

# A G E N D A

800 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 707 1700 | FAX 503 707 1707



**METRO**

**MEETING:** METRO COUNCIL REGULAR MEETING  
**DATE:** August 3, 1995  
**DAY:** Thursday  
**TIME:** 2:00 p.m.  
**PLACE:** Council Chamber

Approx.  
Time \*

Presenter

- |          |   |               |
|----------|---|---------------|
| 2:00 PM  | <b>CALL TO ORDER AND ROLL CALL</b>  |               |
| (5 min.) | 1. <b>INTRODUCTIONS</b>   |               |
| (5 min.) | 2. <b>CITIZEN COMMUNICATIONS</b>  |               |
| (5 min.) | 3. <b>EXECUTIVE OFFICER COMMUNICATIONS</b>  |               |
|          | 4. <b>CONSENT AGENDA</b>  |               |
| 2:15 PM  | 4.1 Consideration of Minutes for the July 27, 1995 Metro Council Meeting.   |               |
| (5 min.) |   |               |
|          | 5. <b>ORDINANCES - SECOND READING</b>   |               |
| 2:20 PM  | 5.1 <b>Ordinance No. 95-612, Amending the Urban Growth Boundary for the Subject Property of Urban Growth Boundary Contested Case 95-1: Harvey/Washington County, Located Along the Tualatin Valley Highway.</b> |               |
| (5 min.) |   |               |
| 2:25 PM  | 5.2 <b>Ordinance No. 95-613, Amending the Urban Growth Boundary for Contested Case 95-3: Jenkins Estate, to Include 68 Acres of Park Property, Located in Washington County.</b>                                |               |
| (5 min.) |   |               |
|          | 6. <b>RESOLUTIONS</b>   |               |
| 2:20 PM  | 6.1 <b>Resolution No. 95-2184, Confirming the Appointment of John Fergonese as the Director of the Department of Growth Management and Development</b>  | <b>McLain</b> |
| (5 min.) |   |               |
|          | 7. <b>CONTRACT REVIEW BOARD</b>   |               |

For assistance/Services per the Americans with Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office)

\* All times listed on the agenda are approximate; items may not be considered in the exact order listed.

Approx.  
Time \*

Presenter

- |                      |     |  |               |
|----------------------|-----|--|---------------|
| 2:25 PM              | 7.1 | <b>Resolution No. 2179, For the Purpose of Authorizing an Exemption From Competitive Bidding and Authorizing Sole-Source and Multi-Year Contracts to Agra Earth and Environmental, and Antech Analysis Technology for Sampling and Testing of Yard Debris Compost.</b> | <b>McLain</b> |
|                      | 8.  | <b>INFORMATIONAL ITEM</b>  |               |
| 2:30 PM<br>(5 min.)  | 8.1 | <b>Openspaces Priority Update</b>  | <b>McCaig</b> |
| 2:30 PM<br>(10 min.) | 8.  | <b>COUNCILOR COMMUNICATIONS</b>  |               |
| 2:40 PM              |     | <b>ADJOURN</b>   |               |

\* All times listed on the agenda are approximate; items may not be considered in the exact order listed.

**AGENDA ITEM 4.1**  
**Meeting Date: August 3, 1995**

**Consent Agenda**

**Minutes of the July 27, 1995 Metro Council were not available at the time the agenda packet was printed.  
Copies will be distributed prior to consideration.**

**AGENDA ITEM 5.1**  
**Meeting Date: August 3, 1995**

**Ordinance No. 95-612**

**Second Reading**

**Ordinance No. 95-612, Amending the Urban Growth Boundary for the Subject  
Property of Urban Growth Boundary Contested Case 95-1:  
Harvey/Washington County, Located Along the Tualatin Valley Highway.**

## STAFF REPORT

### **CONSIDERATION OF ORDINANCE NO. 95-612 AMENDING THE URBAN GROWTH BOUNDARY FOR THE SUBJECT PROPERTY OF UGB CONTESTED CASE 95-1: HARVEY/WASHINGTON COUNTY, LOCATED ALONG THE TUALATIN VALLEY HIGHWAY IN WASHINGTON COUNTY.**

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Date: July 10, 1995

Presented by: Larry Epstein, Hearings Officer  
Prepared by: Stuart Todd, Growth Management

#### FACTUAL BACKGROUND AND INFORMATION

The Tualatin Valley Highway in the vicinity of S.W. 209th to S.W. 216th (were it to connect with the Tualatin Valley Highway) makes a swerve to the north of the railroad tracks as opposed to running directly parallel. Five tax lots occupy the land between the roadway and railroad here. This was the site of the original Reedville railroad stop, and one of the oldest commercial locations in the County. Prior to designation of the Urban Growth Boundary (UGB) by the Columbia Region Association of Governments and by Metro in the late 1970's, this property was in commercial and light industrial use. It is served by sewer and water, is along a transit corridor, is zoned General Commercial under the Washington County Comprehensive Plan, and is currently the site of several businesses.

The original regional UGB map, before it was transferred to the detailed section maps, show the boundary running along the Tualatin Valley Highway. The swerve in the roadway is less evident at the regional scale and was obviously never noticed as an issue in previous urban growth boundary reviews. Washington County assumed the UGB to be parallel to the railroad tracks in this vicinity, and not excluding any developed land between the roadway and the tracks. They were not aware of the interpretation of the Boundary along the centerline of distinguishing boundaries such as the Tualatin Valley Highway, a specific boundary location lettered on the original UGB map as adopted by Metro in 1979.

The hearing on the petition to include this land between the roadway centerline and the railroad tracks right-of-way showed that considerable urban service provision and planning has occurred at the subject site, emphasizing its urban nature. A net improvement of service efficiency will accrue to urban services inside the Boundary through continued urban improvements to these properties (including potential redevelopment), increasing utilization of existing urban services. This makes for a logical adjustment of the UGB under the Metro Code. There are no adverse effects of such an adjustment. The Hearings Officer report details how the petition meets the criteria in this case.

#### PROPOSED ACTION

This is an ordinance to amend the UGB for 5.47 acres between the centerline of the Tualatin Valley Highway and the north line of the Southern Pacific Railroad right-of-way, between S.W. 209th and approximately S.W. 216 (if it came through to Tualatin Valley Highway).

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No.95-612.

**BEFORE THE METRO COUNCIL**

**AMENDING THE URBAN GROWTH BOUNDARY ) ORDINANCE NO. 95-612  
FOR THE SUBJECT PROPERTY OF URBAN )  
GROWTH BOUNDARY CONTESTED CASE 95-1: ) Introduced by Mike Burton  
HARVEY/WASHINGTON COUNTY, LOCATED ) Executive Officer  
ALONG THE TUALATIN VALLEY HIGHWAY )**

**WHEREAS, Washington County requested clarification of the location of the Urban Growth Boundary along the Tualatin Valley Highway and was informed the Boundary runs along the centerline of the highway; and**

**WHEREAS, Washington County requested an administrative adjustment of the Urban Growth Boundary because the subject property was zoned urban and has been characterized by urban activity for at least 50 years, and was thought to have been in the boundary; and**

**WHEREAS, Metro denied the request for an administrative interpretation as without legal basis under the Metro Code, and recommended a quasi-judicial locational adjustment process available to the County; and**

**WHEREAS, Washington County filed a petition for a locational adjustment and Metro held a hearing by an independent hearings officer on May 10, 1995; and**

**WHEREAS, The Hearings Officer recommended approval of the locational adjustment; and**

**WHEREAS, No exceptions to the Hearings Officer Report and Recommendation were received during the appeal period; now, therefore,**

**THE METRO COUNCIL HERBY ORDAINS AS FOLLOWS:**

- 1. The Urban Growth Boundary be amended to include the subject property as shown in Exhibit A; and**
- 2. The Hearings Officer Report and Recommendation be accepted, as attached herein as Exhibit B; and**

3. The Hearings Officer Findings, Conclusions and Final Order be adopted, as attached herein as Exhibit C.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1995.

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**J. Ruth McFarland, Presiding Officer**

**ATTEST:**

**Approved as to Form:**

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**Recording Secretary**

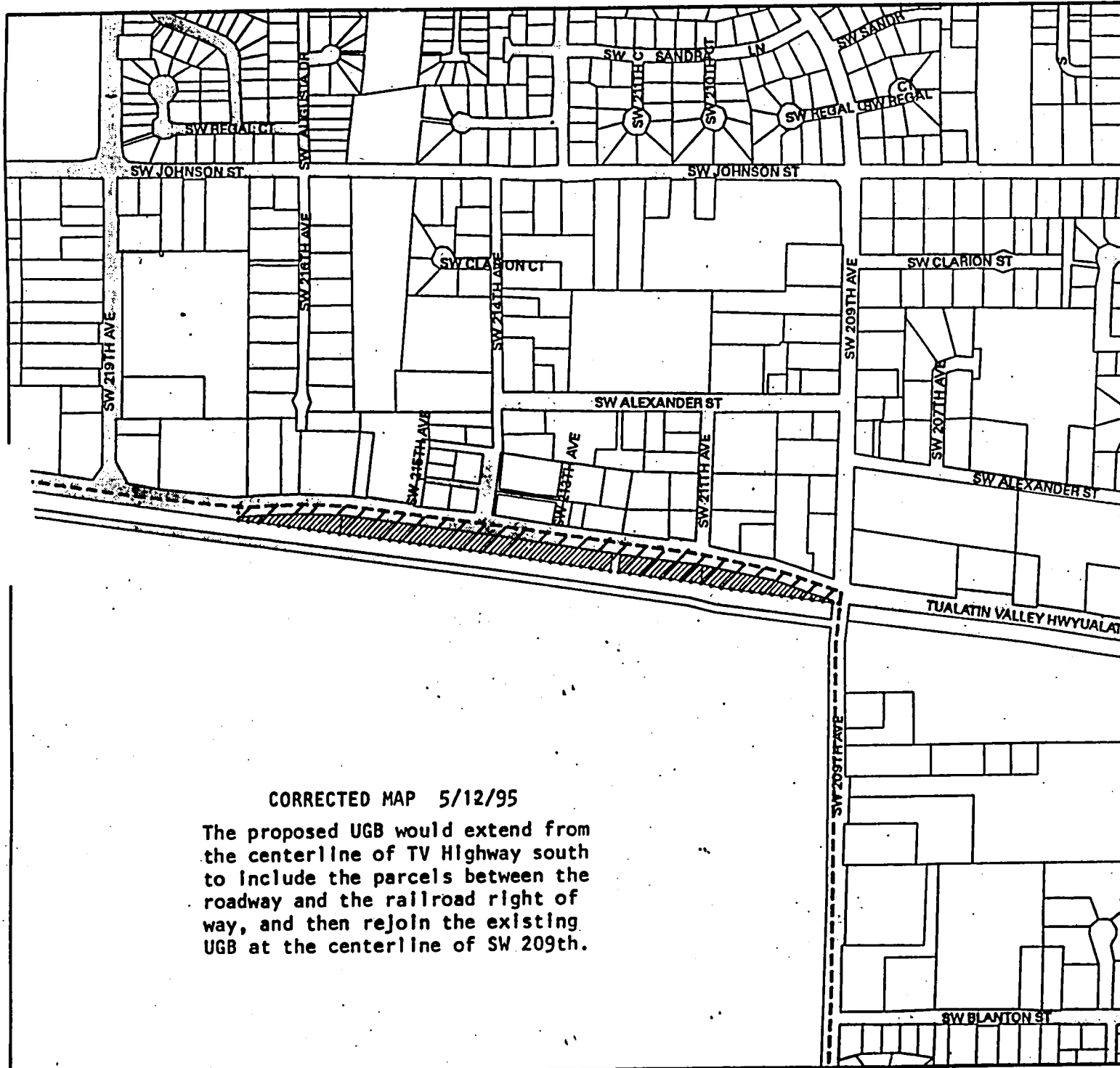
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**Daniel B. Cooper, General Counsel**

# UGB Contested Case: 95-1

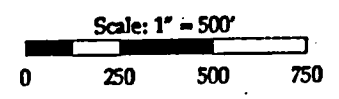
Harvey/WA Co.

-  Area to be added to UGB
-  Urban growth boundary
-  Proposed UGB

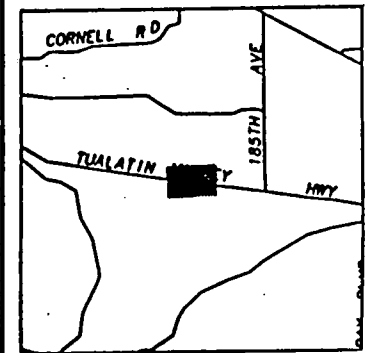


CORRECTED MAP 5/12/95

The proposed UGB would extend from the centerline of TV Highway south to include the parcels between the roadway and the railroad right of way, and then rejoin the existing UGB at the centerline of SW 209th.



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 Internet dra@metro.org



Location map

EXHIBIT "A"



BEFORE THE METRO HEARINGS OFFICER  
IN THE STATE OF OREGON

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In the matter of the petition of Washington County ) HEARINGS OFFICER'S  
for a locational adjustment to add 5.47 acres to the ) REPORT AND  
Urban Growth Boundary south of Tualatin Valley ) RECOMMENDATION  
Highway west of SW 209th Avenue ) Contested Case No. 95-01

I. SUMMARY OF BASIC FACTS

1. On March 14, 1995, John Rosenberger filed a petition for a locational adjustment to the Urban Growth Boundary ("UGB") on behalf of the Washington County Department of Land Use and Transportation ("petitioners") to add 5.47 acres consisting of five contiguous tax lots and adjoining public road right of way (the "subject property").

a. The subject property is between TV Highway and railroad tracks south of the highway west of and adjoining SW 209th Avenue. It is developed for roads (including the south half of TV Highway), two retail businesses and commercial storage. It has been used for urban purposes for more than 75 years. It does not contain sensitive environmental features or hazards. It is served by all public utilities and facilities. It is designated and zoned "General Commercial" on the Washington County Community Development Plan. The UGB abuts the west, north and east edges of the subject property.

b. The record reflects that everyone thought the subject property was included in the UGB when it was adopted. However Metro staff recently determined it is outside the UGB, and that a locational adjustment would have to be approved to include it.

2. The petition was accompanied by comments from affected jurisdictions and service providers, each of whom certifies they can provide urban services in an orderly and timely manner. Some service providers recommended approval; others took a neutral position regarding the locational adjustment. None objected to it.

3. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed public hearing on May 10, 1995. Five witnesses testified in person in favor of the petition. At the conclusion of that hearing, the hearings officer held open the public record until May 17, 1995. There was no oral or written testimony against the petition.

1       **II. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS**

2  
3           1. A locational adjustment to add land to the UGB must comply with the relevant  
4 provisions of Metro Code ("MC") sections 3.01.035(b), (c) and (f) and with the  
5 Transportation Planning Rule in Oregon Administrative Rule ("OAR") section 660-12.

6  
7           2. The hearings officer found that the petition complies with the applicable  
8 standards based on findings summarized below:

9  
10           a. The subject property is smaller than 20 acres. MC 3.01.035(b).

11  
12           b. The subject property is served by urban services. MC 3.01.035(c)(1).

13  
14           c. The locational adjustment results in a net improvement in the efficiency  
15 of public facilities and services for land already in the UGB. MC 3.01.035(c)(1).

16  
17                   (1) Metro rules do not define how to calculate net efficiency of  
18 urban services. The hearings officer concluded the Council has used a two-tiered burden  
19 of proof regarding public service efficiencies. When a petition involves property already  
20 developed for urban uses and served by public facilities, the Council has required a lesser  
21 showing of service efficiencies, presumably because the locational adjustment has relatively  
22 little impact. When a petition involves undeveloped property, Council has required a  
23 greater showing of service efficiencies, because the locational adjustment would allow a  
24 more significant land use change.

25  
26                   (2) In this case, the subject property is developed for urban uses  
27 (and has been for more than 75 years) and is served by all urban facilities. Therefore the  
28 hearings officer applied the lower burden of proof.

29  
30                   (3) The hearings officer found that the locational adjustment  
31 marginally increases the efficiency of urban services to land already in the UGB by  
32 allowing more intense use of the site without building new infrastructure. Therefore the  
33 cost of urban facilities can be spread over a larger population, increasing the net return to  
34 service providers. In this case, that is a sufficient showing of increased efficiency.

1 d. The locational adjustment will facilitate permitted development of  
2 adjacent land already in the UGB, because it reinforces the historic commercial corridor  
3 along TV Highway and the community activity center around the west edge of the subject  
4 property. MC 3.01.035(c)(2).

5  
6 e. There are no hazard or resource lands that will limit use of the subject  
7 property, and there are no significant adverse environmental, energy, social or economic  
8 consequences of the locational adjustment. MC 3.01.035(c)(3).

9  
10 f. The locational adjustment does not convert farm land to urban use, and  
11 nearby agricultural activities will not be adversely affected by urban use of the subject  
12 property, because of its historic use for that purpose and because of the distance, railroad  
13 and trees that separate the subject property from such activities. MC 3.01.035(c)(5).

14  
15 g. The proposed UGB is superior to the existing UGB, because it includes  
16 land that is and has been used for urban purposes for more than 75 years, and it is  
17 consistent with applicable comprehensive plan and zoning designations that have applied to  
18 the property for more than 30 years.

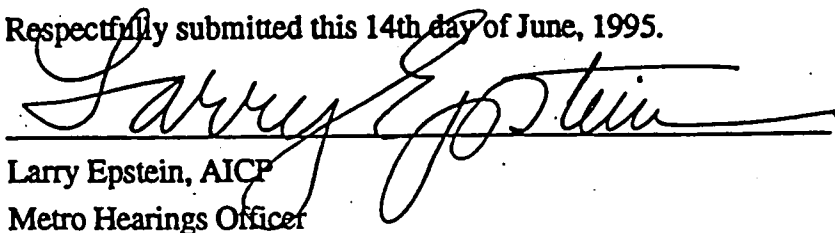
19  
20 h. The petition includes all similarly situated land. MC 3.01.035(f)(3).

21  
22 i. The locational adjustment will not significantly affect a transportation  
23 facility. Therefore it is exempt from the Transportation Planning Rule. OAR 660-12-060.

24  
25 **III. ULTIMATE CONCLUSION AND RECOMMENDATION**

26  
27 For the foregoing reasons, the hearings officer concludes the petition complies with the  
28 relevant approval standards for a locational adjustment adding land to the UGB. Therefore  
29 the hearings officer recommends the Metro Council grant the petition, based on this Report  
30 and Recommendation and the Findings, Conclusions and Final Order attached hereto.

31  
32 Respectfully submitted this 14th day of June, 1995.

33  
34   
35 Larry Epstein, AICP  
36 Metro Hearings Officer

BEFORE THE METRO COUNCIL  
IN THE STATE OF OREGON

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In the matter of the petition of Washington County )  
for a locational adjustment to add 5.47 acres to the )  
Urban Growth Boundary south of Tualatin Valley )  
Highway west of SW 209th Avenue )

FINDINGS,  
CONCLUSIONS &  
FINAL ORDER  
Contested Case No. 95-01

I. BASIC FACTS

1. On March 14, 1995, John Rosenberger filed a petition for a locational adjustment to the Urban Growth Boundary ("UGB") on behalf of the Washington County Department of Land Use and Transportation ("petitioners"), including exhibits required by Metro rules for locational adjustments. See Exhibit 1 for the petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The land to be added to the UGB consists of five contiguous tax lots and adjoining public right of way in Section 11, Township 1 South-Range 2 West, WM, Washington County (the "subject property"). The legal description of the subject property is included as Exhibit 1G. The subject property is a sliver of property between TV Highway and railroad tracks south of the highway and west of and adjoining SW 209th Avenue. The UGB abuts the west, north and east edges of the subject property. Land to the west, north and east is developed for commercial and residential purposes. Land to the south is used for the railroad tracks, south of which is farmland. The subject property and surrounding land are in Washington County's jurisdiction for planning purposes. The subject property is developed for roads, two retail businesses and commercial storage.

b. The record reflects that petitioners believed the UGB followed the railroad tracks; in which case, the subject property would have been inside the UGB. Petitioners have designated and zoned the subject property commercial and industrial since the 1960's, and it continues to be so designated and zoned, consistent with that belief. See Exhibits 11 and 12. However the record also reflects that petitioners' belief was in error. The UGB follows the centerline of TV Highway. Therefore the subject property is not inside the UGB. After petitioners learned this fact, they endeavored to have Metro construe the UGB to include the subject property. But Metro officials concluded they could not do so and urged petitioners to apply for a locational adjustment instead. See Exhibit 1D.

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c. The subject property is served by public sanitary sewer and water systems, public roads under the jurisdiction of Washington County or the Oregon Department of Transportation ("ODOT"), public fire and police services, and public transit. Each of the special districts or jurisdictions with public facility responsibilities testified in writing that they can serve the subject property, and that they either support or have a neutral position regarding the locational adjustment in this case. See Exhibits 1I through 1N. The Washington County Board of Commissioners also submitted a written statement in support of the locational adjustment. See Exhibit 1P.

2. On or before April 20, 1995, Metro staff mailed notices of a hearing to consider the petition by certified mail to the owners of property within 500 feet of the subject property and to other individuals and entities entitled to notice under the Metro Code. The notice and certificate of mailing are included as Exhibits 2 and 3. A notice of the hearing also was published in *The Oregonian* at least 10 days before the hearing. See Exhibit 5.

3. On May 10, 1995, Metro hearings officer Larry Epstein (the "hearings officer") held a public hearing at the Public Services Building auditorium in Hillsboro to consider the petition. After the hearings officer described the rules for the hearing and the relevant standards for the petition, five witnesses testified in person.

a. Metro planner Stuart Todd identified and described the subject property and surrounding area. He introduced a copy of the 1979 UGB map to illustrate how the petitioners could have construed the map to include the subject property in the UGB. He explained that the subject property is the site of the some of the earliest commercial development in Washington County, but, that its location outside the UGB precludes the owners from undertaking more than ordinary maintenance on the subject property. He summarized the written staff report, and urged the hearings officer to recommend that Council approve the locational adjustment for the reasons contained therein.

b. Washington County planner Jim Tice, subject property owners Ed Harvey and Edward Janssen, and neighbor Steve Larrance testified in favor of the petition.

(1) Mr. Tice argued that the locational adjustment is needed to allow reasonable use of the subject property consistent with its historic use; that the UGB location is in error; and that the subject property is uniquely situated with regard to the UGB. He

1 noted the property is designated "urban" on the County's acknowledged Community  
2 Development Plan. He also argued that denial of the locational adjustment will result in a  
3 less efficient use of urban land and urban services. See also Exhibit 12.

4  
5 (2) Mr. Harvey introduced a copy of Exhibit 1B and testified in  
6 favor of the amendment. Mr. Janssen also testified in favor, noting that his family has  
7 conducted business on a portion of the subject property for 75 years, and that the property  
8 is too and too isolated by the railroad to be used for farm purposes. See also Exhibit 9.

9  
10 (3) Mr. Larrance testified about the common belief that the subject  
11 property was (or would be) in the UGB in the period from 1976 to 1980 when Mr.  
12 Larrance participated in community planning as CPO chairman. He noted the UGB on the  
13 relevant Washington County community plan map is situated along the railroad where the  
14 petition proposes to move it. He argued that one of the purposes of an urban growth  
15 boundary is to identify land devoted to urban uses. The subject property was obviously  
16 used for urban purposes when the UGB was drawn. It appeared on the map that it was  
17 included. Failure to do so in fact was an error and inconsistent with the concept of an  
18 urban growth boundary. He argued that including the subject property in the UGB  
19 increases the efficiency of urban services by making it possible to continue to use the  
20 services that already are provided to the site, spreading the cost of services over a larger,  
21 established client base. He argued that denial of the petition will result in service  
22 inefficiencies, because the property will be lost from the client base, and because the  
23 County will have to re-do the community plan to reflect the change in the UGB location.  
24 Mr. Larrance requested that the hearings officer hold open the public record so that he  
25 could prepare additional written argument. See Exhibit 11.

26  
27 4. At the close of the May 10 hearing, the hearings officer left the record open until  
28 May 17 to receive additional written evidence and testimony, which is noted above.

29  
30 5. On June 14, 1995, the hearings officer filed with the Council a report,  
31 recommendation, and draft final order granting the petition for the reasons provided  
32 therein. Copies of the report and recommendation were timely mailed to parties of record  
33 together with an explanation of rights to file exceptions thereto and notice of the Council  
34 hearing to consider the matter.

1           6. On July \_\_\_\_, 1995, the Council held a duly noticed public hearing to consider  
2 testimony and timely exceptions to the report and recommendation. After considering the  
3 testimony and discussion, the Council voted to grant the petition for Contested Case No.  
4 95-01 (Harvey), based on the findings in this final order, the report and recommendation of  
5 the hearings officer in this matter, and the public record in this matter. The record includes  
6 an audio tape of the public hearing on May 10, 1995 and the exhibits on the list attached to  
7 the final order.

8  
9           **II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS**

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

16  
17           *All locational adjustment additions and administrative*  
18 *adjustments for any one year shall not exceed 100 net acres*  
19 *and no individual locational adjustment shall exceed 20 net*  
20 *acres. Metro Code section 3.01.035(b)*

21  
22           2. Because a total of less than 2 acres of land has been added to the UGB  
23 by locational and administrative adjustments in the last twelve months, and the  
24 subject property contains only 5.47 acres, including the subject property in the  
25 UGB does not violate either of the size caps in Metro Code section 3.01.035(b).

26  
27           *Orderly and economic provisions of public facilities and*  
28 *services. A locational adjustment shall result in a net*  
29 *improvement in the efficiency of public facilities and services,*  
30 *including but not limited to, water, sewerage, storm drainage,*  
31 *transportation, parks and open space in the adjoining areas*  
32 *within the UGB; and any area to be added must be capable of*  
33 *being served in an orderly and economical fashion.*

34           Metro Code section 3.01.035(c)(1)

1           3. The subject property can be served in an orderly and economic manner by public  
2 facilities and services, including water, sanitary sewers, roads, storm drainage, transit and  
3 emergency services, based on the comments in the record from the service providers.  
4

5           4. Metro rules do not define how to calculate net efficiency of urban services. In  
6 the absence of such rules, the Council must construe the words in practice. In this case,  
7 the Council concludes the locational adjustment results in a net improvement in the  
8 efficiency of public services sufficient to comply with Metro Code section 3.01.035(c)(1),  
9 based on the following findings:  
10

11           a. The subject property is developed with urban uses. It has urban services  
12 connected to and indistinguishable from services inside the UGB. In the past, where a  
13 petition before the Council proposed including developed land with urban services in-place,  
14 the Council has imposed a lower burden of proof than where a petition involved  
15 undeveloped land without in-place services. For instance, contrast the relevant findings in  
16 Council Orders regarding UGB 91-04 (PCC Rock Creek), UGB 91-01 (Dammasch) and  
17 UGB 88-03 (St. Francis) with corresponding findings in Council Orders regarding UGB  
18 94-01 (Starr/Richards), UGB 90-01 (Wagner) and UGB 88-02 (Mt. Tahoma).  
19

20           b. The inclusion of the subject property in the UGB allows those properties  
21 to continue to be used for urban purposes. Therefore, at a minimum, it sustains the  
22 existing efficiency of urban services to the site and adjoining land already in the UGB.  
23 Including the subject property in the UGB also allows those properties to be used more  
24 intensively. Greater intensity of use is reasonably likely to require a greater quantity of  
25 urban services. Because the infrastructure for those services already is in place, this  
26 increase in the intensity of use will cause an increase in the efficiency of urban services,  
27 because more services can be provided without additional infrastructure or capital  
28 development by the service providers, accruing greater per capita return to the providers.  
29

30           (1) For instance, the subject property is served by Tri Met bus route  
31 57, which travels between Portland and Forest Grove. Including the subject property in  
32 the UGB allows it to be used for a more intense use that would generate more transit  
33 ridership without requiring Tri Met to add routes or buses. That improves the efficiency of  
34 transit service delivery on a per capita basis.  
35



1 (2) Also, there is not a sidewalk on the south side of TV Highway.  
2 If the subject property is included in the UGB and is redeveloped, then a sidewalk would  
3 have to be provided to comply with the County Road Standards. That will facilitate  
4 pedestrian access to lands east and west of the site, which already are in the UGB. If the  
5 petition is not granted, a sidewalk is not required to be built.  
6

7 c. Numerous utilities cross the subject property. Including the subject  
8 property in the UGB reduces land use constraints to the effective and efficient management  
9 of those utilities, benefiting the urban area generally. See Exhibit 11.  
10

11 d. Including the subject property in the UGB results in more efficient use  
12 of land use planning services, because it avoids the need to re-do the adopted and  
13 acknowledged Aloha/Reedville/Cooper Mountain Community Plan.  
14

15 *Maximum efficiency of land uses. The amendment shall*  
16 *facilitate needed development on adjacent existing urban land.*  
17 *Needed development, for the purposes of this section, shall*  
18 *mean consistent with the local comprehensive plan and/or*  
19 *applicable regional plans.*

20 Metro Code section 3.01.035(c)(2)  
21

22 5. Including the subject property in the UGB facilitates development on adjacent  
23 existing urban land consistent with the local comprehensive plan, because it reinforces the  
24 historic commercial corridor along TV Highway and the community activity center around  
25 the west edge of the subject property. If the petition is denied, it would preclude urban use  
26 of the subject property, except as a nonconforming use, and would therefore detract from  
27 the character intended by the plan map designation and text for the area.  
28

29 *Environmental, energy, social & economic consequences. Any*  
30 *impact on regional transit corridor development must be*  
31 *positive and any limitations imposed by the presence of hazard*  
32 *or resource lands must be addressed.*

33 Metro Code section 3.01.035(c)(3)  
34

1           6. The Council has considered economic, energy, social and environmental  
2 impacts of including the subject property in the UGB, and concludes that it will not have  
3 adverse economic, energy, social or environmental impact, because:

4  
5           a. Including the land in the UGB results in a positive economic impact by  
6 allowing the historic commercial use of the property to continue, benefiting the property  
7 owners, the business community of which the subject property is a part, and people who  
8 shop or work in that community.

9  
10           b. Including the land in the UGB results in positive energy impacts,  
11 because the land is served by public transit and is developed with existing infrastructure.

12  
13           c. Including the land in the UGB results in positive social impacts, because  
14 it reinforces the business community in which the subject property is situated.

15  
16           d. The land does not contain steep slopes, hazardous soils, wetlands or  
17 natural habitat, or other unique or significant environmental features that could be adversely  
18 affected by urban development.

19  
20           *Compatibility of proposed urban uses with nearby agricultural*  
21 *activities. When a proposed adjustment would allow an urban*  
22 *use in proximity to existing agricultural activities, the*  
23 *justification in terms of this subsection must clearly outweigh*  
24 *the adverse impact of any incompatibility.*

25           Metro Code section 3.01.035(c)(5)

26  
27           7. The Council finds there are agricultural activities south of the railroad tracks  
28 south of the subject site, but that potential adverse impacts on those activities from urban  
29 uses on the subject property are not reasonably likely, because the subject property is  
30 separated from agricultural activities by a relatively large distance, railroad tracks, and a  
31 band of mature trees.

32  
33           *Superiority. [T]he proposed UGB must be superior to the*  
34 *UGB as presently located based on a consideration of the*  
35 *factors in subsection (c) of this section.*

36           Metro Code section 3.01.035(f)(2)

1  
2 8. The Council finds that the proposed UGB would be superior to the UGB as  
3 presently located, because the amended UGB would better reflect the historic location of  
4 urban uses on the subject property and would better fulfill the local comprehensive plan for  
5 the area.

6  
7 *Similarly situated land. The proposed UGB amendment must*  
8 *include all similarly situated contiguous land which could also*  
9 *be appropriately included within the UGB as an addition based*  
10 *on the factors above. Metro Code section 3.01.035(f)(3)*

11  
12 9. The Council finds the subject property is isolated from other land outside the  
13 UGB by the railroad tracks. Therefore there is no similarly situated property which could  
14 also be appropriately included within the UGB based on the factors above.

15  
16 10. Even though it is not identified as an applicable approval standard in the Metro  
17 Code, a quasi-judicial amendment to the UGB is subject to compliance with the  
18 Transportation Planning Rule if the amendment will significantly affect a transportation  
19 facility. OAR 660-12-060(1). See Exhibit 6. The Council finds the amendment in this  
20 case will not significantly affect a transportation facility, because the amendment largely  
21 recognizes historic urban use of the land in question. It does not change the functional  
22 classification of adjoining roads or the standards for implementing a functional  
23 classification system. It does not allow uses inconsistent with the functional classification  
24 of the adjoining roads or reduce the level of service of the facility. OAR 660-12-060(2)

25  
26 **III. CONCLUSIONS AND ORDER**

27  
28 1. Public services and facilities, including water, sewer, storm drainage,  
29 transportation, schools, transit and police and fire protection, can be provided to the site in  
30 an orderly and economical fashion.

31  
32 2. Addition of the site would result in a slight improvement in the efficiency of  
33 public services and facilities, because the subject property already is developed with urban  
34 uses and is served by urban infrastructure, so that including the subject property in the  
35 UGB allows the property to be used for more intensive purposes that would result in

1 additional use of available public service capacity without requiring additional investment in  
2 public service infrastructure.

3

4 3. The locational adjustment facilitates development of land within the UGB  
5 consistent with the Washington County Community Development Plan and land use  
6 regulations by allowing the property to be used for urban commercial purposes.

7

8 4. The locational adjustment will have a positive impact on regional transit corridor  
9 development and will not have significant adverse energy, social and environmental  
10 consequences.

11

12 5. The subject property does not include agricultural land, and is separated from  
13 existing agricultural activities by distance and barriers such that there is a negligible  
14 potential for adverse impacts on agricultural activities from urban uses on the subject  
15 property. Therefore the location adjustment will not remove agricultural land nor conflict  
16 with agricultural activities on nearby land.

17

18 6. The locational adjustment will result in a superior UGB, because it allows the  
19 property to be used consistent with the Washington County Community Development Plan  
20 and land use regulations.

21

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

23

24 8. The petition complies with the Transportation Planning Rule.

25

26 9. For the foregoing reasons, the Council hereby approves the petition in  
27 Contested Case 95-01.

28

29 DATED: \_\_\_\_\_

30

31

By Order of the Metro Council

32

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By:  
\_\_\_\_\_

34

**ATTACHMENT "A" TO THE FINAL ORDER  
IN THE MATTER OF CONTESTED CASE 95-01**

**EXHIBITS**

<u>Exhibit No.</u>	<u>Subject matter</u>
1	Petition for locational adjustment
1A	Letter from John Rosenberger to Andy Cotugno dated March 14, 1995
1B	Letter from Ed Harvey to Bonnie Hays dated May 24, 1994
1C	Letter from John Rosenberger to Andy Cotugno dated October 18, 1994
1D	Letter from Mike Burton to John Rosenberger dated January 18, 1995
1E	Zoning and parcel maps and table of characteristics of petitioned properties
1F	Certification of property owners list
1G	Legal description of petitioned properties
1H	Letter from Jim Tice to Stuart Todd dated April 3, 1995
1I	Service provider comment from Tri Met dated March 10, 1995
1J	Service provider comment from ODOT dated March 1, 1995
1K	Service provider comment from Tualatin Valley Water District dated 2/16/95
1L	Service provider comment from County Sheriff dated 2/9/95
1M	Service provider comment from TVFRD dated 2/9/95
1N	Service provider comment from Unified Sewerage Agency dated 2/8/95
1O	Memorandum from Brent Curtis to Planning Commission dated 2/15/95
1P	Washington County Board of Commissioners agenda for 3/7/95
2	Mailed notice of public hearing and attached maps
3	Certificates of mailing of public notices
4	List of property owners within 500 feet
5	Published notice of hearing
6	Memorandum from Larry Shaw to Andy Cotugno dated April 12, 1995
7	Memorandum from Stuart Todd to Larry Epstein dated April 28, 1995
8	Metro Staff Report dated April 28, 1995
9	Letter from Edward Janssen to Metro dated May 9, 1995
10	Letter from Stuart Todd to Larry Epstein dated 5/15/95 and attached map
11	Letter from Steve Larrance to Stuart Todd dated May 15, 1995
12	Letter from Jim Tice to Larry Epstein dated May 17, 1995 with enclosure
13	Assessment & Taxation maps (1S-2-11, 11BD, 11AC, 11DA, and 11BC)
14	Washington County GIS maps (land use, transportation, comp plan)

**AGENDA ITEM 5.2**  
**Meeting Date: August 3, 1995**

**Ordinance No. 95-613**

**Second Reading**

**Ordinance No. 95-613, Amending the Urban Growth Boundary for Contested  
Case 95-3: Jenkins Estate, to Include 68 Acres of Park Property, Located in  
Washington County.**

**STAFF REPORT**

**CONSIDERATION OF ORDINANCE NO. 95-613 AMENDING THE URBAN GROWTH BOUNDARY FOR CONTESTED CASE 95-3: JENKINS ESTATE, TO INCLUDE 68 ACRES OF PARK PROPERTY LOCATED IN WASHINGTON COUNTY.**

**Date: July 17, 1995**

**Presented by: Larry Epstein, Hearings Officer  
Prepared by: Stuart Todd, Growth Management**

**FACTUAL BACKGROUND AND INFORMATION**

The Tualatin Hills Park and Recreation District (THPRD) petitioned Metro in March 1995 for a natural area locational adjustment. The 68 acres, known as the Jenkins Estate, is considered a zero-acre addition of urban land to the Boundary, since there is no traditional development associated with the proposal. A natural area is defined in the Metro Code (3.01) as wholly or substantially in its native and unaffected state without paving or extraction or alteration of watercourses. Also, a natural area must be identified on a local or regional plan and be owned or donated to a parks district.

The reason for the request from THPRD is to make small improvements to the property under a recently approved master plan for the property and to utilize bond funds so designated for these park improvements. By bringing the property inside the Urban Growth Boundary (UGB) THPRD can apply to Washington County for an institutional zone, and avoid non-conforming use status of improvements in the current resource/conservation zones. These improvements include an open field for an amphitheater (200-300 persons), paving one gravel parking area, sewerage the property which includes one failing septic system and improving walking paths on the site.

The Hearings Officer Report and Recommendation found the petition met the criteria for a natural area petition. The proposed findings and final order are attached to the ordinance, including the condition that the property be used as a park.

**PROPOSED ACTION**

An ordinance amending the UGB for the 68-acre Jenkins Estate. The ordinance adopts the Hearing's Officer Report and Recommendation as well as his Findings, Conclusion and Final Order.

**EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends adoption of Ordinance No.95-613.

**BEFORE THE METRO COUNCIL**

**AMENDING THE URBAN GROWTH BOUNDARY ) ORDINANCE NO. 95-613  
FOR CONTESTED CASE 95-3: JENKINS ESTATE, )  
TO INCLUDE 68 ACRES OF PARK PROPERTY ) Introduced by Mike Burton  
LOCATED IN WASHINGTON COUNTY ) Executive Officer**

**WHEREAS, Metro received a petition for a natural are locational adjustment for property owned by the Tualatin Hills Park and Recreation District; and**

**WHEREAS, A natural area adjustment is considered to be a no net urban acreage gain except for any developable portion, for which there was none in this petition; and**

**WHEREAS, The Jenkins Estate property is considered to be substantially in its natural and unaffected state, and is identified as a regionally significant greenspace in the Metro Greenspaces Master Plan; and**

**WHEREAS, Metro held a hearing to consider the petition, conducted by an independent hearings officer on May 25, 1995; and**

**WHEREAS, No exceptions were received to the Hearings Officer's Report and Recommendation; now, therefore,**

**THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:**

- 1. The Urban Growth Boundary be amended to include the Jenkins Estate as shown in Exhibit A; and**
- 2. The Hearings Officer Report and Recommendation be accepted, as attached herein as Exhibit B; and**



3. The Hearings Officer Findings, Conclusions and Final Order be adopted, as attached herein as Exhibit C.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
J. Ruth McFarland, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel



BEFORE THE METRO HEARINGS OFFICER  
IN THE STATE OF OREGON

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In the matter of the petition of Tualatin Hills Park and Recreation District for a natural area locational adjustment to add 68.04 acres to the Urban Growth Boundary in Washington County, Oregon ) HEARINGS OFFICER'S REPORT AND RECOMMENDATION Contested Case No. 95-03

I. SUMMARY OF BASIC FACTS

1. On March 15, 1995, the Tualatin Hills Park and Recreation District ("THPRD" or "petitioners") filed a petition for a natural area locational adjustment to the Urban Growth Boundary ("UGB") to add to the UGB 68.04 acres (the "subject property") known as the "Jenkins Estate". The subject property is owned by THPRD and is used for park and open space purposes, including related structures and improvements. This is the first petition for a natural area locational adjustment under the Metro Code.

a. The subject property is south of Farmington Road and west of Grabhorn Road in unincorporated Washington County. It is designated and zoned AF-10 (Agricultural/Forest) and EFC (Exclusive Forest Conservation). If the petition is approved, the proposed plan and zoning designation will be Urban Institutional. The UGB now adjoins the east and north sides of the subject property. There are homes to the east, homes and businesses to the north, and farms and rural dwellings to the south and west.

2. The subject property is not served by public sewer. It is served by a public water system, roads under jurisdiction of Washington County or the Oregon Department of Transportation ("ODOT"), public transit and emergency services. The petition was accompanied by comments from affected jurisdictions and service providers, each of whom certified they can provide urban services in an orderly and timely manner. Some service providers recommended approval; others took a neutral position regarding the locational adjustment. None objected to it.

3. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed public hearing on May 25, 1995. Four witnesses testified in person in favor of the petition. At the conclusion of that hearing, the hearings officer closed the public record. There was no oral or written testimony against the petition.

1        **II. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS**

2  
3            1. A natural area locational adjustment to add land to the UGB must comply with  
4 the relevant provisions of Metro Code ("MC") sections 3.01.035(f) and (g) and with the  
5 Transportation Planning Rule in Oregon Administrative Rule ("OAR") section 660-12.

6  
7            2. The hearings officer found that the petition complies with the applicable  
8 standards based on findings summarized below:

9  
10            a. The petition is proposed by the owner of the property, who also is a  
11 public agency with recognized park and recreation responsibilities. MC 3.01.035(g)(1).

12  
13            b. The subject property is substantially in a natural state. MC  
14 3.01.035(g)(2). There is some development on the property, including the main residence,  
15 a farm house, a stable, a pump house, a carriage house, a water tower and Camp Rivendale  
16 day camp. However the majority of the property is in a forested or pasture condition.  
17 Development that has occurred or is anticipated on the property affects a relatively small  
18 area of the property, and serves only the park and recreational use of the property. Given  
19 these facts, the hearings officer recommends the Council find that the subject property is  
20 substantially without human development and is substantially in a native condition.

21  
22            c. The hearings officer recommends that the Council find that the subject  
23 property does not contain "developable" area, as that term is used in MC 3.01.035(g)(3)  
24 and (g)(5), because the property is used exclusively for park and recreation purposes. The  
25 term "developable" is ambiguous. The hearings officer recommends the Council construe  
26 that term to exclude the park and open space activities in this petition, because such  
27 activities depend on the preservation of the natural and undeveloped character of the subject  
28 property. Although those activities may require a limited amount and area of grading,  
29 construction, and paving commonly recognized as development in local land use codes,  
30 they are secondary to the primary use of the land for park and open space. As long as  
31 those activities remain secondary to the principal open space character of the property, the  
32 hearings officer believes they should not be construed to be development in this context.  
33 However, because the subject property could be used for other than park and open space  
34 purposes if the petition is approved, the hearings officer also recommends the Council  
35 impose a condition of approval prohibiting use of the property for other than park and open  
36 space purposes and related incidental and accessory purposes.

1  
2 d. The subject property is identified as open space on the Metro open space  
3 inventory. MC 3.01.035(g)(4).

4  
5 e. The proposed UGB is superior to the existing UGB, because it includes  
6 land that is and has been used principally to serve residents of the urban area. MC  
7 3.01.035(f)(2).

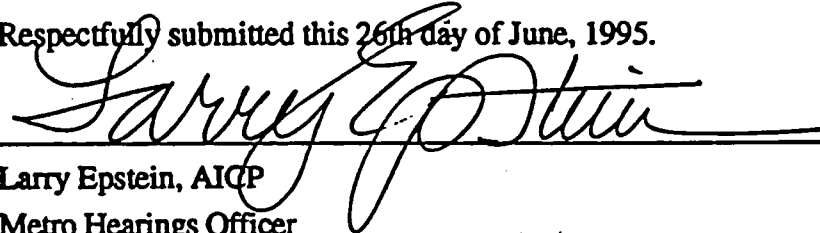
8  
9 f. The petition includes all similarly situated land. MC 3.01.035(f)(3).

10  
11 g. The locational adjustment will not significantly affect a transportation  
12 facility. Therefore it is exempt from the Transportation Planning Rule. OAR 660-12-060.

13  
14 **III. ULTIMATE CONCLUSION AND RECOMMENDATION**

15  
16 For the foregoing reasons, the hearings officer concludes the petition complies with the  
17 relevant approval standards for a natural area locational adjustment adding land to the  
18 UGB, subject to a condition limiting the permitted use of the property to park and open  
19 space purposes and related accessory incidental uses. Therefore the hearings officer  
20 recommends the Metro Council grant the petition, subject to the recommended condition,  
21 based on this Report and Recommendation and the Findings, Conclusions and Final Order  
22 attached hereto.

23  
24 Respectfully submitted this 26th day of June, 1995.

25  
26   
27 **Larry Epstein, AICP**  
28 **Metro Hearings Officer**

BEFORE THE METRO COUNCIL  
IN THE STATE OF OREGON

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In the matter of the petition of Tualatin Hills Park and Recreation District for a natural area locational adjustment to add 68.04 acres to the Urban Growth Boundary in Washington County, Oregon )

FINDINGS,  
CONCLUSIONS &  
FINAL ORDER  
Contested Case No. 95-03

I. BASIC FACTS

1. On March 15, 1995, the Tualatin Hills Park and Recreation District ("THPRD" or "petitioners") filed a petition for a natural area locational adjustment to the Urban Growth Boundary ("UGB"), including exhibits required by Metro rules for natural area locational adjustments. See Exhibit 1 for the petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The petitioner proposes to add two tax lots containing 68.04 acres to the UGB (TL 100, NE 1/4 of Section 25, T1S-R2W and TL 1100, SE 1/4 of Section 23, T1S-R2W, WM, Washington County (the "subject property")). The legal description of the subject property is included as Exhibit 1G. It is situated south of and adjoining SW Farmington Road and west of and adjoining Grabhorn Road. It adjoins the existing UGB. The subject property commonly is known as the "Jenkins Estate." The property contains substantial forest and meadow areas and improvements associated with the historic homestead on the property, including the main residence, a farm house, a stable, a pump house, a carriage house, a water tower and Camp Rivendale day camp. The property is used as a recreational site. It is not occupied for residential purposes. To the east of Grabhorn Road are single family homes in urban subdivisions. To the south and west are rural residences and farmland. To the north are residential and commercial uses along Farmington Road.

b. The subject property is in Washington County for purposes of land use planning. The County Community Development Plan designates the north third of the property as Agricultural/Forest and the remainder as Exclusive Forest Conservation. The north third of the property is zoned AF-10 (Agricultural/Forest) and the remainder is zoned EFC (Exclusive Forest Conservation). If the petition is approved, the proposed plan map designation and zoning will be Urban Institutional.

1  
2 c. The subject property is not served by public sanitary sewer, but USA  
3 indicates they can serve the property with sewer from a line with 150 feet of the property.  
4 Service is being considered now regardless of the UGB amendment, because a septic  
5 system on the property has failed. See Exhibit 1H. The subject property is served by a  
6 public water system operated by Tualatin Valley Water District. The subject property  
7 adjoins Farmington Road, a major arterial under jurisdiction of the Oregon Department of  
8 Transportation ("ODOT"), and Grabhorn Road, a major collector under county jurisdiction.  
9 There is direct vehicular access from the subject property to Grabhorn Road and pedestrian-  
10 only access to Farmington Road. Tri-Met provides bus service along Farmington Road.  
11 The Washington County Sheriff and Tualatin Valley Fire and Rescue District ("TVFRD")  
12 provide emergency services to the property. Each of the special districts or jurisdictions  
13 with public facility responsibilities testified in writing that they can serve the subject  
14 property, and that they either support or have a neutral position regarding the locational  
15 adjustment in this case. See Exhibits 1H through 1M. The Washington County Board of  
16 Commissioners also submitted a written statement in support of the locational adjustment.  
17 See Exhibit 1O.

18  
19 2. On or before May 4, 1995, Metro staff mailed notices of a hearing to consider  
20 the petition by certified mail to the owners of property within 500 feet of the subject  
21 property and to other individuals and entities entitled to notice under the Metro Code. The  
22 notice and certificate of mailing are included as Exhibits 2 and 3. A notice of the hearing  
23 also was published in *The Oregonian* at least 10 days before the hearing. See Exhibit 5.

24  
25 3. On May 25, 1995, Metro hearings officer Larry Epstein (the "hearings officer")  
26 held a public hearing at the THPRD offices at 15707 SW Walker Road, Beaverton, to  
27 consider the petition. After the hearings officer described the rules for the hearing and the  
28 relevant standards for the petition, four witnesses testified in person.

29  
30 a. Metro planner Stuart Todd identified and described the subject property  
31 and surrounding area. He summarized the written staff report and submitted an amendment  
32 to it together with a memorandum from the petitioner. See Exhibits 7 and 8. He urged the  
33 hearings officer to recommend that Council approve the locational adjustment for the  
34 reasons contained therein.

1                   b. Jim McElhinny, Tom Jones and Dave Siegel testified in favor of the  
2 petition.

3  
4                   (1) Mr. McElhinny summarized the history of the use of the subject  
5 property and the petitioner's intentions if the locational adjustment is approved.

6  
7                   (2) Mr. Jones summarized the master plan for the subject property,  
8 noting that the existing nonconforming status of the recreational use on the property makes  
9 it difficult to implement the master plan, even to do something as simple as installing a rest  
10 room for handicapped people. Washington County cannot apply an institutional zone  
11 outside the UGB, so the locational adjustment is needed to allow zoning that would make  
12 the park a conforming use. He noted that septic systems serving several buildings on the  
13 site have failed, and the locational adjustment is needed to allow sewer service without an  
14 extraordinary extraterritorial extension.

15  
16                   (3) Mr. Siegel testified about traffic and the surrounding roads and  
17 responded to questions.

18  
19                   c. Richard Turner, who owns property south of the subject property,  
20 testified with questions about noise from and the proposed operating hours of the park and  
21 camp in general and a planned open-air amphitheater and parking in particular. Mr.  
22 McElhinny responded that the amphitheater will accommodate 250 to 300 people at a time.  
23 The camp serves 280 to 400 children per camp day. The proposed parking is intended to  
24 replace existing on-street parking, thereby making the streets safer for vehicles and  
25 pedestrians.

26  
27                   4. At the close of the May 25 hearing, the hearings officer closed the public record.

28  
29                   5. On June 26, 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.



1           6. On \_\_\_\_\_, 1995, the Council held a duly noticed public hearing to  
2 consider testimony and timely exceptions to the report and recommendation. After  
3 considering the testimony and discussion, the Council voted to grant the petition for  
4 Contested Case No. 95-03 (Jenkins Estate), based on the findings in this final order, the  
5 report and recommendation of the hearings officer in this matter, and the public record in  
6 this matter. The record includes an audio tape of the public hearing on May 25, 1995 and  
7 the exhibits on the list attached to the final order.

8  
9           **II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS**

10  
11           1. Metro Code section 3.01.035(f) and (g) contain approval criteria for natural area  
12 locational adjustments. The relevant criteria from those sections are reprinted below in  
13 italic font. Following each criterion are findings explaining how the petition does or does  
14 not comply with that criterion.

15  
16           *Natural area adjustments must be proposed by the property*  
17 *owner with concurrence from the agency accepting the natural*  
18 *area.* Metro Code section 3.01.035(g)(1)

19  
20           2. The petitioner owns the subject property and is a public agency. Therefore the  
21 petition complies with MC 3.01.035(g)(1).

22  
23           *At least 50% of the land and all land in excess of 40 acres in*  
24 *the petition shall be owned or donated to a parks district in its*  
25 *natural state without extraction of resources or alteration of*  
26 *water features.* Metro Code section 3.01.035(g)(2)

27  
28           3. All of the subject property is and will continue to be owned by a park district.  
29 No extraction of resources or alteration of water features has occurred on the property. The  
30 subject property has been used for a farm, park and day camp, and there are structures and  
31 improvements reflecting that historic use. That raises an issue of whether the property or at  
32 least 50% of the property is in a "natural" state. The Council finds that property is in a  
33 natural state if it is exclusively or substantially without human development, structures and  
34 paved areas and which is wholly or substantially in a native and unaffected state. This  
35 closely parallels the definition of "natural area" in MC 3.01.10(1). In this case, because the  
36 majority of the property is forest and pasture land, enough of the property in question is in

1 a natural state to fulfill the "natural" state requirement in this section. Therefore the petition  
2 complies with MC 3.01.035(g)(2).

3  
4 *Any developable portion of the area included in the petition,*  
5 *not designated as natural area, shall not exceed 20 acres and*  
6 *shall lie between the existing UGB and the natural area.*

7 Metro Code section 3.01.035(g)(3)

8  
9 5. To address MC 3.01.035(g)(3), Council must define the term "developable",  
10 because it is ambiguous. Any land *can* be developed. Council did not intend to apply the  
11 term so strictly, or else natural area locational adjustments would not be possible. Council  
12 finds that land that is held exclusively for parks and open space use and is identified as  
13 such in the Metro inventory of open spaces is not developable in the sense that Council  
14 intended that term. Therefore, if the subject property is used only for parks and open space  
15 purposes, it is not developable.

16  
17 6. In this case, petitioner owns the property and has been using and intends to  
18 continue to use the property for park and open space purposes. However, notwithstanding  
19 this history and intent, in the absence of conditions restricting the future use of the  
20 property, it could be used for any purpose if it is included in the UGB. Council notes that  
21 is what happened after a locational adjustment was granted for the Dammasch State  
22 Hospital. It is to be used for other purposes, notwithstanding the locational adjustment  
23 was approved based in part on the property's continued use for a hospital.

24  
25 7. Pursuant to MC 3.01.04(a), the Council finds that the petition should be granted  
26 subject to a condition that limits use of the property to park and open space purposes and  
27 accessory activities. If this condition is imposed, Council finds the petition complies with  
28 MC 3.01.035(g)(3), because the subject property is not developable. The Council further  
29 finds that limited use of the property for incidental accessory activities that are clearly  
30 secondary to the use of the property for park and open space purposes should be permitted  
31 by the condition of approval. This would allow the petitioner to conduct such activities as  
32 day camping, concerts, weddings and similar personal, cultural and business events,  
33 provided such events do not dominate use of the property.

1        *The natural area must be identified in a city or county*  
2        *comprehensive plan as open space or the equivalent, or in*  
3        *Metro's natural area and open space inventory.*

4        Metro Code section 3.01.035(g)(4)

5  
6        8. The subject property is identified a "regionally significant greenspace in public  
7        ownership" in the Metro Greenspace Master Plan.

8  
9        *The developable portion of the petition shall meet additional*  
10       *locational adjustment criteria, including orderly and economic*  
11       *provision of services, maximum efficiency of land uses, and*  
12       *environmental, energy, social & economic consequences.*

13       Metro Code section 3.01.035(g)(5)

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15       9. As noted above, the Council finds the subject property is not developable.  
16       Therefore MC 3.01.035(g)(5) does not apply in this case.

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18       *The proposed UGB must be superior to the UGB as presently*  
19       *located based on a consideration of the factors in subsection*  
20       *(c) of this section. Metro Code section 3.01.035(f)(2)*

21  
22       10. The Council finds that the proposed UGB would be superior to the UGB as  
23       presently located, because the amended UGB would include in the urban area property  
24       used for park and open space purposes principally for residents of the urban area. Because  
25       the park will serve an increasing number of urban area residents, even the substantially  
26       natural park area will need to provide basic infrastructure for those users, such as sewer  
27       and water service. The proposed UGB also would be superior to the UGB as presently  
28       located, because it would allow public sewer and water systems to serve the property.

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



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2. Substantially all of the subject property is in a natural state, because it is used exclusively for park and open space purposes and consists largely of forest and meadow.

3. The subject property does not include "developable" land, because the property is used only for park and open space purposes. However, to ensure the land continues to be used for that purpose, the natural area locational adjustment should be approved only if subject to a condition limiting use of the property to park and open space purposes and related incidental accessory activities, such as day camping, concerts, weddings and similar personal, cultural and business events.

4. The subject property is identified a "regionally significant greenspace in public ownership" in the Metro Greenspace Master Plan.

5. The locational adjustment will result in a superior UGB, because it includes in the UGB property that is and will be used primarily to fulfill the park and recreation needs of residents of the urban area, and because it allows connection to urban services necessarily to accommodate the users of the property.

6. The petition includes all similarly situated contiguous land outside the UGB.

7. The petition complies with the Transportation Planning Rule.

8. For the foregoing reasons, the Council hereby approves the petition in Contested Case 95-03 (Jenkins Estate), subject to the following condition of approval:

The subject property may be used only for park and open space purposes and related incidental accessory activities, such as day camping, concerts and weddings and similar personal, cultural and business events.

DATED: \_\_\_\_\_

By Order of the Metro Council

By: \_\_\_\_\_

**ATTACHMENT "A" TO THE FINAL ORDER  
IN THE MATTER OF CONTESTED CASE 95-03 (Jenkins Estate)**

**EXHIBITS**

<u>Exhibit No.</u>	<u>Subject matter</u>
1	Petition for locational adjustment
1A	Letter from David Siegel to Stuart Todd dated March 15, 1995
1B	Calculation of UGB Amendment Deposit and copy of deposit check
1C	Executive summary
1D	Site plan superimposed on aerial photograph
1E	Zoning and parcel maps
1F	List of property owners
1G	Legal description of petitioned properties
1H	Service provider comment from Unified Sewerage Agency dated 3/2/95
1I	Service provider comment from Unified Sewerage Agency dated 3/2/95
1J	Service provider comment from Tualatin Valley Water District dated 3/2/95
1K	Service provider comment from TVFRD dated 3/3/95
1L	Service provider comment from County Sheriff dated 3/3/95
1M	Service provider comment from ODOT dated 3/3/95
1N	Letter from John Rosenberger to Andy Cotugno dated 3/3/95
1O	Washington County Board of Commissioners agenda for 3/28/95
1P	Memorandum from Brent Curtis to Planning Commission dated 3/14/95
1Q	Letter from David Siegel to Stuart Todd dated 4/3/95 certifying mailing list
2	Mailed notice of public hearing and attached maps
3	Certificates of mailing of public notices
4	Letter from Charles Cieko to Stuart Todd dated 4/13/95
5	Published notice of hearing
6	Metro Staff Report dated 5/15/95 and attachments
7	Letter from Stuart Todd to Larry Epstein dated 5/25/95
8	Memorandum from Michelle Becker to Dave Siegel dated 5/19/95

**AGENDA ITEM 6.1**  
**Meeting Date: August 3, 1995**

**Resolution No. 95-2184**

**Resolution No. 95-2184, Confirming the Appointment of John Fergonese as the  
Director of the Department of Growth Management and Development**

LAND USE PLANNING COMMITTEE REPORT

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RESOLUTION NO. 95-2184, CONFIRMING THE APPOINTMENT OF JOHN FREGONESE AS THE DIRECTOR OF THE DEPARTMENT OF GROWTH MANAGEMENT AND DEVELOPMENT

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Date: July 25, 1995

Presented by: Councilor McLain

COMMITTEE RECOMMENDATION: At its July 25, 1995 meeting the Land Use Planning Committee voted 3-0 to recommend Council adoption of Resolution No. 95-2184. All committee members were present and voted in favor.

COMMITTEE DISCUSSION/ISSUES: Executive Officer Mike Burton presented the resolution. He said Metro's primary task is growth management, and that he created the Department of Growth Management and Development to emphasize the importance of this function. Executive Officer Burton introduced John Fregonese, and said Mr. Fregonese is committed to working with local jurisdictions to implement the growth management plans that Metro is developing. Executive Officer Burton said Mr. Fregonese's background as planning director for a local government and as the manager for development of the 2040 growth concept makes him uniquely qualified for appointment to the position of department director.

Councilors Morissette, McLain, and Kvistad all spoke in support of the appointment.



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING ) RESOLUTION NO. 95-2184  
THE APPOINTMENT OF JOHN FREGONESE )  
AS THE DIRECTOR OF THE DEPARTMENT ) Introduced by Mike Burton,  
OF GROWTH MANAGEMENT AND ) Executive Officer  
DEVELOPMENT )

WHEREAS, The Executive Officer has created a Department of Growth Management and Development; and

WHEREAS, The Executive Officer has appointed John Fregonese to serve as the Director of the Department of Growth Management and Development; and

WHEREAS, The appointment of a director of a department requires confirmation by the Metro Council; and

WHEREAS, John Fregonese is well qualified to serve as the Director of the Department of Growth Management and Development, and has served in the past as Metro's Manager of the Growth Management Division; now, therefore,

BE IT RESOLVED,

That the Metro Council confirms the appointment of John Fregonese as the Director of the Department of Growth Management and Development.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
J. Ruth McFarland, Presiding Officer

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

## STAFF REPORT

### **FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF JOHN FREGONESE AS THE DIRECTOR OF THE DEPARTMENT OF GROWTH MANAGEMENT AND DEVELOPMENT**

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Date: July 14, 1995

Presented by: Mike Burton

In November 1992 the region's voters approved a new charter for Metro in which the regional government's primary mission became growth management and land use issues. Although Metro has been active in regional growth management issues for several years, the charter mandate that those issues become the agency's primary responsibility.

In order to reflect the impact of the charter's directive, the Executive Officer proposes to reorganize Metro's Planning Department. Under the reorganization, Metro's current Planning Department will become two separate departments. One will focus on planning for the region's transportation system and the other will focus on managing how the region grows and how best to use the land. The important link between land use and transportation decisions will still be a primary focus of both departments and coordination of these two issues should continue to support and compliment each other.

Under the reorganization, Andy Cotugno will direct the transportation program, and John Fregonese will direct growth management efforts. There will be no additional employees as a result of the change.

**AGENDA ITEM 6.1**  
**Meeting Date: August 3, 1995**

**Resolution No. 95-2179**

**CONTRACT REVIEW BOARD**

**Resolution No. 2179, For the Purpose of Authorizing an Exemption From  
Competitive Bidding and Authorizing Sole-Source and Multi-Year Contracts to  
Agra Earth and Environmental, and Antech Analysis Technology for Sampling  
and Testing of Yard Debris Compost.**

**MINUTES OF THE METRO COUNCIL MEETING**

Thursday, July 27, 1995

Council Chamber

**Councilors Present:** Ruth McFarland (Presiding Officer), Rod Monroe (Deputy Presiding Officer), Jon Kvistad, Patricia McCaig, Susan McLain, Don Morissette, Ed Washington

**Councilors Absent:** None

Presiding Officer McFarland called the meeting to order at 7:01 PM.

**1. INTRODUCTIONS**

None.

**2. CITIZEN COMMUNICATIONS**

None.

**3. EXECUTIVE OFFICER COMMUNICATIONS**

None.

**4. CONSENT AGENDA**

**4.1 Consideration of Minutes for the July 20, 1995 Metro Council Meeting**

**4.2 Resolution No. 95-2180, For the Purpose of Amending the Non-Represented Employee Pay Plans**

Councilor Monroe moved approval of the Consent Agenda. In a vote of those Councilors present, the motion passed unanimously.

**7. RESOLUTIONS**

The Council heard Resolution No. 95-2182 out of order to accommodate the citizen participants.

**7.3 Resolution No. 95-2182, For the Purpose of Appointing Claire Stock, Clarice White, and Frank Bird to Three Expiring Terms on the Metro Central Station Community Enhancement Committee**

The Clerk read the resolution by title only.

***Motion:*** Councilor Kvistad moved, seconded by Councilor Washington for adoption of Resolution No. 95-2182.

MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 27, 1995

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*Vote: Councilors McCaig, Morissette, Monroe, Washington, Kvistad, McLain, and McFarland voted aye. The vote was 7/0 in favor and the motion passed unanimously.*

Following adoption of Resolution No. 95-2182, which resulted in the appointment of Claire Stock, Clarice White, and Frank Bird to the Metro Central Community Enhancement Committee (MCEC), Councilor Kvistad introduced Katie Dowdall, Community Enhancement Coordinator, who in turn introduced the new MCEC members.

**5. ORDINANCES - FIRST READINGS**

**5.1 Ordinance No. 95-612, Amending the Urban Growth Boundary for the Subject Property of Urban Growth Boundary Contested Case 95-01; Harvey/ Washington County, Located Along the Tualatin Valley Highway**

The Clerk read the ordinance for the first time by title only.

Presiding Officer McFarland asked Todd Sadlo, Senior Assistant Counsel, to explain Metro's role as a quasi-judicial body in these proceedings. Mr. Sadlo reminded the Council that land use decisions are quasi-judicial, and when considering an Urban Growth Boundary (UGB) amendment Councilors should be careful not to talk to any party with regard to the issues in the application off the record prior to making a decision. If Councilors have spoken with anyone about Contested Cases 95-01 or 95-03, that conversation would need to be placed in the record and an opportunity for rebuttal given.

Presiding Officer McFarland introduced Larry Epstein, Hearings Officer, who addressed Contested Case 95-01; an application by Washington County. In reporting to the Council he referred to documents entitled "Findings, Conclusions, and Final Order," and "Hearings Officer Report and Recommendation," which are included as part of the meeting record.

Mr. Epstein recommended approval of the petition without conditions.

Steve Larrance, 20660 SW Kinnaman Road, Aloha, OR, appeared before the Council to comment in favor of the application. According to Mr. Sadlo, the record with regard to Contested Case 95-01 is closed, so Mr. Larrance's comments will not be entered into the record. However, the Metro Code says that the Council will take public comment at the first reading of the Ordinance, even though the official record is closed. Mr. Larrance indicated the comments he planned to make were already part of the record. He distributed a copy of letters that had already been placed into the record before it was closed by Mr. Epstein.

**5.2 Ordinance No. 95-613, Amending the Urban Growth Boundary for Contested Case 95-03: Jenkins Estate, to Include 68 Acres of Park Property Located in Washington County**

The Clerk read the ordinance for the first time by title only.

**MINUTES OF THE METRO COUNCIL MEETING**

**Thursday, July 27, 1995**

**page 3**

Mr. Epstein addressed Contested Case 95-03 amending the UGB. In reporting to the Council he referred to documents entitled "Findings, Conclusions, and Final Order," and "Hearings Officer Report and Recommendation," which are included as part of the meeting record.

Mr. Epstein recommended approval of the petition subject to the following condition: "The subject property may be used only for park and openspace purposes, and related incidental accessory activities, such as day camping, concerts, and weddings, and similar personal, cultural, and business events."

Councilor McLain asked for a definition of the "incidental accessory activities" language in the condition, stating it seemed open-ended. Mr. Epstein stated the terms "incidental" and "accessory" are commonly used terms in land use regulations and are familiar to adjudicators of land use cases. Councilor McLain also asked about water quality issues pertaining to approval of the application. Mr. Epstein responded that Unified Sewerage Agency rules apply whether or not the land is within the UGB.

Jim McElhinny, Tualatin Hills Park and Recreation District, appeared before the Council to comment in favor of the application. He indicated he supports the conditions placed upon the petition.

Councilor Morissette asked Mr. Epstein asked about the requirements for changing the UGB. Mr. Epstein responded that there are two ways to get approval of changes to the UGB on a case-by-case basis. One is to apply for a locational adjustment, and the other is to apply for a natural area locational adjustment. He provided details of these two types of applications.

Dave Siegel, Tualatin Hills Park and Recreation District, addressed a question by Councilor McLain pertaining to how many trips are currently made to the property on a daily basis, and how many trips are projected in the future. Mr. Siegel responded that approximately 50,000 people visit Jenkins Estate annually, and this figure is not anticipated to change.

Councilor Kvistad asked Mr. Sadlo to clarify the process for approving the Hearings Officer's recommendations with or without conditions. Mr. Sadlo said that the Council does not need to approve the recommendations, but it adds to the process because the findings need to support the conclusions that were made by the Hearings Officer. Councilor McLain said if Council does not agree with Mr. Epstein's recommendations, it is appropriate to tell Mr. Epstein at this time. Mr. Epstein informed the Council that he will be out of town and, therefore, unavailable before the next Council meeting.

Councilor Morissette said it would be helpful to review the UGB amendment process at a future Planning Committee meeting. He said the rules should be reviewed for possible revision to allow for more councilor input. Mr. Sadlo said the procedures for amending the UGB are very unique. He then read language describing the process.

Without objection both ordinances were moved to Council for second reading.

MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 27, 1995

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**6. CONTRACT REVIEW BOARD**

Presiding Officer McFarland recessed the Council Regular Session and convened the Contract Review Board.

**6.1 Resolution No. 95-2179, For the Purpose of Authorizing an Exemption From Competitive Bidding and Authorizing Sole-Source and Multi-Year Contracts to AGRA Earth and Environmental, and Antech Analysis Technology for Sampling and Testing of Yard Debris Compost**

The Clerk read the resolution by title only.

***Motion:*** Councilor McLain moved, seconded by Councilor Monroe for adoption of Resolution No. 95-2179.

Councilor McLain addressed Resolution No. 95-2179, which would authorize Metro to enter into a sole-source contract with AGRA Earth and Environmental, and Antech Analysis Technology for sampling and testing. It was discovered there were inconsistencies in contract documents. Councilor Kvistad requested that it be sent back to the Solid Waste Committee for clarification.

***Vote:*** The Resolution was remanded to the Solid Waste Committee and a vote to adopt it did not take place.

Presiding Officer McFarland adjourned the Contract Review Board and reconvened the Council Regular Session.

**7. RESOLUTIONS**

**7.1 Resolution No. 95-2181, For the Purpose of Accepting Nominees to the Metro Committee for Citizen Involvement (Metro CCI)**

The Clerk read the resolution by title only.

***Motion:*** Councilor McLain moved, seconded by Councilor Kvistad for adoption of Resolution No. 95-2181.

Councilor McLain introduced Resolution No. 95-2181 which would accept Chris Utterback, Lisa M. Umscheid, and Kay Durtschi for membership to the Metro Committee for Citizen Involvement.

***Vote:*** Councilors Morissette, Monroe, Washington, Kvistad, McLain, McCaig, and McFarland voted aye. The vote was 7/0 in favor, and the motion passed unanimously.

Following the vote, Councilor McCaig stated she had not received notification of the selection process of the citizen applicants living in her district. Councilor McLain explained

MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 27, 1995

page 5

the process and assured Councilor McCaig that she would be notified of the nomination process in the future.

**7.2 Resolution No. 95-2172. For the Purpose of Authorizing an Exemption From the Competitive Bid Process and Authorizing Issuance of RFP #95R-17-SW for a Commercial Food Waste Composting Project - Site and Processing Services**

The Clerk read the resolution by title only.

Councilor Kvistad requested that Resolution No. 95-2172 be returned to the Solid Waste Committee for further review. Presiding Officer McFarland remanded the resolution back to committee as requested.

**7.4 Resolution No. 95-2174A. For the Purpose of Adopting Public Involvement Policies for Regional Transportation Planning and for Local Jurisdictions Submitting Projects to Metro for RTP and MTIP Consideration**

The Clerk read the resolution by title only.

***Motion:*** Councilor Washington moved, seconded by Councilor Monroe for adoption of Resolution No. 95-2174A.

Councilor Washington addressed resolution No 95-2174A, which would adopt the Public Involvement Policy for Regional Transportation Planning and the Local Public Involvement Policy for local jurisdictions submitting projects to Metro for inclusion in the Regional Transportation Plan (RTP) or the Metropolitan Transportation Improvement Program (MTIP).

***Vote:*** Councilors Monroe, Washington, Kvistad, McLain, McCaig, Morissette, and McFarland voted aye. The vote was 7/0 in favor, and the motion passed unanimously.

**7.5 Resolution No. 95-2176A. For the Purpose of Amending the FY '95 Transportation Improvement Program to Allocate \$27 Million of Region 2040 Implementation Funds**

The Clerk read the resolution by title only.

***Motion:*** Councilor Kvistad moved, seconded by Councilor Washington for adoption of Resolution No. 95-2176A.

Councilor Kvistad addressed Resolution No. 95-2176A which would amend the FY 1995 MTIP to allocate \$27,201,000 of State and Regional STP funds to fund projects selected from the 2040 Implementation Program process.

He asked that the Council return the resolution to JPACT, to amend JPACT's recommendations on expenditure of the \$27 million by adding \$4 million to the TOD Revolving fund. A discussion of Councilor Kvistad's request is included in the committee report to the resolution and is included in the meeting record.



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Thursday, July 27, 1995

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***Motion to Amend Main Motion:*** Councilor Monroe moved, seconded by Councilor Morissette to amend Resolution No. 95-2176A by substituting the Minority Report for the Committee Report.

Councilor Monroe explained the basis for his submission of the Minority Report which would adopt Resolution No. 95-2176A as approved by JPACT. The Minority Report was distributed to councilors, and a copy is included as part of the meeting record.

Presiding Officer McFarland opened a public hearing.

Evelyn Brzezinski, President of the Beaverton City Council, appeared before the Council to speak in support of JPACT's recommendation to fund for the Mel/Henry Street connection project. She read a letter from Beaverton Mayor Rob Drake a copy of which has been entered into the meeting record.

Meeky Blizzard, representing the city of Portland and Commissioner Earl Blumenauer, appeared before the Council to speak in support of JPACT's recommendation and the Minority Report.

Mike McKillip, City of Tualatin, appeared before the Council to speak in support of JPACT's recommendation to fund the 99W/Tualatin Road/124th Intersection improvements and the Minority Report.

Presiding Officer McFarland closed the public hearing.

Councilors discussed at length the Council's involvement in the process for developing JPACT's recommendation. Following councilor discussion, Councilor Monroe closed by stating every step possible had been taken to ensure Council was involved in the \$27 million decision.

***Vote on Motion to Amend Main Motion:*** Councilors Washington, McCaig, Morissette, and Monroe voted aye. Councilors Kvistad, McLain, and McFarland voted nay. The vote was 4/3 in favor and the motion passed.

***Vote on Main Motion:*** Councilors Kvistad, McLain, McCaig, Morissette, Monroe, Washington, and McFarland voted aye. The vote was 7/0 in favor, and the motion passed unanimously.

**7.6 Resolution No. 95-2177. For the Purpose of Adopting Amendments to the Federal RTP Proposed by the Cities of East Multnomah County**

The Clerk read the resolution by title only.

***Motion:*** Councilor Washington moved, seconded by Councilor Monroe for adoption of Resolution No. 95-2177.

MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 27, 1995

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Mike Hoglund, Transportation Planning Manager, reported on Resolution No. 95-2177, which would adopt amendments to the federal RTP proposed by the Cities of East Multnomah County.

***Vote:** Councilors McLain, McCaig, Morissette, Monroe, Kvistad, Washington, and McFarland voted aye. The vote was 7/0 in favor and the motion passed unanimously.*

**7.7 Resolution No. 95-2183, For the Purpose of Amending the FY 1995 Metro Transportation Improvement Program to Update the Regional Transit Program**

The Clerk read the resolution by title only.

***Motion:** Councilor Kvistad moved, seconded by Councilor Monroe for adoption of Resolution No. 95-2183.*

Councilor Kvistad reported on Resolution No. 95-2183, which would amend the FY 1995 Metro TIP to incorporate revisions to the regional transit program identified in Exhibit "A" of the Resolution. The resolution moves \$10 million into new start-up construction funding for South/North LRT for Tri-Met. A copy of Exhibit "A", and the Committee and Staff Reports are included as part of the meeting record.

***Vote:** Councilors McCaig, Morissette, Monroe, Washington, Kvistad, McLain, and McFarland voted aye. The vote was 7/0 in favor and the motion passed unanimously.*

**8. COUNCILOR COMMUNICATIONS**

Councilor Morissette thanked councilors for their attendance at the Damascus 2040 event. He also commented on a letter from Morgan, Cox, and Slater, LTD. which asked why commercial and industrial land inventories had not been studied by Metro. Councilor Morissette thought this was a good question, and stated that resource research will be done to ensure that all types of land are available. Lastly, he distributed comments of the city of Tigard Planning Commission with regard to 2040. Copies of these documents are included as part of the meeting record.

Councilor Kvistad said the city of Tigard Planning Commission notes were originally presented as a preliminary draft of information they wanted the City Council to act on. The city of Tigard did not approve the document because of its negative tenor.

Councilor Washington gave a brief update on the status of city of Portland/Metro Consolidation Advisory Committee meetings. Discussion to date has focused on gaining an understanding of the operational and financial requirements, and a history of the PCPA and the Civic Stadium. The committee has made no specific recommendations or decisions to date. Future discussions will cover funding alternatives, ownership, and governance issues.

**MINUTES OF THE METRO COUNCIL MEETING**

**Thursday, July 27, 1995**

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Councilor McCaig said she was disappointed to read The Oregonian editorial which was inaccurate and irresponsible. She said the Council was taking every step to move in a direction The Oregonian desired. She suggested councilors contact The Oregonian to express their displeasure with the editorial.

Councilor McLain reported that she, the Regional Water Supply Plan steering committee, along with Mike Burton, Executive Officer, Councilor Kvistad, and Rosemary Furfey, Senior Regional Planner, met together to talk about water issues as they relate to the regional framework plan and charter mandates.

Councilor Morissette offered congratulations to Councilor Monroe for his work on the RTP.

Councilor Monroe reported that the next Cascadia Conference will be held in Portland on September 16, and he encouraged everyone's attendance.

There being no further business before the Council, Presiding Officer McFarland adjourned the meeting at 9:04 PM.

Prepared by,



**Lindsey Ray  
Council Assistant**

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BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN )  
EXEMPTION FROM COMPETITIVE BIDDING )  
AND AUTHORIZING SOLE-SOURCE AND )  
MULTI-YEAR CONTRACTS TO AGRA EARTH )  
AND ENVIRONMENTAL, AND ANTECH )  
ANALYSIS TECHNOLOGY FOR SAMPLING )  
AND TESTING OF YARD DEBRIS COMPOST )

RESOLUTION NO. 95-2179

Introduced by Mike Burton  
Executive Officer

WHEREAS, Metro Resolution No. 91-1889 adopted the Earth-Wise Compost standards and designation program; and

WHEREAS, The purpose of the Earth-Wise Compost program is to provide greater assurance that compost will cause no harm to human health and the environment, and to increase the demand for locally-produced yard debris compost; and

WHEREAS, Consistency in sampling and testing procedures over time is critical to achieving comparable and credible results, and AGRA Earth and Environmental, and Antech Analysis Technology are the current contractors; and

WHEREAS, Antech Analysis Technology is the only laboratory in the Metro area that tests for heavy metals and pesticides; and

WHEREAS, The use of sole-source and multi-year contracts will result in cost savings to Metro; and

WHEREAS, Metro Code Sections 2.04.060 and 2.04.033 require that the Metro Contract Review Board approve sole-source contracts and multi-year contracts; and

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

BE IT RESOLVED, That the Metro Contract Review Board hereby

1. Grants an exemption from the competitive bidding requirements; and

2. Authorizes the Executive Officer to enter into sole-source, multi-year contracts with AGRA Earth and Environmental, and Antech Analysis Technology under the terms and conditions specified in Exhibit A attached to this resolution.

ADOPTED by the Metro Contract Review Board this \_\_\_ day of \_\_\_\_\_, 1995.

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J. Ruth McFarland, Presiding Officer

Approved as to Form:

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Daniel B. Cooper, General Counsel

LZ:gbc  
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**SOLID WASTE COMMITTEE REPORT    REVISED**

CONSIDERATION OF RESOLUTION NO. 95-2179, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS TECHNOLOGY FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

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Date: August 2, 1995

Presented by: Councilor McLain

**Committee Recommendation:** At the July 18 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 95-2179. Voting in favor: Councilors Kvistad, McFarland and McLain.

At the July 27 Council meeting, Councilor Morissette identified an apparent in the "terms of payment" section of the proposed contract with Agra Earth and Environmental. The language indicated that the total amount of the contract was \$20,200, but that expenditures were limited to \$10,000. Therefore, the resolution was returned to the Solid Waste Committee for review.

At the August 1 meeting, the Committee reviewed amendment language from staff that the amount of the contract and the permitted expenditures were \$20,200. The committee adopted the amendment and unanimously recommended Council approval of the resolution.

**Committee Issues/Discussion:** Debbie Gorham, Waste Reduction and Planning Services Manager, and Lauren Ettlin, Associate Solid Waste Planner, presented the staff report. Ettlin explained that the purpose of the resolution was to enter into sole-source multi-year contracts with two companies for the sampling and collection of yard debris for testing and the actual testing of the samples. AGRA Earth and Environmental would be responsible for sample collection and Antech Analysis Technology would do the testing.

Ettlin commented that yard debris compost must be free of contaminants such as heavy metals and seeds in order to be effectively marketed. Ettlin noted that Metro has been involved in the testing of yard debris since 1988 to help insure end users that the products being produced within the region were acceptable.

The testing program became part of Metro's Earthwise Compost Program last year. Processors who successfully participate in the testing program may use the designation "earthwise compost" in marketing their products. Currently, nine of the eighteen yard debris compost processors in the region are participating in the program. Each processor pays \$1,000 to help defray the cost of the program, estimated to be \$22,100 for FY 95-96.

Councilor McFarland noted that a sole-source contract was being requested and asked if there are other competitors that also perform this type of work. Ettlin noted that when the sampling and

collection work was originally bid out, AGRA was the only bidder. She indicated that other firms declined to bid because of the small amount of work involved. She also noted that Antech was the only firm that performed this type of testing in the Portland area. Antech has been used by Metro to perform yard debris testing since 1988.

Councilor McLain commented that, while she supported the use of a sol-source contract at this time, she wanted the record to show that she would favor a competitive process when the contracts proposed in the resolution expire.

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 95-2179, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS TECHNOLOGY FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

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Date: July 19, 1995

Presented by: Councilor McLain

Committee Recommendation: At the July 18 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 95-2179. Voting in favor: Councilors Kvistad, McFarland and McLain.

Committee Issues/Discussion: Debbie Gorham, Waste Reduction and Planning Services Manager, and Lauren Ettlin, Associate Solid Waste Planner, presented the staff report. Ettlin explained that the purpose of the resolution was to enter into sole-source multi-year contracts with two companies for the sampling and collection of yard debris for testing and the actual testing of the samples. AGRA Earth and Environmental would be responsible for sample collection and Antech Analysis Technology would do the testing.

Ettlin commented that yard debris compost must be free of contaminants such as heavy metals and seeds in order to be effectively marketed. Ettlin noted that Metro has been involved in the testing of yard debris since 1988 to help insure end users that the products being produced within the region were acceptable.

The testing program became part of Metro's Earthwise Compost Program last year. Processors who successfully participate in the testing program may use the designation "earthwise compost" in marketing their products. Currently, nine of the eighteen yard debris compost processors in the region are participating in the program. Each processor pays \$1,000 to help defray the cost of the program, estimated to be \$22,100 for FY 95-96.

Councilor McFarland noted that a sole-source contract was being requested and asked if there are other competitors that also perform this type of work. Ettlin noted that when the sampling and collection work was originally bid out, AGRA was the only bidder. She indicated that other firms declined to bid because of the small amount of work involved. She also noted that Antech was the only firm that performed this type of testing in the Portland area. Antech has been used by Metro to perform yard debris testing since 1988:

Councilor McLain commented that, while she supported the use of a sole-source contract at this time, she wanted the record to show that she would favor a competitive process when the contracts proposed in the resolution expire.



## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 95-2179 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

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Date: July 18, 1995

Presented by: Mike Burton,  
Lauren Ettlin

### PROPOSED ACTION

Adopt Resolution No. 95-2179 to authorize entering into sole source and multi-year contracts for sampling and testing of yard debris compost as part of Metro's Earth-Wise Compost Program. The proposed contracts are attached as Exhibit A.

### FACTUAL BACKGROUND AND ANALYSIS

In January 1994, the Metro Council adopted Resolution No. 91-1889 which designated product standards for yard debris compost. Following adoption of this resolution, Metro developed a voluntary Earth-Wise Compost designation program. Through this program yard debris processors may apply to have their compost tested twice a year for pH level, heavy metals, pesticide residue, plant nutrients, foreign materials, salts and viable seeds. In 1995, nine yard debris processors had their products tested. Those who meet the standards will receive a certificate and be entitled to use the Earth-Wise Compost logo in their advertising.

In order to implement this program, Metro contracts with a company to collect samples from the participating processors, and with various laboratories to test the samples. Samples of compost are collected twice during a 12-month period and 13 tests are performed on each sample. Agra Earth and Environmental was selected as the contractor for collecting samples and conducting maturity tests on finished compost; Antech Analysis Technology is the laboratory that tests for heavy metals and pesticide residue. Both companies are currently under contract to Metro and have performed their tasks satisfactorily during the first year of the Earth-Wise Compost program.

### JUSTIFICATION FOR AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS FOR SAMPLING AND TESTING OF COMPOST

1. It is critical to have consistency in sampling and testing techniques from year to year for comparable results, and to maintain the credibility of the Earth-Wise Compost program. Agra Earth and Environmental and Antech Analysis Technology can provide that consistency.

2. The integrity of the program is dependent on sampling and testing being performed by reputable firms. AGRA Earth and Environmental and Antech Analysis Technology are reputable firms who have performed successfully and are willing to continue their services within the limited budget.
3. Antech Analysis Technology is the only laboratory in the Metro region that tests for heavy metals and pesticides. They have worked with Metro since 1988 on testing yard debris compost. AGRA Earth and Environmental is the only company that responded to the original Request for Proposal for the sampling and respirometry work. This has been attributed to the small amount of funds available and to the specialized nature of the work.
4. Metro can realize cost savings in staff time by eliminating the writing and evaluation of Requests for Proposals for services already successfully provided by AGRA and Antech. The two-year contracts will also ensure that expenditures remain at current levels.
5. By authorizing a multi-year contract with AGRA and Antech, Metro can provide the consistency needed for this new program so that test results from the first three years of the Earth-Wise Compost program are comparable and consistent.

#### BUDGET IMPACT

The FY 1995-96 Solid Waste budget has appropriated \$22,500 for sampling and testing for the Earth-Wise Compost Program. These two contracts will spend \$15,600 of that appropriation. By approving the multi-year contracts, the Council will encumber an additional \$15,600 in the FY 1996-97 budget.

#### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 95-2179.

Exhibit A  
**PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232, and ANTECH ANALYSIS TECHNOLOGY, referred to herein as "Contractor," located at 501 NE Thompson Mill Road, Corbett, OR 97019. In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective on the last signature date below and shall remain in effect until and including June 30, 1997, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed ELEVEN THOUSAND DOLLARS AND NO/100ths (\$11,000.00).
4. Insurance.
  - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
    - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
    - (2) Automobile bodily injury and property damage liability insurance.
  - b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be modified in a writing signed by both parties.

**ANTECH ANALYSIS TECHNOLOGY**

**METRO**

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Signature

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Signature

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Print name and title

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Print name and title

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Date

s/share/ettl/earth-wis/904395.psa

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Date

**Exhibit A  
Scope of Work**

Project Purpose

The project involves laboratory testing to determine the presence of cadmium, lead, chlordane and pentachlorophenol in samples of yard debris compost. This project also includes an interpretation of test results.

This testing program is part of Metro's Earth-Wise Compost Marketing Program.

It is estimated that approximately a total of 40 samples will be tested during this two-year contract, two samples from each of 10 processors of yard debris compost each year. The actual number may be more or less than 40 samples.

Specific Work to be Accomplished

This is a two-year contract. Contractor will perform all of the tasks below during FY 1995-96 (July 1, 1995 through June 30, 1997) and again in FY 1996-97 (July 1, 1996 through June 30, 1997).

1. Compost samples will be collected from each processor and delivered to Contractor by AGRA Earth and Environmental, who is on contract to Metro. Each sample will be approximately one quart. The first set of samples will be delivered in September 1995 for FY 1995-96 and September 1996 for FY 1996-97.
2. A number of additional samples, not to exceed 10, may be collected during the contract year for tests to be performed on an "as-needed" basis.
3. Contractor will conduct indicated testing within one week of receipt of Metro sample.
4. Contractor will analyze each sample by gas chromatography/electron capture (GC/EC) or other appropriate means to determine the presence of the following chemicals for the following costs:

Test	To determine the presence of:	Cost per sample through Dec. 31, 1995	Cost per sample beginning Jan. 1, 1996	Detection Limit
Pesticide	chlordane	\$85.00	\$100.00	0.001 ppm
Pesticide	pentachlorophenol	\$95.00	\$110.00	0.001 ppm
Metals	cadmium	\$23.00	\$25.00	0.06 ppm
Metals	lead	\$23.00	\$25.00	1.0 ppm
<b>Cost per sample (for all tests):</b>		<b>\$226.00</b>	<b>\$260.00</b>	

5. If a significant level of any compound is found, Contractor will discuss the results with Metro and provide interpretation.
6. Contractor shall submit a synopsis of test results within fifteen working days of receiving compost samples. For each material tested, the synopsis shall include detection limits and methodology. Contractor shall send a copy of test results to Metro's designated contractor and a duplicate copy to Metro. The first and second sets of test results are due as shown on the timeline below.
7. Upon request, Contractor shall provide any technical background information necessary to verify the methods used and accuracy of the tests conducted.
8. All products resulting from this Agreement, including test results and analyses, shall be held confidentially by Contractor, and shall be disclosed only to Metro and Metro's designated contractor.

Changes to Form Contract

1. The product liability coverage requirement is deleted from paragraph 4.a. (1) of the contract.

Timeline

Task	Due Date
Receive set one of samples. Begin tests.	For FY 1995-96: September 1995 For FY 1996-97: September 1996
Test results due to Metro, duplicate copy to AGRA Earth and Environmental	For FY 1995-96: November 1, 1995 For FY 1996-97: November 1, 1996
Receive second set of samples. Begin tests.	For FY 1995-96: May 15, 1996 For FY 1996-97: May 15, 1997
Test results due to Metro, duplicate copy to AGRA Earth and Environmental.	For FY 1995-96: June 7, 1996 For FY 1996-97: June 7, 1997

Terms of Payment

1. After completing each test and conveying the results to Metro, Antech Analysis/Technology will invoice Metro according to the unit costs set forth above.
2. The cost for any additional testing performed will be negotiated in good faith between Metro and Contractor.



3. The maximum compensation which Metro shall be obligated to pay Contractor for services performed pursuant to this Agreement shall be \$11,000.00. This maximum sum shall include all fees, costs and expenses of whatever nature. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Send invoices to Metro, Attention Solid Waste Department. Metro shall pay Contractor within 30 days of receipt of an approved invoice.

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**PERSONAL SERVICES AGREEMENT**

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In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective on the last signature date below and shall remain in effect until and including June 30, 1997, unless terminated or extended as provided in this Agreement.
  
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A – Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
  
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed TWENTY THOUSAND TWO HUNDRED DOLLARS (\$20,200.00).
  
4. Insurance.
  - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
    - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
    - (2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

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8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or

Exhibit A  
**SCOPE OF WORK**

**PROJECT:** Collect compost samples, perform field maturity tests and keep records

**SUMMARY:** Contractor will collect samples twice yearly from certain processors of yard debris compost in Multnomah, Washington and Clackamas counties. Compost maturity will be determined via field assessment of designated parameters. Once compost maturity is determined, the sample will be sent to designated labs for testing. The labs will test the compost for the parameters listed in the Appendix and send test results to Contractor. Contractor will compare test results for both yearly samples to pre-established standards provided by Metro and forward results to Metro.

It is estimated that approximately 10 processors will participate in the program each year, a total of approximately 20 processors during this two-year contract.

At the end of each fiscal year, or about July 1, upon receiving a summary of test results from Contractor, Metro will issue a designation of Earth-Wise for that year (FY1995-96 or FY1996-97) to processors whose compost samples meet or exceed standards. The goal of the project is to increase market demand for yard debris compost and provide greater assurance that compost will not cause harm to human or environmental health.

**CONTRACTOR:** AGRA Earth and Environmental Inc.

**CONTRACT TERM:** This is a two-year contract. Term will begin on the last signature date on the contract and continue through June 30, 1997.

**Contractor's Responsibilities**

This is a two-year contract. Contractor will perform all of the tasks below during FY1995-96 and again during FY1996-97.

**Task 1: Collect first set of samples**

Within ten working days after this contract becomes effective, Contractor will develop a procedure for sampling to be approved by Metro. According to the timeline listed in Task 9: (1) Metro will provide to Contractor a list of processors who will participate in the Earth-Wise Compost program for that year and (2) Contractor will contact processors on the list provided by Metro to arrange to collect a 1-quart sample from each, using dedicated sampling equipment, supplied by Contractor and the Metro-approved sampling procedure. Contractor will verify appropriate types of sampling containers with Metro's designated labs, listed in the Appendix. Contractor will maintain records of sampling procedure, color of compost, odor, company name and contact person, weather, and feedstock for each sample on a standardized form.

## **Task 2: Maturity Assessment**

Contractor will perform assessment of compost maturity in the field for all samples using parameters provided by Metro. In order to reduce subjectivity of field assessment parameters (smell, color), Contractor will designate two staff people to perform these behaviors for *all* samples. The final number will be an average of the assessment made by the two staff people.

## **Task 3: Divide, package, label and send samples to labs**

Three labs, under contract to Metro, will test all of the samples. (Labs are listed in the Appendix.) Contractor will divide samples, package and send portions using laboratories' instructions for transport within 24 hours of sampling. Contractor will use a legal chain of custody to ensure the sample gets from processor to Contractor's offices to labs and a standardized label to affix to each sample to prevent mis-identification.

## **Task 4: Database**

According to the timeline listed under Task 9, Contractor will provide to Metro a database of test results for lab tests for samples collected to date. Contractor must allow the labs at least 15 working days to complete testing of the samples. Contractor will supply the database on diskette and hard copy and integrate all individual test results received from the labs in an easy-to-read format. Contractor will also provide copies of the completed sampling forms.

## **Task 5: Second Set of Samples**

According to the timeline listed under Task 9, Contractor will collect a second set of samples from the same processors as identified in Task 1. The test results from these samples are due to Metro according to the timeline in Task 9. Contractor must allow the labs at least 15 working days to complete testing of the samples. Contractor will use the same process for sampling, maturity assessment and shipment to labs as described in for the first set of samples in steps 1 through 3 above.

## **Task 6: Update Database and Review**

After receiving results back from the labs for both sets of samples, Contractor will evaluate lab test results against pre-established standards (standards are located in the Appendix). Contractor will forward to Metro by the dates listed in the timeline a database of *only* those results where *both* samples meet or exceed minimum standards. The database will be provided on diskette and hard copy. Contractor will also provide copies of the completed sampling forms for the second set of samples.

Those samples *not* meeting standards shall be maintained by Contractor and not forwarded to Metro on a regular basis, unless specifically requested in writing. Metro will be responsible for forwarding test results to the processors.

potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly

incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be modified in a writing signed by both parties.

AGRA EARTH AND ENVIRONMENTAL INC.      METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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### **Task 7: Additional Samples**

Metro may request that additional samples be collected and/or additional respirometry tests be performed. Contractor will perform these tasks on a timeline mutually agreed upon by Contractor and Metro and at the same unit costs as designated under "Budget" in this contract.

### **Task 8: Record Keeping, General Information**

Contractor will respond to requests from Metro to collect samples and for general information. Contractor will maintain and have available for Metro review a bound sample log book of all information regarding this program.

### **Task 9: Final Report**

Proposer will write a brief summary and evaluation of the project that includes the following topics and submit it to Metro no later than June 30, 1996 for FY1995-96 and June 30, 1996 for FY1996-97. The log book will be included with the final report.

- Sampling procedure
- Field assessment of compost maturity
- Respirometry tests
- Database
- Packaging and sending samples to labs
- Working with labs
- Logistical problems and suggested solutions
- Suggestions for subsequent Earth-Wise Compost programs
- Other, as suggested by Contractor

### **Timeline**

<b>Task</b>	<b>Due Date</b>
AGRA provides sampling procedure for approval	Within 10 days of last signature on contract
Metro provides to AGRA a list of companies who will participate in program	For FY1995-96: Oct 15, 1995 For FY1996-97: Oct 15, 1996
AGRA collects first set of samples; conducts field assessment of maturity; divides, packages, labels and send samples to labs	For FY1995-96: Oct 15-30, 1995 For FY1996-97: Oct 15-30, 1996
Labs provide test results to AGRA, duplicate copy to Metro	For FY1995-96: Dec 15, 1995 For FY1996-97: Dec 15, 1996
Database of test results due to Metro for first set of samples	For FY1995-96: Dec 29, 1995 For FY1996-97: Dec 29, 1996
AGRA collect second set of samples; conducts field assessment of maturity; divides, packages, labels and send samples to labs	For FY1995-96: Between May 1 & 8, 1996 For FY1996-97: Between May 1 & 8, 1997
Labs provide test results to AGRA, duplicate copies to Metro	For FY1995-96: June 7, 1996 For FY1996-97: June 7, 1997
Database of test results due to Metro for second set of samples	For FY1995-96: June 15, 1996 For FY1996-97: June 15, 1997



## Schedule for Reports

Report	Due Date
AGRA provides procedure for sampling to Metro for approval.	For FY1995-96: Within ten working days of the effective date of this contract
AGRA provides database of test results from the first set of samples for lab tests and completed sampling forms to Metro.	For FY1995-96: Dec 29, 1995 For FY1996-97: Dec 29, 1996
AGRA provides to Metro the database of test results for second set of samples from lab tests, comparison of test results to standards and completed sampling forms.	For FY1995-96: June 15, 1996 For FY1996-97: June 15, 1997
AGRA provides to Metro the final report and log book to Metro.	For FY1995-96: June 30, 1996 For FY1996-97: June 30, 1997

This contract does *not* include the following tasks:

- Determine which compost processors will have their compost product sampled
- Maintain contact with yard debris processors beyond initial contact for sampling
- Establish lab testing procedures
- Pay for lab testing procedures
- Establish standards for comparison to lab test results
- Forward test results to compost processors

## BUDGET

Total contract payments will not exceed TWENTY THOUSAND TWO HUNDRED DOLLARS AND NO/100s (\$20,200.00).

Unit cost for all aspects of collection of one sample is \$508.00 per sample, including:

- Travel time to compost sites
- On-site sampling and characterization
- Field tests to determine maturity
- All handling and care of samples including sample division, packaging and shipping to labs
- Log book preparation
- Review and report writing and responding to requests for information

The value of log book preparation and report writing is \$247.00 per sample, and this portion of the per sample unit cost is payable only after: 1) with respect to the test results due on November 15 of 1995 and 1996, upon Metro's receipt of copies of Contractor's log books reflecting all appropriate activities; and 2) with respect to the test results due on June 15 of 1996 and 1997, upon Metro's receipt of the Final Report described above and Contractor's log books reflecting all appropriate activities.

## **TERMS OF PAYMENT**

Metro shall pay Contractor for services performed and materials delivered in the maximum sum of TWENTY THOUSAND TWO HUNDRED DOLLARS (\$20,200.00). This maximum sum includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period, except as noted above regarding a portion of the per sample unit cost. Contractor's billing statements will include an itemized statement of the work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro, Attention Solid Waste Department. Metro will pay Contractor within 30 days of receipt of an approved invoice.

- 1: Payment for invoiced Expenses is dependent upon Metro review and acceptance of the reports. All costs incurred by the Contractor shall be included in and not exceed \$20,200.00.
2. Metro shall process invoices for payment within thirty days of receipt.

Appendix A  
**SUMMARY OF LABS TESTING COMPOST SAMPLES  
 FOR METRO'S EARTH-WISE COMPOST PROGRAM**

Tests	Lab and location	Contact Name and Phone
<ul style="list-style-type: none"> <li>- Plant Nutrients</li> <li>- pH</li> <li>- Soluble salts</li> </ul>	OSU Central Analytical Lab Soil Testing 3179 AgLife Science Bldg. Corvallis, OR 97331	Dean Hanson Extension Soils Specialist (503)737-2187
<ul style="list-style-type: none"> <li>- Effect of compost material on indicator seed (toxicity test)</li> <li>- Foreign Materials</li> <li>- Seed Germination</li> </ul>	OSU Seed Lab Corvallis, OR 97331	Roger Danielson (503)737-4464
<ul style="list-style-type: none"> <li>- Presence of pentachlorophenol and/or chlordane</li> <li>- Presence of cadmium and/or lead</li> </ul>	ANTECH Analysis/Technology Lab 501 NE Thompson Mill Rd. Corbett, OR 97019	Diana Tracy President (503)695-2135

LE:gbc  
 S:\SHARE\ETTL\EARTH-WIS\904396.PSA

1 (c) Final Council action following the opportunity for parties to comment orally to  
2 Council on the proposed order shall be as provided in Code Section 2.05.045. Parties shall  
3 be notified of their right to review before the Land Use Board of Appeals pursuant to 1979  
4 Oregon Laws, chapter 772.

5  
6 (d) Comments before the Council by parties must refer specifically to any arguments  
7 presented in exceptions filed according to the requirements of this chapter, and cannot  
8 introduce new evidence or arguments before the Council. If no party to the case has filed an  
9 exception, then the Council shall decide whether to entertain public comment at the time that  
10 it takes final action on a petition.

11  
12 (e) Within 20 days from the day that the proposed order and findings of the Hearings  
13 Officer are mailed to them, parties may file a motion to reopen the record to receive  
14 admissible evidence not available at the hearing. The motion shall show proof of service on  
15 all parties. The Council shall rule on such motions with or without oral argument at the time  
16 of its consideration of the case. An order approving such a motion to reopen the record shall  
17 remand the case to the Hearings Officer for evidentiary hearing.

18  
19 (f) When the Council acts to approve in whole or in part a petition affecting land  
20 outside the District:

21  
22 (1) Such action shall be by resolution expressing intent to amend the UGB if  
23 and when the affected property is annexed to the District within six months of  
24 the date of adoption of the Resolution.

25  
26 (2) The Council shall take final action, as provided for in paragraphs (c) and  
27 (d) of this section, within thirty (30) calendar days of notice from the  
28 Boundary Commission that annexation to the District has been approved.

29  
30 (g) When the Council is considering an ordinance to approve a petition, it shall take  
31 all public comment at its first reading of the ordinance, discuss the case, and then either pass  
32 the ordinance to second reading or remand the proposed order and findings of the hearings  
33 officer to the Executive Officer or the hearings officer for new or amended findings. If new  
34 or amended findings are prepared, parties to the case shall be provided a copy of the new  
35 order and findings by mail no less than 7 calendar days prior to the date upon which the  
36 council will consider the new order and findings, and parties will be given the opportunity to  
37 provide the council with oral or written testimony regarding the new order and findings.

### 3.01.70 Final Action Notice Requirements

38  
39 (a) The District shall give each county and city in the District notice of each  
40 amendment of the UGB. The District shall also notify the government with jurisdiction,  
41 which notice shall include a statement of the local action that will be required to make local  
42 plans consistent with the amended UGB and the date by which that action must be taken.

## **Proposed Tasks and Dates for Metro Council Adoption of Water Supply Plan**

**August 1995**

**DRAFT**

### **Goals:**

- a. Brief Metro Council members on content of preliminary water supply plan and options
  - b. Inform public about content of preliminary water supply plan and options
  - c. Seek public comments on preliminary plan and preferred option
  - d. Brief and seek technical comments from Water Resources Policy Advisory Committee
  - e. Seek public comment on preferred alternative
  - F. Adopt water supply plan
- 
1. Brief Water Resources Policy Advisory Committee on preliminary plan (August 23, 1995)
  2. Copies of preliminary plan and executive summary given to Metro Councilors (late August 1995)
  3. Newsletter printed with summary of preliminary plan (early September)
  4. Brief Metro Land Use Committee on preliminary plan (mid-September 1995)
  5. Brief full Metro Council on preliminary plan (late September)
  6. Regional Public Forums: Metro Councilors attend three public forums to hear questions and reactions from public (September 27, 28 and 29)
  7. Metro Land Use Committee provides formal comments to consultants on preferred alternative for regional water supply plan based on public forum and staff report (mid-October)
  8. Final water supply plan completed based on comments from all participant utilities and Metro (late October)
  9. Metro Land Use Committee holds public hearing on water supply plan and make recommendation to Council for adoption (early November)
  10. Metro Council adopts water supply plan by resolution (December 1995)



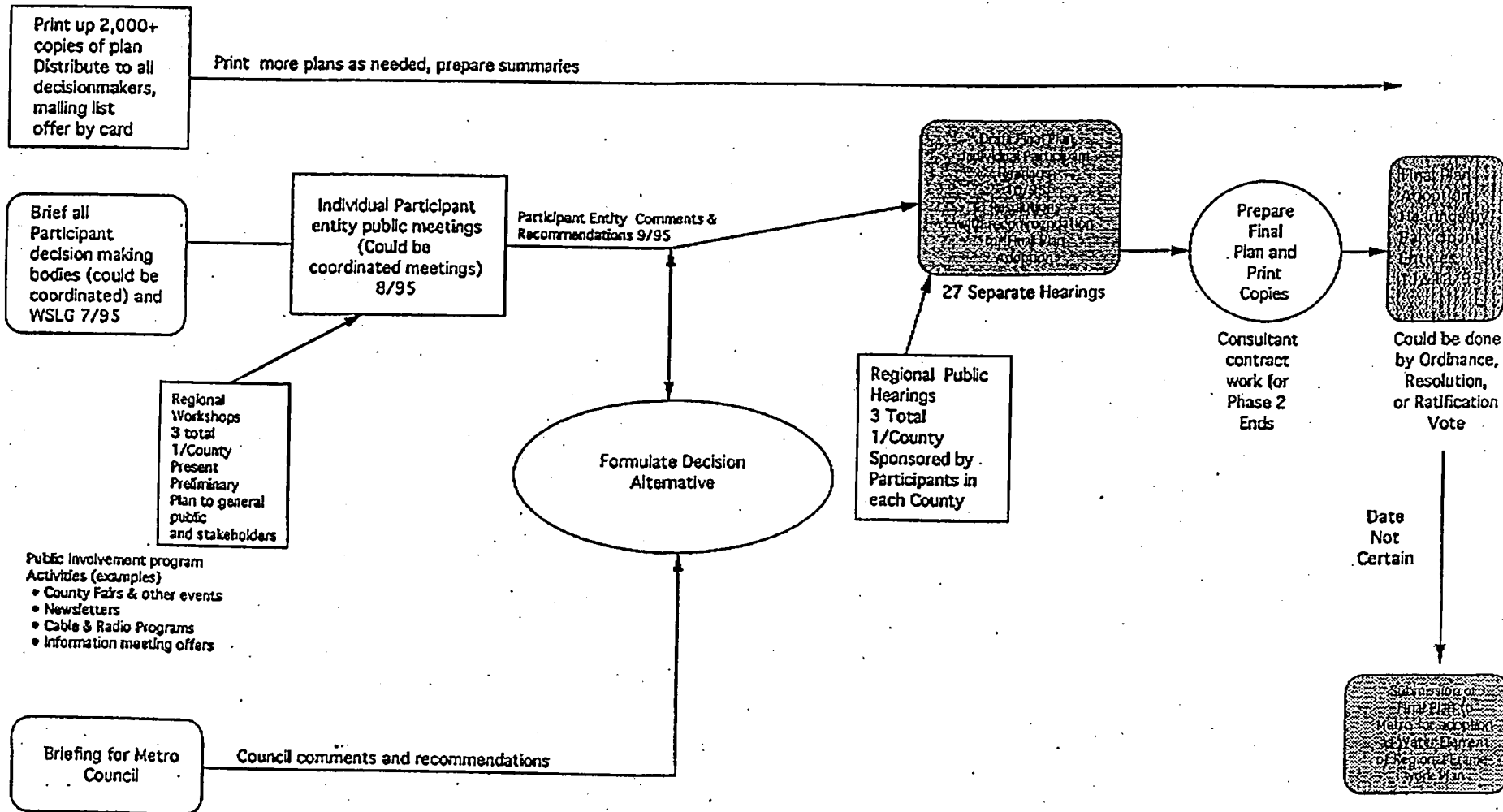
PRELIMINARY PLAN JULY 1995

August

September

October

FINAL PLAN NOVEMBER - DECEMBER 1995



**DRAFT**

BEFORE THE METRO COUNCIL

DRAFT

FOR THE PURPOSE OF REQUESTING	)	RESOLUTION NO. 95-
A STUDY OF THE POTENTIAL FOR	)	
DEVELOPMENT ON LANDS INSIDE	)	Introduced by
THE URBAN GROWTH BOUNDARY THAT	)	Councilor Morissette
ARE CURRENTLY SUBJECT TO FARM	)	
TAX DEFERRAL	)	

WHEREAS, Metro is engaged in the 2040 planning process; and

WHEREAS, Metro has a need to determine the potential for development of all land currently inside the Urban Growth Boundary in order to determine when and where it will be appropriate to make future adjustments to the Urban Growth Boundary; and

WHEREAS, A materially significant number of acres of land within the current Urban Growth Boundary is subject to farm tax deferral status; and

WHEREAS, There is reason to believe that some of the farm tax deferral land within the Urban Growth Boundary may be significantly constrained from development because the owners of the property have intended and will refrain from ever developing the property within the 20-year planning horizon in order to preserve the property for its present use; and

WHEREAS, The determination of which farm tax deferral properties are permanently committed for the planning period for farm use is the equivalent of a determination of which properties within the Urban Growth Boundary are currently developed in a fashion that will preclude additional development or redevelopment on them; and

WHEREAS, The council has need for sufficient data to make an informed and sustainable decision in this regard as it goes forward in the planning process; now, therefore, the council requests that the Department of Growth Management and Development conduct a



study of all farm tax deferral properties in order to assist the Council in determining how much farm tax deferral properties is committed to continued use for farm purposes beyond the next 20 years. The results of this study shall be reported to the Council as soon as possible, and no later than the time that the Council makes the initial determination for future determination of the urban reserve study areas, and that a final determination and study be available for the Council at the time any future legislative amendments to the Urban Growth Boundary are considered.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1995.

---

J. Ruth McFarland, Presiding Officer

Approved as to Form:

---

Daniel B. Cooper, General Counsel

gl  
1243

## FUTURE VISION

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3 the Cascades to the Coast Range, and from Longview to Salem. Any vision for a territory  
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5 is a first step in developing policies, plans, and actions that serve our bi-state region and all  
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10 Future Vision is mandated by Metro's 1992 Charter. It is not a regulatory document;  
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12 It is based on a number of core values essential to shaping our future. As a region:

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## REGIONAL VISION STATEMENT

### EACH INDIVIDUAL:

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56 commitment to each other. Life-long learning is the critical ingredient that enables the  
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68 The ability to work together is the hallmark of great communities and flourishing societies.  
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73 communities to actively meet the needs of their residents. The economic life of the  
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75 • SAFETY - In 2045, personal safety within communities and throughout the region is  
76 commonly expected as well as a shared responsibility involving citizens and all government  
77 agencies. Our definition of personal safety extends from the elimination of prejudice to the

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104 – provide Greenspaces and parks within walking distance of every household;  
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121 • **VARIETY IN OUR COMMUNITIES AND NEIGHBORHOODS** - In 2045, our  
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#### 150 SUGGESTIONS:

151 Clearly, Metro has a critical role to play as planner, convener, monitor, and leader.  
152 However, as in the past, the success we achieve in the future will be a collaborative  
153 accomplishment. We have an unparalleled opportunity to create an environment of

154 consensus and predictability in the region for what Metro's planning and policy making  
155 ought to accomplish. The full report of the Future Vision Commission contains  
156 suggestions for acting on each vision statement.

157 Perhaps the most critical implementing step is Metro's commitment to a continuing  
158 dialogue with the citizens of our greater region to address 21st century problems and issues.  
159 An annual review of the region will allow us to promote, lead, and engage citizens in an  
160 ongoing discussion of our future. The relevant question is not "when" carrying capacity  
161 will be exceeded, but "how" we will collectively restore, maintain, and enhance the  
162 qualities of the region.

163 As a region, our aspiration is to match the spectacular nature of our landscape with an  
164 equally spectacular and regular civic celebration of our sense of the region—truly our sense  
165 of place. For it is only through the creation of a shared and far-reaching culture of this  
166 place that our accomplishments will match our aspirations. Future Vision is a work in  
167 progress – a challenge to future generations to think ahead and make decisions.



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