarded home and industrial appliances, provided that this definition does not include:
 - a. Environmentally hazardous wastes as defined in ORS 459.410, or
 - b. Materials used for fertilizer or for other productive purposes which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.
11. WASTE DISPOSAL SITE. Waste disposal site means a disposal site, whether or not open to the public, permitted by the Department of Environmental Quality to accept and dispose of solid wastes.

SECTION 2. Policy

To protect the health, safety and welfare of the people of the District, the Board has determined the necessity of providing a coordinated District-wide program for the safe, economical and efficient disposal of nonprocessable solid wastes, and to insure an adequate number of disposal sites for nonprocessable solid waste, criteria for the need, location and operation of such sites, and the flow of all processable solid wastes into the processable waste stream, and this ordinance shall be liberally construed for the accomplishment of these purposes.

SECTION 3. Administration and Enforcement

The Manager shall be responsible for the administration and enforcement of this ordinance and any rules or regulations promulgated hereunder.

SECTION 4. Rules and Regulations

The Board shall promulgate reasonable rules and regulations pertaining to the administration of this ordinance and for the disposal of nonprocessable solid wastes, including without limitation the following:

- A. Standards of service to be provided to the public.
- B. Evaluation criteria to determine:
 - 1) Need for and location of nonprocessable disposal sites.
 - 2) Number and priority of nonprocessable disposal sites required in the District.
 - 3) Orderly flow of nonprocessable solid wastes and processable solid wastes.
 - 4) Use of nonprocessable disposal sites as a backup system in the event of a breakdown or overloading of the processable system.

SECTION 5. Activities and Practices Regulated

- A. Except as otherwise provided in this ordinance, it shall be unlawful:
 - 1) For any person to operate a waste disposal site within the District without a certificate from the MSD.
 - 2) For an operator holding a certificate to operate a processable solid waste disposal site to receive, accept and dispose of any nonprocessable wastes.
 - 3) For an operator holding a certificate to operate a non-processable site to receive, accept and dispose of any processable wastes.
- B. In case of an emergency or the breakdown or overloading of the processable system, the Manager may provide to any operator a written waiver from section 5.A.(2) or 5.A.(3).

SECTION 6. Application for Certificates

- A. Applications for Certificates shall be on forms acceptable to the Manager. The Manager may accept applications on forms provided by other city, county, state or federal agencies.
- B. Applicants for Certificates shall state:
- 1) The kind of disposal site to be operated.
 - 2) The rates to be charged.
 - 3) The location of and area occupied by or to be occupied by the disposal site.
 - 4) The estimated amount of material needed and the time required to fill the disposal site.
 - 5) The possible land uses to which the site can be put after it is filled.
 - 6) The present land use of the area to be used as a disposal site.
 - 7) An operational plan, including information covering hours of operation, material handling procedures, on-site traffic flow, emergency procedures and cover material.
 - 8) Other information required by the form or the Manager.

SECTION 7. Requirements for Certificates

The applicant must:

- 1) Have available land, equipment, facilities and personnel to meet the requirements of this ordinance and ORS Chapter 459 (Solid Waste Management) and the rules and regulations promulgated pursuant to this ordinance and ORS Chapter 459.
- 2) Have had the site and operation thereof designed by a registered professional civil, agricultural or logging engineer. This subsection shall not apply to waste disposal sites existing on the effective date of this ordinance.

- 3) Have in force public liability insurance in the amount of not less than \$250,000 per person and \$500,000 per occurrence for bodily injury or death and property damage insurance in the amount of not less than \$100,000 per occurrence which shall be evidenced by a certificate of insurance.
- 4) Submit with his application a corporate surety bond or a firm commitment therefore in an amount established by the Board, guaranteeing full and faithful performance by the applicant of the duties and obligations of a certificate under the provisions of this ordinance. A bond already issued or to be issued to city, county, state or federal agency may be acceptable so long as the bond meets the requirements of this ordinance and the MSD is a direct beneficiary thereof.

SECTION 8. Board Decision on Applications for Certificates

- A. Persons who are operating a waste disposal site on the effective date of this ordinance must make application for the required certificate within 30 days after the effective date of this ordinance and upon filing an application for said certificate, may continue to operate until a final decision is made upon said application by the Board.
- B. Applications for certificates shall be reviewed by the Manager who shall make such investigation as he deems necessary and appropriate. Written notice shall be given by the Manager to any person who holds a certificate and to other interested persons and notice of application shall be published in a newspaper having a general circulation within the District greater than 50,000. The notice shall state the name of the applicant, the type of certificate requested, the location and size of the proposed site, and that the recipient of the notice and the public shall have thirty (30) days from

the date thereof to file written comments pertinent to the application and other information the manager deems appropriate.

C. The Board may refuse to issue a Certificate to any applicant if it has reasonable grounds to believe any of the following to be true:

- 1) That the applicant has not met the requirements of this ordinance or the rules and regulations promulgated thereunder or Chapter 459. (Solid Waste Management) or the rules and regulations promulgated thereunder.
- 2) That the applicant has materially misrepresented the statements in the application for a certificate or in any testimony or documentary evidence given to the Manager or to the Board.
- 3) That the applicant has been convicted of a Class A or B misdemeanor or its equivalent or of a felony, or if the applicant is a firm or corporation that the principal partners or officers have been convicted of a Class A or B misdemeanor or its equivalent or of a felony.
- 4) That the applicant has failed to disclose all information in the applicant's possession deemed relevant to a decision on the application after written notification and a reasonable opportunity to do so.

D. In addition to sub-paragraph 8(C) and in the case of an applicant who is not operating a waste disposal site, the Board may refuse to issue a certificate if it has reasonable grounds to believe that there are sufficient waste disposal sites already certified and operating within the District and the applicant's disposal site and the location thereof will not substantially benefit the Nonprocessable Solid Waste Program.

E. The applicant shall be advised of the Board's action on his application in writing and shall be advised that the applicant has the right to a contested case hearing under the provisions of ORS 183.

- F. If the Board makes a final order rejecting all or part of an application for a Certificate, the applicant may not submit another application for the same or a portion of the same site for a period of 6 months unless the Board finds that the public interest requires reconsideration within a shorter period of time.
- G. The term of the Certificate shall be determined by the Board on the basis of site longevity, population to be served, probable land use and amount of investment by the applicant.

SECTION 9. Transfer of Certificates

An operator may transfer his certificate to another person only after written notice to and approval by the Board. The Board shall approve the transfer unless it has reasonable grounds to believe that the operator-transferor is in violation of any of the requirements of this ordinance or the rules and regulations promulgated thereunder or that the transferee does not meet the requirements of this ordinance or the rules and regulations promulgated thereunder. The Board may attach conditions to an approval under this section.

SECTION 10. Suspension, Modification, Revocation or Refusal to Renew a Certificate

- A. The Board may suspend, modify, revoke or refuse to renew a certificate if it has reasonable grounds to believe that an operator has:
 - 1) Willfully violated this ordinance or ORS Chapter 459 or the rules and regulations respectively promulgated thereunder; or his Certificate and any conditions attached thereto; or
 - 2) Materially misrepresented the statements in the application for his certificate or in any testimony or documentary evidence given to the Manager or to the Board; or

- 3) Willfully refused to provide adequate service to the public after written notification and a reasonable opportunity to do so.
- B. In lieu of suspension, modification, revocation or refusal to renew a certificate, the Board may order compliance and make suspension, modification, revocation or renewal contingent upon compliance with the order within a time stated in said order.
- C. The procedures for suspension, modification, revocation or refusal to renew a certificate shall be those specified for a contested case in ORS Chapter 183.

SECTION 11. Fees

- A. The Board shall collect, in the manner and at the time provided in Section 12, from each operator, except as provided in Subsection 11.B, an annual fee equal to 2.15% of his gross cash receipts.
- B. The Board shall collect, in the manner and at the time provided in Section 12, from operators of waste disposal sites not charging fees for the use of the site or being used by the operator for disposal of solid waste generated solely by him, an annual fee equal to 2.15% of the product established by multiplying the number of cubic yards of solid waste received and disposed of by the operator times the reasonable disposal site charge.
- C. The fees imposed by this section shall be in addition to any other fees or charges the operator is required to pay.

SECTION 12. Collection of Fees

- A. The fees imposed by this ordinance shall be separately stated upon the operator's records and any receipt rendered by the operator.

B. The operator shall pay MSD the fees imposed by Section 11 on or before the 20th day of each month following each preceding month of operation. At the time of payment, the operator must file with the Manager, a statement including without limitation the following information:

- 1) Name and address of the facility.
- 2) The operator's MSD registration number.
- 3) The month and year of each report.
- 4) The number of truckloads received daily.
- 5) The number of cars, pickups, trailers, and other small hauling vehicles.
- 6) Total number of cubic yards of solid wastes received during the month, broken down and divided between compacted and noncompact.
- 7) Detailed explanation of any adjustments made to the amount of fees paid in reliance on Subsection 12.C.
- 8) Amount of gross cash receipts.
- 9) Signature and title of the operator or his agent.

Willful misrepresentation of any information required above shall constitute reasonable grounds for suspension, modification, revocation or refusal to renew a certificate pursuant to Section 10 of this ordinance.

C. An operator is released from liability for fees on accounts that have been found to be worthless and charged off for income tax purposes. If an operator has previously paid the fees, he may take a deduction from his next due payment to the MSD the amount found worthless and charged off for income tax purposes. If any such account thereafter, in whole or in part, is collected by the operator, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

- D. Every operator shall keep such records, receipts or other pertinent papers and information in such form as the Manager may require. The Manager or his authorized agent in writing may examine during reasonable business hours the books, papers, records and equipment of any operator and may investigate the character of the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- E. All fees imposed by and collected by this ordinance shall be paid in the form of a remittance payable to the Metropolitan Service District. All money received by the MSD under this ordinance shall be deposited in the Nonprocessable Solid Waste Program Account and will be used only for the Nonprocessable Solid Waste Program and the administration, operation and enforcement of this ordinance and any rules and regulations promulgated thereunder.

SECTION 13. Penalties

- A. Violation of this ordinance or a certificate issued hereunder is punishable by fine of not more than Five Hundred Dollars (\$500.00).
- B. Each day a violation referred to by Subsection A of this section continues constitutes a separate offense. Such separate offenses may be joined in one indictment or complaint or information in several counts.

SECTION 14. Exclusive Contracts

Upon recommendation of the Manager, the Board may by resolution limit the number of certificates granted pursuant to this ordinance and award exclusive contracts for waste disposal sites in defined areas and set fees for such exclusive contracts. The

Board may establish rates to be charged by holders of exclusive contracts.

SECTION 15. Agreements for Administration, Operation and Enforcement

By contract, MSD may assume and perform any function of any municipal corporation, city or county, in the District or any function of the State of Oregon or any agency thereof performed or to be performed in the District which are related to the duties and functions of the District under this ordinance. The Board may contract with any city or county in the District or with the state or regional association of governments for the administration or enforcement of any of the provisions of this ordinance or of the rules or regulations adopted pursuant hereto.

SECTION 16. Abatement

The disposal of solid waste by any person in the District in violation of this ordinance or rules and regulations promulgated thereunder is deemed a nuisance and the Board may, in addition to other remedies provided by law, institute injunction, mandamas, abatement or other appropriate legal proceedings to temporarily or permanently enjoin or abate such disposal. The provisions of this section are in addition to and not in lieu of any criminal prosecution or penalties as provided by this ordinance or state law.

SECTION 17. Conformance with State Law

This ordinance shall in no way be a substitute for, nor eliminate the necessity of conforming with any and all state laws, rules and regulations which are now, or may in the future be in effect and which relate to the public health or to the operation of any

operator. This ordinance is in addition to said state laws, rules and regulations.

SECTION 18. Savings Clause

In the event any provision or section of this ordinance is declared invalid, such declaration shall not affect the validity of any other provision or section herein, which sections and provisions shall remain in full force and effect.

SECTION 19. Waiver for Local Jurisdiction

The Board may waive some or all of the requirements of this ordinance and rules and regulations promulgated thereunder where an applicant, operator or certificate holder is a city, county, special district or local governmental unit.

SECTION 20. Review of Board Action

All decisions of the Board under this ordinance, except those decisions where the right to a contested case hearing is involved, shall be reviewable by the Circuit Court of the County in which the Board has its principal office or of the county in which the waste disposal site in question is located under the provisions of ORS Chapter 34.010 - 34.100 which shall be the sole and exclusive remedy for review.

SECTION 21. Effective Date

- A. This ordinance shall take effect 60 days subsequent to the completion and Board approval of the following items:
- 1) Evaluation of existing sites.
 - 2) Rules and regulations governing the:
 - a) Standards of service to be provided to the public.

b) Evaluation criteria to determine:

- (1) need for and location of nonprocessable disposal sites required in the District;
- (2) number and priority of nonprocessable disposal sites required in the District;
- (3) orderly flow of processable and nonprocessable solid waste;
- (4) use of nonprocessable disposal sites as a back-up system in the event of a breakdown or overload of the processable system; and

c) The administration of this ordinance.

- B. The Board shall notify all local jurisdictions when the ordinance will take effect and when the imposition of the fees provided herein will begin.

Date of Adoption:

Robert Schumacher, Chairman

Miller Duris, Vice Chairman

V. SUPPLEMENTAL BUDGET APPROVAL AND PUBLIC HEARING

THE FOLLOWING PAGE CONTAINS A SUPPLEMENTAL BUDGET MODIFICATION REQUEST BY THE MSD STAFF. AFTER APPROVAL BY THE MSD THIS SUPPLEMENTAL BUDGET MUST BE SUBMITTED TO AND APPROVED BY THE TAX SUPERVISION AND CONSERVATION COMMISSION (TSCC).

THE FOLLOWING PAGE CONTAINS THE SUPPLEMENTAL BUDGET INFORMATION. THE STAFF RECOMMENDATION IS TO HOLD A PUBLIC HEARING AND APPROVE THE SUPPLEMENTAL BUDGET AND AUTHORIZE TRANSMITTAL TO THE MULTNOMAH COUNTY TAX SUPERVISION AND CONSERVATION COMMISSION.

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACTION NO. 25-321

DATE 3-14-75

BY [Signature]
CLERK OF THE BOARD

METROPOLITAN SERVICE DISTRICT

SUPPLEMENTAL BUDGET
FOR THE FISCAL YEAR 1974-75

SOLID WASTE GENERAL FUND

RESOURCES

DEQ Grant	\$2,000.00
Publication Sales	<u>2,935.00</u>
	\$4,935.00

REQUIREMENTS

Materials and Services:	
Contractual Services,	
Technical Services	<u>\$4,935.00</u>
 Total Materials and Services	 <u>\$4,935.00</u>
 Total Requirements	 <u>\$4,935.00</u>

VI. CONTRACT APPROVAL FOR KCM-WRE/YTO - JOHNSON CREEK
CONSULTANT SERVICES

HOLD THIS ITEM OVER TO A LATER DATE.

VII. OTHER BUSINESS

AUTHORIZATION TO DEVELOP ENVIRONMENTAL ASSESSMENT
INFORMATION FOR THE MERLO ROAD SITE.

THE FOLLOWING PAGES CONTAIN A STAFF REPORT DISCUSSING
POSSIBLE DEVELOPMENT OF FURTHER ENVIRONMENTAL ASSESSMENT
INFORMATION FOR THE MERLO ROAD TRANSFER/PROCESSING STATION
SITE IN WASHINGTON COUNTY.

STAFF RECOMMENDATION IS TO AUTHORIZE ADDITIONAL ENVIRONMENTAL
IMPACT WORK ON THE MERLO ROAD SITE.

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACTION NO. 75-323

DATE 3-14-75

BY Jeanne Wood
CLERK OF THE BOARD

TO: MSD BOARD
FROM: MSD STAFF
SUBJECT: AUTHORIZATION TO DEVELOP ENVIRONMENTAL ASSESSMENT
INFORMATION FOR THE MERLO ROAD SITE.

BACKGROUND.

The original Environmental Assessments evaluated formally were about five sites of which one, located in the city of Beaverton near Allen Road, was indicated as a top priority site. After preliminary engineering design, the costs to develop this site were determined to be excessive. Therefore, the staff proceeded with evaluation of four additional sites.

The four sites in East Washington County that were evaluated were:

- SITE A. Merlo Road and S.W. 158th
- SITE B. Near S.W. 158th and Jenkins Road
- SITE C. S.W. Murray Blvd. between Tualatin Valley Highway and Jenkins Road
- SITE D. Near 99W and Cipole Road

In addition, the staff evaluated Site E, north of S.W. Merlo Road and west of S.W. 158th.

EVALUATION.

The subject sites were considered and evaluated using the following criteria:

- General Location
- Traffic Flow
- Environmental Impact (cursory)
- Layout Configuration

Soils Structure (cursory)
Topography
Landuse Considerations
Proximity to Residents

In addition, Washington County Planning Staff and the MSD Staff investigated each location separately. The following is a brief of this groups evaluation.

SITE A. - Appears satisfactory in all respects except proximity to residents. Further, the site owner probably would react negatively to purchase offer.

SITE B. - Rejected due to soils and apparent drainage problems. This could be a backup to Site A.

SITE C. - Rejected due to layout configuration.

SITE D. - Rejected due to general location.

SITE E. - Rejected due to layout configuration and land use (zoning) considerations.

The evaluation of these sites would probably place them in the following priorities:

<u>Priority</u>	<u>Site</u>
1	A
2	B
3	C
4	D
5	E

DISCUSSION OF THE MERLO ROAD SITE (A)

This site is located south of S.W. Merlo Road (attachment 1 & 2) and west of S.W. 158th (extended) and adjacent to Burlington Northern crossing at Merlo Road. The site contains approximately 19.8 acres of which some portion is flood plain (10%). The owner is Eastgate Theater, Inc. Utilities are in close proximity of the property. The assessed valuation is \$52,100.00.

Of the site:

General location compatible with waste generation centroid

Adjacent trees to protect from visual and noise impact

Traffic flow conditions are good from north, south, and east

Adjacent to railroad

Good general location

Good layout possibilities

A primary disadvantage is the proximity with two or three residences on Merlo Road. The compatibility with land use considerations is good. Primary environmental impact will be additional truck traffic in the vicinity of the residences on Merlo Road. Although, there are probably no sites where this issue would not be raised. Traffic flow south or north connecting the Sunset Highway is excellent with good road base.

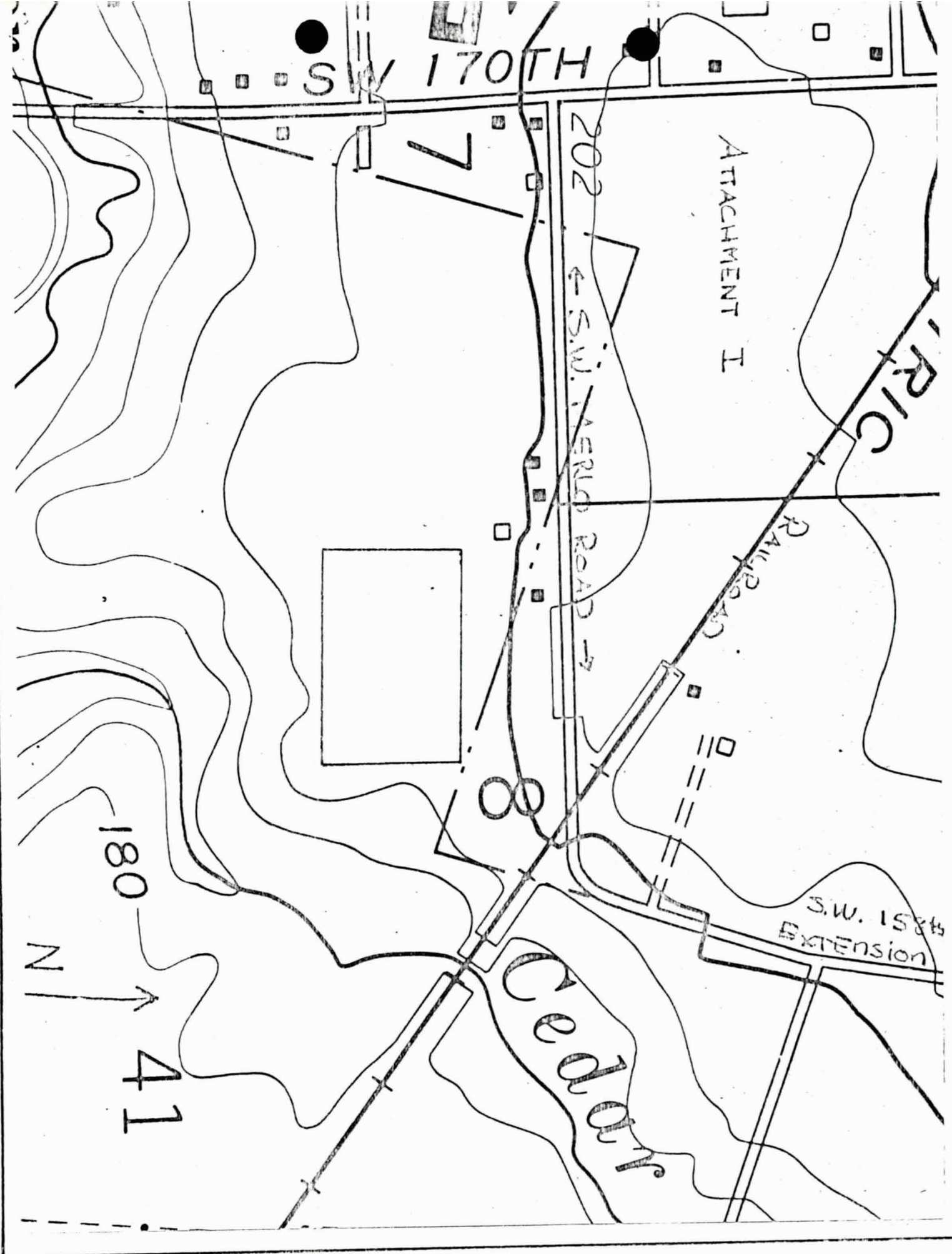
RECOMMENDATION.

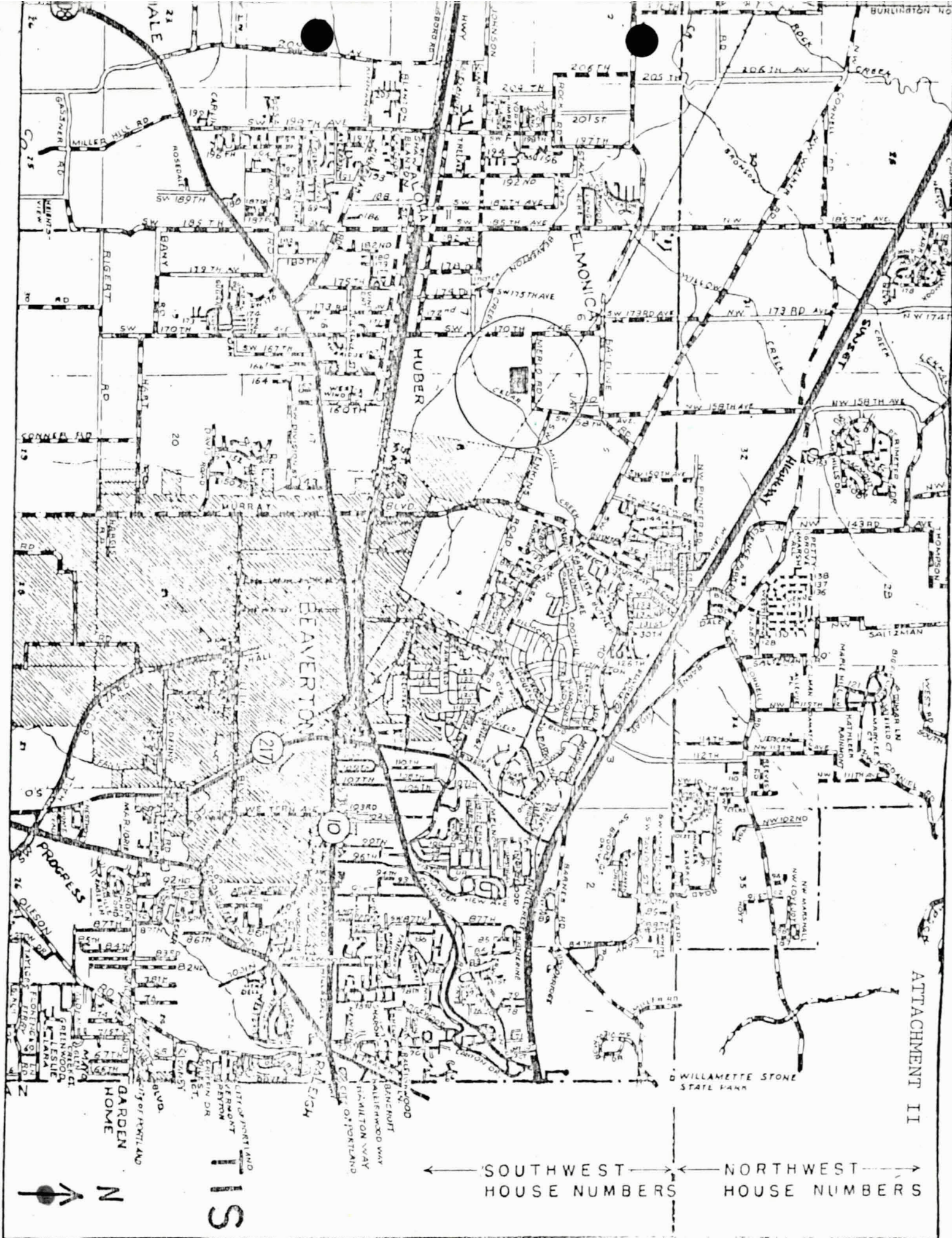
The staff and Solid Waste Committee would recommend the MSD Board authorize additional environmental impact work on the Merlo Road site. It should be noted that this action would not "close out" additional work on sites that could become viable.

The procealano

The procedure the MSD Staff will follow is listed below:

1. SWC recommends to proceed with Environmental Assessments on Merlo Road Site (site A)
2. MSD Board authorizes go-ahead.
3. Send a letter to Washington County Commission and to Mr. Moyer (owner) concerning the MSD Board action.
4. MSD develops the Environmental Assessment (EA) with Washington County planning department.
5. SWC reviews the EA.
6. SWC approves the EA.
7. MSD Board approves the EA.
8. Transmit the approved EA to Washington Commission.





ATTACHMENT II

← SOUTHWEST HOUSE NUMBERS | ← NORTHWEST HOUSE NUMBERS →