

A G E N D A

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



METRO

MEETING: METRO COUNCIL REGULAR MEETING
DATE: November 9, 1995
DAY: Thursday
TIME: 2:00 p.m.
PLACE: Council Chamber

Approx.
Time *

Presenter

- | | | |
|----------------------|---|--------|
| 2:00 PM | CALL TO ORDER AND ROLL CALL | |
| (5 min.) | 1. INTRODUCTIONS | |
| (5 min.) | 2. CITIZEN COMMUNICATIONS | |
| (5 min.) | 3. EXECUTIVE OFFICER COMMUNICATIONS | |
| | 4. CONSENT AGENDA | |
| 2:15 PM
(5 min.) | 4.1 Consideration of Minutes for the November 2, 1995 work session and the November 2, 1995 Metro Council Meeting. | |
| | 5. ORDINANCES - FIRST READINGS | |
| 2:20 PM
(5 Min.) | 5.1 Ordinance No. 95-623 , For the Purpose of Amending Chapter 5.01 of the Metro Code, Changing its Name to "Solid Waste Facility Regulation," Authorizing Demonstration Facilities and Clarifying the Executive Officer's Authority to Impose Reporting and Other Facility Requirements | |
| 2:25 PM
(5 Min.) | 5.2 Ordinance No. 95-621 , For the Purpose of Amending Metro Code Chapter 5.01 to Establish Licensing Standards for Yard Debris Processing and Yard Debris Reload Facilities. | |
| | 6. RESOLUTIONS | |
| 2:30 PM
(5 Min.) | 6.1 Resolution No. 95-2234 , For the Purpose of Requesting Proposals and Executing A Contract for Property /Casualty Agent of Record/Broker | McCaig |
| | 7. 2040 GROWTH CONCEPT MAP | |
| 2:35 PM
(45 Min.) | 7.1 PUBLIC HEARING | |

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

8. INFORMATIONAL ITEM

3:20 PM 8.1 **Report:** Burlington Northern Trail Feasibility Study
(30 Min.)

McLain

3:50 PM 9. **COUNCILOR COMMUNICATIONS**
(10 Min.)

4:00 PM **ADJOURN**

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

AGENDA ITEM 4.1
Meeting Date: November 9, 1995

Consideration of Minutes for the November 2, 1995 work session and the November 2, 1995 Metro Council Meeting.

AGENDA ITEM 5.1
Meeting Date: November 9, 1995

Ordinance No. 95-623, For the Purpose of Amending Chapter 5.01 of the Metro Code, Changing its Name to "Solid Waste Facility Regulation," Authorizing Demonstration Facilities and Clarifying the Executive Officer's Authority to Impose Reporting and Other Facility Requirements

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 95-623 FOR THE PURPOSE OF AMENDING CHAPTER 5.01 OF THE METRO CODE, CHANGING ITS NAME TO "SOLID WASTE FACILITY REGULATION", AUTHORIZING DEMONSTRATION FACILITIES AND CLARIFYING THE EXECUTIVE OFFICER'S AUTHORITY TO IMPOSE REPORTING AND OTHER FACILITY REQUIREMENTS

October 26, 1995

Presented by: Roosevelt Carter

Factual Background and Analysis

There are six primary elements addressed in the proposed Code amendments. They are:

1. The name of the Code chapter is changed from "Disposal Site Franchising" to Solid Waste Facility Regulation."
2. Authority is provided for the Executive Officer to approve "demonstration facilities" for limited time periods.
3. The Code will specifically state the Executive Officer's authority to require detailed electronic data from franchisees.
4. The Code will specifically state the Executive Officer's authority to require material recovery rates for facilities that may vary from facility to facility.
5. The Code will be amended to exempt material recovery facilities (MRFs) from Metro rate setting.
6. The Code language is amended to reflect some housekeeping and maintenance matters.

1. Chapter Name Change

The recommended new name for the Disposal Site Franchising chapter of the Metro Code is "Solid Waste Facility Regulation". The facilities regulated by Metro range from landfills and transfer stations to petroleum soils treatment facilities and material recovery facilities. This new name is intended to reflect the broad spectrum of facilities regulated by Metro rather than the more narrow implication of the term "disposal sites."

2. Demonstration Facilities

This new Code provision will authorize the Executive Officer to administratively approve "demonstration facilities."

The specifically proposed Code requirements for the Executive Officer to approve demonstration facilities are:

- Ninety day application approval period;
- Demonstration facility agreement may be issued for a period not to exceed 18 months;
- Authority to issue is "discretionary" by the Executive Officer; and,
- User fees and excise tax to be paid on residual materials sent for landfill disposal.

Non-Specific Approval Criteria

The proposed Code language does not provide specific facility approval criteria for the Executive Officer because of the need for flexibility in responding to diverse and unique proposals. This proposed new element of the Code and the authority granted to the Executive Officer represents a significant evolution for Metro in responding to solid waste system dynamics.

Examples of the kinds of criteria that may be used by the Executive Officer (*but not embodied in Code language*) in evaluating a demonstration facility application are:

1. Will it divert solid waste from landfill disposal;
2. Will it use a method or means of waste management that has not yet been shown to be commercially viable and is consistent with the Regional Solid Waste Management Plan (RSWMP);
3. Will the demonstration facility be able to provide quantifiable data on the end use or product resulting from its management of the waste;
4. Will the facility have potential for wider application in the event of satisfactory test results;
5. Can the facility satisfy all necessary land use standards, DEQ permit requirements and any other regulatory or permitting requirements prior to commencing operation of the demonstration facility;

6. The proposed facility will not require any Metro guarantee of waste delivery;
7. The proposed facility does not require any Metro financial assistance to establish, finance, build or operate; and,
8. The facility will have an operating life not to exceed 18 months from Executive Officer approval of the operation to end of demonstration.

Yard Debris Processors

A matter currently under consideration by Metro is the potential of regional licensing of yard debris processors. Yard debris processors and potential tie-ins with organics processing may well be absorbed into the Code. This potential element of the Code and the final version of the RSWMP may well drive additional changes in the Code.

The current amendments to the Code will facilitate the ease of incorporating future elements of the RSWMP relative to organics processing. It will also aid movement toward the policy of "facility regulation" vs. "disposal site franchising" .

3 & 4. Electronic Data Reporting and Material Recovery Requirements

The Code provides authority for the Executive Officer to impose a variety of reporting and other requirements of franchises and other regulated facilities. Modern electronic data reporting has become the norm since the establishment of the Code. Also, with the need to recover increasing amounts of materials from processable solid waste to meet Metro and State goals, it is advisable to note these matters as is provided in the amendment to Code Section 5.01.070(c).

5. Removal of Rate Setting Requirement for Material Processors

Section 5.01.170 is recommended to be changed to exempt materials processing facilities from Metro rate setting requirements. Without exception, the Metro Council has considered and approved rate setting variances for material recovery facilities due to the need for such facilities to rapidly respond to market forces. The proposed code amendment addresses this issue by providing elimination of a rate setting requirement for processors who accomplish materials recovery as a primary function of their franchise.

The new language for the rate setting exemption also provides for safeguards against using "materials recovery" as a deception for operating a transfer station. Materials recovery and recycling must be a "primary function" of the facility. Also materials must be recovered and must in fact be sold in a competitive market. This coupled with setting minimum franchise recovery rates for facilities will ensure that materials recovery facilities are doing what they are intended to do.

6. Code Language Housekeeping

Franchise Renewals and Council Discretion

The current language of Section 5.01.080(b) referring to "Franchises shall be renewed unless . . . " gives the impression that a franchise holder is entitled to renewal absent extraordinary circumstances, and does not sufficiently characterize the Council's authority to exercise appropriate discretion in considering franchise renewals within the Code criteria. The proposed amendment to this section does not make a substantive change, but it does more correctly state the Council's discretionary role in franchise renewals.

Ambiguities and Current Law references

Code Section 5.01.070(e) has been amended to provide the current insurance coverage amounts and reference to the Oregon Tort Claims Act.

Also, a modification is proposed for Section 5.01.110(b) relating to variances. The language of section (b) creates a dilemma if a variance request is in the context of a new or renewal franchise request as contrasted with a 'stand alone' variance request. If the variance request is outside of a franchise application or renewal request, the sixty day response time is appropriate. The new language accommodates the longer period of time when a variance request is within the context of the general franchise application or renewal.

Also, Section 5.01.070(d) should be amended to more clearly reflect the Council's discretion to schedule matters for hearing as appropriate to the Council's workload.

Finally, Section 5.01.170(a), with regard to rate setting, should be deleted. This will eliminate some overlap and ambiguity relative to Section 5.01.170(b). No change is made in the Council's authority to set rates as appropriate.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 95-623 Amending Chapter 5.01 of the Metro Code.

PN:cl: s:\share\nort\code95.stf

AN ORDINANCE FOR THE PURPOSE)
OF AMENDING CHAPTER 5.01 OF)
THE METRO CODE, CHANGING ITS)
NAME TO "SOLID WASTE FACILITY)
REGULATION," AUTHORIZING)
DEMONSTRATION FACILITIES AND)
CLARIFYING THE EXECUTIVE)
OFFICER'S AUTHORITY TO IMPOSE)
DATA REPORTING AND OTHER)
FACILITY REQUIREMENTS)

ORDINANCE NO. 95-623

Introduced by: Mike Burton
Executive Officer

WHEREAS, The title of the Metro Code Chapter 5.01, "Disposal Site Franchising" no longer accurately depicts the wide range of recycling and recovery activities carried on in the region; and

WHEREAS, "Solid Waste Facility Regulation" is a more accurate description of the purpose and activities of the "franchise code;" and

WHEREAS, It is desirable policy to allow for demonstration facilities of limited duration to be authorized by the Executive Officer to test innovative ideas and techniques; and

WHEREAS, There is recognition of the need for more electronic reporting of data from regulated facilities; and

WHEREAS, Metro's commitment to recycling and recovery goals requires that materials processors be required to obtain greater levels of recovery during processing; and

WHEREAS, Materials recovery processors must be able to rapidly respond to continuously changing commodities prices and should not be subject to regulated rates in a market driven environment; and

WHEREAS, Renewal of a franchise should be recognized as a discretionary act of the Council subject to consistency with code criteria; and

WHEREAS, Updating Chapter 5.01 requires removal of some language ambiguities and more current references to applicable law; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1 Metro Code Chapter 5.01, "Disposal Site Franchising," is renamed "Solid Waste Facility Regulation."

Section 2 The following Section 5.01.035 is added to Metro Code Chapter 5.01:

Section 5.01.035 Demonstration Facilities

- (a) The executive officer may enter into an agreement with the owner or operator of a proposed demonstration resource recovery facility allowing temporary operation of the facility and establishing the terms for such operation. The terms established in the agreement for operation of a demonstration facility shall not, generally, be less stringent than the terms for operation of a fully franchised or licensed facility, and shall address potential nuisance aspects of facility operation.
- (b) An applicant for a demonstration facility agreement shall apply to the executive officer on forms provided by the executive officer. The applicant shall submit an application fee in the same amount as franchise applicants. The executive officer shall establish criteria for approval of a demonstration facility.
- (c) The executive officer shall approve or deny the application within 90 days of receipt of a complete application. In the event the executive officer does not act to approve or deny the application within 90 days of receipt, the application shall be considered denied. Issuance of a demonstration facility agreement is discretionary on the part of the executive officer and not subject to appeal as a contested case under the Metro Code or any other appeal. An applicant's only remedy for refusal of the executive officer to enter into a demonstration facility agreement is to apply for a franchise or license (as appropriate) under the general requirements of this chapter and to exercise all procedural rights that the formal franchise or license application process provides.
- (d) At the end of 18 months from the date of approval of the demonstration facility agreement, or such shorter time period as may be determined by the executive officer, the owner or operator shall either cease operations or shall have submitted an application for a franchise or license (as appropriate) under the terms of this chapter. In the event of timely filing of a franchise or license application, the

executive officer may allow the facility to continue to operate while the franchise or license application is pending, provided that the applicant is operating in conformity with its agreement and any other applicable Metro regulations.

- (e) Demonstration facilities shall be exempt from payment of Metro user fees and excise tax on incoming tonnage but shall pay user fees and excise tax on residual that is disposed of to the same extent as franchised facilities that accomplish materials recovery and recycling as a primary function under Section 5.01.150(a).

Section 3 Metro Code Section 5.01.070 is amended to read:

Section 5.01.070 Issuance of Franchise:

(a) Applications filed in accordance with Section 5.01.060 shall be reviewed by the Executive Officer. The Executive Officer or his/her designated representative may make such investigation as the Executive Officer deems appropriate, and shall have the right of entry onto the applicant's proposed franchise site with or without notice before or after the franchise is granted to assure compliance with this chapter, the Code, DEQ permit and franchise agreement.

(b) Upon the basis of the application, evidence submitted and results of any investigation, the Executive Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed franchise complies with the District's Solid Waste Management Plan, whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

(c) The Executive Officer shall recommend to the Council whether the application should be granted, denied, or modified. If the Executive Officer recommends that the application be granted, the Executive Officer shall recommend to the Council specific conditions of the Franchise Agreement including, but not limited to, detailed electronic data reporting requirements and percentage of materials that must be recovered, and whether or not the franchise should be exclusive. Following the recommendation of the Executive Officer, the Council shall issue an order granting, denying or modifying the application. The Council may attach conditions to the order, limit the number of franchises granted, and grant exclusive franchises. If the Council issues an order to deny the franchise, such order shall be effective immediately. An exclusive franchise may be granted if the Council determines that an exclusive franchise is necessary to further the objectives of the Solid Waste Management Plan. In determining whether an exclusive franchise should be granted, the Council shall consider the following:

- (1) The proximity of existing and planned solid waste disposal facilities to the proposed site.

- (2) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.
- (3) The capacity of existing and planned solid waste disposal facilities.
- (4) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
- (5) The hauling time to the proposed facility from waste generation zones established by the District.

(d) ~~If the Council does not act to grant or deny a franchise application within one hundred twenty (120) days after the filing of a complete application, a Temporary Franchise shall be deemed granted for the site requested in the application unless the Executive Officer notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The one hundred twenty (120) days will not begin until~~ The Executive Officer shall forward a proposed franchise agreement or a recommendation that a franchise not be issued to the Council for review within 120 days of receipt of a complete application, unless the executive officer has notified the applicant that a specified amount of additional time is needed for the review ~~has accepted the application as complete and ready for processing.~~

(e) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:

- (1) Enter into a written franchise agreement with the District,
- (2) Obtain a corporate surety bond guaranteeing full and faithful performance during the term of the franchise of the duties and obligations of the franchisee under the franchise agreement, and
- (3) Provide proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than ~~\$300,000~~ \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by ~~State law for public contracts~~ the Oregon Tort Claims Act.
- (4) Name the District as an additional insured in the insurance policy required by Section 5.01.060(b)(3).

(f) The granting of a franchise shall not vest any right or privilege in the franchisee to receive specific types or quantities of solid waste during the term of the franchise.

- (1) To ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council may, upon thirty (30) days prior written notice, without hearing at any time during the term of the franchise, direct solid waste away from the franchisee. Whenever possible the District shall divert an equitable amount of waste from each franchised facility to the resource recovery facility. In such case, the Council shall make every reasonable effort to provide notice of such direction to affected haulers of solid waste.
- (2) In emergency situations; to ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council or the Executive Officer may, without hearing, issue a sixty (60) day temporary order directing solid wastes away from the franchisee. In such situations, the Council or Executive Officer shall give the franchisee as much advance notice as is reasonably possible under the circumstances, and shall make a reasonable effort to provide notice of such direction to affected haulers of solid waste. A temporary order issued by the Executive Officer under this subsection shall be subject to codification or revocation by the Council.

(g) In addition to the authority contained in Section 5.01.070(f)(1), for the purposes of this chapter, the Council may, upon sixty (60) days prior written notice, direct solid waste away from the franchisee, direct additional solid waste to the franchisee, or limit the type of solid wastes which the franchisee may receive. Sixty (60) days prior notice shall not be required if the Council finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay. The direction of the solid waste away from a franchisee or limitation of the types of solid wastes a franchisee may receive under this subsection shall not be considered a modification of the franchise, but a franchisee shall have the right to request a contested case hearing pursuant to Code Chapter 2.05. However, a request for a contested case hearing shall not stay action under this subsection.

Section 4 Metro Code Section 5.01.080 is amended to read:

5.01.080 Term of Franchise:

(a) The term of a new or renewed franchise shall be the site longevity or five (5) years, whichever is less. In recommending site longevity, the Executive Officer shall consider the population to be served, the location of existing franchises, probable use and any other information relevant to the franchise term. The Executive Officer shall recommend the term of the franchise to the Council. The Council shall establish the term of the franchise.

(b) ~~Franchises shall may be renewed unless if the Council determines that the proposed renewal does not meets the criteria of Section 5.01.070(b) and all other requirements of this Chapter,~~ provided that the franchisee files an application for renewal not less than one hundred twenty (120) days prior to the expiration of the franchise term, together with a statement

of material changes in its initial application for the franchise and any other information required by the Executive Officer. The Council, upon recommendation from the Executive Officer, may attach conditions or limitations to the renewed franchise.

Section 5 Metro Code Section 5.01.110 is amended to read:

5.01.110 Variances:

(a) The Council, upon recommendation of the Executive Officer, may grant specific variances from particular requirements of this chapter to such specific persons or class of persons upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:

- (1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or
- (2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or
- (3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.

(b) A variance must be requested in writing and state in a concise manner facts to show cause why such variance should be granted. The Executive Officer may make such investigation as he/she deems necessary and shall make a recommendation to the Council together with the franchise recommendations or within sixty (60) days after receipt of the variance request if such request is not part of a franchise application.

(c) If the Council denies a variance request, the Executive Officer shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.

(d) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six (6) months from the date of denial.

Section 6 Metro Code Section 5.01.170 is amended to read:

5.01.170 Determination of Rates:

(a) ~~No franchisee or operator of a site operating under a District Certificate or Agreement upon the effective date of this chapter shall charge a rate which is not established by the Council or, pending establishment of a rate by the Council, an interim rate established by the Executive Officer.~~

(ba) At the time the Council grants a franchise, or after the Council grants a franchise it shall establish the rate(s) to be charged by the franchisee. The Council may establish uniform rates for all franchisees or varying rates based on the factors specified in this section.

(eb) Effective January 1, 1982, before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendation to the Executive Officer. The Executive Officer shall forward the Committee's recommendation along with his/her recommendation to the Council, after which the Council shall hold a public hearing. The Council shall then set forth its findings and decision.

(ec) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:

- (1) Operating and nonoperating revenues.
- (2) Direct and indirect operating and nonoperating expenses including franchise fees.
- (3) Non-franchise profits.
- (4) Reasonable return on investment exclusive of any capital investment in the franchise or any sum paid for the value of the franchise or any other intangible value.
- (5) Any other factors deemed relevant by the Council.

(ed) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 5.01.180(c):

- (1) At any time by the Council after giving ten (10) days written notice to the franchisee of the intent to review; or
- (2) Upon written request by the franchisee on forms provided by the Executive Officer, which request may be made not more than once every six months; or
- (3) In the event the District exercises its right to control the flow of solid waste as provided in Section 5.01.070(f) or 5.01.070(g).

(e) Processing facilities that accomplish materials recovery and recycling as a primary function shall be exempt from rate setting under this chapter if:

- (1) Materials that are recovered from source-separated recyclables or mixed waste are intended to be, and are in fact, sold or traded in competitive markets; and.

(2) User fees and excise taxes are paid for all residual material disposed of at a landfill or other disposal facility.

Adopted by the Metro Council this _____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary
s:\share\north\franchise\chp5_01 or2

Daniel B. Cooper, General Counsel

AGENDA ITEM 5.2
Meeting Date: November 9, 1995

**Ordinance No. 95-621, For the Purpose of Amending Metro Code Chapter 5.01
to Establish Licensing Standards for Yard Debris Processing and Yard Debris
Reload Facilities.**

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 95-621 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO ESTABLISH LICENSING STANDARDS FOR YARD DEBRIS PROCESSING AND YARD DEBRIS RELOAD FACILITIES.

October 9, 1995

Presented by Bill Metzler

Proposed Action

Adoption of Ordinance No. 95-621 to amend Metro Code Chapter 5.01 to establish licensing standards for yard debris processing and yard debris reload facilities.

Purpose

Ordinance No. 95-621 is the result of a collaborative effort between Metro, local governments, yard debris processors and the DEQ. The licensing standards program is a framework for problem identification and resolution. Metro will:

1. Establish licensing standards that can be implemented on a regional level to help ensure the stability of the regional yard debris recycling system.
2. Assist local governments to manage the impacts yard debris processing facilities through a regional licensing program.
3. Minimize the potential for nuisance complaints. Increase the confidence that citizens and local governments have in yard debris processing facilities. Continued growth and greater development densities on surrounding land will lead to more public scrutiny and objections to these facilities.

Recommended Program Elements

Metro

- Implement a licensing program for new and existing yard debris processing and yard debris reload facilities.
- Work with processors, local governments and the DEQ to ensure a coordinated program where information and technical assistance is shared in a cooperative problem solving manner. Technical assistance may include teams consisting of local government and Metro staff (e.g.,

land use and solid waste planners), DEQ, and others with special expertise to address facility concerns.

Local Governments

- Amend zoning ordinances and development codes, as needed, to include clear and objective facility siting standards that do not effectively prohibit them.
- Amend zoning ordinances and development codes so that they include a condition of approval for obtaining a Metro license.
- Amend collection franchises requiring yard debris collected through curbside programs be delivered to licensed facilities.

Processors

- Apply for a Metro license, make use of available technical assistance (if needed), and comply with licensing standards.
- Participate in program evaluation to ensure that the licensing program is effective.

Factual Background and Analysis

On September 20, 1995, the Metro Solid Waste Advisory Committee (SWAC) unanimously approved the Licensing Standards for Yard Debris Processing and Yard Debris Reload Facilities (Attachment A), and voted to forward them to Council for consideration.

Yard debris recycling rates in the Metro region increased from 23% in 1987 to 70% in 1994 (115,000 tons). The tremendous success of yard debris recycling programs has created many opportunities as well as problems for the region. Nuisance impacts (e.g., odor, dust, noise) associated with these facilities have been exacerbated, causing heightened public awareness and concern. This has resulted in: 1) facilities being labeled as NIMBY's (not in my backyard) and LULU's (locally unwanted land uses), and 2) local government land use decisions that essentially prohibit the siting of these facilities, which are greatly needed and provide a valuable product and service to both the region and the individual communities they serve.

In 1994, at the request of Clackamas County, Metro convened a regional discussion group to discuss yard debris processing facilities, their associated impacts, and how Metro can help the region to solve these problems - before they get any worse. The regional discussion group consists of yard debris processors, local governments, haulers and the DEQ. The Licensing Standards for Yard Debris Processing and Reload Facilities and the licensing program proposal were developed with the assistance and guidance of this regional discussion group. Great emphasis was placed on solutions that would be effective as well as acceptable to the yard debris processing industry (see Attachments B and C for additional background and program

information). All of the provisions contained in the Licensing Standards for Yard Debris Processing and Reload Facilities have been codified and are embodied in the proposed amendments to Metro Code Chapter 5.01.

Proposed Amendments to Metro Code Chapter 5.01

ORS Chapter 268 grants Metro the authority to license resource recovery sites or facilities. The proposed Code amendments establish licensing program standards for facilities that process and reload yard debris in the District. Unlike franchises, licenses would be issued by the Executive Officer. For that reason, the regulations applying to yard debris facilities has been set out in great detail in the code. The code amendments related to the licensing of yard debris facilities establish clear and concise standards for a smoother administrative process. Facility operators will know, up front, what the licensing requirements are. A standard licensing application form (Attachment D), will be used in the process to help assess compliance with the licensing requirements.

Provisions are included for a local government that owns or operates a yard debris facility to administer and enforce facility standards through an intergovernmental agreement with Metro (Section 5.01.240 (b)). Public facilities should be accountable to residents in their communities through local elected officials.

There are two general categories of proposed Code amendments:

1. General licensing provisions. Adds language to the Code to define and include facility licensing. Includes amendments that set forth standard regulatory provisions that are (in most cases) not unique to yard debris facilities. These amendments are inserted within the existing franchise code language. Examples of this category are found in the amendments proposed for the following:

5.01.010 - Definitions through

5.01.180 - Enforcement of Franchise or License Provisions; Appeal

2. Licensing provisions specific to yard debris facilities. These include amendments that set forth provisions specifically applicable to the licensing of yard debris processing and reload facilities. These amendments are detailed and unique to the licensing of yard debris facilities. Examples of this category are found in the amendments proposed for the following:

Section 9 - Additional Provisions Relating to the Licensing of Yard Debris Processing and Yard Debris Reload Facilities:

5.01.230 - Scope of Yard Debris Facility Regulations through

5.01.380 General Conditions Relating to Yard Debris Facility Licensees

Budget Impacts

There will be a slight increase in revenues from the annual licensing fee paid by the licensee of \$300 per year. There are currently 16 yard debris processors in the Metro region. The licensing program will bring in approximately \$4,800 in revenues annually.

During the initial implementation phase, Metro will retain a consultant to assist staff with facility operational issues that may require highly specialized expertise. This initial consultant contract is estimated at no more than \$7,000. After the initial facility licensing phase, the consultant will be retained for special circumstances (if required), this contract is estimated at no more than \$2,000 per year.

The annual licensing fee paid by the processors (which is similar to a franchise fee) will help defray some of the costs of the licensing program. Annual licensing fees are set by the Metro Council. However, the regional discussion group recommends that the fees be no more than \$300 per year. Keeping fees low is part of Metro's effort to help maintain the competitive viability of in-district facilities.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Ordinance No. 95-621.

S:\SHARE\METZ\YRDEBRIS\LICENSE\REVISION\COUNCIL\STAF0928.DOC

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 95-621
CODE CHAPTER 5.01 TO ESTABLISH)	
LICENSING STANDARDS FOR YARD)	Introduced by Mike Burton
DEBRIS PROCESSING AND RELOAD)	Executive Officer
FACILITIES)	

WHEREAS, The Metro region has limited land and resources for the disposal of solid waste.

WHEREAS, It is the responsibility of Metro to provide and protect such resources and to do so requires that Metro franchise, license, or permit disposal sites, transfer stations, processing facilities and resource recovery facilities.

WHEREAS, To protect the health, safety, and welfare of Metro residents, the Council declares it to be the public policy of Metro and purpose of this Ordinance to establish a licensing program for facilities that process and reload yard debris in the Metro region in order to:

(a) Establish standards that are implementable on a regional level to help ensure the stability of the regional yard debris recycling system;

(b) Assist local governments in managing the impacts of yard debris processing facilities through a licensing program that is responsive to the risks and benefits associated with these facilities.

(c) Increase the confidence that citizens and local governments have in yard debris processing facilities by minimizing the potential for nuisance complaints and alleviating negative public perception of these facilities.

WHEREAS, this Ordinance will establish standards for yard debris processing and reload facilities operating in the District through a regional licensing program, including problem resolution through intergovernmental cooperation, technical assistance, and enforcement measures; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Chapter 5.01, "Disposal Site Franchising," is renamed "Solid Waste Facility Regulation."

Section 2. Metro Code Section 5.01.010 is amended to read:

5.01.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the ~~{Code of the Metropolitan Service District}~~ Metro Code.

(c) "Compost" means the stabilized and sanitized product of composting, which has undergone an initial rapid stage of decomposition and is in the process of humification (curing), and which should be suitable for plant growth.

(d) "Composting" means the biological treatment process by which microorganisms decompose the organic fraction of the waste, producing compost.

~~{(e)}~~ (e) "Council" ~~{has the same meaning as in Code Section 1.01.040}~~ means the Metro Council.

~~{{(d)}}(f)~~ "DEQ" means the Department of Environmental Quality of the State of Oregon.

~~{{(e)}}(g)~~ "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

~~{{(f)}}(h)~~ "District" has the same meaning as in Code Section 1.01.040.

~~{{(g)}}(i)~~ "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

~~{{(h)}}(j)~~ "Executive Officer" means the ~~Metro~~ Executive Officer ~~of the Metropolitan Service District~~ or the Executive Officer's designee.

~~{{(i)}}(k)~~ "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

~~{{(j)}}(l)~~ "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

~~{{(k)}}(m)~~ "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

~~(n)~~ "Hazardous waste" has the meaning provided in ORS 466.005.

~~(o)~~ "Mixed solid waste" means solid waste containing a variety of waste material, some of which may or may or may not be considered recyclable.

~~{{(l)}}(p)~~ "Person" has the same meaning as in Code Section 1.01.040.

~~{{(m)}}(q)~~ "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil

that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

~~{{(n)}}(r)~~ "Process," "Processing" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction. ~~As to yard debris, such terms mean the controlled method or system of altering the form, condition or content of yard debris utilizing both mechanical and biological methods, including composting (aerobic and anaerobic methods), fermentation, and vermicomposting (of only yard debris).~~

~~{{(e)}}(s)~~ "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~{{(p)}}(t)~~ "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~{{(q)}}(u)~~ "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

~~(+)~~(v) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

~~(+)~~(w) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

~~(+)~~(x) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum-contaminated soils and other wastes; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; or
- (4) Explosives.

~~(+)~~(y) "Solid Waste Management Plan" means the Regional Solid Waste Management Plan.

~~{(v)}~~(z) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

~~{(w)}~~(aa) "User Fee" means a user fee established by the District under ORS 268.515.

~~{(x)}~~(bb) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

(cc) "Yard Debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard Debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other similar vegetative waste, but does not include demolition debris, painted or treated wood.

(dd) "Yard Debris Facilities" means Yard Debris Processing Facilities and Yard Debris Reload Facilities.

(ee) "Yard Debris Reload Facility" means an operation or facility that receives yard debris for temporary storage, awaiting transport to a processing facility.

Section 2. Metro Code Section 5.01.020 is amended to read:

5.01.020 Findings and Purposes

(a) The council finds that the district has limited land and resources for the disposal of solid waste. It is the responsibility of ~~{the Council}~~Metro to provide and protect such resources and to do so requires that ~~{the Council}~~Metro franchise or license disposal sites, transfer stations, processing facilities and resource recovery facilities.

(b) To protect the health, safety and welfare of the district's residents, the council declares it to be the public policy of the district and the purpose of this chapter to establish ~~an exclusive franchise~~ a system for ~~regulating facilities for the disposal and processing of solid waste in the District~~ ~~under the authority granted to the Council by ORS Chapter 268~~ in order to:

- (1) Provide a coordinated regional disposal and resource recovery program and solid waste management plan in cooperation with federal, state and local agencies to benefit all citizens of the district.
- (2) Provide, as necessary, standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the district.
- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to district's resource recovery facilities.
- (6) Maximize the efficiency of the ~~District's~~ Regional Solid Waste Management Plan.
- (7) Provide for cooperation between cities and counties in the district with respect to regional franchising and licensing of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery.

Section 3. Metro Code Section 5.01.030 is amended to read:

5.01.030 Prohibited Activities

Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee or licensee as required by this Chapter, or is otherwise exempted by Section 5.01.040 ~~{of this chapter}~~.

(b) For a franchisee or licensee to receive, process or dispose of any solid waste not specified in the franchise or license agreement.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee or licensee or exempted by Section 5.01.040 ~~{of this chapter}~~ except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the council or executive officer under this chapter.

Section 4. Metro Code section 5.01.040 is amended to read:

5.01.040 Exemptions

(a) The following are exempt from the provisions of this chapter ~~governing franchisees~~:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the district.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.
- (5) Persons who process, transfer or dispose of solid wastes which:
 - (A) Are not putrescible, which, for the purposes of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
 - (B) Have been source separated;
 - (C) Are not and will not be mixed by type with other solid wastes; and

- (D) Are reused or recycled.
- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150, (User Fees); Section 5.01.180, (Determination of Rates); subsection 5.01.070(f) and Section 5.01.130, (Administrative Procedures of Franchisees); and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1).

(c) Notwithstanding anything to the contrary in this section, yard debris processing and yard debris reload facilities are subject to the licensing requirements of this chapter.

Section 5. Metro Code Section 5.01.060 is amended to read:

5.01.060 Applications

(a) Applications for a franchise or license or for transfer of any interest in, modification, expansion, or renewal of an existing franchise or license shall be filed on forms provided by the Executive Officer. Franchises are subject to approval by the council. Licenses are subject to approval by the executive officer.

(b) In addition to the information required on the forms, franchise applicants must submit the following to the executive officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise;
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee;
- (3) Proof that the applicant can obtain ~~[public liability insurance, including automotive coverage, in the amounts of not less than \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law]~~ the liability insurance required by this chapter;
- (4) If the applicant is not an individual, a list of stockholders holding more than 5 percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of 5 percent of ownership thereof must be reported within 10 days of such changes of ownership to the executive officer;

- (5) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused;
- (7) Proof that the applicant has received proper land use approval; and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

~~[(e) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.]~~

(c) Yard Debris Facility License Applications:

- (1) Operators of proposed yard debris processing and yard debris reload facilities shall submit applications for licensing and shall comply with the licensing standards and requirements following the effective date of the licensing standards in this chapter.**

(2) Operators of existing yard debris processing and yard debris reload facilities shall submit an application for licensing and demonstrate compliance within eighteen months after the effective date of the licensing standards in this chapter.

(3) Applications for yard debris licenses shall be as specified by the executive officer.

(d) An incomplete or insufficient application shall not be accepted for filing.

Section 6. Metro Code Section 5.01.100 is amended to read:

5.01.100 Appeals

Any applicant, ~~for~~ franchisee or licensee is entitled to a contested case hearing pursuant to Code chapter 2.05 upon the ~~Council's~~ suspension, modification, ~~or~~ revocation or refusal by the council or executive officer, as appropriate, to issue, renew or transfer a franchise or license or to grant a variance, as follows:

(a) Except as provided in subsection (c) of this section, ~~the Council's~~ refusal to renew a franchise or license by the council or executive officer, as appropriate, shall not become effective until the franchisee or licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(b) The ~~Council's~~ refusal by the council or executive officer, as appropriate, to grant a variance, or to issue or transfer a franchise or license shall be effective immediately. The franchisee, licensee or applicant may request a hearing on such refusal within ~~sixty (60)~~ 30 days of notice of such refusal.

(c) Upon a finding of serious danger to the public health or safety, the executive officer may suspend a franchise or license or the council or executive officer, as appropriate, may refuse to renew a franchise or license and such action shall be effective immediately. If a franchise or license renewal is refused effective immediately, the franchisee or licensee shall have ~~ninety (90)~~ 30 days from the date of such action to request a contested case hearing.

Section 7. Metro Code Section 5.01.150 is amended to read:

5.01.150 User Fees

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the council will set user fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the district or which are liable for payment of user fees pursuant to a special agreement with the district. User fees shall not apply to wastes received at franchised or licensed facilities that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at franchised facilities that treat petroleum contaminated soil to applicable DEQ standards, or to licensed yard debris processing facilities or yard debris reload facilities. Notwithstanding any other provision of this Code, user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User fees and finance charges on user fees shall be paid as specified in Metro Code section 5.02.055.

(e) There is no liability for user fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the district stating the name and amount of each uncollectible charge account and documenting good faith efforts that have been made to collect the accounts. User fees may not be deemed uncollectible unless the underlying account is also uncollectible. If the fees have previously been paid, a deduction may be taken from the next payment due to the district for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All user fees shall be paid in the form of a remittance payable to the district. All user fees received by the district shall be deposited in the solid waste operating fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan.

Section 8. Metro Code Section 5.01.180 is amended to read:

5.01.180 Enforcement of Franchise or License Provisions: Appeal

(a) The executive officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise or license as provided in this section. If, in the opinion of the executive officer, there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the executive officer shall notify the franchisee or licensee in writing of the alleged violation, and the steps necessary to be taken to

cure the violation. Upon a finding that violation exists and that the franchisee or licensee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the executive officer may ~~{make a recommendation to the Council}~~ provide notice to the franchisee or licensee that the franchise ~~{be}~~ or license is suspended, modified or revoked.

(b) ~~{The Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked.}~~ The notice authorized by this subsection shall be based upon the ~~{Council's}~~ executive officer's finding that the franchisee or licensee has:

- (1) Violated the franchise or license agreement, this chapter, the Code, ~~{ORS Chapter 459}~~ state law, local ordinance or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise or license application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at ~~{the}~~ a franchised site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply

with the Metro ~~{Disposal Franchise ordinance}~~ solid waste facility regulation code.

(c) Except as provided in subsection (d) of this section, the ~~{Council's}~~ executive officer's revocation, modification or suspension of a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee under this chapter, the executive officer may in accordance with Code Chapter 2.05 immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition, in the case of a franchise, the executive officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of ~~{the}~~ an affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise is immediately suspended, the franchisee shall have 90 days from the date of such action to request a contested case hearing in accordance with Code chapter 2.05.

(e) Upon revocation or refusal to renew the franchise or license:

- (1) All rights of the franchisee or licensee in the franchise or license shall immediately be divested. If ~~{the}~~ a franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior

franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.

- (2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter.

Section 9. The following sections are added to Metro Code Chapter 5.01, following the subheading "Additional Provisions Relating to the Licensing of Yard Debris Processing Facilities and Yard Debris Reload Facilities":

5.01.230 Scope of Yard Debris Facility Regulations

- (a) Sections 5.01.230 through 5.01.380 relate to Metro licensing of yard debris processing and yard debris reload facilities. Nothing herein is intended to limit the power of a

federal, state, or local agency to enforce any provision of law relating to yard debris facilities that it is authorized or required to enforce or administer.

(b) The licensing requirements of this Chapter apply to all yard debris processing and yard debris reload facilities operating in the District, except those expressly exempted pursuant to Section 5.01.240.

(c) Yard debris reload facilities are exempt from sections 5.01.260(d); 5.01.260(g)(3); 5.01.270(e), (f) and (h); and 5.01.280(g), (i) and (j).

(d) Biological decomposition of organic material can be either a naturally occurring or artificially controlled process. Nothing in this Chapter is intended to establish standards or other regulatory requirements for inadvertent composting resulting from the storage of organic materials. An activity that produces material that will be sold or given away based on biological decomposition that has occurred to the material shall not be considered inadvertent composting.

(e) Nothing in these standards shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities.

5.01.240 Exemptions from Yard Debris Licensing Requirements

(a) The following operations do not constitute yard debris processing facilities and are not required to meet these licensing requirements:

(1) Residences, parks, community gardens and homeowner associations.

- (2) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
- (3) Operations or facilities that chip or grind wood wastes (e.g. untreated lumber, wood pallets), unless such chipped materials are composted at the site following chipping or grinding.
- (4) Solid waste transfer stations and Metro franchised material recovery facilities, except to the extent that these licensing requirements are referenced in the franchise.

(b) A local government that owns or operates a yard debris facility may enter into an intergovernmental agreement with Metro under which the local government will administer and enforce yard debris standards at the facility in lieu of compliance with this chapter.

(c) Nothing in this Section precludes Metro from inspecting an excluded operation to verify that the operation is being conducted in a manner that qualifies as an excluded activity or from taking any appropriate enforcement action.

5.01.250 Authorized and Prohibited Solid Wastes at Licensed Yard Debris Facilities

(a) A licensed yard debris facility is authorized to accept loads of yard debris for processing at the facility. The facility may also accept other source separated material if doing so is consistent with other federal, state and local regulations.

(b) A licensed yard debris facility shall not accept hazardous waste. Any hazardous waste inadvertently received shall be handled, stored, and removed pursuant to state and federal regulations.

(c) A licensed yard debris facility is prohibited from accepting mixed solid waste, but may accept loads of mixed yard debris, landscape waste, and wood wastes (e.g. untreated lumber, wood pallets).

5.01.260 General Yard Debris Facility Design Requirements & Design Plans

(a) Yard debris processing facilities shall be designed and constructed to comply with the facility design plan and the operational requirements set forth in Section 5.01.270 - General Operating Requirements, and Section 5.01.280 - Processing Operations Plan.

(b) The facility design plan shall include the following drawings and diagrams:

- (1) A site plan showing dimensions and details of the proposed receiving, processing, production, curing and storage areas.
- (2) A landscape plan showing the location, size and type of plantings, fences, berms, and existing trees to remain and/or to be removed.
- (3) Drawings of the site that indicate location of initial and permanent roads; buildings and equipment to be installed; sewer and water lines; and storm water system. The drawings shall show final grade contours (required for only new or relocating facilities).

(c) The facility must be designed and constructed in a manner suitable for maintenance and processing operations, including visual inspection of piling areas and fire fighting operations.

(d) The facility design plan shall address management of storm water. The run-off from the facility resulting from precipitation shall be controlled. Methods must be consistent with storm water system standards of the controlling agency (local jurisdiction). For new or relocating facilities only, the facility must be designed and constructed so that precipitation run-on is diverted around the processing area.

(e) The facility design plan shall address:

- (1) Effective barriers to unauthorized entry and dumping (fencing, gates, locks);
- (2) All-weather access roads to the site;
- (3) Appropriate signs (at facility entrance, directing traffic flow, public information); and
- (4) Access to scales, if applicable.

(f) The facility shall have sufficient processing capacity to handle projected incoming volumes of yard debris.

(g) Facility design shall address specific capacity and storage issues, including:

- (1) Capacity for incoming wastes waiting to be processed;
- (2) Capacity for proper handling, storage, and removal of hazardous or other non-permitted wastes delivered to or generated by the facility; and
- (3) Capacity for finished product storage.

5.01.270 General Operating Requirements For Yard Debris Facilities

(a) All activities shall be conducted in a manner that minimizes or prevents vectors, odor impacts, dust, and noise impacts.

- (b) Facility grounds shall be cleaned of litter at least weekly.
- (c) Random load checks of feedstocks for contaminants shall be conducted by the operator.
- (d) Storage and handling capacities shall not be exceeded.
- (e) Compost piles and windrows shall be spaced to facilitate mixing and aeration.
- (f) Windrow, compost pile, and/or active processing area dimensions shall not exceed the design specifications of the facility's equipment.
- (g) Incidental non-compostables shall be properly stored and removed from the facility on a regular basis to avoid nuisance conditions, or at a frequency approved in the license agreement.
- (h) Incidental wastes and feedstocks shall be stored separately from active, stabilizing, stabilized, curing, and cured feedstock areas.
- (i) Surrounding fencing, gates, and/or other natural or artificial barriers shall be maintained to discourage unauthorized human or animal access to the facility.
- (j) The operator shall provide fire prevention, protection, and control measures, including but not limited to, temperature monitoring of windrows, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the composting pad/processing area.
- (k) The operator shall begin processing incoming feedstocks in a time frame that does not create potential for a nuisance, odor, fire, or vectors, or as specified in the license agreement.

(l) All drainage, leachate control, and diversion systems shall be managed and maintained in good working order.

(m) All facility road surfaces and traffic control signs shall be maintained.

(n) Vehicles containing landscape waste or yard debris feedstock/waste shall not be parked on public streets or roads except under emergency conditions. Adequate off-street parking facilities for transport vehicles shall be provided.

(o) Signs at all public entrances to the facility shall be posted, legible, and include the following information:

- (1) The name of the facility;
- (2) The name of the operator;
- (3) Facility hours of operation;
- (4) List or statement of materials that will and will not be accepted (if open to the public);
- (5) Schedule of charges, if any;
- (6) The phone number where the operator or designee can be reached in case of an emergency; and
- (7) Any other information as required by the license agreement and/or local government sign code.

5.01.280 Yard Debris Processing Operations Plan

All activities at a licensed facility must be conducted in accordance with a processing operations plan containing the following information, as well as any additional information required by Metro:

- (a) Designation of personnel, by title, responsible for operation, control and maintenance of the facility;
- (b) A description of the anticipated quantity and variation throughout the year of waste to be received;
- (c) Methods for measuring and keeping records of incoming waste;
- (d) Methods for encouraging waste delivery in covered loads;
- (e) Methods to control the types of waste received, and methods for removing, recovering and disposing of non-compostables;
- (f) Designation of disposal sites for non-compostable wastes;
- (g) Management procedures that will be used in processing, which must include:
 - (1) A general description of any treatment the wastes will receive prior to processing (e.g., chipping, shredding) and the maximum length of time required to process each day's receipt of waste into windrows or other piles;
 - (2) The specifications to which the windrows or other piles will be constructed (width, height, and length) and calculation of the capacity of the facility; and
 - (3) An estimate of the length of time necessary to complete the process.
- (h) Methods to control noise, vectors, dust and litter.
- (i) Methods for monitoring and adjusting temperature, oxygen level and moisture level of the material during processing.
- (j) General plans for marketing the finished product.

5.01.290 Yard Debris Facility Odor Minimization Plans

(a) The operator shall take specific measures to control odors so as not to cause or contribute to a violation of the license agreement. Specific measures an operator shall take to control odor include but are not limited to adherence to the contents of the odor minimization plan required below.

(b) The operator shall have an Odor Minimization Plan. The plan must include methods to minimize, manage and monitor all odors, including odors produced by grass clippings. The plan must include:

- (1) A management plan for malodorous loads;
- (2) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility;
- (3) Additional odor-minimizing measures, which may include the following:
 - (A) Avoidance of anaerobic conditions in the composting material;
 - (B) Use of mixing for favorable composting conditions;
 - (C) Formation of windrow or other piles into a size and shape favorable to minimizing odors; and
 - (D) Use of end-product compost as cover to act as a filter during early stages of composting.
- (4) Specification of a readily-available supply of bulking agents, additives or odor control agents;

- (5) Procedures for avoiding delay in processing and managing landscape waste and yard debris during all weather conditions;
- (6) Methods for taking into consideration the following factors prior to turning or moving composted material:
 - (A) Time of day;
 - (B) Wind direction;
 - (C) Percent moisture;
 - (D) Estimated odor potential; and
 - (E) Degree of maturity.

(c) Grass clippings must be processed in a timely manner to avoid nuisance conditions. Incoming leaves, brush or woody landscape waste may be stored in designated areas for use as a carbon source and bulking agent, rather than being processed into windrows or other piles.

(d) If odors at the facility become a significant source of nuisance complaints, processor shall work with a Metro appointed odor complaint panel. The odor complaint panel will investigate odor complaints to determine their validity and sources and will help the processor with solutions to the nuisance complaints. The odor complaint panel may consist of representatives from Metro, DEQ, the local government, the processing industry and citizen representatives.

5.01.300 Yard Debris Facility Records

(a) Licensee shall effectively monitor facility operation and maintain accurate records of the following information:

- (1) Estimated amount of feedstock received and quantity of product produced at the facility. Records shall be reported to Metro no later than thirty (30) days following the end of each quarter. The report shall be signed and certified as accurate by an authorized representative of licensee.
- (2) Records of any special occurrences encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.
- (3) Records of any public nuisance complaints (e.g. noise, dust, vibrations, litter) received by the operator, including:
 - (A) The nature of the complaint;
 - (B) The date the complaint was received;
 - (C) The name, address, and telephone number of the person or persons making the complaint; and
 - (D) Any actions taken by the operator in response to the complaint.
- (4) For every odor complaint received, the licensee shall record the date, time, and nature of any action taken in response to an odor complaint, and record such information within one business day after receiving the complaint. Records of such information shall be made available to Metro and local governments upon request.

(b) The licensee shall submit to Metro duplicate copies of regulatory information submitted to the DEQ and local jurisdictions pertaining to the facility, within 30 days at the same time of submittal to DEQ and/or a local jurisdiction.

5.01.310 Yard Debris Facility Closure

(a) Unless otherwise authorized in a facility license, all yard debris, composting material, end-product, and other solid wastes must be removed from the facility within 180 days following the beginning of closure.

(b) The facility operator shall close the facility in a manner which eliminates the release of landscape waste, landscape waste leachate, and composting constituents to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment.

(c) Within 30 days of completion of closure, the operator shall file a report with Metro verifying that closure was completed in accordance with this Section.

5.01.320 Yard Debris Facility Annual License Fees

Licensee shall pay an annual license fee. In order to keep costs at a minimum, and so as to not encourage deliveries outside the district, the fee shall be based on a minimum cost for service basis and shall not exceed \$300 per year. The fee shall be delivered to Metro within thirty (30) days of the effective date of this license and each year thereafter.

5.01.330 Insurance for Yard Debris Facilities

(a) Licensee shall purchase and maintain the following types of insurance, covering licensee, its employees, and agents:

- (1) Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury 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, \$100,000 per person, and \$50,000 property damage. 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 INSURED. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

(d) A license shall specify that licensee, its contractors, if any, and all employers operating under the license are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

5.01.340 Indemnification

Licensee 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 licensee's performance under the license, including patent infringement and any claims or disputes involving subcontractors. Licensee shall not assume liability for any negligent or intentionally wrongful act of Metro, its officers, agents or employees.

5.01.350 Compliance With Law

A license shall require the licensee to fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to the license.

All conditions imposed on the operation of the facility by federal, state or local governments or agencies having jurisdiction over the facility shall be deemed part of the license. Such conditions and permits include those attached as exhibits to the license, as well as any existing at the time of issuance of the license and not attached, and permits or conditions issued or modified during the term of the license.

5.01.360 Metro Access to Licensed Facilities

Authorized representatives of Metro shall be permitted access to the premises of a licensed facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this license. Access to inspect is authorized during all business hours.

5.01.370 Disposal Rates and Fees

- (a) The rates charged at licensed facilities are exempt from Metro rate setting.
- (b) A licensee is exempted from collecting and remitting Metro fees on waste received at the facility. A licensee is fully responsible for paying all costs associated with disposal of residual material generated at the facility, including all Metro fees and taxes. A licensee shall obtain a nonsystem license prior to disposal of residuals at any facility not designated by Metro.
- (c) A licensee shall adhere to the following conditions with regard to disposal rates charged at the facility:
 - (1) A licensee may modify rates to be charged on a continuing basis as market demands may dictate. Rate schedules should be provided to Metro on a regular basis, and shall be provided to Metro on request.

- (2) Public rates charged at the facility shall be posted on a sign near where fees are collected. Rates and disposal classifications established by a licensee shall be reasonable and nondiscriminatory.

5.01.380 General Conditions Relating to Yard Debris Facility Licensees

- (a) A licensee shall be responsible for ensuring that its contractors and agents operate in compliance with the terms and conditions of the license.
- (b) The granting of a license shall not vest any right or privilege in the licensee to receive specific quantities of solid waste during the term of the license.
- (c) The power and right to regulate, in the public interest, the exercise of the privileges granted by a license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against licensee.
- (d) A license may not be transferred or assigned without the prior written approval of Metro, which will not be unreasonably withheld.
- (e) To be effective, a waiver of any term or condition of a license must be in writing, signed by the Executive Officer. Waiver of a term or condition of a license shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- (f) A license shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

(g) If any provision of a license is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in the license shall not be affected.

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

kaj
1242

ATTACHMENT A

LICENSING STANDARDS FOR YARD DEBRIS PROCESSING AND YARD DEBRIS RELOAD FACILITIES

October 9, 1995

INTRODUCTION

The Licensing Standards for Yard Debris Processing and Yard Debris Reload Facilities is the result of an on-going collaborative effort between Metro, local government representatives, yard debris processors, and the DEQ. This regional discussion group was formed to explore options to help reduce nuisance impacts related to the operation of yard debris compost facilities in the region.

The regional discussion group voted on May 18, 1995, to forward a recommendation that the Metro SWAC consider the adoption and implementation of a program for licensing yard debris processing and reload facilities.

On September 21, 1995 the Metro SWAC unanimously endorsed the Licensing Standards for Yard Debris Processing and Yard Debris Reload Facilities, and voted to forward them to Metro Council for consideration.

The following is a list of the regional discussion group participants:

Processors

Don Chappel, American Compost
Charles Danner, Danner Nursery
Dan Davis, River Cities One Stop Recycling
Ralph Gilbert, East Co. Recycling
Howard Grabhorn, Lakeside Reclamation
Jeff Grimm, Grimm's Fuel
Dan Holcomb, Oregon Soils Corp.
Steve Jessop, Scott's Hyponex
Jim Lackey, American Waste Recovery
Dan McFarlane, McFarlane's Bark
Chuck Minsinger, Minsinger's Floral Nursery
Rod Oakes, Wilsonville Wood Waste
Tim Perri, Best Buy In Town
Randy Wubben, All-Wood Recycling
Loretta and Duane Stroup, S&H Logging
Greg White, Tualatin Valley Waste Recovery
Lainy Zehr, Universal Wood Recycling

Local Government

Lynda Kotta, Gresham
Mark Schoening, Lake Oswego
JoAnn Herrigal, Milwaukie
Lee Barrett, Portland
Randy Johnson, Portland
Daryl Worthington, Troutdale
William Harper, Tualatin
Dennis Koellermeier, West Linn
Ron Oberg, Clackamas Co.
Ken Spiegel, Clackamas Co.
Susan Ziolk, Clackamas Co.
Kathy Kiwala, Washington Co.
Lynne Storz, Washington Co.
Andrea Friedrichsen, Clark Co.

DEQ

Dave Kunz

Haulers

Tom Miller, Miller's Sanitary
Dave White, ORRA

Industry

Barry Naone, Fred Meyer
Steven Diddy, BFI

TABLE OF CONTENTS

1. PURPOSE, AUTHORITY AND SCOPE	1
2. DEFINITIONS	2
3. LICENSING APPLICATION COMPLIANCE DATES	3
4. EXCLUDED OPERATIONS AND FACILITIES	3
5. AUTHORIZED AND PROHIBITED SOLID WASTES	4
6. GENERAL FACILITY DESIGN REQUIREMENTS & DESIGN PLAN	4
7. GENERAL OPERATING REQUIREMENTS	5
8. PROCESSING OPERATIONS PLAN	6
9. ODOR MINIMIZATION PLAN	7
10. OPERATION AND FACILITY RECORDS	8
11. CLOSURE	9
12. TERM OF LICENSE AND ANNUAL LICENSE FEES	9
13. INSURANCE	9
14. INDEMNIFICATION	10
15. COMPLIANCE WITH LAW	10
16. ENFORCEMENT OF LICENSE PROVISIONS	10
17. APPEALS	11
18. DISPOSAL RATES AND FEES	11
19. GENERAL CONDITIONS	12

LICENSING STANDARDS FOR YARD DEBRIS PROCESSING AND YARD DEBRIS RELOAD FACILITIES

1. Purpose, Authority and Scope

1.1 Purpose

- (a) The purpose of this Chapter is to establish performance standards for yard debris processing and yard debris reload facilities operating in the District through a regional licensing program. The program will include problem resolution through intergovernmental cooperation, technical assistance, and enforcement measures.
- (b) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of Metro to provide and protect such resources and to do so requires that Metro Franchise, License, or Permit disposal sites, transfer stations, processing facilities and resource recovery facilities.
- (c) To protect the health, safety, and welfare of the District's residents, the Council declares it to be the public policy of the District and purpose of this chapter to establish a licensing program for facilities that process and reload yard debris in the District in order to:
 - 1) Establish standards that can be implemented on a regional level to help ensure the stability of the regional yard debris recycling system.
 - 2) Assist local governments in managing the impacts of yard debris processing facilities through a licensing program that is responsive to the risks and benefits associated with these facilities.
 - 3) The licensing program is intended to increase the confidence that citizens and local governments have in these facilities by minimizing the potential for nuisance complaints and alleviating negative public perception of these facilities.

1.2 Authority and Scope

- (a) This document will implement those provisions of the Code relating to licensing of yard debris processing and reload facilities. Nothing in this Chapter is intended to limit the power of any federal, state, or local agency to enforce any provision of the law that it is authorized or required to enforce or administer.
- (b) The provisions in this Chapter apply to all yard debris processing and reload facilities operating in the District, except those expressly exempted pursuant to Section 4 - Excluded Operations and Facilities.

(c) Yard debris reload facilities and operations are exempt from the following sections:

- Section 6c, 6e, and 6f(3);
- Section 7e, 7f, and 7h; and
- Section 8a (7, 8, 10, and 11).

(d) Biological decomposition of organic material can be either a naturally occurring or artificially controlled process. Nothing in this Chapter is intended to establish standards or other regulatory requirements for inadvertent composting resulting from the storage of organic materials. An activity that produces material that will be sold or given-away based on biological decomposition that has occurred to the material shall not be considered inadvertent composting.

(e) Nothing in these standards shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities.

2. Definitions

(a) "Code" means the Metro Code.

(b) "Compost" means the stabilized and sanitized product of composting, which has undergone an initial rapid stage of decomposition and is in the process of humification (curing), and should be suitable for plant growth.

(c) "Composting" means the biological treatment process by which microorganisms decompose the organic fraction of the waste, producing compost.

(d) "Hazardous waste" has the meaning provided in ORS 466.005;

(e) "Mixed solid waste" means solid waste containing a variety of waste material, some of which may or may not be considered recyclable.

(f) "Processing" means the controlled method or system of altering the form, condition or content of yard debris utilizing both mechanical and biological methods. Includes composting (aerobic and anaerobic methods), fermentation, and vermicomposting (of yard debris only).

(g) "Solid waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead

animals, infectious waste as defined in ORS 459.387, petroleum-contaminated soils and other wastes; but the term does not include:

- 1) Hazardous wastes as defined in ORS 466.005;
 - 2) Radioactive wastes as defined in ORS 469.300;
 - 3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; or
 - 4) Explosives
- (h) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. Includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other similar vegetative waste. Does not include construction and demolition debris, painted or treated wood.
- (i) "Yard debris reload facility" means an operation or facility that receives yard debris for temporary storage, awaiting transport to a processing facility.

3. Licensing Application Compliance Dates

- (a) Operators of proposed facilities shall submit applications for licensing and shall comply with the licensing standards and requirements, by the effective date of the licensing standards in this chapter.
- (b) Operators of existing facilities shall submit an application for licensing, and demonstrate compliance with the applicable standards and requirements within eighteen (18) months after the effective date of the licensing standards in this chapter.
- (c) Applications for Yard Debris Licenses shall be as specified by the Executive Officer.

4. Excluded Operations and Facilities

- (a) Residences, parks, community gardens and homeowner associations are excluded operations. In addition, universities, schools, hospitals, golf courses, industrial parks, and other similar facilities are excluded operations if the yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
- (b) Chipping and grinding of wood wastes (e.g. untreated lumber, wood pallets) are excluded operations, unless such chipped materials are composted at the site following chipping or grinding.
- (c) Solid waste transfer stations and Metro franchised material recovery facilities are excluded facilities, except to the extent that these licensing requirements are referenced in the franchise.

- (d) Nothing in this Section precludes Metro from inspecting an excluded operation to verify that the operation is being conducted in a manner that qualifies as an excluded activity or from taking any appropriate enforcement action.

5. Authorized and Prohibited Solid Wastes

- (a) Licensee is authorized to accept loads of yard debris for processing at the facility. The licensee may also take in other source separated material if in compliance and consistent with other federal, state and local regulations.
- (b) Licensee shall not accept hazardous waste. Any hazardous waste inadvertently received shall be handled, stored, and removed pursuant to state and federal regulations.
- (c) Licensee is prohibited from accepting mixed solid waste, but may accept loads of mixed yard debris and wood wastes (e.g. untreated lumber, wood pallets).

6. General Facility Design Requirements & Design Plan

- (a) The Facility Design Plan shall include the following drawings and diagrams:
 - 1) Site plan showing approximate dimensions of the proposed receiving, processing, production, curing and storage areas.
 - 2) Landscape plan showing the location, size and type of plantings, fences, berms, and existing trees to remain and/or to be removed (required for only new or relocating facilities).
 - 3) Drawings of the site that indicate location of initial and permanent roads; buildings and equipment to be installed; sewer and water lines; and storm water system. The drawings shall show final grade contours (required for only new or relocating facilities)
- (b) The facility must be designed and constructed in a manner suitable for maintenance and processing operations, including visual inspection of piling areas and fire fighting operations.
- (c) Facility design plan shall address management of storm water. Methods must be consistent with storm water system standards of the local jurisdiction.
 - 1) The facility must be designed and constructed so that precipitation run-on is diverted around the processing area. The run-off from the facility resulting from precipitation shall be controlled (required for only new or relocating facilities).
- (d) Facility design plan shall address:
 - 1) Effective barriers to unauthorized entry and dumping (fencing, gates, locks);
 - 2) All-weather access roads to the site;
 - 3) Appropriate signs (at facility entrance, directing traffic flow, public information);
 - 4) Access to scales, if applicable;

- (e) Facility shall have sufficient processing capacity to handle projected incoming volumes of yard debris.
- (f) Facility design shall address specific storage issues, including:
 - 1) Capacity for incoming wastes waiting to be processed;
 - 2) Capacity for proper handling, storage, and removal of hazardous or other non-permitted wastes delivered to or generated by the facility; and
 - 3) Capacity for finished product storage.

7. General Operating Requirements

- (a) All activities shall be conducted in a manner that minimizes or prevents vectors, odor impacts, dust, and noise impacts.
- (b) Facility grounds shall be cleaned of litter at least weekly.
- (c) Random load checks of feedstocks for contaminants shall be conducted by the operator.
- (d) Storage and handling capacities shall not be exceeded.
- (e) Compost piles and windrows shall be spaced to facilitate mixing and aeration.
- (f) Windrow, compost pile, and/or active processing area dimensions shall not exceed the design specifications of the facility's equipment.
- (g) Incidental non-compostables shall be properly stored and removed from the facility on a regular basis to avoid nuisance conditions, or at a frequency approved in the license agreement.
- (h) Incidental wastes and feedstocks shall be stored separately from active, stabilizing, stabilized, curing, cured feedstock areas.
- (i) Surrounding fencing, gates, and/or other natural or artificial barriers shall be maintained to discourage unauthorized human or animal access to the facility.
- (j) The operator shall provide fire prevention, protection, and control measures, including but not limited to, temperature monitoring of windrows, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the composting pad/processing area.
- (k) The operator shall begin processing incoming feedstocks in a time frame that does not create potential for a nuisance, odor, fire, or vectors, or as specified in the license agreement.

- (l) All drainage, leachate control, and diversion systems shall be managed and maintained in good working order.
- (m) All facility road surfaces and traffic control signs shall be maintained.
- (n) Vehicles containing yard debris feedstock/waste shall not be parked on public streets or roads except under emergency conditions. Adequate off-street parking facilities for transport vehicles shall be provided.
- (o) Legible signs at all public entrances to the facility shall be posted and include the following information:
 - 1) The name of the facility,
 - 2) The name of the operator,
 - 3) Facility hours of operation
 - 4) List or statement of materials that will and will not be accepted, if open to the public,
 - 5) Schedule of charges, if applicable
 - 6) The phone number where operator or designee can be reached in case of an emergency; and
 - 7) Any other information as required by the license agreement and/or local government sign code.

8. Processing Operations Plan

- (a) All activities at a licensed facility must be conducted in accordance with the processing operations plan containing the following information, as well as any additional information required by Metro:
 - 1) Designation of personnel, by title, responsible for operation, control and maintenance of the facility;
 - 2) A description of the anticipated quantity and variation throughout the year of waste to be received;
 - 3) Methods for measuring and keeping records of incoming waste;
 - 4) Methods for encouraging waste delivery in covered loads;
 - 5) Methods to control the types of waste received, and methods for removing, recovering and disposing of non-compostables;
 - 6) Designation of disposal sites for non-compostable wastes;
 - 7) Management procedures that will be used in processing, which must include:
 - A) A general description of any treatment the wastes will receive prior to processing (e.g., chipping, shredding) and the maximum length of time required to process each day's receipt of waste into windrows or other piles;
 - B) The specifications to which the windrows or other piles will be constructed (width, height, and length) and calculation of the capacity of the facility;

- C) An estimate of the length of time necessary to complete the process.
- 8) Metro may request additional process management procedures. Proprietary information will be submitted on a confidential basis.
- 9) Methods to control noise, vectors, dust and litter.
- 10) Methods for monitoring and adjusting temperature, oxygen level and moisture level of the material during processing.
- 11) General plans for marketing the finished product.

9. Odor Minimization Plan.

- (a) The operator shall take specific measures to control odors so as not to cause or contribute to a violation of the license agreement. Specific measures an operator should take to control odor include but are not limited to adherence to the contents of the odor minimization plan required below.
 - 1) The operator shall have an odor minimization plan. The plan must include methods to minimize, manage and monitor all odors, including odors produced by grass clippings. The plan must include:
 - (A) A management plan for malodorous loads;
 - (B) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility;
 - (C) Additional odor-minimizing measures, which may include the following:
 - i) Avoidance of anaerobic conditions in the composting material;
 - ii) Use of mixing for favorable composting conditions;
 - iii) Formation of windrow or other piles into a size and shape favorable to minimizing odors; and
 - iv) Use of end-product compost as cover to act as a filter during early stages of composting.
 - (D) Specification of a readily-available supply of bulking agents, additives or odor control agents;
 - (E) Procedures for avoiding delay in processing and managing yard debris during all weather conditions;
 - (F) Methods for taking into consideration the following factors prior to turning or moving composted material:
 - 1) Time of day;
 - 2) Wind direction;
 - 3) Percent moisture;

- 4) Estimated odor potential; and
 - 5) Degree of maturity.
- (b) Grass clippings must be processed in a timely manner to avoid nuisance conditions. Incoming leaves, brush or woody landscape waste may be stored in designated areas for use as a carbon source and bulking agent, rather than being processed into windrows or other piles.
- (c) If odors become a significant source of nuisance complaints, processor shall work with a Metro appointed odor complaint panel. The odor complaint panel will investigate odor complaints to determine their validity and sources and will help the processor with solutions to the nuisance complaints. The odor complaint panel may consist of representatives from Metro, DEQ, the local government, citizen representatives and the processing industry.

10. Operation and Facility Records

- (a) Licensee shall effectively monitor facility operation and maintain accurate records of the following information:
- (1) Estimated amount of feedstock received and quantity of product produced at the facility. Records shall be reported to Metro no later than thirty (30) days following the end of each quarter. The report shall be signed and certified as accurate by an authorized representative of licensee.
 - (2) Records of any special occurrences encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.
 - (3) Records of public nuisance complaints (e.g. noise, dust, vibrations, litter) received by the operator, including:
 - A) The nature of the complaint;
 - B) The date the complaint was received; the name, address, and telephone number of the person or persons making the complaint; and
 - C) any actions taken to respond to the complaint.
 - (4) For every odor complaint received, the licensee shall record the date, time, and nature of any action taken in response to an odor complaint, and record such information within one business day after receiving the complaint. Records of such information shall be made available to Metro and local governments upon request.
- (b). The licensee shall submit to Metro duplicate copies of regulatory information submitted to the DEQ and local jurisdictions pertaining to the facility, at the same time of submittal to DEQ and/or local jurisdiction.

11. Closure

- (a) Unless otherwise authorized in a facility license, all yard debris, composting material, end-product, and other solid wastes must be removed from the facility within 180 days following the beginning of closure.
- (b) The facility operator shall close the facility in a manner which eliminates the release of yard debris leachate and composting constituents to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment.
- (c) Within 30 days of completion of closure, the operator shall file a report with Metro verifying that closure was completed in accordance with this Section.

12. Term of License and Annual License Fees

- (a) The term of the license shall be established by the Executive Officer not to exceed five (5) years. If a license is issued for less than five (5) years, the reason(s) shall be set forth in the licensing agreement.
- (b) Licensee shall pay an annual license fee. In order to keep costs at a minimum, and so as to not encourage deliveries outside the district, the fee shall be based on a minimum cost for service basis and shall not exceed \$300 per year. The fee shall be delivered to Metro within thirty (30) days of the effective date of this License and each year thereafter.

13. Insurance

- (a) Licensee shall purchase and maintain the following types of insurance, covering Licensee, its employees, and agents:
 - 1) Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury 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, \$100,000 per person, and \$50,000 property damage. 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 prior to the change or cancellation.
- (d) A license shall specify that licensee, its contractors, if any, and all employers under this license are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject

workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

14. Indemnification

Licensee 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 licensee's performance under this license, including patent infringement and any claims or disputes involving subcontractors. Licensee shall not assume liability for any negligent or intentionally wrongful act of Metro, its officers, agents or employees.

15. Compliance With Law

Licensee shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license. All conditions imposed on the operation of the facility by federal, state or local governments or agencies having jurisdiction over the facility are part of this license by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to the license, as well as any existing at the time of issuance of this license and not attached, and permits or conditions issued or modified during the term of this license.

16. Enforcement of License Provisions

- (a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke a license as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a license, the Executive Officer shall notify the licensee in writing of the alleged violation, and the necessary steps to be taken to cure the violation. Upon a finding that violation exists and that the licensee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Executive Officer may provide notice to the licensee that the license is suspended, modified or revoked.
- (b) The notice authorized by this subsection shall be based upon the Executive Officer's finding that the licensee has:
 - 1) Violated the license agreement, this chapter, the Code, state law, local ordinance or the rules promulgated thereunder or any other applicable law or regulation; or
 - 2) The licensee has misrepresented material facts or information in the license application, annual operating report, or other information required to be submitted to Metro;
 - 3) Failed to pay when due the fees required to be paid under this chapter; or
 - 4) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees to comply with the Metro Code (solid waste facility regulation).

- (c) Except as provided in subsection (d) of this section, the Executive Officer's revocation, modification or suspension of a license shall not become effective until the licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.
- (d) Upon finding of serious danger to the public health or safety as a result of the actions or inaction of a licensee under this chapter, the Executive Officer may in accordance with Code Chapter 2.05 immediately suspend the license and may take whatever steps may be necessary to abate the danger.
- (e) Upon revocation or refusal to renew the license all rights of the licensee in the license shall immediately be divested.

17. Appeals

- (a) Any applicant licensee is entitled to a contested case hearing pursuant to Metro Code Chapter 2.05 upon the Executive Officer's suspension, modification or revocation or refusal by the Council or Executive Officer, as appropriate, to issue, renew or transfer a license or grant a variance, as follows:
 - 1) Except as provided in subsection (3) of this section, the Executive Officer's refusal to renew a license by the Council or Executive Officer, as appropriate, shall not become effective until the licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.
 - 2) The refusal by the Council or Executive Officer, as appropriate, to grant a variance, or to issue or transfer a license shall be effective immediately. The licensee or applicant may request a hearing on such refusal within thirty (30) days of notice of such refusal.
 - 3) Upon finding of serious danger to the public health or safety, the Executive Officer may suspend a license or the Council or Executive Officer, as appropriate, may refuse to renew a license and such action shall be effective immediately. If a license renewal is refused effective immediately, the licensee shall have thirty (30) days from the date of such action to request a contested case hearing.

18. Disposal Rates and Fees

- (a) In accordance with the variance granted by the Metro Council, the rates charged at this Facility shall be exempt from Metro rate setting.
- (b) Licensee is exempted from collecting and remitting Metro Fees on waste received at the Facility. Licensee is fully responsible for paying all costs associated with disposal of residual material generated at the Facility. Licensee shall obtain a non-system license prior to disposal of residuals at any facility not designated by Metro.

- (c) The Licensee shall adhere to the following conditions with regard to disposal rates charged at the Facility:
- 1) Licensee may modify rates to be charged on a continuing basis as market demands may dictate. Rate schedules should be provided to Metro on a regular basis, and shall be provided to Metro on request.
 - 2) Public rates charged at the facility shall be posted on a sign near where fees are collected. Rates and disposal classifications established by the licensee shall be reasonable and nondiscriminatory.

19. General Conditions

- (a) A licensee shall be responsible for ensuring that its contractors and agents operate in compliance with the terms and conditions of this license.
- (b) The granting of a license shall not vest any right or privilege in the licensee to receive specific quantities of solid waste during the term of the license.
- (c) The power and right to regulate, in the public interest, the exercise of the privileges granted by this license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against licensee.
- (d) This license may not be transferred or assigned without the prior written approval of Metro, which will not be unreasonably withheld.
- (e) To be effective, a waiver of any term or condition of a license must be in writing, signed by the Executive Officer. Waiver of a term or condition of a license shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- (f) The license shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- (g) If any provision of the license shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this license shall not be affected.
- (h) Authorized representatives of Metro shall be permitted access to the premises of the facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this license. Access to inspect is authorized during all business hours.

S:\SHARE\METZ\YRDEBRIS\LICENSE\REVISION\COUNCIL\REV4\ISSU.DOC

ATTACHMENT B

Summary of Key Issues Licensing Program for Yard Debris Processing and Yard Debris Reload Facilities

Background

Recent attempts to site a yard debris composting facility in Clackamas County resulted in a land use decision that requires these facilities to completely enclose their operations. This requirement is considered unusually restrictive and would, in effect, prohibit a yard debris processing operation from siting or relocating in Clackamas County. This situation does not appear to be unique. Many facilities in the region are located in areas that are now becoming highly urbanized. As a result, these facilities are increasingly being noticed for their potential to create a public nuisance.

In order to begin developing solutions to this situation, a regional discussion group was convened to discuss yard debris processing facilities and their associated impacts. Major issues included:

- How to maintain programs, provide safeguards for the existing system and provide additional security for the future stability of the yard debris recycling system (note that the yard debris recycling rate in the Metro region increased from 23% in 1987 to 70% (110,000 tons) in 1993).
- How the confidence of local governments and the public could be restored so that siting or relocating these facilities does not become prohibitively expensive.

It was recognized early on that without the assistance and support from the local yard debris composting industry, it would not be possible to implement effective solutions. From that point forward, all group discussions included industry and local government representatives (including the DEQ). Great emphasis was placed on solutions that would be effective as well as acceptable to the yard debris processing industry.

A model ordinance approach for local government adoption was developed and reviewed by local governments. It was concluded that this approach would not be effective for the existing eighteen facilities in the region. Therefore, the discussion group recommended that the facility operational standards be developed as a regional licensing program.

Regional Discussion Group Endorsement

The licensing program proposal was voted on and endorsed by a clear majority of the discussion group participants on two separate occasions. Endorsement of the licensing proposal by the regional discussion group was based on the following:

- The licensing program addresses problems on a regional level. It is fair to all processors in region and will be beneficial to the industry. It helps maintain programs and provides needed safeguards for the future security of the system.

- A local government model ordinance approach will not work for existing facilities. A voluntary program would not be effective on a regional scale, and would not help create a level playing field.
- The licensing program is a framework for problem identification and resolution. Surrounding land uses and growth in the region will lead to more public scrutiny and objections to these facilities. They may be forced out of operation, especially the smaller to medium sized operations.
- The program enforcement measures are viewed as important elements by both processors and local governments. The program will help legitimate processors while limiting the fly-by-night processors trying to make a fast profit and creating nuisance conditions that give the industry a bad reputation.

Licensing Program Concerns

There are concerns about implementing a regional licensing program. These concerns are summarized below, and are followed by responses in italics.

1. The problem is zoning and facility issues should be addressed with local government land use planners. Further, a voluntary and/or model ordinance approach should be used rather than a region-wide licensing program.

The regional discussion group made it clear that zoning is not the only issue that needs to be addressed. Operational issues, reporting requirements, and problem resolution and enforcement became an integral part of the equation.

The local government model ordinance approach was rejected by the group and determined to be ineffective for the 18 existing facilities in the region. This is also true for a voluntary program. The discussion group agreed that any program should foster a level playing field, and that it be implemented on a regional level.

Zoning ordinances typically can not include the kind of operational standards and reporting requirements that are now needed to ensure that these types of facilities do not become public nuisances. This is particularly true in light of the sustained growth that is projected for our region, as these facilities get "pushed out."

One element of the licensing program is to work with local governments to ensure that development codes and zoning ordinances adequately address these facilities. In addition, the group recommended that a special work group be set up to discuss the licensing program with land use planners and nuisance code enforcement personnel.

2. The DEQ could implement a state-wide permit program for yard debris processors.

The DEQ has made it clear that they do not intend to implement a state-wide permit program. However, the DEQ has indicated that they support the proposed regional licensing program.

3. Product quality standards for compost are all that may be necessary.

Metro has implemented a product quality standards program for yard debris compost (Earth-Wise Compost Designation). This program was set-up for marketing purposes and is voluntary (the program costs \$1,000 per year to participate). The product quality standards do not address facility operational issues, which are the source of concern. It may be possible to link the two programs in the future, but for now it has been recommended that they remain separate.

4. Counties with land outside the Metro boundary will have no way of encouraging these facilities to participate in the licensing program. Facilities may relocate outside the Metro boundary to escape the licensing requirements.

An important element of the licensing program is to work with the local government land use planners to encourage siting standards that set the conditions for approval on participation in the licensing program. In this way, facilities outside the Metro boundary will be able to participate in the program.

It is important to note two important considerations: 1) processors prefer to be located close to the source of their feedstock and markets; and 2) zoning outside the Metro boundary tends to be predominantly rural or agricultural in nature and is generally not favorable for siting these types of commercial operations, unless they are strictly in conjunction with agricultural uses.

5. Local governments will not be able to amend their contracts with franchised haulers, requiring them to take yard debris from municipal curbside programs to approved (licensed) facilities.

The City of Portland is currently doing this. For example, they provide a list of approved facilities to their haulers who may then select the most convenient facility for their use. It is primarily intended to ensure that, at a minimum, yard debris that the public source-separates for recycling through municipal programs is processed in a responsible manner.

6. Will Metro have to hire additional staff to administer a licensing program? Will the processors be required to pay for these costs through the license fees?

Implementation of a licensing program will not require Metro to hire additional staff. Existing staff will absorb the program responsibilities. However, it will be necessary to contract with a consultant to assist staff with special circumstances. The consultant contract for the initial licensing phase is estimated at \$7,000, and \$2,000 thereafter for special circumstance consultation (if needed).

The annual licensing fee paid by the processors (which is similar to a franchise fee) will help defray some of the costs of the licensing program. Annual licensing fees are set by the Metro Council. However, the regional discussion group recommends that the fees be no more than \$300 per year. High licensing fees could drive processors out of the region.

7. How will local governments be involved in the licensing program?

Local governments are typically the first to receive nuisance complaints. Therefore, Metro will coordinate the licensing program with local government land use planners, solid waste and recycling coordinators, and nuisance code administrators. Metro is committed to meet with local governments to develop a specific plan for responding to nuisance complaints and other licensing program issues.

A key objective of the licensing program is to minimize potential nuisance conditions and encourage the processor, local government, and Metro to work together to resolve issues through a facility and operational review process. Therefore, the licensing program will take a proactive, cooperative approach to ensure intergovernmental coordination. Information on facilities will be shared, and Metro will consult with the local jurisdiction before providing technical assistance or initiating enforcement action. Processors will be closely involved throughout the process.

S:\SHARE\METZ\YRDEBRIS\LICENSE\REVISION\COUNCIL\KEY\ISSU2 SUM

Attachment C - Licensing Program Regulatory Table

The following table summarizes the key regulatory concerns regarding the proposed yard debris processing and reload facility licensing program.

ISSUES	METRO	LOCAL GOVERNMENT	DEQ
Siting	Siting by private initiative. Metro sets up a regional workgroup to review zoning issues.	Local land use permit process. Ensure that zoning ordinances and development codes do not effectively prohibit these facilities. Local governments to work with a regional workgroup to review and discuss zoning issues.	NA
Licensing	Metro license required for all facilities within Metro boundary. Voluntary outside boundary. The program will include problem resolution through intergovernmental cooperation, technical assistance and enforcement measures (see next page for details).	Local jurisdiction participates in program. Nuisance/code violations are handled locally. Metro is notified and may be asked for assistance, if warranted.	NA
Operational Standards	Addressed through the license agreement.	Many operational concerns are not addressed through the land use permit process.	May provide technical assistance.
License Fees	Fees are set by Metro Council. Recommendations in the draft licensing standards are that fees should not exceed \$300 per year.	NA	NA
Collection	Metro will not direct yard debris to processing facilities.	Facility designation. Local governments provide franchised haulers with a list of approved, licensed facilities where they may take curbside yard debris for processing or reload.	NA

ISSUES	Inside Metro Boundary	Outside Metro Boundary	DEQ
Problem Resolution and Enforcement	<p><u>Intergovernmental Coordination</u> Metro, local governments, DEQ share information on facilities. If nuisance complaints warrant Metro action, local governments can request assistance from Metro. Metro may independently monitor facilities and take appropriate action in cooperation with the local jurisdiction. Processor will be closely involved throughout the process.</p> <p><u>Technical Assistance</u> Metro, local governments, DEQ and the processor work together to resolve issues through a facility and operational review.</p> <p><u>Enforcement</u> If issues can not be resolved, Metro can take enforcement action per Metro Code. Enforcement may include:</p> <ul style="list-style-type: none"> • Request corrective action • Notice of intent to assess fines. • Contested case proceeding. • Findings of compliance/noncompliance. • Temporary restraining order (emergency action). • Injunction. • Suspend or revoke the license. 	<p><u>Conditional Use Permit</u> As a condition for land use approval, zoning and development ordinances could require new facilities to participate in the Metro licensing program. If facilities do not comply with the licensing agreement, the local government can find them in violation of their conditional use permit.</p> <p><u>Zoning</u> Typical land use zones outside Metro are Rural and Exclusive Farm Use zones (EFU). These zoning designations typically have restrictions on either feedstocks or product. These restrictions do not encourage the siting of municipal yard debris processing operations that sell a product to the public.</p> <ul style="list-style-type: none"> • Rural zones - Facilities are subject to significant restrictions of the rural zone designation and other conditions of approval. • EFU zones - Facilities are not allowed in EFU zones, except when permitted by the local land use authority as a commercial activity in conjunction with a farm. Subject to statutory and Goal limits. Counties may define commercial activities more restrictively than state law. 	<p>Complaint driven process. Odor, air, and water quality issues. Enforcement includes a DEQ Compliance Order.</p> <p>DEQ has indicated support for the Metro licensing program and is willing to participate in a cooperative problem resolution process.</p>

ATTACHMENT D

MAIL THIS APPLICATION TO:

DATE RECEIVED BY METRO

Metro
Regional Environmental Management
600 N.E. Grand Avenue
Portland, OR 97232-2736

**LICENSE APPLICATION FORM
YARD DEBRIS PROCESSING AND/OR YARD DEBRIS RELOAD FACILITY**

Check all that apply:

Yard Debris Composting _____
Yard Debris Reload _____
Other (specify) _____

Date of Application: _____

PART 1

1. NAME OF FACILITY _____
FACILITY ADDRESS _____

2. PROSPECTIVE LICENSEE

Public Agency _____ Private _____

Name of Licensee:: _____

Mailing Address:: _____

Phone Number: _____

3. OWNER(S) OF PROPERTY

Name

Mailing Address:

Phone Number:

4. SUBCONTRACTOR(S)

Name, address and function of prospective franchisee's facility operation subcontractors, if any:

5. SITE LEGAL DESCRIPTION

(Include tax lot(s) descriptions, Section, Township and Range):

SECTION _____ TOWNSHIP _____ RANGE _____

6. ZONING

Present Land Use Zone:

Restrictions:

7. Is a conditional use permit necessary for the facility?

Yes _____ No _____

If required, has the permit been obtained?

Yes _____ No _____

8. PUBLIC HEARING(S)

Date(s) and nature of Public Hearing(s) held or to be held, if any:

9. PERMITS ISSUED OR APPLIED FOR

List name and number of all permits (i.e., DEQ Solid Waste Disposal Permit, Conditional Use Permit, National Pollution Discharge Elimination System Permit, Etc.), plus name, address and contact person at the agency responsible for issuing the permit(s).

Permit(s) Applied for:

Permit(s) Received:

10. ESTIMATED QUANTITY OF YARD DEBRIS TO BE ACCEPTED

Annually: _____ Cubic Yards
Annually: _____ Tons (optional)

Daily: _____ Cubic Yards
Daily: _____ Tons (optional)

11. PUBLIC/COMMERCIAL OPERATIONS

Will the facility be open to the public? Yes _____ No _____

Will the facility be open to commercial solid waste collectors? Yes _____ No _____

12. OPERATING HOURS AND TRAFFIC VOLUME

OPERATING HOURS	PUBLIC	COMMERCIAL
Hours Per Day		
Days Per Week		
Estimated Vehicles Per Day		

13. Does the owner/operator of this facility own, operate, maintain, have a proprietary interest in, or is the owner financially associated with or subcontracting the operation of the facility to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the boundary of Metro?

Yes _____ No _____

14. Will the facility be open to any solid waste collection companies not wholly owned by the franchisee that collect refuse within the boundary of Metro?

Yes _____ No _____

15. Will the facility be open to solid waste collection companies who collect outside the boundary of Metro other than the franchisee?

Yes _____ No _____

PART 2

GENERAL FACILITY DESIGN PLAN

1. Describe how storm water is managed at the facility.

Is precipitation run-on diverted around the processing area?

Yes _____ No _____

Describe _____

Is run-off from the facility controlled?

Yes _____ No _____

Describe _____

2. Describe any barriers that the facility has (or will have) to prevent unauthorized entry and dumping (fencing, gates, locks).

3. Are there all weather access roads to the site?

Yes _____ No _____

4. Does (or will) the facility have scales?

Yes _____ No _____

5. Does the facility have signs (at entrance, directing traffic flow, public information) ?

Yes _____ No _____

Please describe the location(s) and type of sign(s):

6. What is the estimated capacity (cubic yards) of the facility storage area(s) for incoming yard debris waiting to be processed?

7. What is the estimated capacity (cubic yards) for finished product storage?

8. Please describe how you handle, store and remove hazardous or other non-permitted or non-compostable wastes delivered to the facility.

PART 3

GENERAL OPERATING PLAN

1. Describe your methods for measuring and keeping records of incoming yard debris.

2. How often are the facility grounds cleaned of litter?

3. Describe how you encourage delivery of yard debris in covered loads.

4. Describe how you control the types of materials you receive, and methods for removing, recovering and disposing of non-compostables.

5. Where do you dispose of non-compostable wastes?

6. Please give a general description of the steps you take to process yard debris (from delivery to end-product).

7. What is the maximum length of time required to process each day's receipt of yard debris?

8. How long does it typically take to process yard debris at your facility (from receipt to finished product)?

9. If applicable, what are the dimensions of the windrows or piles that are typically constructed at your facility. (length, width, height)?

10. Describe how you control:

Noise:

Vectors (insects, birds, rodents):

Dust:

Litter:

11. Describe the fire prevention, protection and control measures used at the facility.

12. Does (or will) the facility have legible sign(s) at public entrances that includes:

Name of facility?

Yes _____

No _____

Name of the operator?

Yes _____

No _____

Hours of operation?

Yes _____

No _____

List of materials that will and will not be accepted?

Yes _____

No _____

Schedule of charges?

Yes _____

No _____

Phone number in case of emergency?

Yes _____

No _____

13. Describe your methods for monitoring and adjusting the following (during processing):

Temperature:

Oxygen levels

Moisture levels:

14. In general, what are your plans (existing or proposed) for marketing the finished product?

PART 4

ODOR MINIMIZATION PLAN

1. Generally describe how you handle loads of bad smelling yard debris and grass clippings.

2. Describe your procedures for receiving, recording and remediating odor complaints or odor problems at the facility.

3. Describe your methods for minimizing and controlling odors at the facility.

4. Do you have and use a readily available supply of bulking agents, additives or odor control agents?

5. Describe your procedures for avoiding delay in processing yard debris during all weather conditions.

6. Prior to turning or moving composted material, describe how you consider the following factors:

Time of day:

Wind direction:

Percent moisture:

Estimated odor potential:

Degree of maturity:

LIST OF ATTACHMENTS

1. ATTACHMENT A - SITE PLAN
2. ATTACHMENT B - INSURANCE
3. ATTACHMENT C - OTHER REQUIRED PERMITS

1. ATTACHMENT A -SITE PLAN

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

- a) The boundaries of the facility;
- b) The boundaries of the composting area;
- c) The property boundaries, if different,
- d) The location of all buildings on the property and other pertinent information with respect to the operation of the facility (e.g. water supply, fencing, access roads, paved areas, etc.);
- e) The location and approximate dimensions of receiving, processing, curing, and storage areas for yard debris, end-product, and waste residuals; and
- f) The drainage patterns of the composting facility and surrounding areas. For example, the direction of both on-site and off-site drainage, as well as the location of any ditches, swales, berms, or other structures that exist or will be constructed to control runoff and leachate generated by the facility's operation.

(The following additional information is required for all new and proposed yard debris processing and yard debris reload facilities:)

- g) Landscape plan showing the location, size and type of plantings, fences, berms, and existing trees to remain and/or to be removed.
- h) Drawings of the site that indicate location of initial and permanent roads; buildings and equipment to be installed; sewer and water lines; and storm water system. The drawings shall show final grade contours (required for only new or relocating facilities).

2. ATTACHMENT "B" - INSURANCE

The application must contain a letter demonstrating that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than Five Hundred Thousand Dollars (\$500,000) for any number of claims arising out of a single accident or occurrence, Fifty Thousand Dollars (\$50,000) to any claimant for any number of claims for damage to or destruction of property, and One Hundred Thousand Dollars (\$100,000) to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State Law for public contracts.

3. ATTACHMENT "C" - OTHER REQUIRED PERMITS

The application must contain one copy each of any required federal, state, county, city or other permits or licenses and one copy each of all correspondence pertaining to all such permits or licenses.

LICENSE APPLICANT

I hereby certify that the information contained in this application is true and correct to the best of my knowledge. I agree to notify Metro within 10 days of any change in the information submitted as a part of this application. I am enclosing the required Three Hundred Dollar (\$300.00) non-refundable license application fee. (Make checks payable to Metro.)

Signature and title of person completing this application:

SIGNATURE _____ TITLE _____

DATE _____ PHONE _____

metz\yardebris\license\app form\license app

AGENDA ITEM 6.1
Meeting Date: November 9, 1995

**Resolution No. 95-2234, For the Purpose of Requesting Proposals and Executing
A Contract for Property /Casualty Agent of Record/Broker**

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 95-2234 FOR THE PURPOSE OF REQUESTING PROPOSALS AND EXECUTING A CONTRACT FOR PROPERTY/CASUALTY AGENT OF RECORD/BROKER.

Date: October 25, 1995

Presented by : Scott Moss

PROPOSED ACTION

Adoption of Resolution No. 95-2234, authorizing the release of a Request for Proposals for Property/Casualty Agent of Record/Broker and authorizing the Executive Officer to execute a single contract with the lowest qualified bidder.

FACTUAL BACKGROUND AND ANALYSIS

A three year contract with Allendale Insurance Corporation will expire December 31, 1995.

The proposed contract will provide Metro with insurance brokerage services including marketing crime insurance, employee dishonesty insurance, property insurance and negotiating limited excess liability. The contractor will be expected to provide additional services such as reviewing Metro's insurance program, issuing Certificates of Insurance, and providing loss control consultation assistance.

This contract will commence Jan 1, 1996 until December 31, 1998.

BUDGET IMPACT

No impact. Compensation will come from the commission paid by SAIF Corporation under Metro's workers' compensation policy.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 95-2234.

Before the Metro Council

FOR THE PURPOSE OF)
AUTHORIZING THE REQUEST FOR)
PROPOSALS DOCUMENT FOR)
PROPERTY/CASUALTY AGENT OF)
RECORD/BROKER, WAIVING THE)
REQUIREMENT FOR COUNCIL)
APPROVAL OF THE CONTRACT)
AND AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE)
THE CONTRACT SUBJECT TO)
CONDITIONS.)

RESOLUTION NO. 95-2234

INTRODUCED BY Mike Burton,
Executive Officer

WHEREAS, The existing contract for Property/Casualty Agent of Record/Broker will expire on December 31, 1995; and

WHEREAS, The Request for Proposals and contract form attached hereto will provide a means to locate a firm to continue the previously provided and necessary services; and

WHEREAS, Council approval of this Request for Proposals is required pursuant to Metro Code Section 2.04.033(b); now, therefore,

BE IT RESOLVED,

That the Metro Council Authorizes issuance of the Request for Proposals for Property/Casualty Agent of Record/Broker for the period Jan 1, 1996, to December 31, 1998, in a form substantially similar to the attached Exhibit "A" and authorizes the Executive Officer to execute a contract with the most favorable proposer.

ADOPTED by the Metro Council this _____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

REQUEST FOR PROPOSALS

PROPERTY/CASUALTY
AGENT OF RECORD/BROKER
NOVEMBER/DECEMBER 1995



METRO

600 NORTHEAST GRAND AVE.
PORTLAND, OR. 97232-2736

PRINTED ON RECYCLED PAPER

EXHIBIT A

Table of Contents	1
Metro description, map and list of Councilors	2
a) General Information about Metro	3
b) Map of Metro facilities, natural areas, and cemeteries	4
c) Index to map of Metro facilities, natural areas, and cemeteries	5
Timeline	6
Dept. Organizational Structure	7
Financial Structure.....	8
Department Breakdown	9
a) Growth Management and Transportation Planning	9
b) Regional Environmental Management, Metro Washington Park Zoo, Parks.	10
c) MERC/Admin Services	11
Overview of Key Staff	12
Introduction	13
Risk and Contract Management Program	13
Proposed Scope of Work/Schedule.....	13

Table of Contents

Metro is the directly elected regional government that serves more than 1.2 million residents in Clackamas, Multnomah and Washington counties and the 24 cities in the Portland metropolitan area.

Metro is responsible for growth management, transportation and land-use planning; solid waste management; operation of the Metro Washington Park Zoo; regional parks and greenspaces programs; and technical services to local governments. Through the Metropolitan Exposition-Recreation Commission, Metro manages the Oregon Convention Center, Civic Stadium, the Portland Center for the Performing Arts and the Expo Center.

Metro is governed by an executive officer, elected regionwide, and a seven-member council elected by districts. Metro also has an auditor who is elected regionwide.

Executive Officer
Mike Burton

Auditor
Alexis Dow, CPA

EXHIBIT
District 1
Ruth McFarland

District 2
Don Morissette

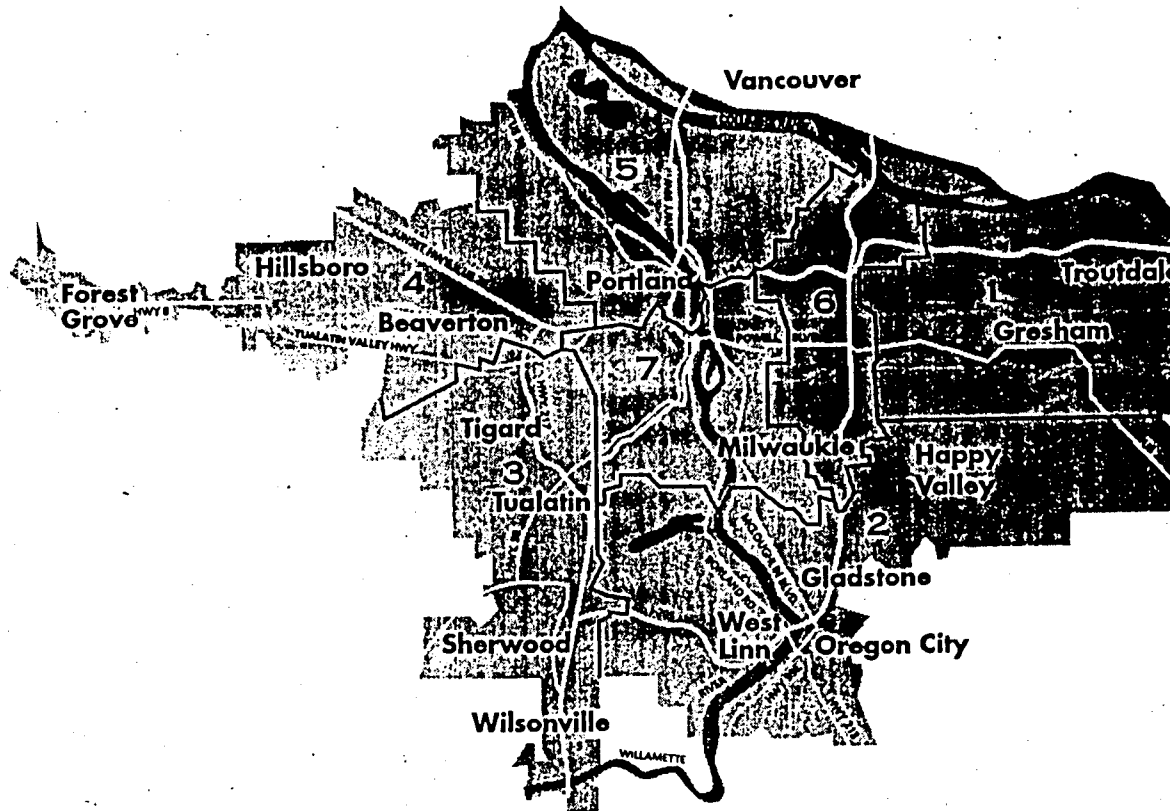
District 3
Jon Kvistad

District 4
Susan McLain

District 5
Ed Washington

District 6
Rod Monroe

District 7
Patricia McCaig



Council Districts

Metro is a regional government authorized and created pursuant to Article XI, Section 14, of the Oregon Constitution to provide planning and policy-making to preserve and enhance the quality of life and to provide regional services needed for the Portland metropolitan region.

Metro was originally created for a more limited purpose in 1969. At that time, pursuant to laws adopted by the Oregon Legislature and upon voter approval, Metro's predecessor was authorized to provide a limited number of regional services. Its original governing body was appointed from members of city councils and county commissions within its boundary. In 1978, the Legislature and voters reconstituted Metro and merged it with another regional entity. The new regional government had authority to provide regional services and to participate in Oregon's land use planning process. For the first time in U.S. history a regional government was created that had a directly elected council as well as an elected executive.

In 1990, the Oregon Constitution was amended to authorize home rule status for Metro. In November 1992, the voters approved a charter for Metro that implemented the constitutional provisions. The Charter continues the directly elected Metro Council and Executive Officer. The Council is now salaried and the 13-member Council was reduced to seven members effective January 1995. Also, in January 1995, an elected Auditor took office.

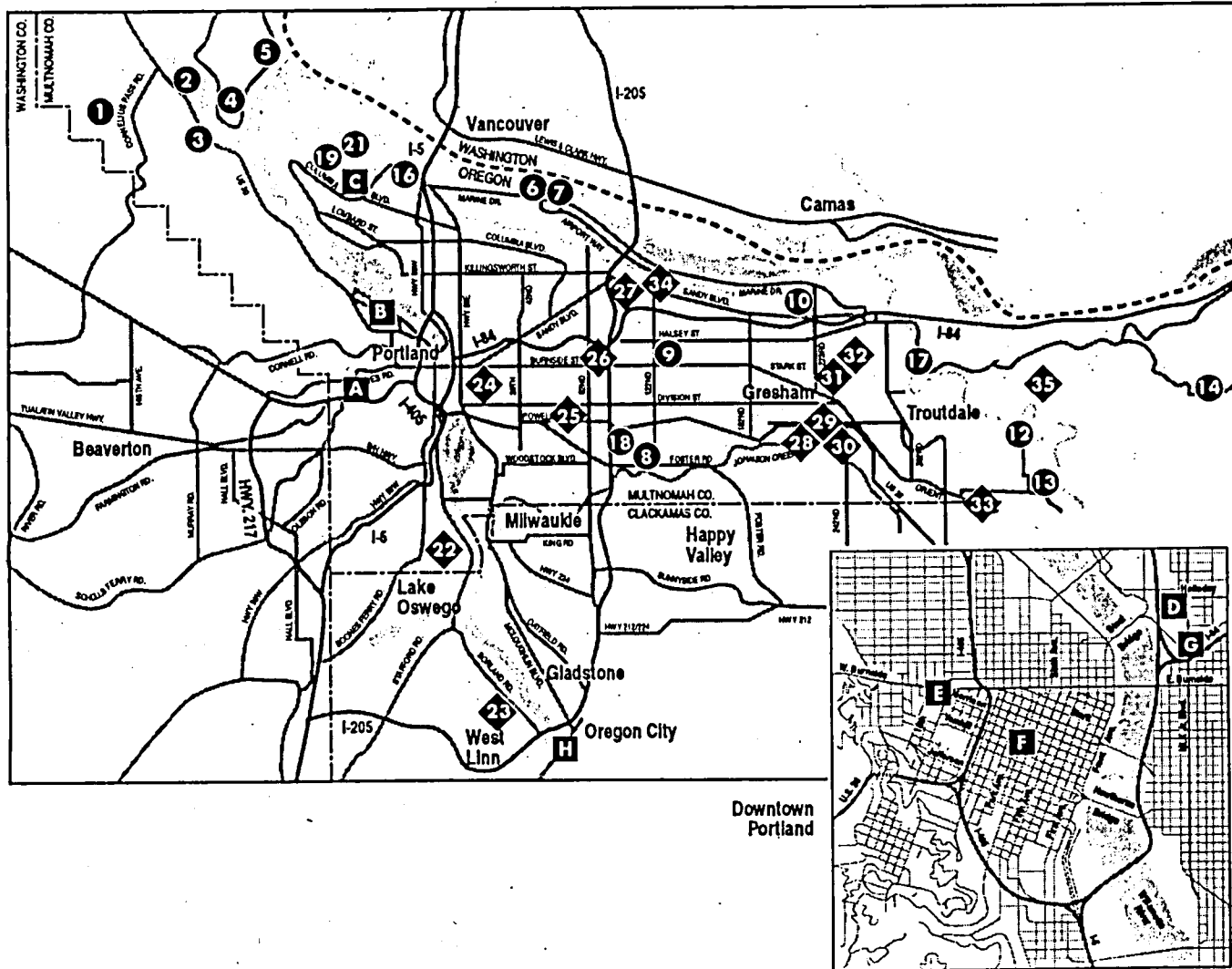
Under the Charter, Metro continues to possess all powers and authorities set forth in state law prior to the adoption of the Charter. Metro now also has independent constitutional authority to exercise jurisdiction over any matter of metropolitan concern. The powers granted to Metro under the Charter are broader than previously contained in state law. In exercising authority over its authorized function, Metro has all the powers the laws of the United States or Oregon now allow or could allow in the future.

The Council is responsible for legislative actions. The Council annually selects a Presiding Officer and a Deputy Presiding Officer from among its members.

The Executive Officer is an elected, full-time, salaried position and is responsible for the executive function and administration of Metro. Metro is organized into nine departments, and employs approximately 800 full-time equivalent employees.

The 1992 Charter created a new, independently elected Auditor who took office in January 1995. The Auditor is charged with conducting audits of Metro operations and recommending improvements. The audits will be in addition to Metro's annual financial audits performed by an independent, outside auditor.

General Information about Metro



Metro Facilities, Natural Areas and Cemeteries

Metro Facilities

- A. Metro Washington Park Zoo
4001 SW Canyon Road
Portland, OR 97221
- B. Metro Central Station
6161 NW 61st Ave.
Portland OR 97210
- C. St. Johns Landfill
9363 N. Columbia Blvd.
Portland, OR 97232
- D. Oregon Convention Center
777 NE ML King Jr. Blvd.
Portland, OR 97232
- E. Civic Stadium
1844 SW Morrison St.
Portland, OR 97205
- F. Portland Center for the
Performing Arts
1111 SW Broadway
Portland, OR 97205
- G. Metro Regional Center
600 NE Grand Ave.
Portland, OR 97232
- H. Metro South Station
2001 Washington St.
Oregon City, OR 97045
16. Expo Center
2660 N Marine Drive
Portland, OR 97211

Natural Areas

1. Mason Hill, 3 acres
2. Sauvie Island Boat Ramp, 1 acre
3. Multnomah Channel, 11 acres
4. Bybee House & Howell Park, 73 acres
5. Bell View Point, 10 acres
6. M. James Gleason Memorial Boat Ramp, 6 acres
7. Broughton Beach, 9 acres
8. Beggars Tick Marsh, 20 acres
9. Glendoveer Golf Course & Fitness Trail, 232 acres
10. Blue Lake Park, 185 acres
11. Gary & Flagg Islands, 132 acres
12. Oxbow Park, 1,000 acres
13. Indian John Island, 64 acres
14. Larch Mountain Corridor, 185 acres
15. Chinook Landing Marine Park, 67 acres
16. Expo Park (Future overnight facility), 12 acres
17. Sandy River Access Points (4), 5.6 acres
18. Beggars Tick Addition, 0.25 acres
19. Smith & Bybee Lakes Addition, 5.17 acres
20. Phillipi Property, 6.38 acres
21. Smith & Bybee Lakes, 2,000 acres
22. Jones, 2.5 acres

Cemeteries

23. Grand Army of the Republic, 1 acre
24. Lone Fir 30.5 acres
25. Multnomah Park, 9.3 acres
26. Brainard, 1.1 acres
27. Columbia Pioneer, 2.4 acres
28. White Birch, 0.5 acres
29. Escobar, 0.5 acres
30. Gresham Pioneer, 2 acres
31. Mt. View Stark, 0.8 acres
32. Douglass, 9.1 acres
33. Pleasant Home, 2 acres
34. Powell Grove, 1 acre
35. Mt. View Corbett, 2 acres

Index to Map

1979

Columbia Region Association of Governments (CRAG) combined with the Metropolitan Service District to form Metro. Functions include solid waste planning, the zoo and managing the urban growth boundary.

Joint Policy Advisory Committee on Transportation (JPACT) formed and staffed by Metro's Transportation Planning Department.

Transfer of the ownership and operation of the Washington Park Zoo to Metro.

1981

Solid waste operations (including the management of the St. Johns Landfill) added to Metro's functions.

1983

Clackamas Transfer and Recycling Center (now named Metro South Station) opens.

1986

Voters approve \$65 million general obligation bond issue to build the Oregon Convention Center.

1987

Metropolitan Exposition-Recreation Commission established.

1988

Metro assumes responsibility of appointing members of the Portland Metropolitan Area Local Government Boundary Commission.

1989

Attendance at the Metro Washington Park Zoo breaks the 1 million mark.

1990

Metro assumes management responsibility for the Portland Center for the Performing Arts, Civic Stadium and Memorial Coliseum.

Columbia Ridge Landfill opens near Arlington, Ore., to replace the St. Johns Landfill and serve the Portland metropolitan region.

1990

Metro issues \$28.5 million in solid waste revenue bonds to construct the Metro East Station (now named Metro Central Station).

Voters approve tax base for the Metro Washington Park Zoo.

Metro initiates an excise tax on its own enterprise operations.

Oregon Convention Center exceeds projected use and economic projections each year thereafter.

Voters approve an amendment to the Oregon Constitution allowing the creation of a home-rule regional government in the Portland metropolitan region and calling for the creation of a Charter Committee.

1991

Metro Central Station opens.

St. Johns Landfill closes as a general purpose landfill.

Africa Rain Forest exhibit opens at the Metro Washington Park Zoo.

1992

Voters approve a new home-rule charter for Metro, identifying Metro's primary mission, revising Metro's structure, and formally changing the name of the organization from Metropolitan Service District to Metro.

Voters narrowly turn down a \$200 million general obligation bond measure to acquire metropolitan greenspaces.

1993

Management of the Memorial Coliseum is returned to the City of Portland and subsequently transferred to the management of the Oregon Arena Corporation.

1994

Metro assumes management responsibility for the Multnomah County parks system and the Expo Center.

Voters approve \$475 million Tri-Met general obligation bonds for contraction of South-North light rail.

Region 2040 concept plan adopted.

1995

New seven-member Metro Council takes office, along with a new Executive Officer and Metro's first elected Auditor.

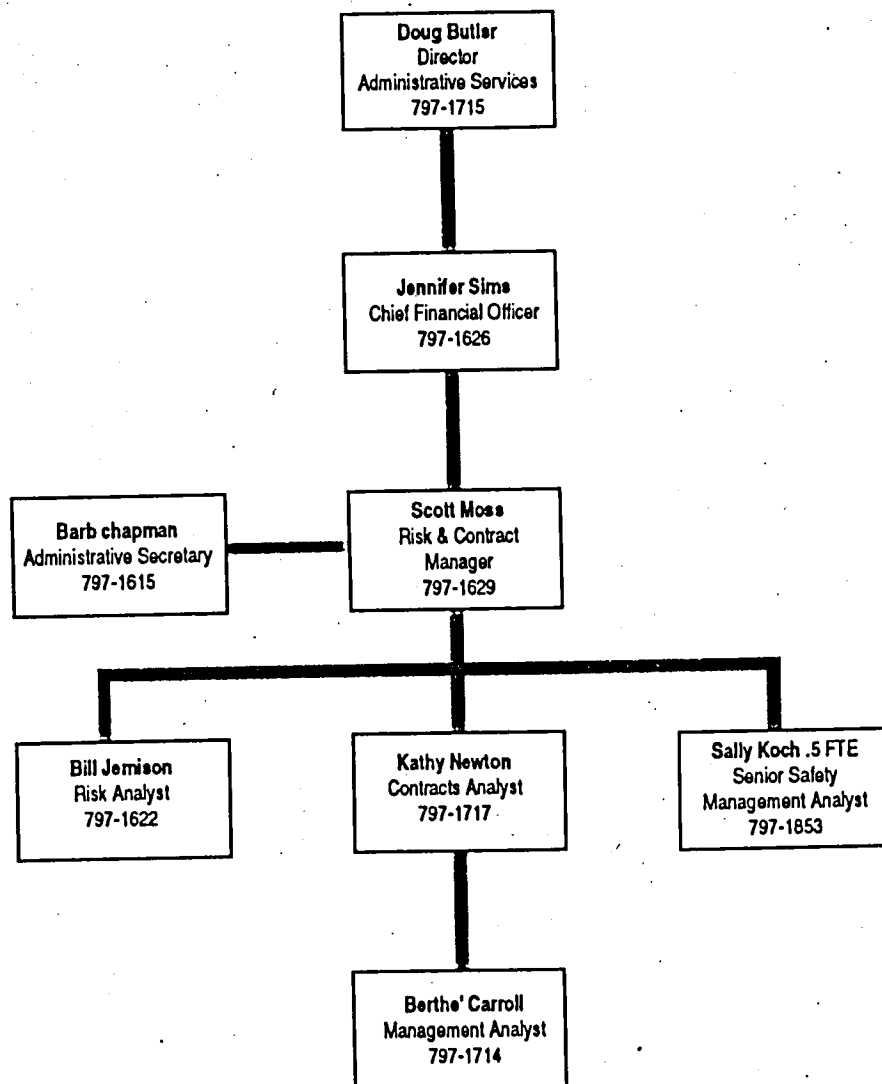
Voters approve \$135.6 million general obligation bond measure to acquire and protect open spaces, parks and streams.

Future Vision Statement to be adopted.

Metro Timeline

Administrative Services Department

Risk and Contract Management Division



Metro evolved out of a special district structure, and as functions were added, they brought with them dedicated revenue sources. Accordingly, most of Metro's operations are funded by fees and charges for service. Metro has a relatively modest General Fund that is used to support general government functions and provide transfers to departments for non-self-supporting activities.

In the FY 1995-96 approved budget, Metro projects \$128,067,331 in operating resources (excluding fund balances, bond proceeds, debt service and interfund transfers). Of this amount, \$84,871,644 or 66 percent comes from enterprise revenues. The balance of Metro's operating resources in FY 1995-96 come from grants (15 percent), property taxes

(5 percent), excise taxes (5 percent), intergovernmental transfers (5 percent) and all other sources (4 percent). The following table shows both total budgeted resources and operating resources.

Metro maintains a healthy level of reserves and ending fund balances in its various funds, in part, due to the enterprise nature of most of its operations. Since 1991-92, Metro's reserves have averaged about 30 percent of its total budget. Metro has taken care to forecast long-term needs and has built and maintained reserves to pay for those needs as they come due. The primary example of this type of long-range planning occurs in the Solid Waste

Revenue Fund, which includes a reserve built up during the last several years to pay for the closure of the St. Johns Landfill. Those closure costs have been absorbed by Metro without adverse rate impacts due to the availability of the closure reserve. Metro has also built reserves for renewal and replacement of many of its major capital facilities, notably solid waste and the Oregon Convention Center, and, in FY 1995-96, Metro is embarking on a program to ensure that replacement reserves are built for its remaining facilities.

Financial Structure

	FY 1995-96 Approved Resources	Approved Resource % Share	FY 1995-96 Operating Resource	Operating Resource % Share
Fund Balance	\$ 67,101,966	18%	\$0	0%
Grants	19,644,363	5%	19,644,363	15%
Property Taxes	23,365,346	6%	5,972,342	5%
Excise Tax	6,417,895	2%	6,417,895	5%
Enterprise Revenues	84,871,644	22%	84,871,644	66%
Intergov'tal Transfers	6,334,756	2%	6,334,756	5%
Donations and Bequests	737,500	0%	737,500	1%
Bond Proceeds	141,296,500	37%	0	0%
Interest Earnings	8,645,288	2%	2,645,488	2%
Interfund Transfers	18,270,134	5%	0	0%
Other	1,443,343	0%	1,443,343	1%
Total Resources	\$378,128,735	100%	\$128,067,331	100%

Transportation

Metro serves as the lead agency for regional transportation planning and funding in the metropolitan area. Metro, in turn, works with citizens and the diverse mixture of local, regional, state and federal agencies that own and operate the region's transportation system to develop transportation plans and programs. The Transportation Department has three sections: Regional Transportation Planning, High Capacity Transit Planning and Travel Forecasting.

- Regional Transportation Planning develops long-range transportation plans, evaluates funding programs and studies transportation needs in specific areas. The travel options that are available in our region are defined in the Regional Transportation Plan.
- High Capacity Transit Planning provides project management to the region's South/North Transit Corridor Study.
- Travel Forecasting provides assistance to other Metro departments and agencies throughout the region in the form of data analysis and research.

Growth Management

The mission of Growth Management is to plan for and seek to implement a model land-use program to address the needs of the region and to protect its livability, especially in the areas of regional air and water quality, and land use. This department, which has a FY 1995-96 budget of \$22.9 million, has grown to meet the demands and pressures of population growth in the region. Projections show that an estimated 700,000 new residents will be coming into the four-county metropolitan region in the next 20 years.

Major Planning Programs

- Growth management
- Regional Framework Plan Development
- Urban Growth Boundary maintenance
- Regional Land-Use Policy implementation

Organizational Structure

Metro Washington Park Zoo

The Metro Washington Park Zoo celebrated its 100th anniversary in 1987 and two years later reached record attendance of 1 million. The zoo is the largest paid tourist attraction in Oregon. One million annual visitors to the zoo help support the facility through paid admissions, zoo memberships, train tickets, gift shop and food service purchases and donations. At least half of Zoo revenues are from non-tax sources. The Zoo's FY 1995-96 Operating Fund budget amounts to \$19.0 million.

- Mission: Provide visitors a unique educational and recreational opportunity to experience wildlife in a naturalistic setting and to learn to "care now for the future of life"
- Metro's goals for FY 1995-96 include beginning construction of a new Zoo entrance near the light-rail station

Regional Environmental Management

Regional environmental is responsible for solid waste disposal and solid waste reduction efforts. Solid waste collection is regulated by local government through a system of franchises. The Department manages two solid waste transfer sites and franchises one other. Waste is trucked to the Columbia Ridge Landfill in Gilliam County, Ore. operated by Waste Management of Oregon under contract to Metro, or to one of several other designated facilities. The department's budget has grown with increased population pressures, and stands at \$59 million for FY 1995-96. The department also operates several programs to encourage the reduction, reuse or recycling of solid waste in the region.

- Flow control of solid waste in the metropolitan area totalling 1.05 million tons
- Development of the regional solid waste management system
- Reduce solid waste generated and increase recycling and waste reduction activities – in 1993, the region's recycling level was 38 percent compared to 22 percent in 1986 and 32 percent in 1990

Regional Parks and Greenspaces

Regional Parks and Greenspaces was created in January 1994 with the transfer of parks functions from Multnomah County. Its FY 1995-96 operating budget is \$5.7 million. The department provides both an operational arm and a planning function to protect and care for the public's investment in park lands and facilities. Passage of the Open Spaces Program bond measure adds a significant component to the department's responsibilities.

- Mission: Create a cooperative regional system of natural areas, open spaces, trails, parks and greenways for wildlife and people in the metropolitan area
- Operation of 21 regional parks and natural areas, as well as 14 pioneer cemeteries, visited by more than 1 million visitors annually
- Management and operation of the regional parks facilities transferred to Metro from Multnomah County in January 1994
- Coordination and involvement of local governments
- Planning and capital development of park facilities.



Organizational Structure

MERC

Administrative Services

The Metropolitan Exposition-Recreation Commission, established in 1987, is the operating arm for Metro's trade and spectator facilities, including the Oregon Convention Center, the Expo Center, the Portland Center for the Performing Arts, and the Civic Stadium. The Portland Center for the Performing Arts and the Civic Stadium were transferred to Metro's management from the city of Portland in 1990, when the convention center opened. Management of the Expo Center was transferred to Metro from Multnomah County in January 1994. The Metro E-R Commission oversees operations. Seven commissioners are appointed by Metro to serve four-year terms. The Metro Council approves the commission's budget, which is \$34.6 million for FY 1995-96.

- Metropolitan Exposition-Recreation Commission established in 1987
- Operates the Oregon Convention Center, the Expo Center, the Portland Center for the Performing Arts, and the Civic Stadium
- The Oregon Convention Center, a \$92-million facility, opened in September 1990 on time and under budget

The Department of Administrative Services was created in May 1995 by merging the former Finance, General Services and Personnel departments. The new department combines all business services provided to other Metro departments into one unit to improve coordination and efficiency.

Administrative Services Department divisions include: Financial Planning, Accounting, Risk and Contracts Management, Electronic and Print Services, Personnel and Property Services. A primary function of the department is to lead Metro's financial planning efforts and to establish and manage various funding mechanisms as needed for Metro operations. Its FY 1995-96 budget amounts to \$7.1 million.

Department costs are allocated back to operating departments based on a cost allocation plan prepared each year and approved by the federal government as the federal indirect cost plan for federal grant purposes.

Major Functions:

- Long-range financial planning
- Debt management
- Budget preparation
- Personnel management
- Labor relations
- Accounting services

Organizational Structure

- Risk management
- Contracts management
- Information services
- Office services
- Graphics and print services
- Property services

**Jennifer Sims,
Chief Financial Officer**

Jennifer Sims was employed at Metro's predecessor agency, Columbia Region Association of Governments (CRAG) since 1973. She transitioned to Metro in 1979, where she had a variety of assignments, including Research and Policy Development Officer, Local Government Liaison, and Land Use Planner. In 1981, Ms. Sims was appointed manager of Financial Services and assumed day-to-day managerial responsibility for financial planning, data processing, accounting, and office services. In 1991, she was appointed to the position of Director of Finance and Management Information. In 1995 she was designated Chief Financial Officer. Ms. Sims holds a bachelors degree from Portland State University and is a candidate for a master's degree in public administration at Lewis and Clark College.

**R. Scott Moss
Risk and Contract Manager**

Scott Moss began his professional career as Risk Manager for the University of Utah. In 1987 he moved to Oregon and acquired a position with Washington County, where he established their first risk management program. Mr. Moss joined Metro in August of 1991 to assure the proper administration of risk. His expertise is in the development of creative risk prevention techniques and risk financing. Mr. Moss has held a variety of leadership positions with professional associations, which includes President of the Oregon Chapter of PRIMA and RIMS. He has instructed courses in risk management at Oregon State University, and holds CPCU, ARM, and ALCM designations. He received a bachelor's degree in Risk and Insurance from Arizona State University.

**William G. Jemison
Risk Analyst**

Bill Jemison joined Metro in 1992 working in the Solid Waste Department. In July 1995, he moved to Risk and Contracts Management as a Risk Analyst. Mr. Jemison graduated from the U. S. Naval Academy in 1986 with a Bachelors of Science degree. He served 6 years onboard ships in the Pacific Fleet in engineering and operations positions.

**Barb Chapman
Administrative Secretary**

Barb Chapman move to Portland and joined Metro's Risk Management Division in September, 1994. Ms Chapman grew up in Ohio, and spent several years traveling throughout the United States, living in Tennessee, Idaho and California. She has held various secretarial positions since 1975, including the Peace Corps Recruiting Office in Los Angeles, where she discussed volunteer opportunities and requirements with applicants, maintained the applicant database, and prepared and monitored the budget. Ms. Chapman also worked in the publishing Department at the Disney Studios, with responsibility for the preparation of marketing presentations and the updating of telemarketing and direct mail sales figures. Ms. Chapman brings diverse skills and a creative approach to her duties at Metro.

Overview of Key Staff

Metro emphasizes risk reduction through the identification and management of loss exposures. This philosophy is of such importance that Metro employs a full-time, professional risk management staff.

INTRODUCTION

The Risk and Contract Management Division of Metro, is requesting proposals for Property/Casualty Agent of Record/Broker. Proposals will be due on Friday, December 1, 1995, 3:00 p.m., PST, in Metro's business offices, attention R. Scott Moss, Risk Manager, 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the project and proposals are contained in this document. It is anticipated that the term of the contract will be from January 1, 1996 to December 31, 1998. Details concerning the proposal are contained in this document.

RISK MANAGEMENT PROGRAM

In July 1986, the Metro Council adopted Resolution No. 86-670 directing the Executive Officer to prepare, administer and maintain a self-insurance and risk management program. With this direction and a recommendation from a 1990 actuarial study, Metro developed a new Risk Management Division in July of 1991, to administer the risk associated with property, auto, general liability, and Workers' Compensation losses for the agency.

Effective July 1, 1992, Metro became self-insured for its general and automobile liability coverage. Metro maintains an actuarially sound self-insured reserve and the Risk Management Division has established policies and procedures to assure the integrity of the program. During FY 1994-95, Metro had 43 general liability and automobile claims. Metro purchases a limited excess liability policy, a special event policy, and a liquor liability policy.

Workers' compensation is covered by SAIF Corporation under a paid loss retro program. Risk Management personnel work directly with SAIF, with limited oversight from the broker.

Metro insures approximately \$250,000,000 worth of property through Allendale Insurance Company. On July 1, 1993, Metro renewed a three-year contract with Allendale, which will be up for renewal on June 30, 1996.

Metro purchases crime insurance and a faithful performance bond from Hartford Accident & Indemnity Company. Both policies renew July 1, 1996.

PROPOSED SCOPE OF WORK/SCHEDULE

Metro's risk management team combines internal and external resources to provide Metro departments with the highest quality of service. To this end, we request experienced Property/Casualty Agents of Record Broker to submit proposals to be a part of Metro's risk management team.

- a) General Agent of Record Services
 - i. The Agent shall be available to the Risk Manager, or other staff as directed, for general insurance-related counseling.
 - ii. Shall annually review Metro's insurance program and make recommendations to Risk Management.
 - iii. Market Crime insurance.
 - iv. Market Employee Dishonesty coverage.
 - v. Negotiate limited excess liability policy.
 - vi. Be a resource for the Risk Manager to exchange ideas
- b) Market Property Insurance
 - i. Survey the insurance market place to determine available property insurance markets.
 - ii. Assist risk management in developing underwriting information.
 - iii. Provide the available property insurance markets with Metro's underwriting information.
 - iv. Review suggested policy forms and coverage's.
 - v. Evaluate the financial strength of the proposed insurance company.
 - vi. Issue Certificates of Insurance.
 - vii. Assist in placement and resolution of any claims.
- c) Loss Control Consultation
- d) Additional services offered by the broker

QUALIFICATIONS/EXPERIENCE

Metro is looking for an Agent of Record who is licensed in the State of Oregon and has demonstrated experience with self-insured organizations. The Agent of Record must also have experience serving commercial clients approximately the same size as Metro, have knowledge and experience with public entities and the Oregon Tort Claims Act. Experience with facilities catering to large numbers of visitors and experience with hazardous materials is required. The Agent should have experience focusing on loss control engineering to avoid liability and workers' compensation injuries.

The Agent of Record will have demonstrated, through education and experience, that they are technical experts in their field with the ability to effectively communicate Metro's needs to Risk Management, supervisors, employees, and the Metro Council. The Agent will have demonstrated creativity, not only to see things as they are but as they might be. Perhaps most important, the Agent will have a reputation among their peers and clients to have utmost integrity and a willingness to place their clients interest above their own.

PROJECT ADMINISTRATION

All the work of the Agent of Record will be coordinated through the Risk and Contracts Manager. Other principle contacts will be the Risk Analyst and the division's Administrative Secretary.

PROPOSAL INSTRUCTIONS

a) Submission of Proposals. The Proposal should be submitted on recyclable, double-sided paper (post-consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.

Five copies of the proposal shall be furnished to Metro addressed to:

Mr. R. Scott Moss,
Risk and Contract Manager
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

b) Deadline

Proposals will not be considered if received after 3:00 p.m., PST, Friday, December 1, 1995. Postmarks are not acceptable.

c) RFP as Basis for Proposals

This Request for Proposals represents the most definitive statement Metro will make concerning information upon which proposals are to be based. Any verbal information which is not contained in this RFP will not be considered by Metro in evaluating the proposals. All questions relating to the RFP or the project must be submitted in writing to R. Scott Moss, Risk and Contracts Manager. Any questions which in the opinion of Metro warrant a written reply or RFP amendment will be furnished to all parties receiving a copy of this RFP. Metro will not respond to questions received after Monday, November 27, 1995.

PROPOSAL

The proposal must be in the following format:

- a) Name, address, telephone number, and short history of the company.
- b) Name, education, experience of Agent of Record.
- c) Fees for services.
- d) List all public and private entities and clients of Metro's size (present and past). Please include contact person's name and telephone number.
- e) Describe in detail a proposed work plan to service Metro. The proposed work plan should include: the goals and objectives of the Agent of Record in servicing Metro; a detailed proposal of services; when these services are to be provided; and a proposed self-evaluation. The work plan will be judged on both creativity and proposed activities.

COMPENSATION

We look for a broker to provide a range of services to Metro. For compensation for those services, Metro has the following expectations:

The majority of compensation will come from the commission paid by SAIF Corporation under Metro's workers' compensation policy. We understand a five percent commission is paid on Metro's current standard premium of approximately \$398,000. Please be aware that for the most part, Metro's risk management staff deals directly with SAIF Corporation personnel.

All other insurance is expected to be commission free. If commissions are paid, it must be used to reduce fees.

Additional fees as deemed necessary by the broker and must be noted in the response to this proposal.

Please indicate fee for the next three years. Any fees that may arise from additional services should be addressed.

EVALUATION OF PROPOSALS

a) Evaluation of Procedure - Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. The evaluation process will result in Metro developing a short list of qualified firms. Interviews with these firms may be requested prior to the final selection of one firm.

b) Evaluation Criteria - Proposals submitted that conform to the instructions provided in this RFP will be evaluated on the following criteria:

1. Work plan (40 points)

- Organization of proposal.
- Response to purpose and scope of work.
- Description of proposed services including loss control consulting and other services offered.

2. Experience and Qualifications of the Agent of Record and as outlined (20 points)

3. Cost of Service (20 points)

4. Response from References (20 points)

GENERAL PROPOSAL/CONTRACT CONDITIONS

Information Release

All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.

Minority and Women-Owned Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Code provisions 2.04.100 & 200.

Copies of that document are available from the Risk and Contracts Management Division of Administrative Services, Metro, Metro Center, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1717.

a) Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.

b) Billing Procedures: Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. 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. Metro shall pay Contractor within 30 days of receipt of an approved invoice.

c) Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.

d) Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other

Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

NOTICE TO ALL PROPOSERS — STANDARD AGREEMENT

The attached personal services agreement is a standard agreement approved for use by the Metro Office of General Counsel. This is the contract the successful proposer will enter into with Metro; it is included for your review prior to submitting a proposal.

EXHIBIT "A"

Project _____

Contract No. _____

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 N.E. Grand Avenue, Portland, OR 97232, and _____, referred to herein as "Contractor," located at _____

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 _____ and shall remain in effect until and including _____, 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 maximum a sum not to exceed _____ AND 00/100THS DOLLARS (\$ _____).

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 INSURED. 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. 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 30 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 and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

METRO

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 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 2:15 PM.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

Councilor Washington requested that the Council minutes of October 12, 1995 be amended to change the wording of his motion regarding Ordinance No. 95-616A from minimum to maximum.

Motion: Councilor McCaig moved, seconded by Councilor Washington for approval of the consent agenda, with amendments to the minutes as noted above.

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

5. INFORMATIONAL ITEMS

5.1 Report by the Auditor, Alexis Dow: Regional Parks and Greenspaces: Glendoveer Cellular Site Lease

Alexis Dow, Metro Auditor, appeared to report on her audit of the Regional Parks and Greenspaces department and her observations relating to the Glendoveer cellular site lease agreement. The lease agreement allows GTE Mobilnet to operate a cellular communications transmission facility at Glendoveer Golf Course. Ms. Dow undertook the study in response to an inquiry of a Metro area citizen. A copy of this report, which

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 2

includes the background, analysis, recommendations, and the Executive Officer's response, as well as other key elements, is included as part of the meeting record.

Councilor Kvistad asked that Mike Burton, Executive Officer, or his designee be available to answer questions when Ms. Dow makes her presentations to the Council. Jennifer Sims, Chief Financial Officer, informed the Council that she was present at Executive Officer Burton's request to address any questions.

Councilor McLain asked that audits go first to the appropriate Council committee, this case, either Regional Facilities, or Governmental Affairs to allow for Council input and discussion. Presiding Officer McFarland said she will follow through on Councilor McLain's request.

5.2 Regional Urban Growth Goals and Objectives

Presiding Officer McFarland opened a public hearing.

Councilor McLain gave a brief overview of the 2040 process. John Fregonese, Growth Management Director, and Mark Turpel, Senior Program Supervisor, were present and available to answer specific questions.

(Editor's note: public hearing testimony was transcribed by temporary Metro Council staff person David Aeschilman. Mr. Aeschilman's notes are presented below in their entirety.)

1. Alan Malone, Friends of Cooper Mountain, 19238 SW Heightsview, Aloha OR 97007.
"I would like to address the Metro Council on Cooper Mountain and its status on urban reserve. The purpose of me coming here today is to familiarize the Metro Council with the opinions and concerns of the property owners of Cooper Mountain area regarding the placement of Cooper Mountain into the urban reserve study area. The concerns of the property owners focus on three main subjects: First, the density assumptions developed for Region 2040 Growth Concept Plan indicate an anticipated density of 1,156 additional dwellings in our area. We are deeply concerned that the infill possibilities of Cooper Mountain have been greatly and gravely over-calculated by Metro staff and independent consultants to Metro. We would like to bring to the Metro Council's attention the fact that many, if not most properties on top of Cooper Mountain that were developed on RR5 land are covered by restrictions on their deeds that will prohibit the subdivision of lots. We feel that this is a significant subject of legal concern that should be looked at Metro Council and Staff. Furthermore, in discussions with Metro staff personnel, it is apparent that the assumption exists that property sizes of one acre will be subject to subdivision within the twenty-year scope of the study. Many of the properties would not be dividable unless existing homes are demolished or moved due to their placement on the lots. It is questionable whether existing or future owners would be willing to do this. A petition signed by 191 Cooper Mountain owners certainly suggests individuals would not willingly make this choice. The resulting checkerboard pattern that may be formed by the attempted infill of Cooper Mountain urban reserve area would be highly disruptive to the nature of our neighborhood and would not preserve an existing stable and distinct neighborhood. This would not be in the spirit of Goal II of the Regional Urban Growth Goals and

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 3

Objectives (RUGGOs). Second, we would like to bring to your attention the existence of agricultural, mining and timber industries in or adjacent to the study area. Cooper Mountain Vineyard is considered to be a prime Oregon agricultural resource. This is a unique feature to our community and should not be considered for development. This is an active winery, producing wine. This wine can be found on the local shelves of our supermarkets. The rock quarries of Cooper Mountain should also be considered when looking at a reserve status for this area. Cobb Rock and Baker Rock are actively mining and blasting on the west slope of Cooper Mountain. A land use district B encompasses all land on either side of Grabhorn Road, well into the proposed urban reserve study area. Home built in this area will have severe building requirements and restrictions. The south slope of Cooper Mountain consists of farm and forest lands that are under active use. The land bordering Kemmer Road has been recently clear cut under the State Forest Practices Act. We strongly feel that this land should remain farm and/or forest use or be considered for acquisition into the Greenspace Program. Replanting and regeneration as well as maintaining the remaining forested lands on the south slope of Cooper Mountain is consistent with Regional Urban Growth Goals and Objectives (RUGGOs), growth management Objective 21, Urban/Rural Transition. Finally, we feel that our area should be considered for rural reserve designation. We need to maintain the agricultural industry of the vineyards; we need to eliminate conflicts with forest use and other farm uses; we can help meet regional goals and needs for open space and wildlife habitat and help to clearly separate urban from rural land. All of these reasons and others are clearly in agreement with the definition of 'rural reserves' in the amended Regional Urban Growth Goals and Objectives (RUGGOs). Thank you for your attention."

2. Bill Resnick, Portland Jobs With Justice, 1615 SE 35th Place, Portland OR 97214. "I am authorized to speak on 2040. We urge you to hold the line with no expansion of the Urban Growth Boundary (UGB). We also urge you to adopt policies that not only reduce concentrations of poverty but also direct development and resources to the people who need them. The Urban Growth Boundary (UGB) decision seems to me to be quite simple, at least as a policy matter. This country has conducted a fifty-year experiment in encouraging suburban sprawl. If we can continue to fuel suburban growth, as most studies have done, we will surely get similar outcomes; that is, urban and inner suburban disinvestment and blight, congestion, environmental decline, wasted resources, as well as subsidies to the affluent. Ultimately, suburbanization generates social patterns where people abandon community concerns and intensify the search for private security, going further and further into the countryside in a futile effort to find comfort. We have to hold the line on the Urban Growth Boundary (UGB) and avoid malignant growth. Then comes the hard part: How to direct development to revive urban communities and regional livability? It seems to us that you have taken the first step; that is, adopting Objective 21 of the Regional Urban Growth Goals and Objectives (RUGGOs). It seems to me that is only a first step. Because we have to begin directly addressing the fundamental driving force right now in this society, that is the polarization of income, the marginalization of much of America's working class. Some have termed it the Brazilianization of this country. For the past twenty years, the rich have been getting much richer; stupendously richer. Most people are working harder for less with increasing insecurity and perhaps 1/3 of people are falling into deep

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 4

poverty, even more among children. No city or region will be livable if substantial and increasing numbers of people are unable to get work that enables them to raise a family and live in dignity. It seems to me that unless we, in particular our political leaders, do something about income polarization and decline for most people, we will continue to keep expanding prisons while cutting schools and parks and environmental restoration. I understand that dealing with polarization of income is not your primary objective and responsibility but it seems to me that you are not helpless and that you are not without considerable influence and there are many things you can do. One thing, it seems to me, is make clear in your documents, the real problems this region faces about income polarization and that is not now the case. We have submitted testimony on that throughout this process. A second thing you can do is think about contracting standards to eliminate low wage, no benefit companies from consideration for public contracts. You can support increases in the minimum wage and all working class wage and benefit levels. You can adopt policies and resolutions that stop reckless tax breaks to get high tech but in fact low-wage companies and that process generates a race to the bottom as more and more cities are forced to compete in the tax break derby. You can speak, in fact, for a progressive taxation and job creation and very different ways of managing the US economy. You can also promote a through-going process of democratization so that participation in decision-making is built into the fabric of life for all citizens. In conclusion, we urge you to hold the line on the Urban Growth Boundary (UGB) and pursue the policies of development and incoming quality rather than reckless growth. Thank you."

3. Dorothy Cofield, Oregonians in Action, 8255 SW Hunziker Road, Tigard OR 97223.
"Many changes still need to be made. The most troublesome aspect for us is the fact that some land is going to be acquired by Metro Greenspace bond money and others are going to be acquired by regulation. I did talk to John Fregonese after the last hearing to find out the status of just acquiring land from willing sellers and really the difference is a philosophical one: At this point the Metro Council doesn't yet consider taking away some use by regulation, generating the need for compensation and we would suggest that the Council look very hard at that and what might happen in the future and make an effort to only acquire open space land by purchasing that land. That will perhaps keep Metro out of future litigation that it doesn't want to get involved in. The second problem for us in the Regional Urban Growth Goals and Objectives (RUGGOs) is treating all the agricultural resource land outside the Urban Growth Boundary (UGB) as productive farm and forest land. While we absolutely support protecting the good, productive land, all of it shouldn't be disallowed for rural living and there are many restrictions already in place in state law such as the Urban Growth Boundary (UGB) not allowing subdivisions, farm/forest conflicts, and right to farm laws that will protect existing farm and forest industries from the conflict of rural living. Third, we have a problem with the rural reserve concept. The idea of state-wide Goals 11 and 14, which is to have this orderly growth, if you have these rural reserves right outside the Urban Growth Boundary (UGB), and someday you have to add more land because of growth, you are going to have to leap-frog over those reserves which really conflicts with some of our other state laws and policies. Finally, we would like to state that we support keeping the planning activities out of the Regional Urban Growth Goals and Objectives (RUGGOs). We advocate keeping the Future Vision or even an abridged version out of

the Regional Urban Growth Goals and Objectives (RUGGOs) document. I have specific and proposed amendments that I won't go through but hope that you will take the time to read. Thank you very much."

4. M'Lou Christ, 904 SE 13th Portland OR 97214, District Seven. "I appreciate your dilemma about how to accommodate and apparently huge number of newcomers and new households to the area. I think that the last paragraph in the Oregonian article is a key point: It was about encouraging local communities to speed up zoning and other measures to increase densities within the existing boundary. 'But a packet of fast-track measures is moving slowly because of disagreements over the details.' I urge you to put the horse back in front of the cart and delay any discussion of expansion of the Urban Growth Boundary (UGB) until zoning and other measures to increase densities are settled throughout the Metro region."
5. Kim Vandehey, landowner in urban reserve area, 17207 SW Siler Ridge, Aloha OR 97007. "I live on Cooper Mountain which is District 3. Every one says we don't want to be like California but that is exactly what we are doing. We want livability and we want everything that we have always had here but yet we allow businesses to come in with million-dollar tax breaks, bringing more people and building as well as more everything. Unlike some of the people who have testified today, I am a little different side. When we allow all these people to come in, we do this backwards. We let them come in, then we decide that we have a need to build more housing, then we do all of the infrastructure and then we plan. It is the backwards way. You are the regional government. You need to take charge and tell the cities and the counties what to do rather than work with them but you need to strong-arm them pretty much. The cities and the counties pretty much decide what they want to do. The cities and counties like to not do their planning and then suddenly come to grips with the fact that something has to be done by tomorrow and then just throw a dart. The other thing I want to say is we need logical, reasonable growth patterns so that all of us can plan ahead. At this point, we don't have that. The last time they did one of these growth boundary changes, in my area, they decided that they were going to stop a sewer line half way up a hill. That is not where a sewer line should stop. It should stop at the top of the hill or it shouldn't go that way at all. We do a lot of that in our area. I think it needs to stop. I think the place where it needs to stop is here with you. You are the regional government. You really need to strong arm some of these people and say 'Hey, we're not going to allow those kinds of things.' The other thing is when we logically start thinking about roads and transportation, everybody says we don't need anymore widening of the roads or anything but if you look in my area, and Beaverton, when we first moved out there, it was 45 miles per hour on all the roads. Now they don't allow people to front the roads, you have to have a cul-de-sac that comes in behind or a street that is off the road, and we keep lowering the speed limit. We are down to 30 miles per hour in some places where I frequently travel. It used to be 45 miles per hours. There are no more houses on the road than there were when I moved there. The problem is that it just keeps going on and on. We all would like a perfect place to live. Unfortunately, we have a lot of people in our society right now who are what they call 'NIMBIES' or 'not in my back yard.' I think what we need to do is decide what we actually need and where is the best place to put it and then just stifle those

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 6

people. Unfortunately I think some of them are my next-door neighbors. I think what we need to do is when we decide that all the area inside the Urban Growth Boundary (UGB) is now up for grabs for building because we are not going to move the Urban Growth Boundary (UGB), then those people just need to sit down and be quiet or allow the Urban Growth Boundary (UGB) to move where we can adjust and buy land that would be cheaper for the urban greenspaces or whatever outside where it is cheaper. I guess that's it."

6. Lamont Brock, 630 SE Yamhill, Suite 202, Portland OR 97214. "I am a native Oregonian. One of the concerns that I have, being a members of the RCA, Rose City Astronomers and also for the Geological Survey and Planetary Society and UN Environmental Concerns. I believe that our Urban Growth Boundary (UGB) should be controlled as I had heard some testimony that we need to manage what we have instead of adding more. If we control the number of people coming into the area, we need not just quantity of people but we need quality to make the community work. I lived in the major urban areas of the San Francisco Bay area and the Los Angeles-Long Beach area which had runaway growth. We all know what problems they are facing down there. Here in the Pacific Northwest, we have a unique ecosystem which includes the forests and geological hazards with Mt. Hood and Mt. St. Helens and so on. The concern I would urge you to consider is that in the case of major disasters, we don't need a lot of people that would add to the casualties for any major calamities that may occur."
7. William Sloane, 4303 SW Chesapeake, Portland OR 97201. "I have concerns about the expansion of the Urban Growth Boundary (UGB). I think I am also hearing that there are a lot of people who think the counties are not working, trying to stay within the growth boundary. I own property in both Multnomah and Clackamas Counties. By zoning standards, my property in Clackamas County, could be made into flag lots; therefore, adding two more lots to the county. Now I realize that two isn't much but since that is all that I can help with, I would like to. If the counties pulled together and the regulations were applied evenly throughout the tri-county area, there might be a lot of developable property out there - perhaps 20% to 30%."
8. Dennis Tooley, US West Communications, 421 SW Oak, Portland OR 97204. "In Section 18, we would propose adding 'telecommunication as a recognized infrastructure that should be planned' as well as electric and gas as we move forward. The second proposal would take that language that includes telecommunications and energy transmission and distribution systems and place that as well under the definition of infrastructure."
9. Thomas Cropper, PO Box 18025, Portland OR 97218-0025. "I have the report from the Director of Growth Management Services and I see that there are two amendments on the front page. One you will find on page 27 which talks about Urban Vitality which creates alarm signals in my head because it speaks about areas populated by disproportionately high percentage of people living at or below 80% of the area's median income level. This reeks to me of gentrification and I am alarmed that this language is in here. I am suggesting holding the Urban Growth Boundary (UGB) at this

time because the urban reserve areas may need study to protect the best farm land and forest land available. We need to identify these land before they are actually converted to something else. Also, I think that you need to define some of these terms in these reports. What does 'mixed use' mean? When you talk about vitality, you are talking about mixed use. That suggests to me zone changes. If people are subjected to zone changes, their values may go up and down. I have read a suggestion that a capital gains tax might be levied by Metro on 25% of the capital gains from zoning areas. This could be a tax on forced sales. Most of these sales might be on people who could no longer live in these areas. I am very alarmed by that. My last point is that the second amendment which is about new urban reserve areas, talks about adding new urban reserve areas to the one that are absorbed into the Urban Growth Boundary (UGB). When is this going to stop? I think that before you talk along these lines, you had better spell out your criterion of what is acceptable in the urban reserve areas."

Mr. Fregonese discussed the effects of the state legislation which specifies time limits upon actions taken by Metro with regard to the urban reserves.

Presiding Officer McFarland closed the public hearing.

6. ORDINANCES -- SECOND READINGS

6.1 Ordinance No. 95-618A, Amending the FY 1995-96 Budget and Appropriations Schedule to Recognize Grant Funds, Transfer \$5,000 From the Regional Parks and Expo Fund Contingency, and Authorize the Expenditure of Said Funds to Pay for Emergency Dredging at the M. James Gleason Boat Ramp; and Declaring an Emergency

***Motion:** Councilor Morissette moved, seconded by Councilor McCaig for adoption of Ordinance No. 95-618A.*

Charles Ciecko, Director of Regional Parks and Greenspaces, gave a presentation on Ordinance No. 95-618A, which would amend the FY 1995-96 budget to provide for emergency dredging at the M. James Gleason boat ramp. A background and discussion of this ordinance is part of the committee report which is included as part of the meeting record.

Councilor Kvistad stated for the record his belief that it is inappropriate for Metro to operate boat ramps and cemeteries.

***Vote:** Councilors McCaig, Morissette, Monroe, McLain, Kvistad, and McFarland voted aye. Councilor Washington was absent. The vote was 6/0 in favor and the motion passed.*

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 8

6.2 Ordinance No. 95-620, Amending the FY 1995-96 Budget and Appropriations Schedule Transferring \$15,000 From Contingency and \$23,500 From Capital Outlay to Materials and Services in the Regional Parks and Greenspaces Department to Provide Funding for a Roof Replacement at Blue Lake Park's Curry Maintenance Building; and Declaring an Emergency

***Motion:** Councilor Monroe moved, seconded by Councilor McLain for adoption of Ordinance No. 95-620.*

Councilor Monroe spoke to Ordinance No. 95-620, which would amend the FY 1995-96 budget to provide funds for re-roofing of Blue Lake Park's Curry maintenance building.

***Vote:** Councilors Morissette, Monroe, McLain, Kvistad, McCaig, and McFarland voted aye. Councilor Washington was absent. The vote was 6/0 in favor and the motion passed unanimously.*

6.3 Ordinance No. 95-619, Amending the FY 1995-96 Budget and Appropriations Schedule to Implement the Open Spaces Work Program, Adding 7.63 FTE in Various Funds, Transferring \$87,180 From the General Fund to the Regional Parks and Expo Fund, and Transferring Appropriations Within the Support Services and Open Spaces Fund; and Declaring an Emergency

***Motion:** Councilor McCaig moved, seconded by Councilor Monroe for adoption of Ordinance No. 95-619.*

Councilor McCaig spoke to Ordinance No. 95-619, which would implement the work program to provide refinement and acquisition of the open spaces program. A factual analysis and background can be found in the committee and staff reports to the ordinance which are included as part of the meeting record.

***Vote:** Councilors Monroe, McLain, Kvistad, McCaig, Morissette, and McFarland voted aye. Councilor Washington was absent. The vote was 6/0 in favor and the motion passed.*

7. RESOLUTIONS

7.1 Resolution No. 95-2224, For the Purpose of Amending the FY 95-96 Unified Work Program to Include Development of Regional Framework Plan Elements for Transit Supportive Land Uses in Light Rail Station Areas and Corridors.

***Motion:** Councilor Monroe moved, seconded by Councilor Kvistad for adoption of Resolution No. 95-2224.*

Councilor Monroe spoke to Resolution No. 95-2224, which would amend the FY 95-96 Unified Work Program to include development of Regional Framework Plan elements for transit supportive land uses in light rail station areas and corridors. Factual background and

MINUTES OF THE METRO COUNCIL MEETING
Thursday, November 2, 1995
page 9

analysis can be found in the committee and staff reports, copies of which are included as part of the meeting record.

Councilor McCaig reported that she is married to an employee of a transit agency, and declared a potential conflict of interest for the record. Presiding Officer McFarland said she had researched the matter of potential conflicts of interest, and it is her understanding that individual councilors can declare a potential conflict of interest and then proceed to vote. Daniel Cooper, General Counsel, said the law provides that in the event of any potential conflict of interest, any member of the Council body who declares so on the record may then proceed to vote.

***Vote:** Councilors McLain, Kvistad, McCaig, Morissette, Monroe, and McFarland voted aye. Councilor Washington was absent. The vote was 6/0 in favor and the motion passed.*

7.2 Resolution No. 95-2233. For the Purpose of Providing Comments on the Primary Regional Water Supply Plan

Presiding Officer McFarland said Resolution No. 95-2233 has been removed from consideration at the request of staff. Councilor McLain said consideration of resolution should be put off for one week to allow staff and the Council to further develop guidance for the technical steering group of the regional resource supply water plan.

7.3 Resolution No. 95-2227. Authorizing the Executive Officer to Execute Contract No. 904542 in the Amount of \$20,000 With the Wetlands Conservancy for Technical Assistance Services to the Greenspaces Restoration Grant Program

***Motion:** Councilor McCaig moved, seconded by Councilor Kvistad for adoption of Resolution No. 95-2227.*

Councilor McCaig spoke to Resolution No. 95-2227, which would authorize issuance of contract number 904542, with the Wetlands Conservancy for technical assistance services to the greenspaces restoration grant program. A factual background and analysis of the resolution can be found in the committee and staff reports, copies of which are included as part of the meeting record.

***Vote:** Councilors Kvistad, McCaig, Morissette, Monroe, McLain, and McFarland voted aye. Councilor Washington was absent. The vote was 6/0 in favor and the motion passed.*

7.4 Resolution No. 95-2228A. For the Purpose of Authorizing the Executive Officer to Purchase Property Within Accepted Acquisition Guidelines as Outlined in the Open Space Implementation Work Plan

***Motion:** Councilor McCaig moved, seconded by Councilor Monroe for adoption of Resolution No. 95-2228A.*

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 10

Councilor McCaig spoke to Resolution No. 95-2228A, which would authorize the Executive Officer to purchase open space property within accepted guidelines as outlined in the open spaces implementation work plan. Mr. Ciecko gave a presentation on the resolution. He said the specific portions of the work plan that are proposed to be delegated to the Executive Officer are the acquisition parameters, and the due diligence components.

Councilor McCaig gave her support to the work plan, however, she indicated she had two amendments to the resolution. The first amendment would address her concern that the work plan only calls for the Council to be notified of acquisitions by way of a quarterly report. Councilor McCaig maintained that this notification process was not sufficient or timely enough. Following input by Councilor Morissette, Councilor McCaig proposed the following language that would provide for speedy notice to the Council of each acquisition: "The Executive Officer or his/her designees shall notify the Council promptly following the execution of any purchase agreement." This language would be added to page 1 of Attachment "A" to the resolution, following the second to last paragraph.

According to Councilor McCaig, the second amendment would modify the exceptions process for properties that do not meet established acquisition guidelines. The modified process would give the Council the opportunity to review these exceptional acquisitions prior to a decision to purchase being made. She submitted the following language which would amend the resolution: "The acquisition committee's confidential recommendation shall be forwarded to the Executive Officer. The Executive Officer shall review the recommendation and determine whether he/she supports or opposes the recommendation. The Executive Officer shall convey this determination to the Council for review in executive session at its next regularly scheduled meeting. The Council will accept or reject the Executive Officer's recommendation. This information shall remain confidential."

Motion to Amend No. 2: Councilor McCaig moved, seconded by Councilor Kvistad to amend Resolution No. 95-2228A to modify the exceptions process as outlined above.

Vote on Motion to Amend No. 2: Councilors McCaig, Morissette, Monroe, McLain, Kvistad, and McFarland voted aye. Councilor Washington was absent. The vote was 6/0 in favor and the motion passed.

Motion to Amend Main Motion: Councilor McCaig moved, seconded by Councilor Morissette to amend Resolution No. 95-2228A to modify the notification process as outlined above.

Vote on Motion to Amend Main Motion: Councilors Morissette, Monroe, McLain, Kvistad, McCaig, and McFarland voted aye. Councilor Washington was absent. The vote was 6/0 in favor and the motion passed.

Councilor Morissette asked how the acquisition process dealt with hazardous materials. Jim Desmond, Open Spaces Acquisition Program Manager, responded that hazardous materials are dealt with in the due diligence process.

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 11

Vote on Main Motion as Amended: Councilors Morissette, Monroe, McLain, McCaig, and McFarland voted aye. Councilors Kvistad and Washington were absent. The vote was 5/0 in favor and the motion passed.

7.5 Resolution No. 95-2221, For the Purpose of Authorizing Issuance of a Request for Proposals for Bond Counsel Services for the Period January 1, 1996 to December 31, 1998

Motion: Councilor McCaig moved, seconded by Councilor Washington for adoption of Resolution No. 95-2221.

Councilor McCaig spoke to Resolution No. 95-2221 which authorizes the Executive Officer to issue an RFP for bond counsel services for the period January 1, 1996 to December 31, 1998.

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

7.6 Resolution No. 95-2229, For the Purpose of Authorizing Issuance of a Request for Proposals for Financial Advisory Services for the Period January 1, 1996 to December 31, 1998

Motion: Councilor McLain moved, seconded by Councilor Washington for adoption of Resolution No. 95-2229.

Councilor McLain spoke to Resolution No. 95-2229 which authorizes the Executive Officer to issue an RFP for financial advisory services for the period January 1, 1996 to December 31, 1998.

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

7.7 Resolution No. 95-2230, For the Purpose of Authorizing Issuance of a Request for Proposals for Arbitrage/Rebate Management Services for the Period January 1, 1996 to December 31, 1998

Motion: Councilor McLain moved, seconded by Councilor Washington for adoption of Resolution No. 95-2230.

Councilor McLain spoke to Resolution No. 95-2230 which authorizes the Executive Officer to issue a RFP for arbitrage/rebate management services for the period January 1, 1996 to December 31, 1998.

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

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 2, 1995

page 12

8. CONTRACT REVIEW BOARD

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

8.1 Resolution No. 95-2223, Exempting the Procurement of the Chimpanzee Climbing Structures at the Metro Washington Park Zoo from Sealed Bids

***Motion:** Councilor McLain moved, seconded by Councilor Washington for adoption of Resolution No. 95-2223.*

Councilor McLain spoke to Resolution No. 95-2223 which would exempt the procurement of a chimpanzee climbing structure from sealed bids. A factual background and analysis of the resolution is included as part of the meeting record. Councilor McLain explained the reason for utilizing an RFP rather than an RFB is that zoo exhibit construction is highly specialized, and price cannot be the only consideration when contracting for such an exhibit.

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

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

9. COUNCILOR COMMUNICATIONS

Councilor Kvistad reported that at 10:00 AM this morning, the first greenspaces funds were released for the purchase of two parcels on the Tualatin River. The total amount of the purchases was \$65,000.

Councilor Morissette invited councilors to join him in attending a meeting about Saving the Stafford Triangle on Saturday, November 4, 1995 at 10:00 AM. He then asked Councilor McCaig about information he had received that Metro is targeting more efforts on open space acquisition outside the UGB. He stated he wants attention focused on land inside the UGB as well. Councilor McCaig responded that she does not think there has been any change in policy or philosophy, and that Metro is looking both inside and outside the boundary. She pointed out that once the Council locks into the money in the refinement, the priorities cannot be changed without prior approval from the Council.

Councilor Washington reported on the City/Metro Consolidation meeting held earlier in the day. He said a proposal has been forwarded, stating that [the consolidation issue] will be turned over to a private consortium. He invited the Council to attend the November 16 meeting at 7:30 am. Presiding Officer McFarland added that she had made it clear that she is not willing to relinquish all supervision by the elected body. She clarified that she had not voted to go to the private consortium. Councilor Kvistad asked for clarification of his

MINUTES OF THE METRO COUNCIL MEETING

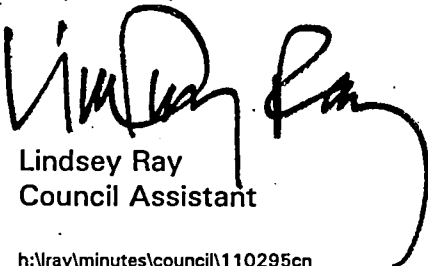
Thursday, November 2, 1995

page 13

understanding that Metro is leaning toward a decision that would transfer ownership of all facilities except the stadium to Metro; yet a new, independent body would be formed with some Council oversight. Presiding Officer McFarland said consensus was to have one government body, Metro, own and operate all of the facilities. She further stated that the stadium would be left where it is for five years for study. Councilor McLain said she is hearing this for the first time. She said that before the November 16 meeting, Council should discuss the issue to see where councilors stand. She also said another issue is that in the long-term funding discussions, councilors agreed not to change status of those particular facilities without a contingency plan that did not leave the public without facilities and without responsible public agencies involved. Presiding Officer McFarland clarified that there is not a proposal yet. She suggested that Doug Butler, Director of Administrative Services, appear before the Governmental Affairs committee or the full Council for a briefing. Councilor Washington will provide the meeting packet from earlier in the day and ask Lindsey Ray, Council Assistant, to provide copies to councilors. Executive Officer Burton said that the joint committee was simply examining options at this time.

There being no further business before the Council, Presiding Officer McFarland adjourned the meeting at 4:13 PM.

Prepared by,

A large, stylized handwritten signature in black ink, appearing to read 'Lindsey Ray', is written over the typed name and title.

Lindsey Ray
Council Assistant

h:\lray\minutes\council\110295cn

STAFF REPORT

BURLINGTON NORTHERN RAILS TO TRAILS FEASIBILITY STUDY

Also known as Sauvie Island to Hillsboro Rails to Trail
Informational Briefing Only / No Action Requested

November 9, 1995

Presented by:
Charles Ciecko and Mel Huie
Regional Parks and
Greenspaces Department

Project Scope and Issues

- The purpose of the briefing is to present the data/information/findings and conclusions reached by Metro's consultants, David Evans and Associates (DEA), regarding the feasibility of converting the Burlington Northern Railroad corridor to a public trail.
- The Executive Officer and Metro staff are not making any recommendations to Council at this time on the potential Rails to Trails project.
- The Council is not being asked to make any decisions at this time. The briefing is for informational purposes only. This is the first presentation to Council regarding this potential project.
- Two councilors, (who specifically requested to be involved) have participated on certain aspects of the project. Councilors McLain and Kvistad were involved in developing the scope of work and selecting the consultant for the feasibility study. Both have attended public meetings about the project and have responded to citizen comments and concerns. Councilor Kvistad also requested that Metro study the feasibility of a potential Rails with a Trail project (e.g. Keeping the rails in place for future train use, but with a trail over them and the potential for operating an excursion train on the existing track with a trail in the corridor as well).

Contents of the Feasibility Study

- Assessing the condition of the rails, ties, trestles, and tunnel within the corridor
- Determining if any hazardous wastes and/or contaminated sites exist within the corridor
- Inventorying the corridor for archeological and historical sites
- Assessing the condition of the terrain and landscape within the corridor (e.g. erosion)
- Developing a database of maps, photographs (land and aerial) and statistics about the corridor

- Conducting an appraisal of the value of the corridor
- Estimating construction costs of a potential trail
- Estimating maintenance costs for a potential trail
- Studying the Option of a potential Rails with Trail project
- Assisting Metro conduct two public meetings about the potential trail project
- Determining if any known environmental, cultural, historical, physical or other conditions exist to prevent the creation of a potential Rails to Trail for the public

The potential trail would be for non-motorized use which includes walking, biking and potential equestrian use.

Feasibility Study Not Intended to be a Master Plan.

Many questions and concerns related to: security; public safety; fire hazard; litter; vandalism; crime; private property rights, including reversionary rights, and privacy of homeowners from future trail users; the need for more recreational trails; light rail potential for the corridor; and design and maintenance issues were brought to Metro's attention. While the feasibility study does address these issues and concerns, it was not an exhaustive review.

If it is determined that Metro should acquire the corridor and that a trail should be built, a Master Plan will be developed with public input to thoroughly address and resolve these important issues and concerns.

Conclusions Reached by Metro's Consultants

The feasibility study suggests that there are no known environmental, cultural, historical, physical or other conditions precluding use of the corridor for trail purposes.

Project Background

The potential Rails to Trails project is a 6.84 mile rail corridor stretching from United Junction (just north of the Sauvie Island Bridge on Hwy. 30/N.W. St. Helens Rd.) in Multnomah County to Bowers Junction (north of Hillsboro and Hwy. 26) in Washington County. The corridor Right-of-Way (ROW) ranges from 50' to 100' wide. The rails and ties are still in place along the corridor.

The rail corridor winds through forested areas and farmlands. The area is sparsely populated. The Ancient Forest Preserve (Old Growth Grove), Howell Territorial Park and Burlington Bottoms natural area are in the general vicinity of the rail corridor. Major structures in the corridor include a 4,107 feet tunnel at Cornelius Pass and eight wooden trestles. No trains are currently operating in the corridor.

The corridor is owned by the Burlington Northern Co. (BN). Rail service for freight ceased on September 25, 1994 after a fire burned down a trestle. The trestle has not been replaced. The Burlington Northern Co. has expressed its intent to discontinue future rail service and abandon the rail corridor. A formal request to the

Interstate Commerce Commission (ICC) from Burlington Northern to abandon the line is anticipated this fall or in early 1996.

The corridor has served as a historic transportation route for nearly 100 years. Commuter rail service (old interurban line) was initiated in 1909 and continued until 1933. Freight service continued until the trestle fire occurred in September 1994. Prior to train service, various trails and roads meandered through the area providing routes for transportation by horse and foot. This connection between the Tualatin Valley and the Willamette and Columbia rivers and lowlands has always been very important.

During the past two years, public meetings and workshops were held to solicit public opinion about making the BN corridor a potential priority trail in Metro's Open Spaces Bond Measure.

Two public meetings were held this year on January 17 and February 28 to specifically address the potential Rails to Trails project and feasibility study.

Regional Significance of the Corridor

The rail corridor is outside of Metro's boundaries and the Urban Growth Boundary (UGB), but it connects two geographical areas that are within Metro; northwest Multnomah Co. / northwest Portland, and Tualatin Valley / Hillsboro. Bike lanes currently exist on Hwy 30 / St. Helens Rd. which is the eastern terminus of the potential trail. Metro's Regional Transportation Plan (RTP) designates this bicycle route as regionally significant. The city of Hillsboro is planning bike routes and pedestrian pathways near the western terminus of the potential trail. The connection between these two bike routes could be the potential BN rails to trail. The alternative route currently available is N.W. Cornelius Pass Rd. This route has been deemed less suitable for bicyclists by Metro's "Bike There" map. It is a rural road with high speed traffic. Caution areas with heavy traffic, steep sections and difficult curves exist on this route. In addition, Cornelius Pass Rd. is not designated as a bike route in Metro's proposed Regional Bicycle Network in the RTP.

Under state law and the Metro Charter, Metro has authority to purchase property outside the district, "to the extent necessary to provide a metropolitan aspect of a public service." Securing or buying what was once an interurban rail line corridor which connects two geographic areas of the region for bicycle and pedestrian use, meets this criterion.

The Burlington Northern Rails to Trail corridor was identified in Metro's Greenspaces Master Plan and Regional Trails System Map as a trail of regional significance in 1992. The planning for a potential trail within the BN corridor has been coordinated with Metro's Regional Transportation Plan (RTP) and 2040 Growth Concept. Local jurisdictions and state agencies (Oregon Parks and Recreation Department, and Oregon Department of Transportation) have also participated in the planning process for the potential trail.

The corridor is one of six regional trail projects earmarked for funding under Metro's Open Spaces Bond Measure. Ballot Measure 26-26 was approved by the region's voters on May 16, 1995.

Feasibility Study Background

In the spring of 1993, the Oregon Parks and Recreation Department requested that Metro determine the feasibility of converting the rail line to a trail once rail service was discontinued and the line officially abandoned. Since this corridor is identified in the Greenspaces Master Plan as a major trail opportunity similar to the successful Springwater Corridor Rails to Trail which connects southeast Portland to Gresham and Boring 16 miles to the east, it was determined that conducting a feasibility study had merit. Carrying out a feasibility study also had support from local parks departments.

Joining Metro and Oregon Parks and Recreation to carry out and pay for the feasibility study were Multnomah County, Tualatin Hills Park and Recreation District, and the cities of Hillsboro and Portland. Washington County provided support in the form of staff assistance. The 40-Mile Loop Land Trust also supported conducting a feasibility study. David Evans and Associates (DEA) a planning and engineering firm, was retained through a public bidding process to conduct the study

Rail Banking of the Corridor for Interim Trail Use

Following Burlington Northern's anticipated request to the Interstate Commerce Commission (ICC) to abandon the rail corridor, and after the ICC's approval of the abandonment request, Metro would have the right to become the new owner of the entire corridor. Metro would have the right to acquire the corridor intact from the Burlington Northern Co. via a purchase or donation from the company. Reversionary clauses in property titles (if any exist) would not take effect under the Rail Banking scenario.

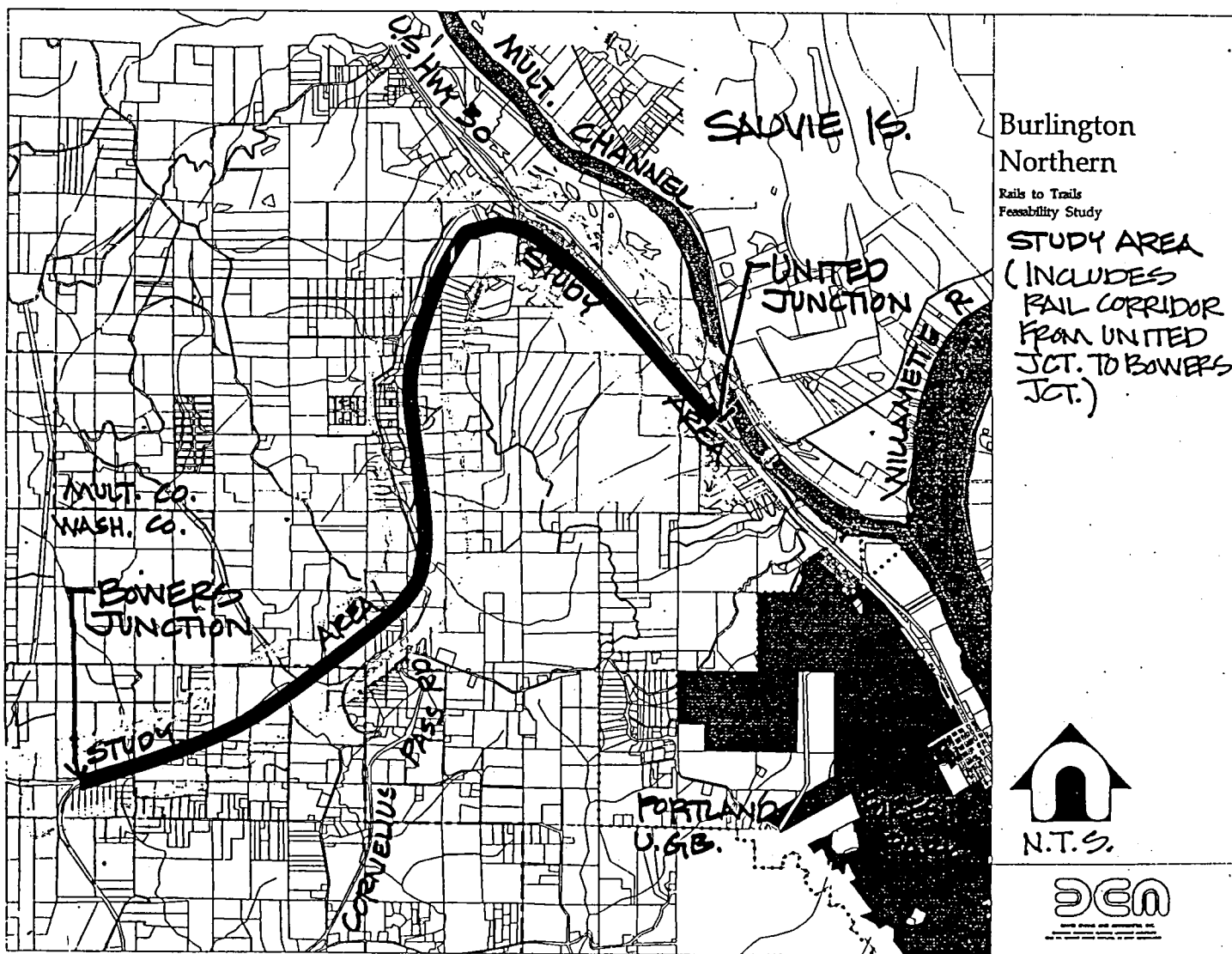
Metro would then have the right to build and maintain a trail in the corridor in the interim until rail service (freight and/or passenger) was viable again sometime in the future. If rail service returns to the corridor in the future, the cost of Metro's trail investment would be refunded or the trail would somehow have to be accommodated within the corridor next to the new rail lines.

If Metro or some other entity does not purchase the corridor for Rail Banking / Interim Trail Use, Burlington Northern would be free to dispose of the corridor, most likely by breaking it up and selling it in pieces to adjacent property owners or any other interested parties. Reversionary clauses in property titles (if any exist) would take effect under this scenario.

Availability of Feasibility Study

The feasibility study will be released to the public on November 9, 1995. The study will be available for public review at Metro, and public libraries and schools in the general area of the potential trail. Information related to valuations of railroad assets and the appraisal are confidential.

Summaries of the feasibility study can also be obtained from Metro's Regional Parks and Greenspaces Department (797-1731 or 797-1774) and from Councilor Susan McLain (797-1553).





METRO
Regional Parks and Greenspaces
600 NE GRAND AVE. PORTLAND, OR 97232-2736 (503) 797-1850

November 3, 1995

To Interested Parties
From Susan McLain, Metro Councilor S.M.
Subject Burlington Northern Rails to Trails Feasibility Study

Meeting Notice

The findings and conclusions of the Burlington Northern Rails to Trails Feasibility Study will be presented to the Metro Council on November 9 at 2:00 p.m. The meeting will be held in the Metro Council Chambers, 600 N.E. Grand Ave., Portland, OR.

Informational Briefing Only / No Decisions Will Be Made

The purpose of the briefing is to present the data/information/findings and conclusions reached by Metro's consultants regarding the feasibility of converting the Burlington Northern Railroad corridor to a public trail.

The Metro Executive Officer and staff are not making any recommendations to the Council at this time on the potential Rails to Trails project.

The Metro Council is not being asked to make any decisions at the meeting. The briefing is for informational purposes only. This is the first presentation to the Council regarding this potential project.

Where is the Burlington Northern Railroad Corridor?

The potential Rails to Trails project is a 6.84 mile rail corridor stretching from United Junction (just north of Sauvie Island Bridge on N.W. St Helens Rd. / Hwy. 30) in Multnomah Co. to Bowers Junction (just north of Hwy. 26 and Hillsboro) in Washington Co. There is one tunnel and eight trestles in the corridor. The corridor right-of-way ranges from 50' to 100' wide. The rails and ties are still in place along the corridor. Trains are no longer operating. The Burlington Northern Co. has expressed its intent to abandon the rail corridor.

How to Get a copy of the Feasibility Study

- A Summary of the feasibility study is available at no charge from Metro Regional Parks and Greenspaces, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232, (503) 797-1850.
- The complete feasibility study is available for the cost of printing and postage (\$18.00). The complete study includes: Rail Inspection and Analysis Report / Level 1 Environmental Site Assessment / Cultural Resources Baseline Data Report / Trail with Rails Report / Summary of Public Meetings. It can be purchased by sending a check or money order

made out to "Metro" to Metro Regional Parks and Greenspaces Dept.,
Attn: Mel Huie, 600 NE Grand Ave., Portland, OR 97232.

- A complete feasibility study is available for review at the following locations:

Metro Regional Parks and Greenspaces Dept.
Metro Regional Center
600 NE Grand Ave.
Portland, OR 97232

Public Libraries

- Multnomah County Central Library, 1400 SW 4th, Portland
- North Portland Branch, 512 N Killingsworth, Portland
- St Johns Branch, 7510 N Charleston, Portland
- Cedar Mill Community Library, 12505 NW Cornell Rd, Portland
- Tanasbourne/Hillsboro Library, 2453 NW 185th, Beaverton

Schools (study will be placed in the library)

- Sauvie Island Elementary School, 14445 NW Charlton Rd, Portland
- Skyline Elementary School, 11536 NW Skyline Blvd., Portland
- Lenox Elementary School, 21200 NW Rock Creek Blvd, Portland
- Portland Community College-Rock Creek Campus, 17705 NW Springville Rd., Portland

Who to Call if you Have Questions or Need More Information:

Councilor Susan McLain 797-1553

Metro Council Decision Points
General Comments / Concerns

Mel Huie 797-1731

Feasibility Study
General Comments / Concerns

Ron Klein 797-1774

Bond Measure Questions
General Comments / Concerns

Todd Sadlo 797-1533

Legal Issues / Rail Banking
Private Property Questions



THE STEPS LEADING UP TO THE BURLINGTON NORTHERN RAILS TO TRAILS FEASIBILITY STUDY

Metro's Greenspaces Master Plan

July 1992

Burlington Northern Rail corridor and its potential for a Rails to Trail conversion were identified and mapped in the plan. Prior to adoption of the plan by the Metro Council, public workshops were held throughout the region.

Regional Trails and Greenways Working Group

1990 to Present

Representatives from local, regional, state and federal agencies, and nonprofit organizations were involved in developing a regional trails plan which includes the Burlington Rail Corridor.

Beginning of the Feasibility Study

Spring 1993

Oregon Parks and Recreation Department asks Metro to take the lead on carrying out a feasibility study of the potential for converting the rail line to a public trail.

Regional / Local Partnership to Carry Out the Feasibility Study

1993 to 1995

Joining Metro in the study were Oregon Parks and Recreation, Oregon Dept. of Transportation, Multnomah Co., Washington Co. city of Portland, city of Hillsboro and Tualatin Hills Park and Recreation District.

Greenspaces Policy Advisory Committee

1994

Committee of locally elected officials advised the Metro Council to include the Burlington Northern Rail corridor as a potential trail for funding in the upcoming Open Spaces Bond Measure.

Greenspaces Blue Ribbon Committee

1994

Committee of business and civic leaders advised the Metro Council to include the Burlington Northern Rail corridor as a potential trail for funding in the upcoming Open Spaces Bond Measure.

Consultant Selected

Fall 1994

David Evans and Associates, a planning and engineering firm was retained by Metro to conduct the feasibility study.

Public and Community Meetings

1995

January 17 at Tualatin Hills Park and Recreation

February 7 at Bowers Junction area

February 28 at Skyline Grange Hall

June 9 at meeting called by local residents

November 9 at Metro. Briefing on Feasibility Study.

Metro Open Spaces Bond Measure Approved

May 1995

The Measure is approved by the region's voters by a 62% to 38% majority.

Informational Briefing on the Feasibility Study

November 9, 1995

The findings and conclusions from the study were presented to the Metro Council by David Evans and Associates.

No recommendations were made by the Metro Executive Officer and staff whether the corridor should be purchased or not purchased.

No action was requested of the Council.

I:\staff\mel\Burling.STP

THE NEXT STEPS

- Abandonment Notice to be filed by Burlington Northern Co. with the Interstate Commerce Commission.
- Metro files letter of intent to take financial responsibility for the corridor with the Interstate Commerce Commission. This responsibility would not actually be assumed until Metro purchases and takes possession of the corridor.
- Metro and Burlington Northern Co. negotiate terms of purchase for the corridor.
- Decision Point by Metro to purchase or not purchase the corridor. If the purchase option is selected, the final terms must be approved by the Metro Council.

The following only occur if the purchase is completed:

- Acquire the corridor. No trail is built until funding secured for construction.
- Stabilization activities where needed.
- Land Banking the Corridor

The following only occur when funding is secured for the Master Planning Process:

- Develop Master Plan which will be the final design for the Trail, including funding options for trail construction, and operations and management of the trail. Extensive citizen involvement will occur. Public concerns (e.g. safety, litter, fire hazards, design, etc.) will be addressed in the Master Plan.
- The final step would be actual implementation of the Master Plan (i.e. construction of the trail).

For more information or questions about the Feasibility Study or the potential trail project, contact:

Mel Huie, Project Manager
Metro Regional Parks and Greenspaces
600 N.E. Grand Ave.
Portland, Oregon 97232
(503) 797-1731

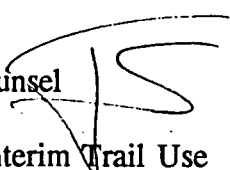
Susan McLain, Councilor
Metro
600 N.E. Grand Ave.
Portland, Oregon 97232
(503) 797-1553

For information and questions related to legal issues, Rail Banking and private property, contact:

Todd Sadlo, Senior Assistant Counsel
Metro
600 N.E. Grand Ave.
Portland, Oregon 97232
(503) 797-1533



METRO

Date: November 3, 1995
To: Metro Council
From: Todd Sadlo, Senior Assistant Counsel 
Regarding: Burlington Northern Corridor, Interim Trail Use

Measure 26-26, the Parks, Trails and Open Spaces Bond Measure, included funds for purchase of a rail corridor that extends between Sauvie Island and Hillsboro, just south of Cornelius Pass Road. This memo briefly describes the federal procedure for "abandonment" of the corridor, and steps Metro would need to take in order to purchase the corridor for trail use.

Burlington Northern Corporation (BN) is the owner of the corridor. BN's use of the line ceased in 1994, when fire destroyed a trestle. BN now serves its customers by an alternate route, and intends to formally request permission from the federal Interstate Commerce Commission (ICC) to "abandon" the line in the near future. The ICC's permission is required for abandonment of a rail line. Once the ICC receives BN's request, it will publish a notice in the Federal Register.

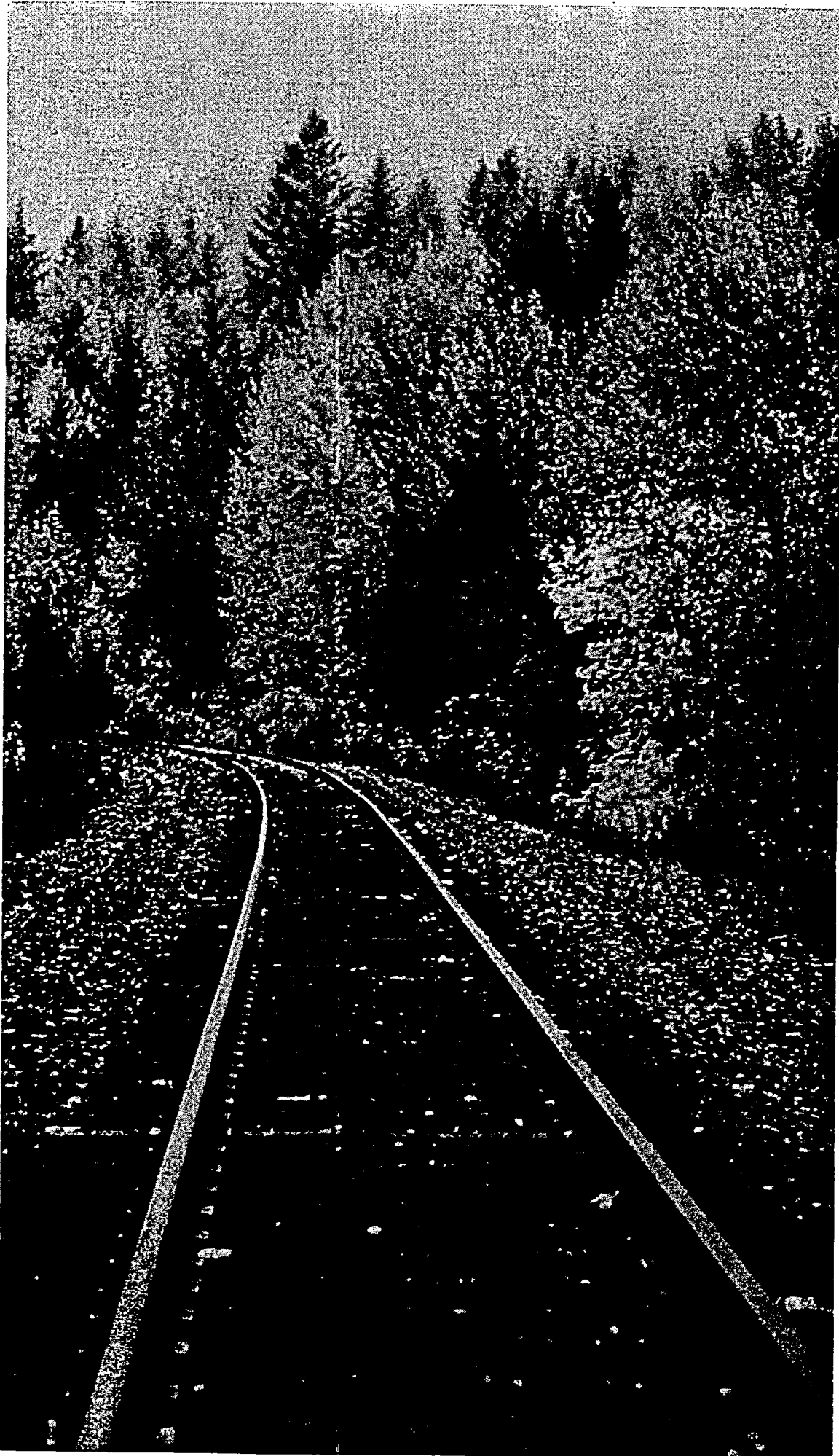
Under the National Trails System Act (16 U.S.C. §§ 1241-1251) a government or qualified nonprofit entity has 30 days from the date of notice of an abandonment request to file for "interim trail use" of the corridor. If "interim trail use" is granted, Metro would have the right to negotiate with BN to purchase the corridor.

The filing submitted to the ICC by Metro within the 30-day period would acknowledge Metro's intent to take financial responsibility for the corridor, although such responsibility would not actually be assumed until Metro purchases and takes possession of the corridor. It is currently anticipated that Metro would secure the corridor, using funds available in the bond measure, and "bank" it until funds are available for developing a master plan.

As part of the initial filing, Metro would also acknowledge that its use of the corridor is subject to future rail use. The process would essentially be reversed in the future if a railroad company or transit agency sought to use the corridor for freight or passenger rail service. Metro would then negotiate the sale of the corridor for rail use, or seek an arrangement allowing rail and trail use together, if possible.

Please contact me if you have further questions regarding this matter.

kaj:1504



METRO

Burlington Northern

Rails to Trails Feasibility Study

November 1995



METRO

Regional Parks and
Greenspaces
600 N.E. Grand Ave.
Portland, OR 97232
(503) 797-1850

BURLINGTON NORTHERN RAILS TO TRAILS FEASIBILITY STUDY



METRO

Regional Parks and Greenspaces

600 N.E. Grand Avenue
Portland, Oregon 97232
(503) 797-1850

Prepared by

David Evans and Associates, Inc.

Technical Reports Prepared by

**Archaeological Investigations Northwest, Inc.
AGI Technologies**

Acknowledgments

Funding and/or staff assistance provided by:

Metro Regional Parks and Greenspaces

Oregon Parks and Recreation Department

Oregon Department of Transportation

Multnomah County

Washington County

City of Hillsboro

City of Portland Parks and Recreation

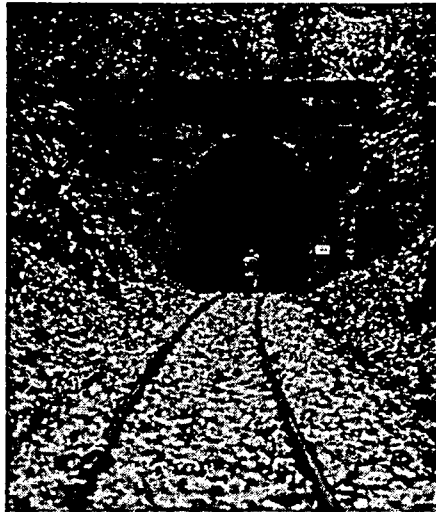
Tualatin Hills Park and Recreation District

Burlington Northern Railroad Co.

40-Mile Loop Land Trust

Table of Contents

Section	Page
Introduction.....	1
Site Characteristics	2
Site History	3
Railroad Inspection and Analysis Report Summary.....	4
Appraisal Report Summary	4
Level 1 Environmental Site Assessment Summary.....	5
Cultural Resources Baseline Data Summary	6
Potential Conflicts	6
Light Rail Analysis - Rails with Trails	8
Trails on Rails.....	9
Abandonment Analysis.....	9
Linkage Analysis	9
Trailhead Recommendations	11
Public Involvement.....	11
Trail Preliminary Cost	11
Conclusion	12



*Summary
of Study*

INTRODUCTION

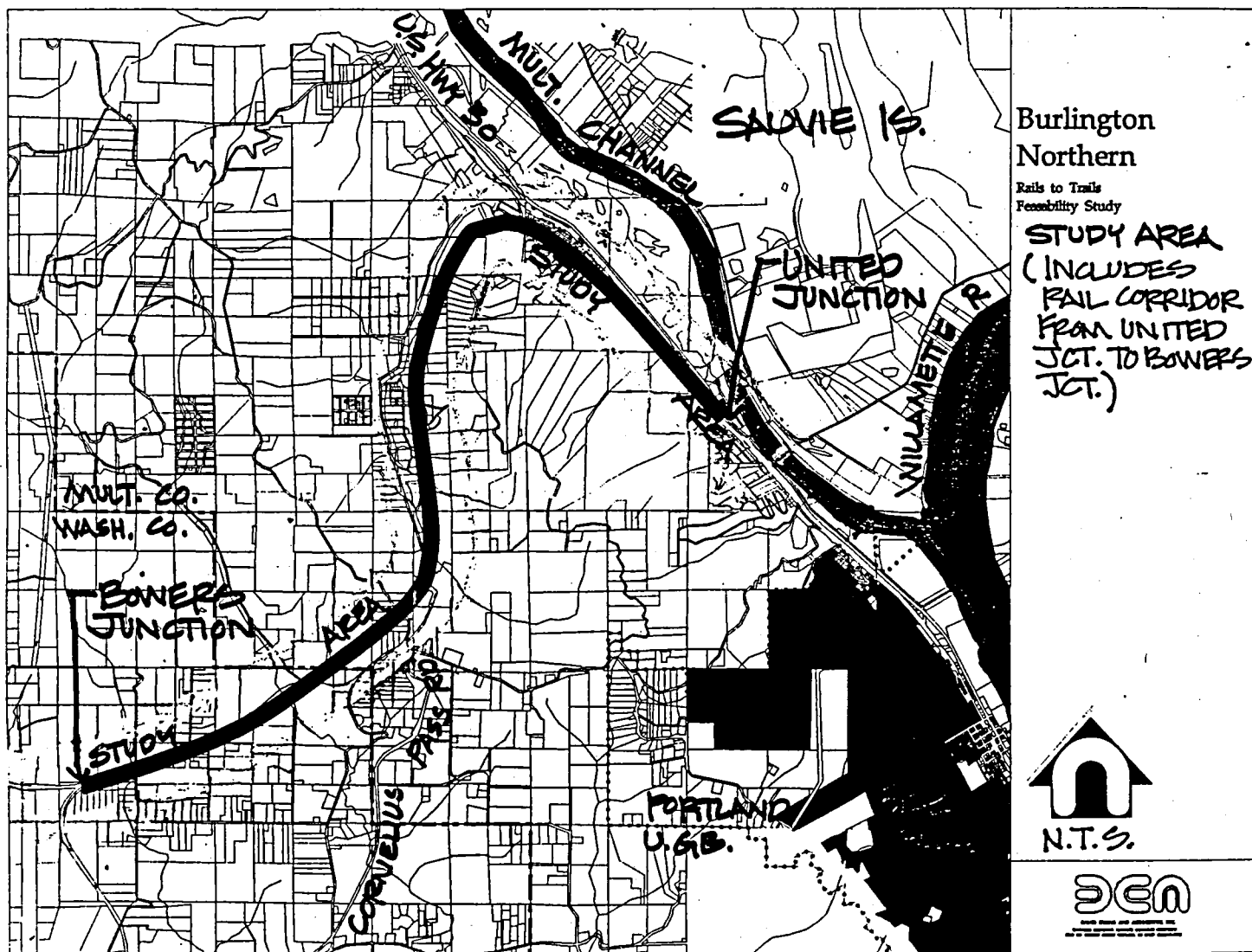
Opportunity has surfaced for conversion of a segment of the Burlington Northern Railroad's (BN) rail line over Cornelius Pass to interim trail use.

This feasibility study suggests there are no known environmental, cultural, historical, physical, or other conditions precluding use of the line for trail purposes.

BN has provided notification of the likelihood that the Company will file with the Interstate Commerce Commission (ICC) for abandonment of the 6.84 mile segment from United Junction, just north of the Sauvie Island Bridge along Hwy. 30 in Multnomah County, to Bowers Junction in Washington County. The line segment is now inoperable due to the absence of a large trestle that burned to the ground in the fall of 1994.

The line segment is identified on Metro's Regional Trails Systems Map, which is part of its Greenspaces Master Plan. The trail corridor is also listed in Metro's Regional Transportation Plan (RTP) as a potential regional bike trail. The potential rails to trails project would be another step in interconnecting regionally significant natural areas and parks such as Forest Park, Burlington Bottoms, the Ancient Forest, Sauvie Island, the Rock Creek Greenway Trail and other features that could form a trail loop from Hillsboro to Portland and back. Other potential rail abandonments and planned trails could provide links to parks and future planned facilities such as the Banks Vernonia Linear Park, Portland to the Coast Trail, and Greenway to the Pacific.

In 1991, Oregon Parks and Recreation Department (OPRD), suggested the line segment be identified and mapped in Metro's



Greenspaces Master Plan as a regionally significant future trail, and as a priority in the trails and greenways work program. During the summer of 1993, OPRD requested that Metro and its Greenspaces Program take the lead in carrying out a rails to trails feasibility study of the line segment. This study is the result of a cooperative effort among the affected public agencies, nonprofit organizations and citizens. Funding for the study has been jointly shared among six agencies. They include Metro, OPRD, Multnomah County Park Services (now incorporated within Metro), City of Portland Parks and Recreation, Tualatin Hills Park and Recreation District (THPRD), and City of Hillsboro.

Site Characteristics

If converted to trail use, the line segment proposed for abandonment would provide significant hiking or bicycling experiences. The BN right-of-way extends across three general landforms. From United Junction to the mouth of the McCarthy Creek Canyon (1.7 miles) the right-of-way runs at the base of the Tualatin Mountains, overlooking the Columbia River and the Multnomah Channel of the Willamette River near Sauvie Island Bridge. Over this segment the proposed trail corridor rises from approximately 50 feet mean sea level (msl) to nearly 200 feet msl. Three small unnamed perennial streams cross the right-of-way that drain the northern slopes of the Tualatin Mountains. The right-of-way follows the McCarthy Creek Canyon for about 2.4 miles, rising from 200 feet msl to about 400 feet msl. Along the way, the trail user would have the opportunity to view basalt cliffs, the Burlington Bottoms wetlands and Sauvie Island beyond, forested areas, clear-cut areas, the panorama from the big curve above the junction of Highway 30 and Cornelius Pass Road, tall trestles, and farmland.

From here the line travels under the crest of the Tualatin Mountains. The experience would include hiking or riding through a 4,000 feet long tunnel. The crest of the route occurs in the middle of the tunnel.

From the tunnel the rail line turns down-grade into the farm fields of Washington County before ending at Bowers Junction just north of Hillsboro and Highway 26.

Land ownership

Some large private and public lands adjoining the right-of-way are listed below. Other adjoining lands generally consist of relatively small privately owned parcels.

The BN right-of-way ranges from approximately 50 to 100 feet in width. Except for a small amount, Agency Creek Management owns some land to the north and almost all of the land adjoining the railroad to the south from near United Junction to just around the big curve that turns toward Cornelius Pass. The private land in the section that parallels U.S. Highway 30 consists mostly of the half dozen homes that are located next to the tracks in the community of Burlington. It appears Agency Creek Management owns the land surrounding the area of the burned trestle also.

BN and Multnomah County (Tax Title), owns various lands adjacent to the right-of-way from the big curve to Rock Creek. BN and Multnomah County each have approximately one acre east of the track at Willamette View. BN has approximately 40 acres east of the tracks at Folkenberg and the County approximately two acres. BN has approximately 22 acres east of the tracks a short distance north of the Cornelius Pass Tunnel.

South of the tunnel, Oregon Department of Transportation (ODOT), owns approximately 30 acres adjacent to the tunnel entrance and west of the tracks. The property was quarried in the past. West of the tracks at the Rock Creek stream crossing, BN owns approximately 50 acres.

Site History

The corridor and surrounding property has been modified by Euro-American settlement over the past 150 years. In the 1850's, when this area was mapped in detail for the first time, the bottoms along the Multnomah Channel were covered by a network of shallow lakes, ponds, and meandering sloughs. The Tualatin Mountains were heavily timbered in fir, cedar, maple, hemlock and yew. The northern edge of the Tualatin Valley was also wooded but possibly with a denser understory of hazel and maple brush. The Tualatin Valley near Bowers Junction opened up into broad expanses of prairies surrounded by scattered woodlands of fir, oak and ash.

The BN right-of-way falls into two archaeological areas. The Columbia River floodplain and the Tualatin Valley. Location of known prehistoric sites indicates a strong association between prehistoric settlements and areas frequented and floodplain wetlands. Native American resources also traverse two cultural areas. The Chinookan Indians of the Sauvie Island area and the Tualatin Indians of the Kalapuyan group occupied the Tualatin Valley. However, there are no recorded sites along the BN right-of-way.

By 1850 several trails and roads provided access between the Tualatin Valley and the Willamette River. In 1883 a rail line was constructed along St. Helens Road and the Multnomah Channel.

Between 1860 and 1890 Cornelius Road was constructed.

By 1900 the Tualatin Valley had grown to a point where connections between towns, farm and timber markets, the coast, and access to Portland by rail was essential.

In 1909 The United Railways Company completed a line to Cornelius Pass. The alignment began in NW Portland, followed the river north to Linnton and Burlington, horseshoed to Folkenberg, went up a 5% grade called the "Tualatin Hill Shoo-Fly" to Cornelius Pass.

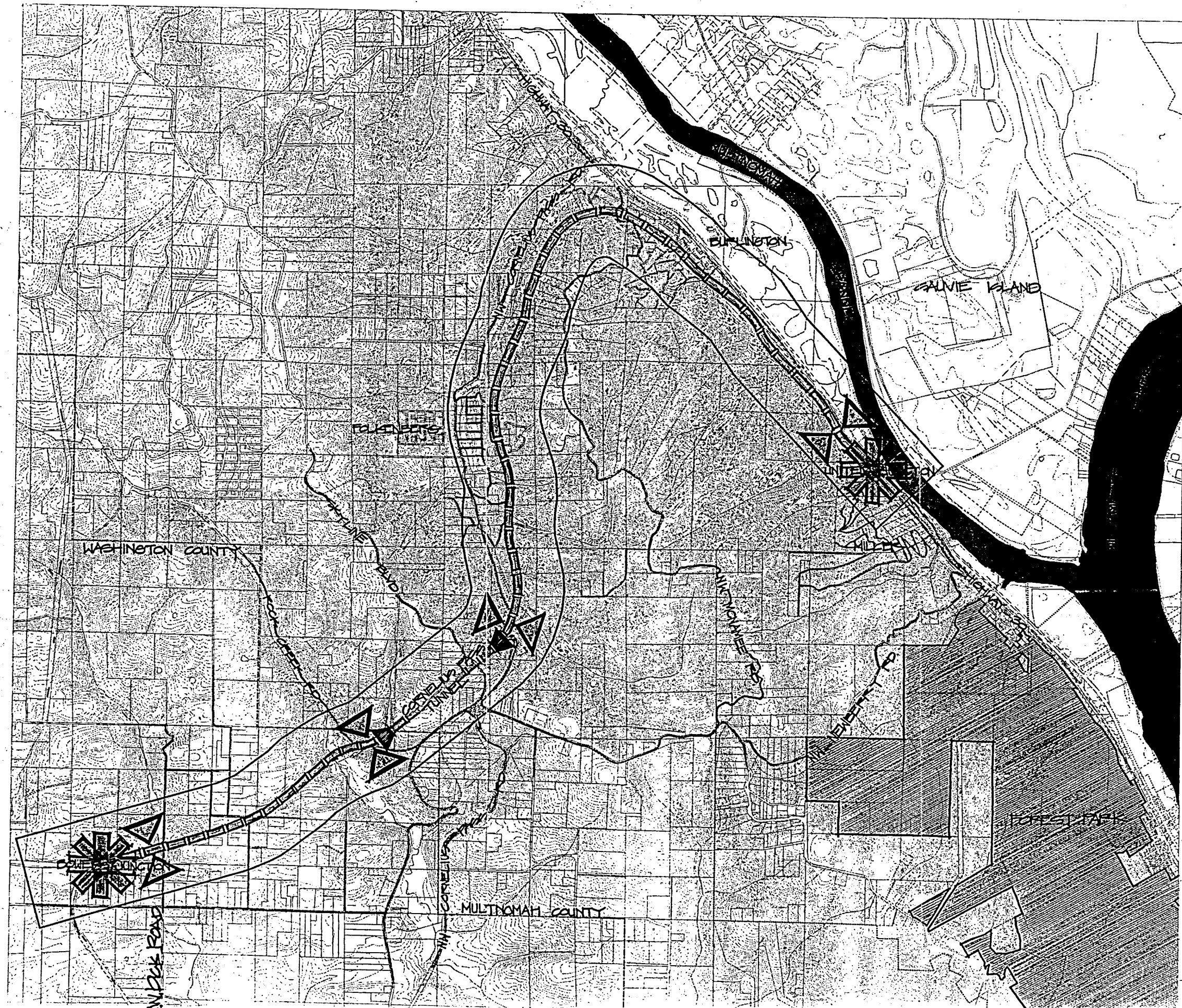
In 1910 the United Railways and the Oregon Electric railways were sold to the Spokane, Portland and Seattle Railroad Company (SP&S). In 1911 a tunnel was completed under the crest of the Tualatin Mountains eliminating the need for the "shoo-fly". At this time it was the longest interurban tunnel in the United States.

Real estate was promoted along the line. Burlington was laid out by United Railways and halfway up Cornelius Pass Folkenberg was platted in 1911 by the Folkenberg Family.

By 1913 Oregon Electric ran a connecting line between Orenco (Hillsboro) and Bowers Junction on the United Railways line.

Oregon Electric stopped passenger service in 1933. In 1944 United Railways was terminated as a corporation. SP&S continued freight service along the original United Railways line.

In 1970 SP&S became a part of Burlington Northern. Freight service declined but continued along this line until the trestle fire in 1994 stopped service.



Burlington Northern

Rails to Trails
Feasibility Study
Parcels and Topo

- Study Area
- Urban Growth Boundary
- City Boundary
- County Boundary

Terminus of Study

Potential Trail Segment

Potential Access Point



Scale = 1" = 3,000'

BCN

Railroad Inspection and Analysis Report

Existing Conditions

A field inspection was conducted of the line to determine the general condition of the track, structures, tunnels, and supporting roadbed. Due to closure of the west portal of the tunnel only 500 feet of the tunnel was inspected. There are eight (8) pile trestles -- the design of the trestles is five (5) pile design with two 4-stringer chords supporting the decks. The trestles vary in length from approximately 55 feet to 1,300 feet and in height from five feet to 100 feet. No major defects were noted in any of the trestles during a field inspection.

The track ditches and major drainage courses are in good condition and carry water away from the track roadbed. One area of erosion was observed near milepost 13.2 on the west side of the track. This area appears to be unstable and may require further repairs.

The tunnel is approximately 4,000 feet long and concrete lined. No significant leaking was noted. BN records reveal the concrete liner was installed in two phases - 314 feet from the east and the remainder 3,700 from the west.

The track and roadbed appear to be in good to very good condition. The roadbed is constructed in most instances on native soils.

Useful Life Analysis

The useful life analysis looks at two functions. The use of the line for rail or for a trail. The analysis for the rail line examines the track, trestles, and tunnel and the economic need for a rail line. The analysis for trail use focuses on only the trestles and tunnel.

Rail Analysis

Useful life for rail is significantly shorter than for trail use.

With normal maintenance the track may have an indefinite useful life. The tunnel's useful life is in excess of 20 years. However, for rail use the trestles are the limiting factor. Without trestles the useful life is non-existent. Over the next 10 years the trestles will require significant work to continue to carry rail cars. Without maintenance and rehabilitation the useful life of the structures for train traffic is estimated to be less than 10 years.

Economically, the rail line did not directly serve any rail customers. Since the trestle fire, BN uses Southern Pacific lines to reach customers previously reached by this line. This arrangement makes the line redundant.

Trail Analysis

The trestles and tunnel are the limiting factors for trail use.

The trestles are in fair to good structural shape. Because of the lighter use (trail versus rail) the useful life will be extended from 10 to 15 years. New decks may further extend the life of these structures.

The tunnel's useful life is approximately the same as for rail - 20 years. All this assumes normal maintenance. See Appendix for the entire report.

Appraisal Report

David Evans and Associates, Inc. (DEA), prepared an appraisal report for Metro in October 1994. The purpose of the appraisal was to estimate the fair market value of the BN Railroad line from United Junction to Bowers Junction.

To determine property value the report reviews the factors that influence its values.

Physical and Locational Characteristics

The rail line is a 6.84 mile-long corridor within a 50 to 100 feet wide right-of-way totally 126.03 acres. The corridor is not served by sewer or water. Electricity is provided by Portland General Electric.

The corridor traverses a mix of land forms. From the Columbia River bottoms the rail line travels up varying terrain to the crest of the Tualatin Hills where it tunnels under the crest and down the Tualatin Valley floor.

Although the railway line is not presently in use its historic use over the past 75 years as a corridor is well established.

Legal Considerations

Zoning along the corridor includes: commercial forest use, rural center, rural residential, multiple use agriculture, exclusive farm use, exclusive forest and conservation, agriculture and forest-10, and rural residential-5.

Both the Multnomah and Washington County Comprehensive Plans have provisions that allow development and use of the property for roads and corridors.

Market Conditions

The market for a right-of-way corridor is generally restricted to governments, nonprofit conservancy organizations, and utilities.

Over the years thousands of miles of abandoned rail lines have been converted to trails, linear parks and in some cases "rail banked" for future use as a railway some time in the future.

There is a market for the property but it is limited. Demand has been created by governments, recreationists and futurists for use of the corridor for trails and linear parks with the opportunity to reuse them some time in the

future as rail/transportation corridors. Utilities have a need for established corridors to use for transmission lines out of the public's way.

Based on market, legal and location factors the use which generates the greatest level of future benefits possible for the property is probably for use as a recreational trail.

See Appendix for brief summary. The complete report is on file with Metro Regional Parks and Greenspaces. The appraisal is confidential.

Level 1 Environmental Site Assessment

The assessment has identified past and present uses as a basis for determining the potential for on-site environmental contamination prior to trail development. This assessment focused on the existing railroad right-of-way and adjacent properties located within 500 feet. The assessment reviewed the following information: local, state and federal data bases to identify on and off site contamination sources; Oregon Department of Environmental Quality (DEQ), and Environmental Protection Agency (EPA), records for supplemental information on contamination of right-of-way; interview with present and past railroad employees; field reconnaissance of right-of-way; and the review of aerial photographs of the right-of-way

Based on this review there is a very low potential for significant soil and groundwater contamination within the BN right-of-way. Some herbicides were probably used to control vegetation in the right-of-way and some may be persistent in the soil and/or have a tendency to contaminate groundwater.

The review of the aforementioned data bases identified three (3) potential off-site sources. However, based on the distance and down

gradient direction from the right-of-way these sites have a very low potential for contamination of the right-of-way. See Appendix C, Level I Environmental Site Assessment, Section 5.2, page 9.

The historic record suggests that all significant commercial development has occurred down grade from the right-of-way. See Appendix for the entire report.

Cultural Resources Baseline Data Report

Archaeological Investigations Northwest, Inc., conducted a summary review of the prehistoric and historic development of the BN right-of-way. The map entitled Cultural Resource Locations illustrates the locations of previously recorded historic resources and cultural resource sensitivity areas within the right-of-way.

In all, ten sites were located. Of these, six are associated with trestles and associated stream crossings where there is the potential for archaeological deposits, three are related to railroad related development (interurban depot, tunnel, and the rail line from the south end of the Cornelius Pass Tunnel), and one is a stream crossing where there is the potential for archaeological deposits. The two previously recorded locations are the rail line from the Cornelius Pass Tunnel to Bowers Junction and the Smith Trestle.

The BN right-of-way itself, from United Junction to the Multnomah/Washington County line, is a likely candidate to be listed as a historic resource. This line was a component of the interurban system of the Portland metropolitan area and was important in the development of the western suburbs of Portland.

Further development of the trail should include a more in depth study of potential historic and archaeological resources in the areas identified through this preliminary study. See Appendix for the entire report.

Potential Conflicts

This feasibility study has uncovered no known planning, design, safety, or construction conflicts that would, at this time preclude converting the line segment from rail to trail use. In most ways, conditions are very appropriate. The line segment is at the edge of the Portland Metropolitan Area and could be part of a "west side trail loop" that would serve many users in the future. The trail experience would likely be spectacular due to the nature of the route, views and the pleasant grade.

There are very few homes visible from the railroad whose privacy would potentially be impacted by the trail. Screening and fencing would be needed there.

On the north side of the right-of-way, in the community of Burlington just east of the junction of Highway 30 and Cornelius Pass Road, there are several houses on residential lots whose backyards abut the proposed trail. There is sufficient width within the right-of-way to plant and build screening to completely block views and fence for potential trespass.

At the east end of the Cornelius Pass Tunnel, there is a home that exists several hundred feet south of the right-of-way on top of a large hill over looking the potential trail. The house is located well away and above the right-of-way.

These are the only homes visible from the right-of-way from United Junction to the Dick Road trestle, approximately one-half mile from Bowers Junction. At the Dick Road trestle, the

route breaks out of the woods and the terrain allows views of local farms, rural residences, and the Tualatin Valley. Consequently, there are very few homes visible along almost the entire route.

Site Observations

On trips to the site, conflicts were observed that will require design solutions such as decking and railings for trestles, replacement of the burned trestle with a pedestrian/service bridge, repair of erosion problems, considerations for user safety, tunnel repair and lighting, considerations for private property privacy and safety, etc. However, it is anticipated that these can and would be solved in design.

Current obstacles to most any use of the segment are the gap from the burned trestle and the tunnel which has been closed with steel doors at both ends. The trestle burned September 25, 1994, (see newspaper article in the appendix of this report for additional information). The remains have been cleaned from the site and the slopes seeded for erosion control. Burlington Northern has no plans to rebuild. The railroad sealed both ends of the tunnel most likely for safety and liability reasons. Past problems with teenagers partying and setting fires in the west end of the tunnel have been reported by neighbors and newspapers.

Burlington Northern Railroad

BN has been notified of Metro's intent to file for interim trail use. In general BN supports the idea of rail trails and has indicated it is receptive to conversion of this line segment according to Steve Myhr, Property Services Division, Seattle.

Highway 30 Multimodal Corridor Plan

ODOT has begun a Regional Corridor Planning Process. In ODOT Region 1, corridor planning is being done for U.S. Highway 30 from Portland to Astoria. The Multimodal Corridor Plan will include consideration of U.S. Highway 30, Interstate 5, The Burlington Northern Rail Road and the Columbia River. The Plan will likely recommend that U.S. Highway 30 remain five lanes from Portland to Columbia City. The Plan will support the opportunity for converting the United Junction to Bowers Junction rail segment to trail use and the long range potential for linking and looping connections to other trails. U.S. Highway 30 has bike lanes on both sides from Montgomery Park in Northwest Portland to Scappoose which could be linked to the trail. The Corridor Plan will also support linking Forest Park trails to the rail trail segment beginning near United Junction. U.S. Highway 30 is a designated Statewide Bicycle Route which is to be preserved and improved to safely accommodate statewide bicycle travel.

Washington County

The Washington County Land Use and Transportation Department designated West Union Road and Cornelius Pass Road as street bike routes in the 1988 Transportation Plan. Although bicycle traffic has increased on these roads, there is considerable concern for safety because there are generally no bike lanes or shoulders.

No road improvement projects are planned in the study area by Washington County.

Multnomah County

The Multnomah County West Hills Rural Area Plan is currently being prepared by the County. In the plan the County will address the potential

for converting the rail road to a trail. The Plan will express need for minimal impact on adjacent private property owners. In the Transportation Element, the Plan will suggest study of the proposal as an alternative to bicycle use of Cornelius Pass Road. It currently is a designated bike route.

Public Concerns

Two public meetings were held to gather ideas and concerns for the rails to trails project. One was held January 17, 1995 and one was held February 28, 1995. Proponents and opponents expressed ideas and concerns. Potential conflicts expressed and responses are included in the appendix. Concern was expressed for loss of privacy, liability, fire, crime, safety, vandalism, and others and for increasing need for hiking, bicycling and equestrian trails in the area.

Fire safety is one of the biggest concerns of nearby property owners. According to the Portland Fire Bureau, the area and the corridor is served by mutual aid agreement between three service providers. The Portland Fire Bureau, Station 22, is responsible for the east side of the area or any call within the City limits of Portland. Multnomah County Fire District #20 is responsible for the northeast corner of the area or anything in Multnomah county outside the City of Portland. Tualatin Valley Fire and Rescue is responsible for the west side of the area or anything in Washington County.

Converting the railroad to a trail may improve fire response access because fire and rescue vehicles will be able to drive along the trail. Sufficient turn around would have to be provided. The situation may be superior to many situations in large public parks and forests where emergency vehicles cannot access trail routes.

The same conditions would allow access for police response. The area is served by the sheriff's departments of Multnomah County and Washington County for the section of the corridor within their respective jurisdictions.

Banks Vernonia Linear Park

Banks Vernonia Linear Park is a rails to trails project located a few miles west of Cornelius Pass. It was purchased by the Oregon State Parks in 1974 and only recently developed for trail use around 1990. Since it is very similar to this proposed project, it is worth comparing conflicts, especially for those concerned about crime and vandalism. City police in Vernonia haven't heard of problems on the trail. Neither has the Washington County Sheriff's Office.

Light Rail Analysis - Rails with Trails

The segment of rail line proposed for study could be one leg of a major trail loop west of Portland connecting Forest Park to Sauvie Island, Sauvie Island to Hillsboro, Hillsboro to Beaverton and Beaverton to Portland. The Hillsboro to Beaverton link could possibly benefit by fitting the trail into a section of the right-of-way that will be used for the West Side Light Rail, "rails with trails". The terrain on the sides is flat enough to consider potential joint use. The Portland General Electric Company may require a service road adjacent to the light rail line which could possibly be used for trail purposes. Since the light rail project is still in design, there still may be potential for joint use of the right of way from Orenco to Beaverton.

Across the country, rails with trails projects have been built with apparent success and safety. The Appendix contains a Fact Sheet from the Rails to Trails Conservancy explaining typical projects. Generally, rails with trails involve a trail that

parallels a rail line with sufficient separation or barrier between them for safety.

Trails on Rails

Public comment raised the issue of saving the rails in place until future use arises or using the line for excursions or light rail passenger service. Preliminary study suggests that freight use is not viable as BN has not chosen to rebuild the burned trestle and maintain the line in service. Tri-Met has chosen other routes for light rail. Excursion use faces the well-known hurdles of economic viability, especially for a route paralleled by roadways.

An associated concept was raised that the rails and ties could remain in place with the trail placed between them. These concerns and issues are explained in detail in a section of the Appendix and do not appear feasible.

The Rails to Trails Conservancy has not found nor recommends a project that involves trails on, between, or immediately adjacent to rails.

Abandonment Analysis

BN has notified ICC of intent to file for abandonment the line segment from United Junction to Bowers Junction over Cornelius Pass in Washington County, Oregon and filing is expected sometime during the fall of 1995 or early 1996. BN is expected to file when it finalizes trackage agreements and contracts with Willamette Pacific Company (WP) and Southern Pacific Company (SP). These agreements and contracts are part of an overall plan for service in Washington County being monitored by ODOT.

The line segment west from Bowers Junction and south from Bowers Junction to Bendemeer are not anticipated to be abandoned in the foreseeable future as long as there are customers to service along these routes. The line segment

from Bendemeer to Merle is planned to be abandoned at the same time as United Junction to Bowers Junction or shortly thereafter. The segment from Merle to Orenco is being abandoned for non-trail use.

Linkage Analysis

Metro's Regional Trails Systems Plan identifies the potential rails to trails project as an essential portion of a regional trails system providing opportunity to connect communities and their parks, and natural features for all to experience. The Plan shows conceptually a system of trails, some existing and most proposed, that would serve the metropolitan area and connect to proposed regional and statewide trails.

Portland to Cornelius Pass

The potential rails to trails project described in this report could form the outer leg of a loop beginning with existing trails in Forest Park and along U.S. Highway 30. By extending those hiking and bicycle trails and turning up and over Cornelius Pass and then into Hillsboro, a large part of a trail loop would be formed connecting several communities. Ideally, the loop would be completed by then extending the trail from Hillsboro through Beaverton and on to Portland and back to Forest Park.

Cornelius Pass to Hillsboro

The United Junction (near Sauvie Island Bridge and approximately one mile from Forest Park) to Bowers Junction (approximately three miles north of Cornell Road and Sunset Highway), abandonment could provide the turning leg of the trail. The Orenco to Merle abandonment and the expected Merle to Bendemeer abandonment could extend the trail into Hillsboro with the exception of the Bendemeer to Bowers Junction

segment. This segment has a service customer and is not scheduled for abandonment.

Another potential route into Hillsboro could tie into the City of Hillsboro's plans for the Rock Creek Greenway Trail. It is planned to follow Rock Creek from Sunset Highway to near the new MAX light rail station planned at 206th Avenue. Two segments of the trail will be built in the coming year, one from Sunset Highway to Evergreen Road and one from Evergreen Road approximately one-half mile south through the Tannasbourne Commons project.

If the trail could reach Cornell Road and Sunset Highway from the north, it could be extended straight on to Orenco along the railroad right-of-way or jump east approximately three-fourths mile and connect with the Rock Creek Trail and head south or both.

The City of Hillsboro soon plans to build the pathway along Rock Creek and under Sunset Highway. A future trail could be extended from the railroad east to the Rock Creek Trail in order to make the connection southward into Hillsboro. This is the City's preferred route versus extending the trail along the corridor directly to Orenco.

One issue with extending the trail on to Orenco is that ODOT desires to remove the trestle over Sunset Highway in conjunction with plans for improvements to the Cornell Road and Sunset Highway Interchange. The trail(s) should be accommodated in any new interchange construction that occurs.

An issue with the route from Bowers Junction to Sunset Highway is that the section of line from Bowers Junction to Bendemeer is not expected to be abandoned soon, leaving a need to find a route around or alongside the tracks. As identified in plans by THPRD and on Metro's Trail System Plan, there is potential for

developing a trail under Portland General Electric Company's power line that runs somewhat parallel to the railroad and then east to a substation located at Cornell and Sunset Highway.

Cornelius Pass to Banks Vernonia Trail

Coming from Cornelius Pass, the railroad splits at Bowers Junction and goes south into Hillsboro and west to Banks. The line from Bowers Junction to Banks is not expected to be abandoned soon but is shown on Metro's Regional Trails System Plan as a route that would link urban trails with other trails, including the existing Banks Vernonia Trail. The Banks Vernonia Trail is an Oregon State Parks rails to trails project that has been in use for the last several years. It extends 21 miles from near the City of Banks in Washington County to the City of Vernonia in Columbia County.

Pacific Greenway - Cornelius Pass to the Coast

The Pacific Greenway is a visionary project to develop one or more greenway corridors from the Oregon Coast to the Portland metropolitan area. Two potential corridors envisioned, the Saddle Mountain Corridor paralleling Highway 26 and the Columbia Blueway paralleling Highway 30, could connect to the trail over Cornelius Pass. U.S. Highway 30 is a designated Statewide Bicycle Route. According to the Oregon Bicycle Plan, it is to be preserved and improved to safely accommodate statewide bicycle travel. Currently bicycle lanes extend from Portland to Scappoose.

Portland to Coast Trail

The Oregon State Parks has identified a Portland to the Coast Trail on their Oregon Trail Systems

Plan. It generally identifies a concept of connecting Portland to the Banks Vernonia Trail and extending the Banks Vernonia Trail on toward the Coast. Extending a trail from Cornelius Pass west to Banks Vernonia would be in keeping with the plan.

Trailhead Recommendations

Additional study would need to be done if the trail were built. But, for the purpose of preparing a preliminary construction cost estimate for the potential trail segment, two trailheads are proposed. One would be located at United Junction near the tunnel under Highway 30 and the other on the west end of the Cornelius Pass Tunnel off Rock Creek Road.

Ideally, a trailhead would be located near Bowers Junction. However, that location is surrounded by private property. Property would have to be acquired in the neighborhood and access achieved that would not unduly impact the neighboring properties. This could be studied in subsequent planning for the trail. Consequently, the trail would be usable initially from United Junction to Rock Creek Road. When the trail was extended on to Hillsboro or Banks, the Rock Creek Road to Bowers Junction section could be utilized.

The trailhead at United Junction would have access off Highway 30 at N.W. Johnson Mill Road. If the tracks were removed there would be enough room between United Junction and the tunnel for a small trailhead with parking for approximately ten cars, portable restroom, trash receptacle and informational signing.

Off Rock Creek Road near the west end of the Cornelius Pass Tunnel, a trailhead could be provided of similar size and facilities.

Another project planned in the area may provide a nearby trailhead. Access for the Ancient Forest, a nature park reserve of a remaining stand of old growth forest, is being planned and may start near the railroad off N.W. McNamee Road.

Public Involvement

Public involvement is an important part of this feasibility study and of any future planning and decision making regarding the potential trail. Two informational meetings were held during preparation of this study. One was held January 17, 1995 and one February 28, 1995. The first meeting introduced the concept and the purpose of the study and solicited public comment. The second further explained the concept of rails to trails, how other rails to trails projects were developed and also gathered public comment.

The Appendix includes a summary of potential conflicts raised in the meetings and lists of attendees.

Preliminary Estimated Cost to Construct

Part of the answer to determine feasibility for this study is need to provide preliminary construction costing for building the trail. Preliminary costing will be useful in the upcoming decision-making process.

A number of assumptions were made in order to prepare the preliminary construction cost estimate.

1. Although, for the purposes of initial feasibility, the trail would initially be usable only from United Junction to Rock Creek Road, costing includes building the trail from United Junction to Bowers Junction.

The trail would likely only be initially open for use from United Junction to Rock Creek Road because there is opportunity to build small trail head parking facilities at United Junction and at Rock Creek Road on corridor land. There appears to be no public access to Bowers Junction and little opportunity to build trail head parking there or between there and Rock Creek Road.

2. Two small trailheads are proposed for initial use of the trail. Further study in the design development stage may modify this proposal.
3. In this study it is recommended the tunnel be lighted because not all users are expected to be outfitted with flashlights and lighting may deter potential vandalism.
4. Tracks and ties will be removed by others as determined in the negotiation process with BN.
5. The burned trestle would be replaced with a pedestrian-type bridge that would handle light service vehicles.
6. The pedestrian and bicycle trail would be asphalt paved and approximately 8 to 10 feet wide. Further study and decisions may dictate alternative surfacing. The adjoining equestrian trail would be top dressed with a soft surface material such as bark chips and be approximately 2 feet wide.
7. Fencing and vegetative screening is included for the length of the trail that would run by the back yards of homes in the community of Burlington.
8. Trestles would be re-decked and fitted with guard rails.
9. Informational, safety, and regulatory signing would be provided along the length of the trail.

10. Miscellaneous improvements would be made to protect private property and the safety of trail users. *See following page for Table 1 - Burlington Northern Rails to Trails Feasibility Study - Preliminary Estimated Cost to Construct*

Cost of Right-of-Way

Assuming the rail segment will be abandoned and that Metro would file for rail banking, Metro would negotiate with BN for acquisition of the right of way. It is expected that BN will want to retain the ties and rails, remove them from the site and sell the right-of-way and other associated assets. If very much of the right-of-way has reversionary clauses, the cost of the right-of-way could be less than if owned fee simple. BN Property Services Division has no data on reversionary clauses for this segment but expects to find some on a line of this age and type. BN will not address the issue until an application is filed for rail banking or purchase. Original purchases along the right of way must be researched deed by deed.

The presence of reversionary clauses will not preclude trail use if the rail banking legislation is used to secure the right of way. BN has acknowledged that a letter of interest from Metro to BN has been received and general agreement to rail banking.

Conclusion

Based on the information presented above, in the appendix and in information gathered to prepare this report, there are no known conditions that would preclude economical conversion of the railway for trail use. Use of the rails to trails legislation appears to be an appropriate action to serve public recreational needs while preserving the option of returning the line to rail use if needed some time in the future.

Table 1

Burlington Northern Rails to Trails Feasibility Study

Preliminary Estimated Cost to Construct

With rails and ties removed - fine grading, add leveling course of aggregate and asphalt paving (10' pedestrian) and bark (2' equestrian trail)	\$600,000
Trestle decking and railings	\$350,000
New bridge to replace burned trestle	\$400,000
Improvements for Cornelius Pass Tunnel including lighting	\$100,000
Trailheads (2), including parking (10 cars each) (no flush toilets or water)	\$ 50,000
Fencing, gates, bollards and other controls	\$ 50,000
Signing	\$ 10,000
	<hr/>
Design, engineering, permits and contingency	\$1,560,000
	\$390,000
	<hr/>
TOTAL PRELIMINARY ESTIMATED COST TO CONSTRUCT	\$1,950,000

LAURIE ANN VOSS
15446 NW CORNELIUS PASS ROAD
PORTLAND, OREGON 97231-2037
(503) 621-3108 Fax by Appointment

7 September 1995

Mrs. Marge Livingston
c/c West Hills/Island
19446 NW Morgan Road
Portland, Oregon 97231
(503) 621-3896

Subject: Opposition to the Rails to Trails Metro project which may
be taken near Burlington, Oregon, or:

DUMP THE DUMP
EQUALS
FLUSH THE TRAIL

Dear Mrs. Livingston,

Evelyn Gallaher suggested that I contact WHI. The Gallahers are people who fought for their land to be free from the assaults of METRO. Evelyn told me how her home would have been affected by the sighting of the Wildwood Dump, and what this sighting would have meant to her. My home means as much to me as Evelyn's does to her.

Peter Staples may be the only member of the WHI board who knows of me. Given that I have lived on Cornelius Pass for the past seventeen years, the reason for my anonymity is because I have been working over forty hours per week as a registered nurse in order to pay for this land while raising four children.

It is because I have worked so hard for this land that I know that I am the "chosen one" to defend this area from the ravages of the METRO plan to convert the Burlington Northern line up the Pass into a public access trail - much as you at WHI defended this area from METRO's last fiasco: the Wildwood Dump. This METRO invasion could not even be voted on by the local residents.

The opposition to METRO's BN rails to trails plan has formed an organization entitled: PEARL - Protecting our Existing Agricultural and Rural Lands.

Evelyn felt that WHI may have some funds which may be used by PEARL in the fight to block this METRO invasion. I do not want your money! I want your support!!!

What I do want is for you to know that I am here; that METRO is trying to drive a trail through the center of my and other local

neighbors' lands; and that even the members of the WHI board support this rape of their neighbors who helped WHI fight off the Dump in the past. I have only shame for you and the others in this neighborhood who would support this METRO plan.

Maybe some of the 120,000 Portland urbanites who will use this trail each year will park on your land, leave trash on your land, defecate on your land, steal from you, damage your newly planted trees and crops, frighten your livestock, and start fires on your land as they likely will on our land. Further, the "trail users" won't stay on the trail if they are hot and thirsty; they will trespass to McCarthy Creek which is in our front yard which they will foul, destroying the stream bed which supports returning runs of anadromous fish. I propose that at least one outhouse serving this proposed trail be placed in every yard in this neighborhood, yours included. You'll support this sanitary suggestion, won't you?

Today I called the Portland Police Department to verify the extent of criminal acts committed in Forest Park which is the closest analog to this proposed linear trail (not the rails to trail park from Banks to Vernonia which is dramatically more remote from Portland). In the nine months from October 1994 to July 1995, there were seventy written reports of offenses made by local residents. Call Lisa at (503) 823-0043 and she will confirm this number. Lisa will also say that for an additional \$50.00 you can get an exact breakdown of the details of these crimes in a computer printout. Are you curious? Boy, does this situation deviate from the idyllic scenario for the Banks-Vernonia Trail presented at the Skyline Grange by Washington County Sheriff's Detective Wayne Salisbury. What other lies and misrepresentations has METRO fed you?

PEARL is not opposed to the people of Portland having parks in which their children can play and grow. PEARL merely thinks that METRO should use this money to develop parks within the urban growth boundaries nearby the people who will use them. People should not be encouraged to waste gas while fouling the air to come out to our property which we maintain and on which we pay taxes.

I do not want to invite the people from the City of Portland to walk, horse, or ride through the center of my land for which I have worked so hard. I will not stand by idly and watch my land be destroyed. I will not let this community think that this invasion and rape is all "OK." It is NOT OK.

Contact me for further information.

Very respectfully submitted,

Laurie Ann Voss

Laurie Ann Voss

7 June 1995

Laurie Voss
15446 N.W. Cornelius Pass Rd.
Portland OR 97231-2037

Dear Laurie,

I am unable to attend the meeting on Friday 9 June 1995 but, as we discussed on the telephone, I am submitting a letter expressing my feelings on the Metro plan to turn the Burlington Northern rail line from the Sauvie Island Bridge to Bower's Junction into a linear park.

As a long time resident of this area I am totally opposed to turning this, soon to be abandoned, rail line into a riding and jogging trail for a number of reasons:

1. The land that is currently railroad right-of-way that crosses private property was to revert to the owners of the land it crossed if the railroad ever abandoned the rail line. Metro is flexing it's considerable muscle by taking this land through court action that throws out this long standing agreement. Although this may be legal it most certainly is not right. This action leaves me with an image of Metro that I's never wanted to see in this country.
2. There are no access roads to much of the rail, tunnel, and trestles that would become the Linear Park. Any fire started by users of the park would be hard to extinguish and could spread to nearby homes and forests.
3. Joggers and bicyclists have not set a good example in our neighborhood. They constantly disobey traffic laws, causing hazards to drivers. They use our yards for resting places, stealing flowers and fruit as if it was theirs for the taking, leave their trash behind for us to pick up, and urinate on our property. Their attitude seems to be that the country belongs to them and everyone else, not to the people who bought and paid for it. Is this also Metro's view? "I like that apple and I'm going to take it." There is no way to ID these people with a serious lack of police presence, but we are learning who Metro is!

A third generation landowner in this area.

I am not signing this letter for fear of retaliation by Metro and other county agencies who might decide to harass me legally.

6-6-95

Dear Laurie:

I had to miss the
first & second meetings held by
Guy MERO: IE: TRAKS LIVERPOOL -
I'm sorry to say I'll have to miss
the 9 June meeting also. When I
first heard of their plans I called
MEL HUIE and talked about what
was going on. HE informed me
all who attended were all for it.
I found out later this was
not true, there was a lot of
people not FOR THIS PLAN. Mainly
because "we" as land owners
seem to have NO say in the matter -
I would like to know where and
how has MERO been given so much
power to do what he wants with out
any vote from us - I will be

following this as much as I can
so I'll be getting in touch with
you as soon I return from
this trip.

Legends

Signature
Name Crossed
out for individuals
requests ✓

PETITION IN OPPOSITION TO METRO'S BURLINGTON NORTHERN RAILS-TO-TRAILS PROJECT

Copy

The undersigned voting Citizens of Washington and Multnomah Counties do hereby declare their opposition to Metro's plan to develop a linear park from the Sauvie Island Bridge to Bower's Junction along the old Burlington Northern right of way. The reasons are;

- 1) **DISENFRANCHISEMENT:** The majority of the affected land owners' property lays outside of MSD boundaries and therefor the owners could not vote. This is an outrage.
- 2) **EMINENT DOMAIN:** While Metro widely down played the use of eminent domain, it remained in the details of Measure 26-26. Metro falsely maintains that eminent domain is not being used, when in fact the Supreme Court of the United States held that federal eminent domain was inherent in the federal Rails-to-Trails Act. Further, the majority of the deeds which created the original right of way for the antecedent United Railway contain restrictions which range from requiring that the land be used only for a railroad, now and forever, to reversion clauses which cause the land's use and ownership to revert to the original owners, their heirs, and assigns - by force if necessary. The owners suffer an uncompensated taking. This is an outrage.
- 3) **FIRE:** The ability to fight a fire on this trail without vehicular access (as per trail protocol) and without water is virtually nonexistent. Consider the recent six week long tunnel and the violent trestle fires. This is an outrage.
- 4) **LIABILITY:** The land owners will have increased claims made by the hikers who are not used to the terrain nor the narrow limitations of the trail. The high trestles are accidents waiting to occur. Horses will bolt if illegal motorcycles roar by. This is an outrage.
- 5) **CRIME:** Even now Portland is trying to organize local citizens into bands to patrol Forest Park due to vandalism and crime. No one can responsibly suggest that this adjacent area will not also suffer similarly. This is an outrage.
- 6) **TRAFFIC AND PARKING:** Cornelius Pass Road and other area streets will not sustain the increased traffic caused by the tens of thousands of addition trail related trips each year. The parking of cars everywhere and anywhere within one half mile of the trail will be intolerable. No one's land should be condemned with or without compensation for a five acre, 24 hour illuminated, multilevel parking structure in this area. This is an outrage.
- 7) **AESTHETIC REASONS:** This trail development will destroy our rural community. We want to maintain our land and lifestyle. This is an outrage.
- 8) **SANITATION AND ENVIRONMENT:** The human and animal wastes generated along this bike path through our community would foul our well based drinking water. Trash and litter will collect along the trail way which cannot be served by vehicles. This is an outrage.
- 9) **SAFETY AND SECURITY:** The trail will increase traffic to our rural neighborhood, and the linear park would present the police, fire fighters, and other agencies offering aid no easy access. Outrageous.
- 10) **FINANCIAL:** With over 80% of the State of Oregon being owned by the Federal, State, and Local Governments, including one of the largest urban parks in the nation, Forest Park, which is adjacent to the proposed trail, the need to convert private land for this linear park does not exist. Budget cutting begins at home, and we need to save our precious tax dollars for police, fire, schools, and primary health care.

621-
3108

Laura Noll - 621-3108

PETITION IN OPPOSITION TO METRO'S BURLINGTON NORTHERN RAILS-TO-TRAILS PROJECT

The undersigned voting Citizens of Washington and Multnomah Counties do hereby declare their opposition to Metro's plan to develop a linear park from the Sauvie Island Bridge to Bower's Junction along the old Burlington Northern right of way. See reverse for reasons.

#	SIGNATURE	PRINT NAME	STREET ADDRESS	CITY	ORE	ZIP	PHONE
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

Reverse side has the text of the petition. Petitioner
Signature: _____

To: Metro Council Please enter the following into the public record of citizen testimony concerning the proposed " Rail to Trail " conversion of the Burlington Northern Right of way along Cornelius Pass rd.

From: Seth Tane, Linnton Neighborhood Association Land Use Committee Chair
PO Box 83037, Portland, OR 97383

RAILS TO TRAILS: KEEPING THE PATH

At the present time, the Burlington Northern Railway right of way from the junction at Sauvie Island to Bower's Junction, an approximately seven mile long stretch of track, is a possible candidate for "abandonment" under federal Interstate Commerce Commission rules. The rules also permit public agencies or non-profit private groups to purchase the right of way as a transportation corridor as a public use trail or path until a future need for a rail based system might be re-established on the same right of way.

There has been some opposition to this possible trail by adjacent property owners who have voiced several concerns. Many of these same issues have been raised across the country when similar trails have been proposed, and the responses to them are supported by the actual experiences of the growing number of people who live near or use the 1,100 or so miles of these trails that exist. The people who live with these existing trails are heard to comment about their former opposition with regret and point to *decreased* litter, noise, crime and vagrancy after the rail was converted to trail. They also enjoy the increase in resale value and the use of the trail themselves.

Strong words have been used by those opposed to this and other trails. They have claimed that the BN right of way is being "stolen" from adjacent property owners. They say that only outsiders will use the trail and that they are an undesirable element that will increase crime and vandalism, trespass on their property, and increase their liability. They argue that they are outside Metro's boundaries, and Metro has no right to impose it's will on the disenfranchised. A past fight over a landfill location proposal Metro inherited has been revived complete with distortions about the court battles to scare anyone who thinks they can get honest answers from Metro. If you go to any meetings where you hear stories about having to fight Metro all the way to the U.S. Supreme court not once, but *twice*, remember that the actual record is of two LUBA appeals with one further appeal to the Oregon Court of Appeals. Stories like these don't help you to make up your own mind about what could or should happen to a valuable resource in our neighborhood.

It is time to use the voice of reason supported by documentation to counter these inflammatory arguments so that the trail proposal can be debated on its merits, rather than be a polarizing war between us. We are all neighbors who must live and work together.

Historically, the BN right of way was acquired just after the turn of the century to provide electric interurban rail service. The various parcels were purchased and obtained legally from the owners of record at the time. The ICC regulated the operation of the various successor railroads as a public resource, and when the rate of railroad abandonment accelerated nationally, federal legislation was enacted and rules established to provide alternatives. The ICC gained authority over abandonments in 1920, and subsequent passage of the National Trails System Act in 1968

with the addition of section 8(d) in 1983, the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) and various court decisions and rulemaking helped to shape a national policy of preserving the public resource of rail corridors by "Railbanking".

Railbanking is a way for all of us to retain the use of this corridor. It is not a license to steal anything from anyone. Nationally, at least two such right of way "bankings" have been returned to rail use. Burlington Northern Railway is the legal owner of the property, and has operated the line in publicly regulated service under ICC rules. If BN were to "abandon" under provisions of Federal law, *and* a regional government with the responsibility to manage parks, open space, and trails in this region were able to **purchase** the land for railbanked trail, it would be a continuation of the present public access.

There are fewer environmental impacts from the proposed new primary use as a trail rather than a rail freight line and the similar trails that are volunteer and agency maintained elsewhere in Oregon and the U.S. have provided increased security and value to every neighborhood they have passed through, not just to people from "outside" as opponents claim.

The angry cries of theft of private property, and about the breaking of contracts, polarize any discussion about the greater public good. Repeated searches for documented evidence have failed to turn up the claimed "reversionary deeds" for the Burlington Northern property within the proposed trail corridor. At this time no legal documents have been produced to support trail opponent's claims that they have a "reversionary right" to the rail right of way or that the railroad does not own the land but occupies an easement. An investigation of the records has not revealed a single parcel adjacent to the right of way that can show evidence of these rights. The argument that Metro or anyone else is stealing anything from the adjacent property owners is without basis and is being used to scare other property owners into thinking they could be next.

The image of what would happen to this land if it were somehow to "revert" to owners of adjacent lands who have never owned the parcels that formed the present right of way is a radically different one than the current public benefit from this *linear group of parcels that would be impossible to reacquire if lost to many separate ownerships*.

Make your neighborhood association, regional and local governments work for you. Make them perform and be accountable for their actions. We can make Metro work for us, rather than flog the past. Personally, I think a trail for hiking, bicycling, and horseback riding would be a great thing to have in my neighborhood and my family and others would be glad to support and use such a trail. It is also not hard to imagine a future day when a trolley might be just the thing to ease congestion on Cornelius Pass road when the buildout just over the hill in Washington County is complete. The possibility that this right of way could be intact for that future is preserved by the railbanking option. I say lets support Metro's proposed purchase of the BN right of way if it becomes available, and work with them to craft a trail management plan that resolves all the liability, maintenance, access and safety concerns we all have.

***IF CORNELIUS PASS ROAD IS "ABANDONED" WHEN WE ALL DRIVE IN
HYPERSPACE, SHOULD IT BE GIVEN AWAY TO THE ADJACENT PROPERTY
OWNERS, OR HELD IN THE PUBLIC TRUST, JUST IN CASE!***

from Stephan Bach

WALL STREET JOURNAL.

© 1995 Dow Jones & Company, Inc. All Rights Reserved

MONDAY, OCTOBER 16, 1995

Angry Landowners Turn Public Paths Into Unhappy Trails

* * *

Feuds Over Former Railways
Split Many Communities:
Ride Around the Cornfield

By TIMOTHY AEPPPEL

Staff Reporter of THE WALL STREET JOURNAL
WINFIELD, Pa. — Carl Jones never had a problem with the freight trains that used to rumble across his 80-acre farm here. It's the bicyclists in spandex pants who replaced them that he can't tolerate.

"Why don't they go recreate on their own land?" he snaps.

Instead, they pedal across his land on a crushed-limestone pathway that used to be a railroad line but has been turned into a public trail. Or at least they try to. Mr. Jones has done his best to prevent people from coming through — piling 1,000-pound bales of hay and stringing electric fences across the corridor, and hiring a lawyer who threatens to sue anyone who sets foot on the path or promotes its use, including the publisher of a popular trail guide.

Watch Your Step

Trail users have retaliated by knocking down his fences and twice setting fire to the hay barricades. A sign outside a nearby bike shop proclaims: "Mr. Jones: Bicyclists Are Not Criminals."

So much for warm, fuzzy notions about linking a community together with a trail. Like other so-called rails-to-trails projects around the country, this one has sent property owners onto the warpath. A couple living a few miles from Mr. Jones once plopped a mound of fresh manure on the path. Another landowner spends his days in a chair near the trail, yelling at people to turn around and go home. This summer, a bicyclist who pushed away a woman trying to videotape him pulling down a barrier was charged with assault. The charge was later dismissed.

How could such a seemingly appealing idea — turning a ratty, unused rail line into a smooth, recreational trail — cause such a ruckus? Property owners say it is because trails invade their privacy and invite crime into their communities. Isolationist nonsense, reply trail boosters, who contend such problems are rare.

The real fight is over who owns the land. More than 100 years of railroad building resulted in a crazy quilt of land claims. In some cases, the government simply gave land to the railroads; in others, railroads bought the land outright from private owners. But certain landowners sold what were essentially temporary easements, meaning the land would revert to them if the rail lines were ever abandoned.

Bank It

In recent years, the federal government has said that keeping these corridors available for future public uses — including laying fiber-optic cables or water mains or even building a new railroad — is a valid policy goal that justifies not turning the land over to private owners. It is called "railbanking."

Such battles have raged for years. A Vermont couple fought a trail project all the way to the U.S. Supreme Court in 1990 and lost. Now, the rise of conservative Republicans — self-proclaimed champions of property rights — is breathing new life into antitrail efforts in several states. Indiana has passed a law making it tougher to build trails, and some members of Congress have vowed to put limits on railbanking.

"There's a move afoot to end rails-to-trails," says David Burwell, president of the Rails-to-Trails Conservancy, of Washington. The nonprofit group, which gets involved only in disputes that could set state or national precedents, is aiding 10

Please Turn to Page A8, Column 1

CVER

Don't do unto others, as you
would not have them do unto you!

AS THE WALL STREET JOURNAL MONDAY, OCTOBER 16, 1995

Old Rail Lines Can Make Unhappy Trails

Continued From First Page

separate battles around the country.

Since the early 1980s, the rails-to-trails movement has grown rapidly. There are now 720 trails open, totaling 7,400 miles, and more than 900 more trails are being developed. Trails are usually built by private groups or local governments and are heavily funded by federal grants; about \$200 million has been earmarked for rail trails since 1992 from funds raised through gasoline taxes.

Some property owners opposed to trails on their land simply give up in the face of a costly legal battle or make quiet settlements with trail builders. Rick Spence, a corn and soybean farmer in La Port City, Iowa, initially objected when he learned in 1980 that the 53-mile Cedar Valley Nature Trail would cut across his land. Mr. Spence — who has a deed saying the land under the tracks on his property would revert to him if the railway were ever abandoned — eventually sold a 40-foot-wide strip across his farm to the Iowa Natural Heritage Foundation, the group building the trail, for \$6,000. Now he says he gets Christmas cards from regular trail users.

Another landowner along the trail was a harder sell. The trail was finished this past spring only after the last property owner (who had bulldozed over the rail bed and planted corn on the route) agreed to sell a corridor. But not across his land. Instead, the trail loops around the perimeter of his property, resulting in a bike path

that makes an abrupt turn at the edge of his cornfield, goes around the farm, then reconnects to the trail on the other side.

"We're not politically correct, because we think this land should belong to property owners, not the government," says Richard Weisz, who heads a group called the National Association of Reversionary Property Owners, in Issaquah, Wash. Last year, he came up with a creative way to delay a proposed trail: He applied to the Interstate Commerce Commission for permission to run his own half-mile-long railroad on a chunk of disputed right-of-way in Seattle. (He was turned down.)

Mr. Jones, of Pennsylvania, was worried at first about opposing such a popular project. He is a former member of the local school board and owns a small machine-tool company in addition to his farm. "I didn't want the negative publicity to hurt me or my business," he says. But now he is so angry he has turned into an activist.

In the 1980s, when Conrail decided to stop running trains on the line through Mr. Jones's property, the railroad sold its interest to a salvage company, which

turned around and sold it to three local townships that wanted to build a trail.

Mr. Jones and more than 35 other landowners have brought suit in county court against the three townships and five local officials. The group hopes the court will decide the land was legally abandoned and should have reverted to them. Mr. Jones, for instance, says his lawyer has examined old public records showing that the railroad got an easement across Mr. Jones's farm in 1869 — but not title to the land.

In the meantime, some trail users, such as Enrico Davanzati, a 64-year-old sign painter and avid mountain biker, have devised detours to avoid stretches controlled by the angriest owners. "I'm not going to climb over anyone's barricade or yell at anyone. That's not my style," he says. Others won't even set foot on the trail, for fear of ending up in court.

There is reason for caution. In a separate legal action, the landowners are suing the local trail boosters club — and its president — for "promoting organized trespassing."

To those who want the
trail so badly:
Donate your own land.
Call Todd Sadlo. See Sam.
But don't call him just to say
how great it is to have the
trail go through your neighbor's
land.

→ That's RAPE ←

METRO



TIMOTHY S. "TODD" SADLO
Senior Assistant Counsel
OFFICE OF GENERAL COUNSEL

Regional Government