

*Clackamas
County*DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

Sunnybrook Service Center

THOMAS J. VANDERZANDEN
DIRECTORDECISION OF APPROVAL BY PLANNING DIRECTOR IN RESPONSE
TO PEREMPTORY WRIT OF MANDAMUS20174-96-C
20895-97-DApplicant: Fred KahuiFile No.: Z0174-96-CProperty Legal Description:T2S, R2E, Section 09DB, Tax Lots 101, 200, 300, 301,
302, W.M.

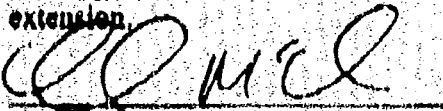
T2S, R2E, Section 09DA, Tax Lot 1701, W.M.

Zone: I-2, Light Industrial

This application for approval of a one-year time extension of a previously approved conditional use was approved by Planning Staff in a February 2, 1999 "Notice of Decision". That approval was appealed by the Clackamas CPO to the Land Use Hearings Officer, who denied the time extension. After filing a request for rehearing, the applicant filed a mandamus action in Circuit Court pursuant to ORS 215.428, *State ex rel K. B. Recycling, Inc. and Fred Kahui v. Clackamas County*, Clackamas County Circuit Court No. 99-05-315. Neither Clackamas CPO nor any other parties intervened in that case.

The Circuit Court granted judgment in favor of Clackamas County on the claim involving the time extension. The Court of Appeals subsequently reversed and remanded that decision. After due consideration, the County has now agreed to settle the mandamus action by reinstating the February 2, 1999 staff decision, including its conditions of approval with one modification. That settlement has been memorialized in a peremptory writ of mandamus issued on February 14, 2001.

Accordingly, this application is approved, subject to the conditions set forth in the attached "Notice of Decision on Conditional Use Time Extension--Approval", except that the expiration date of the conditional use permit shall be one year from the date of this approval. The applicant will also be given a refund of one-half of the application fee for the time extension.


Doug McClain
Planning Director

Date: 2/26/01

Ex. 2

**Clackamas
County****DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT**

Sunnybrook Service Center

**THOMAS J. VANDERZANDEN
DIRECTOR****NOTICE OF DECISION ON
CONDITIONAL USE TIME EXTENSION APPROVAL**

TO: Applicant, Citizens Planning Organization, Agencies, and Property Owners within 300 feet of this application.

DATE: February 2, 1999.

LAST DATE TO APPEAL: February 12, 1999

FILE NO.: Z0174-96-C

STAFF CONTACT: Gary Naylor

APPLICANT: Fred Kahut

OWNER(S): Same

LOCATION: South side of Clackamas Road between 98th Avenue and the Southern Pacific Railroad line; Clackamas area.

LEGAL DESCRIPTION: T2S, R2E, Section 09DB, Tax Lot(s) 101, 200, 300, 301, 302, W.M.
T2S, R2E, Section 09DA, Tax Lot(s) 1701 W.M.

SITE ADDRESS: None

TOTAL AREA INVOLVED: Approximately 12.42 Acres

PRESENT ZONING: I-2, Light Industrial

CITIZENS PLANNING ORGANIZATION FOR AREA: Clackamas CPO; Jerry Nordstrom, PO Box 2136, Clackamas, OR 97015; (503) 655-3988.

PROPOSAL: One (1) year time extension of originally approved Conditional Use, to permit the implementation of that approval, to develop the site as a waste recovery facility and high grade recycling center.

DECISION: Approval**CONCLUSIONS:**

Subsection 1203.03 of the Clackamas County Zoning and Development Ordinance states a one (1) year time extension for a Conditional Use may be granted once by the Planning Division staff subject to three (3) provisions. The staff has reviewed the request with respect to these provisions and finds:

1. The first provision states the time extension must be in writing, on forms provided by the Planning Division, at least thirty (30) days prior to the expiration of the approval. This Conditional Use application was considered through the public hearing process and approved by the County Hearings Officer on January 6, 1997. Applicant Fred Kahut submitted this time extension in writing on October 22, 1998 over two months prior to the two (2) year expiration of this Conditional Use. This first provision is met.
2. The second provision requires this request be consistent with all ordinance provisions in effect at the time of the time extension request. The subject property is within the Light Industrial Zoning District. There has been no change in Comprehensive Plan and Zoning and Development Ordinance language relating to the Light Industrial Zoning District since the original application was approved. Specifically, Subsection 602.05B11 of the Light Industrial District continues to permit consideration of recycling centers and transfer stations subject to Section 819 as a Conditional Use. There has also been no change in the language of Section 819 and Subsections 602.05A, 801.03 and 1203.01 of the Zoning and Development Ordinance which respectively identify the mitigation standards for recycling centers, criteria for considering a Conditional Use in the Light Industrial District, submittal requirements for a Conditional Use and the criteria that must be demonstrated to allow a Conditional Use in all Zoning Districts. Next, the applicants request has not changed from what was proposed in the original Conditional Use application.

What has changed is the amount of traffic using the network of public roads within the area affected by this land use proposal. The County Traffic Engineering and Development Review staff have no objection to this application. The Oregon Department of Transportation staff have advised by telephone they have no objection to this time extension and will further respond in the Design Review process for this development.

The County Hearings Officer reviewed a transportation impact study and additional traffic information submitted by the applicant as well as the analysis of that information by the County Traffic Engineering Section. The Hearings Officer found street intersections within the area affected by traffic generated by this use were operating at an unacceptable level of traffic service during the AM peak traffic period and/or PM peak traffic period. Therefore, the Hearings Officer attached conditions to this proposal restricting the traffic it generates to the period time in which the street system operates at an acceptable level of traffic service. The County Traffic Engineer and Oregon Department of Transportation have advised these traffic restrictions continue to be acceptable mitigation measures to ensure there is an acceptable level of traffic service when the proposed use is generating traffic.

At the time of the original Hearings Officer approval, public facilities and services were available to adequately serve this use. Specifically, public water was provided by the Clackamas River Water District, public sanitary sewer by Clackamas County Service District #1, and fire and emergency protection by Clackamas County Fire District #1. These public facilities and services continue to be provided.

In conclusion, this second provision is met subject to the attached conditions which sufficiently mitigate the traffic impact of this use.

3. The third provision requires there be reasonable expectancy the necessary development permits can be secured within the one year time extension period. The applicant has made progress towards securing the necessary development permits for this use as evidenced by securing Master plan and Phase I development approvals from the Design Review Committee. The decision of the Design Review Committee was also upheld by the County Hearings Officer on appeal. However, through no fault of the applicant the Hearings Officer did not submit a final written decision on this appeal. The Hearings Officer is writing that decision at this time. The applicant also intends to apply for Phase II and Phase III Design Review for the remainder of this development during this year. Based on the present state of implementing the Hearings Officers conditions of approval, there is a reasonable expectancy the applicant can secure the necessary development permits to implement this Conditional Use approval within the one year time extension period. The third provision is met.

In conclusion, the Planning Division staff finds the three provisions for granting this time extension are met and, therefore, the staff approves this one (1) time extension of Conditional Use File #Z0174-96-C subject to the following conditions which were imposed by the County Hearings Officer in the original approval:

1. A Design Review application shall be submitted to the Planning Division for approval by the Design Review Committee prior to any development on the subject property associated with this Conditional Use. Design Review considerations shall include the signing, building and site design requirements under Subsection 819.02A8 and the standards under Subsection 602.03.
2. This materials recovery facility shall accept only dry construction and demolition debris and clean source separated recyclables. It shall not accept putrescible solid waste or yard debris.
3. The truck route to this facility shall be from State Hwy 212-224 to 102nd Avenue to Clackamas Road. The operator shall post identification signs along this truck route subject to the regulations of Clackamas County and Oregon Department of transportation. The driveway entrance onto the subject property shall be from Clackamas Road. There shall be no driveway access permitted onto 98th Avenue.
4. The applicant shall dedicate additional right-of-way along that portion of the property frontage with Clackamas Road designated a minor arterial to ultimately achieve a 70 ft. right-of-way. This will require a dedication of at least 5 ft. The dedication will also include an industrial standard radius at the corner of 98th Avenue and Clackamas Road. To achieve proper curb alignment and construct a sidewalk along Clackamas Road west of Industrial Way where it is a local street, the applicant may have to dedicate additional right-of-way.
5. Up to a one-half street improvement will be designed and constructed on the property frontage with Clackamas Road and 98th Avenue. The frontage on 98th Avenue shall be

improved with curb, surfacing, storm sewer, five ft. sidewalk and pavement tapers. The curb off-set shall be at least 21 ft. from centerline for an ultimate curb width of 42 ft. The improvements shall be tapered to match the existing improvement to the south which appears to be 24 ft. from centerline. Some of the existing road surface is in poor condition and has poor drainage and it may be necessary to make additional improvements to ensure proper drainage and a vital driving surface.

6. The property frontage improvements on Clackamas Road shall consist of curb, surfacing, storm sewer, and sidewalk. Due to the functional classification difference, the segment between Industrial Way and 98th Avenue shall have a centerline offset of 24 ft. and a six ft. sidewalk. West of Industrial Way, the centerline offset may be reduced to 21 ft. to correspond to the functional class and the sidewalks shall be five ft. There must be a satisfactory radius or taper to transition traffic and stormwater between the two road segments.
7. A grading permit shall be obtained from the County Department of Transportation and Development for the proposed development.
8. The applicant shall obtain a Street Construction and Encroachment Permit for construction of the required street improvements. The applicant shall submit plans prepared and stamped by an engineer registered in the State of Oregon, a performance guaranty and an inspection fee for this permit.
9. Parking of all vehicles associated with this business shall occur only on this site.
10. The development is subject to the Rules & Regulations for Clackamas County Service District #1.
11. The storm drainage shall be in compliance with the Rules & Regulations for Clackamas County Service District #1 and Section 1003 of the Clackamas County Zoning and Development Ordinance.
12. The cost of the storm and sanitary sewer systems shall be borne entirely by the developer.
13. Storm drainage design and detention calculations shall be by the King County method.
14. The applicant's engineer must provide supporting data (to the District) that the downstream conveyance system has adequate capacity to accommodate the additional flows and not cause flooding. The maximum release rate allowed may be less than the five year rate.
15. The applicant's engineer shall submit two copies of an Erosion Control Plan and two copies of the storm drainage and detention system along with one copy of the detention calculations to the County Water Environment Services Department.
16. The applicant shall furnish the wetland mitigation plan approved by the Army Corps of Engineers and/or Division of State Lands to the County Water Environment Services Department along with the plan for on-site storm detention and water quality facility.
17. Emissions (odors) from this facility shall not exceed the standards in OAR Chapter 340, Division 21, and Section 050. An odor control plan shall be submitted to Metro and Department of Environmental Quality. A copy of this approved plan shall be submitted to Clackamas County prior to operation of this facility.
18. The applicant shall submit a dust control plan to the Department of Environmental Quality for approval. A copy of the approved plan shall be submitted to Clackamas County prior to operation of this facility.
19. The operation of this facility shall be in compliance with the Department of Environmental Quality Noise Standards. A copy of the Department of Environmental Quality approval shall be submitted to Clackamas County prior to issuance of a building permit.

20. Storage of materials shall occur only in a totally enclosed building with proper air quality controls except recyclable materials that do not require post-consumer processing may be stored in drop boxes outside of the processing building with or without an area enclosed by a fence. These drop boxes shall be completely enclosed containers except during times of loading and unloading. Also permitted is the unloading by haulers into a bunker system, with temporary storage only permitted in the bunker prior to removal of the material into the processing building.
21. The applicant shall have a Metro approved operating plan for the salvaging of any recyclable materials.
22. The applicant shall have a County Recycling License or permit for any salvaging of materials if applicable.
23. The applicant shall have a stormwater management plan for the stormwater collection and disposal system which shall include emergency spill containment and clean up measures and water quality mitigation measures approved by the County Water Environment Services Department.
24. This facility shall not accept hazardous waste or bio-medical waste. Any incidental hazardous waste such as household hazardous materials shall be confined within the processing building. The applicant shall have an incidental hazardous waste containment and clean up plan approved by Clackamas County Department of Environmental Quality.
25. The applicant shall have a hazardous spill response plan approved by the County Water Environment Services Department and Clackamas County Fire District #1.
26. The Army Corp of Engineers and/or Division of State Lands shall approve a wetlands mitigation plan prior to any disturbance of the wetland areas on the subject property. A copy of the approved plan shall be submitted to Clackamas County.
27. The applicant shall pay a County fee to Clackamas County and Metro if required.
28. The applicant shall acquire a Metro processing franchise and comply with the terms and conditions of that franchise. A copy of this franchise shall be submitted to Clackamas County prior to operation of this facility.
29. The applicant shall acquire a department of Environmental Quality Disposal Permit and comply with the terms and conditions of that permit. A copy of the permit shall be submitted to Clackamas County prior to Operation of this facility.
30. The applicant shall acquire a Clackamas County Recycling License and comply with the terms and conditions of that license.
31. The applicant shall use only Metro or Metro-designated or approved facilities for disposal of residual solid waste.
32. The applicant shall have a litter control plan approved by Clackamas County, and Metro if required, to keep the site clean of litter and other debris.
33. The applicant shall provide and maintain fire department access, grades, and turnarounds per County, Fire District, and UPC Standards and Requirements.
34. The applicant shall provide approved address numbering, fully visible from the street, which clearly identifies the site location.
35. The applicant shall provide fire extinguishers accessible to the public, with each extinguisher to have a minimum rating of 3A:40BC.
36. All flammable, combustible and hazardous materials shall be stored, used and handled per UPC requirements.

37. All working operations shall comply with UFC requirements.
38. The applicant shall provide fire hydrants as required to meet the fire flow ordinance requirements with location subject to joint water and fire district approval.
39. Any signing within the State right-of-way will require a permit from the Oregon Department of Transportation.
40. The applicant shall have signing to keep trucks from using 98th Avenue to access this facility. The signing shall be approved by the County Traffic Engineering Section.
41. The applicant shall have a Certificate of Occupancy prior to operation of this facility.
42. The applicant shall not allow activities which will result in any vehicle trip generation to/from this facility between the hours of 3:30 PM to 6:00 PM, Monday through Friday. The applicant shall require all deliveries prior to 3:30 PM, Monday through Friday. The applicant shall erect highly visible signs informing the public that this facility is closed to public buy-back and drip-off activity between the hours of 3:30 PM to 6:00 PM, Monday through Friday. The applicant shall keep records of public vehicle arrivals between the hours of 3:30 PM to 6:00 PM, Monday through Friday.
43. The applicant shall arrange all employee shift changes so that no employee traffic will occur between the hours of 3:30 PM to 6:00 PM, Monday through Friday.
44. This Conditional Use permit is granted for the specific materials recovery facility identified in this application to the extent it is consistent with the conditions of approval.
45. This Conditional Use permit is approved subject to the conditions of approval. Noncompliance with any of these conditions constitutes a violation of this permit and shall be cause for revoking this permit.
46. The Conditional Use Permit shall expire within one (1) year from January 6, 1999. In the event this approval is not implemented within one (1) year from January 6, 1999. The Conditional Use approval is implemented when all necessary permits for development have been secured and are maintained.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE A NOTICE OF SALE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT THE PLANNING DIVISION OFFICE. IF YOU DISAGREE WITH THESE FINDINGS OF CONDITIONS, YOU MAY APPEAL THIS DECISION TO THE CLACKAMAS COUNTY HEARINGS OFFICER. THE COST OF THE APPEAL IS \$500. YOU APPEAL MUST BE RECEIVED IN THE PLANNING DIVISION OFFICE BY 5:00 PM ON THE LAST DATE TO APPEAL, WHICH IS FEBRUARY 12, 1999. THIS PERMIT WILL NOT BE ISSUED UNTIL THE DAY AFTER THE APPEAL DEADLINE.

RICHARD F. CRIST
Land Use Hearings Officer
18734 Upper Midhill Drive
West Linn, Oregon 97068
(503) 636-9256

FINDINGS AND DECISION OF THE HEARINGS OFFICER

File No.: 20174-96-C (Rehearing)

Applicant: Fred Kahut, P.O. Box 550, Canby, OR 97013

Proposal: To develop the subject property with a materials recovery facility and a high-grade recycling center.

Planning Division Recommendation: Approval

Staff Representative: Gary Naylor

Public Hearing: A public hearing was held at the Clackamas County Department of Transportation and Development (DTD), 902 Abernethy Road, Oregon City, Oregon on April 17, 1996 at 9:00 a.m., at which time testimony and other evidence was received, the record was left open for the receipt of additional written information through May 8, 1996, and the matter was continued for decision until May 15, 1996 at 9:00 a.m., at which time an oral decision was announced denying the application. By Order entered on June 28, 1996, the applicant's Request for Rehearing was granted, the Findings and Decision of the Hearings Officer herein, dated and filed June 12, 1996 was set aside, and the Planning Director was directed to schedule this matter for a further public hearing. A further public hearing was held on August 28, 1996 at 10:45 a.m., at which time additional testimony and other evidence was received, the record was closed, and the matter was continued for decision until September 11, 1996 at 9:00 a.m., at which time an oral decision was announced approving the application, subject to certain conditions.

Speaking in Support of Request:

1. Steve Donovan, 8625 SW Cascade Blvd., Suite 220, Beaverton, OR 97005
2. Brian Copeland, 921 SW Washington, Suite 612, Portland, OR 97205
3. Peter Coffey, 921 SW Washington, Suite 612, Portland, OR 97205
4. Mark Greenfield, Attorney at Law, 111 SW Columbia, Suite 1080, Portland, OR 97201
5. Robert Guttridge, P.O. Box 550, Canby, OR 97013
6. Richard Bloom, 820 7th Street, Oregon City, OR 97045

Community Planning Organization Response: The Clackamas CPO was timely notified of this application, but did not respond.

EX. 11, 20174-96-C

Speaking in Opposition to Request:

1. Frank Crow, 402 Beaver Creek Road, Suite 105, Oregon City, OR 97045

FINDINGS:A. Subject Property:

1. Legal Description: Tax Lots 101, 200, 300, 301 & 302, Section 9DB, T2S, R2E, W.M.; Tax Lot 1701, Section 9DA, T2S, R2E, W.M., Clackamas County, Oregon

2. Location: On the south side of Clackamas Road, between 98th Avenue and the Southern Pacific Railroad line, Clackamas area.

3. Zone: I-2, Light Industrial

4. Comprehensive Plan Designation: Light Industrial

5. Site Description: The subject property is approximately 12.10 acres. It is relatively level, except for man-made cuts. Most of this property is a field, but there are areas of brush and small hardwoods. There are also a number of shallow basins and ditches which are wetlands. These wetlands have been inventoried by Clackamas County and designated as "insignificant wetlands". This property appears to have been long abused, and is presently abandoned. There are scattered areas of unauthorized dumping, as well as several foundations, paved areas and rocky areas on the property.

B. Vicinity Information: The subject property is located within an area of mixed zoning and land uses. To the south it is bordered by State Highway 212/224 and the Lumberman's warehouse facility. The Southern Pacific Railroad line abuts the property on the west, with Commercial zoning further to the west. Land to the north, across Clackamas Road, is zoned I-3, General Industrial, and is developed with the Milwaukie Transfer Industrial facility and Camp Withycomb. To the east, across 98th Avenue is a pocket of R-7 single family residential development.

C. Service Considerations: Public sanitary sewer is provided by Clackamas County Service District No. 1; public water is provided by Clackamas River Water District; fire protection is provided by Clackamas County Fire District #1.

D. Land Use Ordinance Considerations:

1. Section 602 of the Clackamas County Zoning and Development Ordinance (ZDO) controls land use in the I-2 zoning district. Subsection 602.05(A) provides that certain uses may be approved as a conditional use where the application satisfies the applicable standards under Section 800 of the ZDO, satisfies the criteria

under Section 1203 of the ZDO and satisfies each of the three additional approval criteria set forth therein.

The Hearings Officer has reviewed the entire record made as a part of this proceeding, and Findings based on that record with regard to the criteria above described will be discussed below.

2. Subsection 801.03 of the ZDO lists the information which must be submitted for a complete conditional use application. This application contains a description of the proposed use and specific reasons for the request, a vicinity map, a site plan of the property, including existing and proposed improvements, a building profile, and information addressing the criteria under Section 1203 of the ZDO.

This provision is satisfied.

3. Section 819 of the ZDO sets forth development and mitigation for recycling centers and transfer stations. The proposed use constitutes a recycling center, as defined by Section 202 of the ZDO. Those standards relate to potential impacts resulting from a recycling center, including traffic, odor, dust, noise, storage, materials salvage, sewage disposal, processing wastewater and storm water management, signing, building and site design, hazardous waste handling, safety, protection of identified environmental concerns, economic impacts and litter. This application, with the conditions of approval, will satisfy each of the listed development and mitigation standards, as follows:

a. 819.02(A)(1): Traffic. The road access system to the facility shall be adequate to handle traffic generated by the use. The County shall require the necessary traffic measures to insure the facility use is consistent with the County transportation system. The facility shall have access to major roadways and truck routes. The facility shall have an operational plan that assures those travelling to the facility, particularly trucks, travel primarily on truck routes identified by the County.

The first requirement of this standard is that the transportation system be adequate to handle traffic generated by this use. To address this standard the applicant has submitted transportation impact studies prepared by DKS Associates and the testimony of Brian Campbell of that office. The traffic impact studies have been reviewed by the County Traffic Engineering and Transportation Planning Sections, which concur with approach, factual data and analysis of the study. In accordance with the access plan initially developed by the applicant and County staff, regional access to this facility would be provided by the I-205 freeway, with traffic then travelling east on State Highway 212/224 to 102nd Avenue, then north to Clackamas Road, and west on Clackamas Road to the site. Intersections studied along this route include Highway 212/I-205 southbound ramps, Highway 212/I-205 northbound ramps, Highway 212/82nd Drive, Highway 212/98th Avenue and Highway 212/102nd Avenue. Of these intersections, all but the Highway 212/98th Avenue intersection are signalized. The traffic

Impact study analyses establish that each of the studied intersections, except for the Highway 212/102nd Avenue intersection, currently operates at Level of Service (LOS) "F" during an extended PM peak traffic hour, with the Highway 212/98th Avenue also operating at LOS "F" during the AM peak traffic hour for traffic movements on 98th Avenue. The Highway 212/102nd Avenue intersection operates at LOS "C" and "D" during the AM and PM peak traffic hours. LOS "F" is defined within the traffic impact study for both signalized and unsignalized intersections. That LOS denotes an intersection which does not have the capacity to accommodate existing traffic flows, and is considered to be unacceptable.

As a result of the Hearings Officer's initial decision on this application, the applicant has presented more site specific usage data and has presented a revised access plan, designed to avoid all LOS "F" intersections during the PM peak hour and to not include 98th Avenue traffic. The access plan now provides for all hauler traffic to completely avoid failing Highway 212 intersections during the extended PM peak traffic hour. This will be required by conditions of approval, and can be easily satisfied, as all hauler traffic can be completed prior to the beginning of the extended PM peak hour.

In addition to hauler traffic, this facility is expected to generate public buy-back trips and public drop-off trips. The substantial evidence in this record establishes that only approximately one vehicle trip per day would travel the affected LOS "F" intersections during the extended PM peak traffic hour. Because of the necessity to avoid even this low level of traffic, a condition of approval will require the applicant to post highly visible signage that the facility is closed to public buy-back during the extended PM peak traffic hours of 3:30 p.m. to 6:00 p.m., Monday through Friday. The substantial evidence in this record establishes that, given current experience from the applicant's existing similar facility, there will be some public drop-off trips during the extended PM peak traffic hour. To avoid this traffic, the applicant will be required to post highly visible signs that the facility is closed to public drop-off activity between the hours of 3:30 p.m. to 6:00 p.m., Monday through Friday. Although this signage will not prevent all public drop-off activity during the extended PM peak traffic hour, it will assuredly be significantly reduced over time. The Hearings Officer finds, based on all the substantial evidence in this record, that the very limited continuing public drop-off traffic will be offset by the public drop-off traffic currently traveling the congested portion of Highway 212, resulting in no additional traffic impact on those failing intersections.

The applicant's current shift hours are such that employee traffic will not impact the affected intersections during the extended PM peak hour. A condition of approval will require that the applicant continue to utilize employee shift hours which avoid the PM peak traffic hour.

All of the above discussed evidence establishes that,

with the conditions of approval, the transportation system which will provide access to this will have the capacity to accommodate the additional traffic generated by this use.

This standard is satisfied.

b. 819.02(A)(2) through 819.02(A)(13): With the conditions of approval, these performance and mitigation standards will be satisfied, for the reasons discussed in the Planning Division Staff Report/Recommendation to the Hearings Officer herein, dated April 9, 1996, incorporated herein by this reference, and specifically adopted by the Hearings Officer.

This criterion is satisfied.

4. This application satisfies each of the criteria under Section 1203 of the ZDO, as follows:

a. 1203.01(A): The use must be listed as a conditional use in the underlying zoning district.

Subsection 602.05(B)(11) of the ZDO identifies recycling centers as a conditional use in the I-2 zoning district.

This criterion is satisfied.

b. 1203.01(B): The characteristics of the site must be suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

The subject property is suitable for development as proposed. The 12.42 acre subject property is large enough to accommodate the proposed facility, meet applicable setbacks, provide for required off-street parking and storage, provide for internal traffic circulation, meet landscaping requirements and accommodate stormwater and/or wetlands mitigation features, as demonstrated by the site plan in the record. The shape of the subject property does not interfere with the proper functioning of the use, and appears to be very suitable for the layout of the proposed development and stormwater/wetland mitigation. The subject property is appropriately located within a predominately industrial area, with convenient access to the arterial road system serving the County. The location of this property immediate to a railroad siding is a particularly suitable characteristic. The topography of the property does not limit development as proposed. The relatively flat topography is a suitable construction characteristic. There are no improvements on the subject property. This record identifies one significant natural feature on the subject property, the presence of scattered wetlands. These wetlands have been declared to be insignificant by the County in its Goal 5 review process, but they may be an asset if transformed into a stormwater detention facility.

This criterion is satisfied.

c. 1203.01(C): The site and proposed development must be timely, considering the adequacy of transportation systems and

with the conditions of approval, the transportation system which will provide access to this will have the capacity to accommodate the additional traffic generated by this use.

This standard is satisfied.

b. 819.02(A)(2) through 819.02(A)(13): With the conditions of approval, these performance and mitigation standards will be satisfied, for the reasons discussed in the Planning Division Staff Report/Recommendation to the Hearings Officer herein, dated April 9, 1996, incorporated herein by this reference, and specifically adopted by the Hearings Officer.

This criterion is satisfied.

4. This application satisfies each of the criteria under Section 1203 of the ZDO, as follows:

a. 1203.01(A): The use must be listed as a conditional use in the underlying zoning district.

Subsection 602.05(B)(11) of the ZDO identifies recycling centers as a conditional use in the I-2 zoning district.

This criterion is satisfied.

b. 1203.01(B): The characteristics of the site must be suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

The subject property is suitable for development as proposed. The 12.42 acre subject property is large enough to accommodate the proposed facility, meet applicable setbacks, provide for required off-street parking and storage, provide for internal traffic circulation, meet landscaping requirements and accommodate stormwater and/or wetlands mitigation features, as demonstrated by the site plan in the record. The shape of the subject property does not interfere with the proper functioning of the use, and appears to be very suitable for the layout of the proposed development and stormwater/wetland mitigation. The subject property is appropriately located within a predominately industrial area, with convenient access to the arterial road system serving the County. The location of this property immediate to a railroad siding is a particularly suitable characteristic. The topography of the property does not limit development as proposed. The relatively flat topography is a suitable construction characteristic. There are no improvements on the subject property. This record identifies one significant natural feature on the subject property, the presence of scattered wetlands. These wetlands have been declared to be insignificant by the County in its Goal 5 review process, but they may be an asset if transformed into a stormwater detention facility.

This criterion is satisfied.

c. 1203.01(C): The site and proposed development must be timely, considering the adequacy of transportation systems and

public facilities and services existing or planned for the area affected by the use.

Regarding the transportation system, for the reasons discussed in Finding D(3)(a) above, the Hearings Officer finds that the existing transportation system which will serve development as proposed is adequate to accommodate additional traffic reasonably expected to be generated by this use.

The subject property is currently provided with necessary public services. All service providers were provided notice of this application, and each has responded indicating its ability to serve the proposed facility with existing facilities.

This criterion is satisfied.

d. 1203.01(D): The proposed use must not alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of surrounding properties for the primary uses listed in the underlying zoning district.

The subject property is located within the confines of a Light Industrial, I-2, zoning district. As stated above, there is a pocket of single family residential uses to the east, across 98th Avenue. The primary uses for the I-2 district are set forth in subsection 602.03 of the ZDO, and are included herein by this reference. They are light industrial uses. The nature of existing surrounding uses is described above.

The nature of this use is such that it will generate impacts which have the potential to create adverse impacts to the detriment of surrounding uses. This use will generate noise, but the extent of noise impacts will be lessened by the fact that all recycling and processing activities will be conducted within an enclosed structure. The substantial evidence in this record establishes that this use can and will meet DEQ noise degradation standards. A condition of approval will require that the use meet these standards at all times. The Hearings Officer deems DEQ's standards as a level of additional noise which does not unreasonably impact surrounding uses. The visual impact of this facility will be mitigated through required perimeter fencing and landscaping, and will be similar in character to other industrial uses. The limited nature of traffic impacts has been discussed above, and will be at a level of traffic lower than other potential I-2 uses which might be established on the property. Conditions of approval require the control of dust and other emissions (odors) to at least the level required by DEQ regulations, minimizing the potential for adverse impacts from these sources. No other potential adverse impacts to surrounding industrial or residential uses are identified in this record.

This criterion is satisfied.

e. 1203.01(E): The proposed use must satisfy, on balance, the Goals and Policies of the Comprehensive Plan which apply to the proposed use.

As stated above, the Plan designates the subject property Light Industrial. No provisions of the Industrial and Light

Industrial Sections of the Land Use Chapter of the Plan are identified as applicable to this application. The proposal is specifically consistent with the Goal of the Natural Resources and Energy Chapter of the Plan to conserve energy and promote energy efficiency through source development and recycling, and with Policy 2.0 of that Chapter of the Plan, in that the record establishes that this recycling center is a needed component of the County's efforts establish effective solid waste recycling programs.

This criterion is satisfied.

5. This application, with the conditions of approval, satisfies each of the three criteria under subsection 602.05(A) of the ZDO, as follows:

a. 602.05(A)(1): The use must have minimal adverse impact on the appropriate development of primary uses on abutting properties and the surrounding area, considering location, size, design, visual appearance and operating characteristics of the use.

The zoning of abutting and surrounding properties, with the primary uses for those zoning districts has been listed above. Also discussed above is the fact that this use will have minimal adverse impact on existing and potential uses on abutting and surrounding lands. The requirement of the I-2 zoning district, and the conditions of approval herein, that this development be subject to Design Review, with provisions for extensive landscaping, will further assure that the use is compatible with surrounding development.

This criterion is satisfied.

b. 602.05(A)(2): The use must not create hazardous, or potentially hazardous, conditions which cannot be contained within the premises in the event of an accident involving hazardous materials or processes.

The use proposed will not involve the use of hazardous materials or processes. Conditions of approval require that this facility not accept hazardous waste or bio-medical waste. Furthermore, the applicant will be required to implement an incidental hazardous waste containment and clean-up plan approved by the County and DEQ, assuring that any hazardous waste which inadvertently is on the property is contained within the premises.

This criterion is satisfied.

c. 602.05(A)(3): The use must comply with all standards under subsection 602.03 of the ZDO, except those which prompt the application for a conditional use.

None of the standards under subsection 602.03 prompt the application for a conditional use permit. This use will comply with those standards under subsection 602.03 which are applicable, as follows:

1. 602.03(B): This standard relates to site plan and

design, and provides that structures, circulation, parking, loading and landscaping shall be designed to accomplish the factors listed.

A review of the site plan submitted by the applicant indicates that the proposed facility is consistent with these factors. Design Review of this facility will specifically address and assure compliance with these factors.

This standard will be satisfied.

2. 602.03(C): This standard relates to design standards for certain types of buildings, including office buildings, multi-use and multi-tenant buildings, and warehouse or manufacturing buildings.

The proposed structure is similar to a warehouse or manufacturing structure, one of the building types regulated under this standard. The Design Review of this development will assure compliance with this standard.

This standard will be satisfied.

3. 602.03(D): This standard relates to outside storage and process areas, and provides that outdoor processes are prohibited, with limited outdoor storage permitted in accordance with the standards set forth therein.

This use proposes limited outdoor storage of a type necessary and inherent to a facility which received recyclable material for processing. Conditions of approval will specifically limit outdoor storage to recyclable materials which do not require post-consumer processing which may be stored in drop boxes outside of the processing building within an area enclosed by a sight-obscuring fence, as required by this subsection. These drop boxes will be closed except during times of loading or unloading. Also permitted is the unloading by haulers into a bunker system, with temporary storage only in the bunker prior to removal of the material into the processing building.

This standard is satisfied.

4. 602.03(E): This standard relates to display areas, and provides that all display of products shall be located within an enclosed building, unless approved as a conditional use.

No display area is proposed as a part of this use. This standard is not applicable.

5. 602.03(F): This standard relates to transportation requirements, and provides standards for loading areas and permitted vehicle traffic.

This use will utilize loading areas. The design and suitability for large truck traffic will be reviewed through the Design Review process. The small amount of non-employee traffic which will be generated by this facility is within the traffic generation limitations established.

This standard is satisfied.

6. 602.03(G): This standard relates to parking, and

provides that the use shall satisfy the parking requirements of subsection 1007.07 of the ZDO, and parking area landscaping shall satisfy the standards of subsection 1009.04 of the ZDO.

This standard will be satisfied through Design Review of this development. The site plan demonstrates that parking and parking area landscaping requirements can be met, and Design Review will assure compliance with those standards.

This standard will be satisfied.

7. 602.03(H): This standard relates to landscaping, and provides that at least 15 percent of the developed site shall be landscaping satisfying the requirements under subsection 602.07(D)(3) and Section 1009 of the ZDO, and the standards set forth in this subsection.

Again, this standard will be satisfied through Design Review of this development.

This standard will be satisfied.

8. 602.03(I): This standard relates to operational impacts of the use, and provides as follows:

(a). 602.03(I)(1): The operation of the use shall not produce noise, odors, fumes or gases, or vibration which exceed the standards of the Department of Environmental Quality (DEQ).

(b). 602.03(I)(2): No hazardous materials in quantities classified under Group H, Division 1 or Division 2 Occupancies under the Uniform Building Code shall be stored or used on the premises, except as specifically approved as a conditional use.

The limited nature of noise, odors, fumes, gases or vibration which can be expected to be produced by this use has been discussed above. This use is not expected to generate any of these items at a level which approaches that authorized under DEQ standards. A condition of approval will specifically require that the use at all times be in compliance with applicable DEQ standards. Also discussed above is the fact that no hazardous materials are proposed to be stored or used on the subject property in conjunction with this use.

This standard will be satisfied.

This approval criterion is satisfied.

6. No other provisions of the ZDO or the Plan have been identified as applicable to this application, and no other provisions of the ZDO or the Plan are found to be applicable.

7. The Hearings Officer specifically finds that the applicant can satisfy each of the conditions of approval.

DECISION: Approval, subject to the following conditions:

1. Conditions 1 through 42, as set forth in the April 9, 1996 Planning Staff Report/Recommendation to the Hearings Officer, herein, except as follows:

a. Condition #18 is modified by adding at the end thereof the following language: "Also permitted is the unloading by haulers into a bunker system, with temporary storage only permitted in the bunker prior to removal of the material into the processing building."

2. Compliance with the requirements of Clackamas County Service District No. 1, as set forth in the August 15, 1996 Memorandum to this file from the Department of Utilities, Exhibit #20.

3. The applicant shall not allow activities which will result in any vehicle trip generation to/from this facility between the hours of 3:30 p.m. to 6:00 p.m., Monday through Friday. The applicant shall require all commercial haulers to complete on-site activity prior to 3:30 p.m., Monday through Friday. The applicant shall erect highly visible signs informing the public that this facility is closed to public buy-back and drop-off activity between the hours of 3:30 p.m. to 6:00 p.m., Monday through Friday. The applicant shall keep records of public vehicle arrivals between the hours of 3:30 p.m. to 6:00 p.m., Monday through Friday.

4. The applicant shall arrange all employee shift changes so that no employee traffic will occur between the hours of 3:30 p.m. to 6:00 p.m., Monday through Friday.

Dated and Filed this 6th day of January, 1997.

/s/ Richard F. Crist
Richard F. Crist
Hearings Officer

bio-medical waste. Further, the applicant will be required to implement an incidental hazardous waste containment and clean up plan approved by the County and Dept. of Environmental Quality. The second criterion can be met.

3. The third criterion requires the use will comply with all standards under 602.03, except those which prompt the application for a Conditional Use. It is apparent the proposed use will be able to comply with the many standards under 602.03. This third criterion can be met.

In conclusion, it is the staff's judgment the proposed use can meet the criteria for establishing this Conditional Use in a Light Industrial District.

Conditions of Approval:

1. A Design Review application shall be submitted to the Planning Division for approval by the Design Review Committee prior to any development on the subject property associated with this Conditional Use. Design Review considerations shall include the signing, building and site design requirements under Subsection 819.02A8 and the standards under Subsection 602.03.
2. This materials recovery facility shall accept only dry construction and demolition debris and clean source separated recyclables. It shall not accept petrusable solid waste or yard debris.
3. The truck route to this facility shall be from State Hwy 212-224 to 102nd Avenue to Clackamas Road. The operator shall post identification signs along this truck route subject to the regulations of Clackamas County and Oregon Dept. of Transportation. The driveway entrance onto the subject property shall be from Clackamas Road. There shall be no driveway access permitted onto 98th Avenue.
4. The applicant shall dedicate additional right-of-way along that portion of the property frontage with Clackamas Road designated a minor arterial to ultimately achieve a 70 ft. right-of-way. This will require a dedication of at least 5 ft. The dedication will also include an industrial standard radius at the corner of 98th Avenue and Clackamas Road. To achieve proper curb alignment and construct a sidewalk along Clackamas Road west of Industrial Way where it is a local street, the applicant may have to dedicate additional right-of-way.
5. Up to a one-half street improvement will be designed and constructed on the property frontage with Clackamas Road and 98th Avenue. The frontage on 98th Avenue shall be improved with curb, surfacing, storm sewer, five ft. sidewalk and pavement tapers. The curb off-set shall be at least 21 ft. from centerline for an ultimate curb width of 42 ft. The improvements shall be tapered to match the existing improvement to the south which appears to be 24 ft. from centerline.

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Some of the existing road surface is in poor condition and has poor drainage and it may be necessary to make additional improvements to ensure proper drainage and a vital driving surface.

6. The property frontage improvements on Clackamas Road shall consist of curb, surfacing, storm sewer, and sidewalk. Due to the functional classification difference, the segment between Industrial way and 98th Avenue shall have a centerline offset of 24 ft. and a six ft. sidewalk. West of Industrial way, the centerline offset may be reduced to 21 ft. to correspond to the functional class and the sidewalks shall be five ft. There must be a satisfactory radius or taper to transition traffic and stormwater between the two road segments.
7. A grading permit shall be obtained from the County Dept. of Transportation and Development for the proposed development.
8. The applicant shall obtain a Street Construction and Encroachment Permit for construction of the required street improvements. The applicant shall submit plans prepared and stamped by an engineer registered in the State of Oregon, a performance guaranty and an inspection fee for this permit.
9. Parking of all vehicles associated with this business shall occur only on this site.
10. Sanitary sewers shall be provided for this development subject to the rules and regulations for Clackamas County Service District #1.
11. The storm drainage shall be in conformance with the rules and regulations for Clackamas County Service District #1 and Section 1008 of the Clackamas County Zoning and Development Ordinance.
12. The cost of the storm and sanitary sewer systems shall be borne entirely by the developer.
13. The applicant's engineer shall submit two copies of an Erosion Control Plan and two copies of the storm drainage and detention system along with one copy of the detention calculations to the County Dept. of Utilities.
14. The applicant shall furnish the wetland mitigation plan approved by the Army Corps of Engineers and/or Division of State Lands to the County Dept. of Utilities along with the plan for on-site storm detention and water quality facility.
15. Emissions (odors) from this facility shall not exceed the standards in OAR Chapter 340, Division 21, Section 050. An odor control plan shall be submitted to Metro and Department of Environmental Quality. A copy of the approved plan shall be submitted to Clackamas County prior to operation of this facility.

26. The applicant shall acquire a Metro processing franchise and comply with the terms and conditions of that franchise. A copy of this franchise shall be submitted to Clackamas County prior to operation of this facility.
27. The applicant shall acquire a Dept. of Environmental Quality Disposal Permit and comply with the terms and conditions of that permit. A copy of this permit shall be submitted to Clackamas County prior to Operation of this facility.
28. The applicant shall acquire a Clackamas County Recycling License and comply with the terms and conditions of that license.
29. The applicant shall use only Metro or Metro-designated or approved facilities for disposal of residual solid waste.
30. The applicant shall have a litter control plan approved by Clackamas County, and Metro if required, to keep the site clean of litter and other debris.
31. The applicant shall provide and maintain fire department access, grades, and turnarounds per County, Fire District, and UFC Standards and Requirements.
32. The applicant shall provide approved address numbering, fully visible from the street, which clearly identifies the site location.
33. The applicant shall provide fire extinguishers in all work, storage and areas accessible to the public, with each extinguisher to have a minimum rating of 3A:40BC.
34. All flammable, combustible and hazardous materials shall be stored, used and handled per UFC requirements.
35. All working operations shall comply with UFC requirements.
36. The applicant shall provide fire hydrants as required to meet the fire flow ordinance requirements with location subject to joint water and fire district approval.
37. Any signing within the State right-of-way will require a permit from the Oregon Dept. of Transportation.
38. The applicant shall have signing to keep trucks from using 98th Avenue to access this facility. The signing shall be approved by the County Traffic Engineering Section.
39. The applicant shall have a Certificate of Occupancy prior to operation of this facility.

16. The applicant shall submit a dust control plan to the Dept. of Environmental Quality for approval. A copy of the approved plan shall be submitted to Clackamas County prior to operation of this facility.
17. The operation of this facility shall be in compliance with the Dept. of Environmental Quality Noise Standards. A copy of the Dept. of Environmental Quality approval shall be submitted to Clackamas County prior to issuance of a building permit.
18. Storage of materials shall occur only in a totally enclosed building with proper air quality controls except recyclable materials that do not require post-consumer processing may be stored in drop boxes outside of the processing building within an area enclosed by a fence. These drop boxes shall be completely enclosed containers except during times of loading and unloading.
19. The applicant shall have a Metro approved operating plan for the salvaging of any recyclable materials.
20. The applicant shall have a County Recycling License or permit for any salvaging of materials if applicable.
21. The applicant shall have a stormwater management plan for the stormwater collection and disposal system which shall include emergency spill containment and clean up measures and water quality mitigation measures approved by the County Dept. of Utilities.
22. This facility shall not accept hazardous waste or bio-medical waste. Any incidental hazardous waste such as household hazardous materials shall be confined within the processing building. The applicant shall have an incidental hazardous waste containment and clean up plan approved by Clackamas County and Dept. of Environmental Quality.
23. The applicant shall have a hazardous spill response plan approved by the County Dept. of Utilities and Clackamas County Fire District #1.
24. The Army Corp of Engineers and/or Division of State Lands shall approve a wetlands mitigation plan prior to any disturbance of the wetland areas on the subject property. A copy of the approved plan shall be submitted to Clackamas County.
25. The applicant shall pay a Community Enhancement Fee and/or recycling fee to Metro if required.

40. This Conditional Use permit is granted for the specific materials recovery facility identified in this application to the extent it is consistent with the conditions of approval.
41. This Conditional Use permit is approved subject to the conditions of approval. Noncompliance with any of these conditions constitutes a violation of this permit and shall be cause for revoking this permit.
42. This Conditional Use permit shall expire in the event the approval is not implemented within two (2) years from the date of the final written decision. This Conditional Use approval is implemented when all necessary permits for development have been secured and are maintained.

FINDINGS

ZONING ORDINANCE CONSIDERATIONS

Section 602, Subsection 801.03, Subsection 819.02 and Section 1203 of the Zoning and Development Ordinance are applicable to this request.

PLAN CONSIDERATIONS

The Industrial and Public Facilities Sections of the Comprehensive Plan are applicable to this request.

SITE DESCRIPTION

The subject property is approximately 12.42 acres. It is relatively level except for scattered man-made cuts. Most of the property is a field, but there are areas of brush and small hardwoods. There are a number of shallow basins and several ditches on the subject property that are wetlands. There are also scattered areas of unauthorized dumping as well as several foundations, paved areas and rocky areas on the property. The subject property appears to have been long abused and is presently abandoned. There are no street frontage improvements.

VICINITY DATA

Surrounding Conditions:

The subject property is bordered by State Hwy 212-224 and the Lumbermen's warehouse facility on the south. It is bordered by the Southern Pacific Railroad lines on the west. It is bordered by Milwaukie Transfers Industrial Facility and Camp Withycomb on the north. It is bordered by an island of single family residential development on the east.

Service Considerations: