



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

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November 22, 2011

INTEROFFICE MEMORANDUM

TO: Karla Moore-Love
Council Clerk

FROM: Kathryn Beaumont *KSB*
Chief Deputy City Attorney

SUBJECT: Proposed findings and final decision for Appeal
of Cottonwood Capital Property Management LLC,
Frank Fleck and Gary Gossett (Application of Recology
Oregon Material Recovery, Inc., LU 10-1094818 CU AD,
Previous Agenda #1205, (11/16/2011))

Attached for City Council consideration at 10:45 a.m. on November 30, 2011 are proposed findings in this appeal. Consistent with PCC 33.730.030.H.6.B, I have reviewed the proposed findings as have Bureau of Development Services staff. We recommend the Council adopt these findings as the Council's final decision.

KB:KSB

c. Sheila Frugoli, Bureau of Development Services
Michael C. Robinson
Martha Sharp

**IN THE CITY COUNCIL OF THE
CITY OF
PORTLAND, OREGON**

**IN THE MATTER OF AN APPLICATION
BY RECOLOGY OREGON MATERIAL
RECOVERY, INC. FOR A CONDITIONAL
USE AND AN ADJUSTMENT AT
6400 SE 101ST AVENUE
LU 10-194818 CU AD (HO 411004)**

FINDINGS AND CONCLUSIONS

**ADOPTED BY THE CITY COUNCIL ON
NOVEMBER 30, 2011**

(APPROVAL OF A CONDITIONAL USE AND AN ADJUSTMENT)

I. GENERAL INFORMATION

File No.: LU 10-194818 CU AD (HO 4110004)

Applicant: Dave Dutra
Recology Oregon Material Recovery, Inc.
4044 N Suttle Road
Portland, OR 97217

Recology Oregon Material Recovery, Inc.
50 California Street 24th Floor
San Francisco, CA 94111

**Applicant's
Representatives:** Michael Robinson, Attorney
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209-4128

Steve Gramm, Engineering Consultant
PBS Environmental
1310 Main Street
Vancouver, WA 98660

Appellants: Cottonwood Capital Property Management, LLC,
Frank Fleck and Gary Cossett
c/o Kell, Alterman & Runstein LLP
520 SW Yamhill Street, Suite 600
Portland, OR 97204

Owner: Kevin Loftus
Jameson Partners LLC
2495 NW Nicolai Street
Portland, OR 97210

Site Address: 6400 SE 101st Avenue

Legal Description: BLOCK 4 INC PT VAC STS LOT 1-10 LAND & IMPS SEE R624825 (R022400261) MACH & EQUIP, AMBOY; BLOCK 11 TL 6500 SPLIT MAP R215713 (R551002240), MCKINLEY PK; BLOCK 11&12 TL 5100 SPLIT MAP R215712 (R551002230), MCKINLEY PK; TL 100 70.21 ACRES LAND & IMPS SEE R606684 (R992222591) MACH &

EQUIP SPLIT MAP R336871 (R992222590), SECTION 21 1S 2E; TL 3200 19.55 ACRES, SECTION 22 1S 2E; TL 100 7.58 ACRES SPLIT MAP R336673 (R992211480), SECTION 22 1S 2E, SECTION 21 1S 2E, TL 400 6.21 ACRES

Tax Account No.: R022400260, R551002230, R551002240, R992211480, R992221570, R992222590, R992211990

State ID No.: 1S2E21AA 02100, 1S2E16DD 06500, 1S2E15CC 05100, 1S2E21A 00100, 1S2E22BB 03200, 1S2E22BC 00100, 1S2E21A 00400

Quarter Section: 3740

Neighborhood: Lents

District Neighborhood Coalition: East Portland Neighborhood Office

Plan District: Johnson Creek Basin

Zoning: IH, Heavy Industrial and the EG, General Employment zones; c, Environmental Conservation, p, Environmental Protection and ,b, Buffer Overlay zones.

Land Use Review: Type III, CU AD, Conditional Use Review and Adjustment Review

Procedure: Type III public hearing before the Hearings Officer, appealed to the City Council.

BDS Staff Recommendation to Hearings Officer: Approval with conditions

II. INTRODUCTION AND PROCEDURAL HISTORY

Proposal: Recology proposes to accept mixed residential yard debris/food waste at a 6.2 acres lease area (the "Subject Property") within an approximately 100 acres site (the "Site") for recycling. Currently landscape materials and wood debris, as well as building materials and other dry, non-perishable materials, are accepted at the Subject Property for recycling. The mixed yard debris/food waste will be delivered to the Subject Property via garbage collection trucks; approximately 35 total garbage trucks per day in and out of the Subject Property. Landscape material and other dry non-perishable materials will continue to be accepted from private self-haulers and the general public.

The mixed yard debris/food waste material, from residential sources, will be unloaded inside the existing large industrial building. Inside the building, the material will be sorted and mixed with additional yard and other wood waste materials that are accepted at the Subject Property. The compostable material will be loaded onto semi-trucks for shipment to an off-site composting facility. The mixed residential yard debris/food waste will be stored inside the building for no more than a 48-hour period before it is hauled to another site.

Recology intends to install a biofilter aeration system to control odors inside the building. Also inside the building, Recology proposes to install a drain system to collect and contain liquids (leachate) from the food waste materials. The leachate will be transported off-site. The facility will

also include a 3,000 square foot exterior area for retail sales of exterior landscape-type materials such as compost, soil, mulch and gravel. The facility will accept food waste deliveries only between the hours of 7 a.m. to 5 p.m., Monday through Friday, and 8 a.m. to 5 p.m. on Saturday.. No new exterior improvements or alterations are proposed at the Subject Property.

A Type III Conditional Use Review is required because food waste recycling is classified as a Waste-Related use. An Adjustment Review is needed to vary from an applicable development standard. Specifically, an adjustment is requested to waive the requirement that vehicle access to the Site and Subject Property be provided from a designated Major City Traffic Street. Access to the facility is from SE Foster onto a private street, vacated SE 100th Avenue.

Procedural History: A public hearing before the Hearings Officer was held on April 6, 2011. The Hearings Officer closed the record on April 14, 2011. The Hearings Officer issued his written decision approving the conditional use review and adjustment on April 27, 2011. Cottonwood Capital Property Management, LLC, Frank Fleck and Gary Gossett (the "Appellants") filed a timely appeal of the Hearings Officer's decision on May 12, 2011.

The City set the appeal hearing before the Portland City Council (the "City Council") on July 13, 2011 after providing written notice of the appeal hearing on or before May 27, 2011 to all persons entitled to notice. The notice of the appeal hearing met the relevant requirements of the Portland City Code ("PCC") and ORS 197.763 for quasi-judicial *de novo* land use hearings. No party objected to the content of the notice of the appeal hearing.

The Mayor opened the City Council appeal hearing on July 13, 2011. Present at the commencement of the public hearing was a quorum of four members for conducting business consisting of Commissioners Leonard, Fritz, and Saltzman and Mayor Adams. Commissioner Fish was absent. The Mayor described the rules for participation in the hearing and timelines for persons who wished to testify. The Mayor noted that because Recology had waived the 120-day clock and ORS 227.178(3), the appeal hearing before the City Council would be *de novo*, meaning that parties to the hearing were not limited to the record made before the Hearings Officer and parties could raise any arguments and evidence.

The Mayor asked for disclosure of conflicts of interest and *ex parte* contacts. Commissioners Leonard, Fritz, and Saltzman and Mayor Adams disclosed *ex parte* contacts. The Mayor thereafter offered persons in the audience the opportunity to rebut the substance of the *ex parte* contacts, but no person did. The members of the City Council and the Mayor also determined that they had no conflict of interest that would prevent them from participating in the appeal hearing. No person in the audience challenged that determination.

Following the Mayor's announcements, Bureau of Development Services Planner Sheila Frugoli presented the Hearings Officer's decision and the appeal issues. Following Planner Frugoli's presentation, City Attorney Kathryn Beaumont read the procedural announcements required by ORS 197.763 for a quasi-judicial hearing.

The Mayor allowed the Appellants and Recology to discuss the open record. Following this discussion, the City Council adopted the following open record schedule:

- All parties were allowed to submit argument and evidence to the City Council Clerk before 5:00 p.m. on July 27, 2011.
- The Bureau of Development Services and other City staff were allowed to submit a staff report and response to materials submitted during the open record before 5:00 p.m. on August 10, 2011.
- All parties were allowed to rebut submittals in the first open record period submittal, including the City staff response, by submitting written materials no later than 5:00 p.m. on August 24, 2011. At that point the evidentiary record closed.

The Mayor closed the public hearing and continued the matter to August 31, 2011 at 2:00 p.m. for deliberation when all City Council members were anticipated to be present. No party raised or identified a procedural error that prejudiced the party's substantial rights prior to the close of the public hearing.

Prior to August 31, 2011, City Council continued the scheduled City Council deliberation on the appeal to September 8, 2011 at 2:00 p.m. At that time, due to the absence of Commissioner Fish, the City Council by a vote of 4-0 continued the deliberation until October 5, 2011. No party objected to the continuation of deliberation.

The City Council convened for deliberation on October 5, 2011 with the Mayor and all four City Council members present. Prior to deliberation, City Attorney Beaumont identified several preliminary matters. She noted that the City Council had three decisional options: to affirm the Hearings Officer's decision, to deny the hearing officer's decision, or to modify the hearing officer's decision. Commissioner Fish declared that he had not been present at the City Council appeal hearing but had reviewed the transcript and record and determined that he was able to participate in and vote on the matter.

The City Council members declared ex parte contacts and then provided an opportunity for rebuttal or challenges to these disclosures and no party sought to rebut the substance of the disclosures.

Planner Frugoli then summarized her memo submitted into the record on August 10, 2011, "LU 10-194818 CU AD (Recology): Staff Response to Additional Testimony and Information submitted into the Appeal Record". In the memo, staff recommended that the City Council affirm the Hearings Officer's decision, but modify the decision to include additional and modified conditions of approval. Commissioner Fritz moved to approve the application subject to staff recommended conditions of approval and additional conditions of approval. Commissioner Fish moved to second Commissioner Fritz's motion. The main motion before the Council was to deny the appeal and affirm the Hearings Officer's decision as modified. The City Council voted to approve the main motion by a vote of 4-1 with Commissioner Leonard opposed.

The City Council notes that the preparation of findings by the prevailing party is required under PCC 33.730.031.F.3.b. Following submittal of proposed findings by Recology's attorney, the city attorney's office filed proposed findings for City Council adoption with the council clerk.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.815.220, A-I, Conditional Use Review for Waste-Related use
- 33.805.040, A-F, Adjustment Review

III. ANALYSIS

Site and Vicinity: The Site, historically referred to as the “Jameson property” or the “Freeway Land” site, is situated between SE Knapp Street and the Springwater Corridor trail, along the east side of Interstate 205 in Southeast Portland. Overall, the Site area covers over 100 acres. Recology’s proposed use will be located on the Subject Property, a 6.2-acre leased area, located approximately in the center of the 100 acre Site. The Subject Property includes a portion of an existing warehouse-type building, a small modular office building, truck weight scales, and an exterior work area including a large landscaping debris stockpile. A tall chain link fence follows the entire boundary of the Subject Property. There are two gates providing access to the facility.

The interior portion of the Site, north and south of Johnson Creek, is currently used for industrial purposes, and is developed or occupied by exterior material stockpiles, construction equipment storage area and industrial buildings. The Site is occupied by a myriad of industrial business and uses—Manufacturing and Production, Warehouse and Freight Movement, Wholesale Sales and Industrial Service uses. There are approximately five buildings on the Site. The industrial uses/activities take place largely outside of structures, *i.e.*, exterior development. A vegetated hillside, with primarily trees and ground cover, defines the southern edge of the Site.

Vehicular access to the site is via SE Foster Boulevard at SE 101st Avenue. Access to the Site crosses through a privately-owned lot that is located on the north side of SE Woodstock, and then through the City-owned Springwater Corridor via an easement. The Springwater recreational trail corridor follows the northern boundary of the Site. The corridor is approximately 100 feet wide and developed with a paved pathway. The channel of Johnson Creek runs through the north part of the Site and is about 800 feet from the Subject Property. A two-lane bridge spans Johnson Creek, providing passage into the Site and the Subject Property.

The I-205 Interstate Freeway (“Freeway”) is located within approximately a 400-foot wide public right-of-way and is located on the west side of the Site. The Freeway creates a significant physical barrier from the Site for the residential development that is located west of the Freeway. Immediately north of the Site and west of SE 100th Avenue is an area developed with primarily single dwelling residences. East of SE 100th Avenue, along SE Foster Road, the area is developed with a mixture of employment, commercial and industrial uses. North of SE Foster, near NE 103rd Avenue, is a 16.8-acre industrial site used for auto salvage and wrecking. Directly east of the Site are numerous large vacant lots. Many are City-owned and zoned as “Open Space.” The Bureau of Environmental Services (“BES”) has implemented projects in this area to the east to: (1) improve fish habitat within Johnson Creek, (2) increase flood storage capabilities of the Johnson Creek floodplain, and (3) restore and enhance wetland and non-wetland riparian plant communities and habitats.

SE Knapp abuts the southern edge of the Site. Because of continuous, dense vegetation on the south side of the Site, SE Knapp is not visible from the Subject Property. A tall chain link fence follows the south property line. There is a locked gate and gravel "pull-out." Historically, the gate has only been opened for emergency access. Recology has agreed not to use SE Knapp for access to or from the Subject Property. Directly across SE Knapp, there is a 6.2-acre site that is residentially zoned but vacant. Further south and up the hill is the Mt. Scott residential area. The area includes single-dwelling residences, church sites, a neighborhood park and a residential group-living treatment facility.

Zoning: The Site is within the IHc, Heavy Industrial zone with an Environmental Conservation (c) overlay zone and EG2cp, General Employment 2 zone with Environmental Conservation (c) and Environmental Protection (p) overlay zones. This Site also is within the Johnson Creek Basin Plan District and has a Comprehensive Plan designation of EXd – Central Employment with a Design Overlay Zone.

The IH zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate, including those not desirable in other zones due to their objectionable impacts or appearance. The Recology lease area is within the IH zone. Waste-Related uses require Conditional Use Review approval in this zone.

The EG2 zone allows a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the zone is on industrial or industrially-related uses. EG2 areas have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. Waste-Related uses require Conditional Use Review approval.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. Note that these regulations apply only to areas within the Environmental Conservation ("c") or Environmental Protection ("p") zoning designation. The proposal is not located within an Environmental overlay zone.

The Buffer overlay zone requires additional buffering between nonresidential and residential zones. It is applied to provide adequate separation between residential and nonresidential uses. The separation is achieved by restricting motor vehicle access, increasing setbacks, requiring additional landscaping, restricting signs, and in some cases, by requiring additional information and proof of mitigation for uses that may cause off-site impacts and nuisances.

The Johnson Creek Basin Plan District provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate that prior land use reviews, for the Site, include the following:

- **CU 66-76:** Request by previous property owner for a Conditional Use permit to: comply with Chapter 7 of the Building Code; place fill in excess of 1,000 cubic yards; and landscape the site (application determined to be unnecessary).
- **CU 83-79:** Request by previous property owner for a Conditional Use permit for a 50,000 cubic yard fill and excavation along Johnson Creek, widening creek bed, filling abandoned log ponds approved.
- **LUR 94-00842 ZC EN AD:** Request by previous property owner for approval of a Zone Change for the Environmental zone boundary along Johnson Creek; approval of a Zone Change for the Environmental zone boundary along the south side of the property at the toe of slope for Mt. Scott; approval of Environmental review to allow truck parking and maneuvering in the transition area along Johnson Creek; approval of an Adjustment to allow removal of trees; approval of Modification to an Environmental zone boundary on the eastern portion of the site.
- **LUR 98-00095 NU:** Case withdrawn on March 3, 1998 for establishment of a Nonconforming Use situation per LUR 94-00842 ZC EN AD.
- **LU 03-113394 ZC:** Approved on April 21, 2003 for map error correction related to LUR 94-00842 ZC EN AD.
- **LU 06-133094 EN AD:** Approved with conditions on December 29, 2006 for an Environmental review for excavation of soils in the 100-year floodplain near Johnson Creek, within the Environmental Conservation and Protection overlay zones; and an Adjustment review to remove trees during grading activities for resource enhancement.
- **LU 07-107637:** Approved with conditions on April 12, 2007; a Nonconforming Status review.
- **LU 07-116137 EN:** Approved with conditions on October 31, 2007 for Environmental review of excavation, gravel and pavement removal, and restoration with native plants.
- **LU 09-137528 EN:** Approved an Environmental review for a Modification of the Environmental Conservation and Environmental Protection overlay zones.

Agency Review: A "Request for Response" was mailed February 7, 2011. The following bureaus have responded with no issues or concerns:

- Water Bureau (Exhibit E.3)
- Fire Bureau (Exhibit E.4)
- Site Development Section of BDS (Exhibit E.5)
- Life Safety Review Section of BDS (Exhibit E.5)
- Bureau of Parks-Forestry Division (Exhibit E.5)

BES responded with no objections to the Conditional Use review request to allow food waste to be accepted at the Subject Property. BES Source Control requirements will apply at building permit review (Exhibit E.1).

The Portland Bureau of Transportation ("PBOT") responded with comments. Excerpts from Exhibit E.2 follow:

“PBOT/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services.”

“The existing uses at the site generate 290 trips, with 15 occurring in the a.m. peak hours and five occurring in the p.m. peak hour. Retail sales currently occur at this site with most transactions occurring during the weekend. For the purposes of this analysis, the Applicant has assumed that the revised site will experience increased weekday retail sales. Based on conversations with Recology, it is anticipated that there could be up to ten sales transactions on a typical weekday associated with soil amendment sales. It is likely that some of these transactions will be made by customers dropping off recycling materials (thereby already accounted for in the original transportation assessment letter). Further, these transactions will most likely occur throughout a typical day. However, to be conservative with the regional intersection operations, we have assumed that approximately half of these transactions would occur during the weekday a.m. peak hour and the other half would occur during the weekday p.m. peak hour. The expanded use, including the soil amendment sales, will result in 400 daily trips, with 40 occurring in the a.m. peak hour and 20 in the p.m. peak hour. Of those 110 increased daily trips, it is expected that 90 (45 in/45 out) will be trucks and 20 (10 in/10 out) will be vehicles related to the proposed soil amendment sales. The peak hours are not anticipated to occur at the peak hours of bicycle/pedestrian uses of the Springwater Trail.”

“Manual turning movement counts, conducted by the Applicant’s traffic consultant, were taken at the SE Foster Road and SE 101st Avenue intersection and site access driveway in September 2010. The counts were taken at typical peak periods. Also counts were taken at the Springwater Corridor crossing. The consultant found that peak weekday vehicular activity along SE 101st Avenue occurs between 10:00 a.m. and 2:00 p.m., while peak Springwater Trail use occurs between 3:30 and 5:30 p.m. The consultant concluded that the intersection of SE Foster and 101st Avenue, the Springwater Trail and the site’s driveway, are all expected to continue to operate acceptably at Level of Service A, even with the additional traffic generated by the proposed use.”

“The Bureau of Development Services received an e-mail from a neighbor bordering the southern boundary of the site on SE Knapp Street. A concern was expressed that additional truck traffic on this street would negatively impact neighborhood livability. There appears to be access to the proposed site from a locked gate entrance on SE Knapp. In discussions with the Applicant, they would not object to a condition of approval that prohibits access to the site from SE Knapp Street by Recology-owned vehicles. The Applicant would also not object to a condition of approval that Recology notify in writing all companies they have business with that will have vehicles coming to the site to direct their drivers not to use SE Knapp Street to access the site. Since the traffic study prepared for this report already assumed Recology-related trips would not

be using SE Knapp Street to access the site, all adequacy of transportation facilities criteria remain valid." (Exhibit E.2).

ZONING CODE APPROVAL CRITERIA

Conditional Uses

33.815.010 Purpose

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

33.815.220 Mining and Waste Related Recology's proposed use is a waste related use and a conditional use in the IH and EG2 zones, subject to review for compliance with the criteria stated in 33.815.220. These approval criteria allow these uses in locations where their large size and potential nuisance and environmental impacts will not harm surrounding land uses. The approval criteria are as follows:

- A. There are adequate nearby lands available for the development of more intense industrial uses;

Findings:

The Site is located in the EG2, General Employment and IH, Heavy Industrial zones, which allows a mix of uses with a strong industrial orientation. The proposed Waste-Related use will be located within the Subject Property; it is located in the southeast quadrant of the Site, which is zoned IH. Of the approximate 100-acre Site, only 6.2 acres, the Subject Property, will be dedicated to a Waste-Related use and is currently used as an industrial use allowed in the EG2 zone. The remainder of the Site will continue to be used for industrial and employment purposes. All of the properties surrounding the Subject Property contain employment and industrial activities.

The mixed residential yard debris/food waste will be delivered to the Subject Property for sorting and blending in an existing building. No new development is needed to accommodate the waste material and associated activities because the existing site and building will be used for this purpose. There will be no permanent impacts to the Site or Subject Property. As explained under criterion F below, the transport of the waste material to and from the Subject Property will not adversely impact the transportation system nor the Springwater Trail users. When the activity is discontinued, the building and land will still be available for other industrial use. In both the short and long term periods, there are adequate adjacent lands available for the development of more intense industrial uses because this use does not change the existing availability of such lands.

The Hearings Officer found that Recology satisfied the standard by showing that adequate nearby lands are available for development of more intense industrial uses will continue to remain available and will not be affected by approval of this application. The City Council concurs with the Hearings Officer findings regarding availability of other nearby industrial lands. However, this City Council decision includes numerous conditions that will result in limiting the intensity of the proposed Waste-Related use.

- B. The proposed use will not significantly alter the overall industrial character of the area, based on the existing proportion and type of industrial uses;

Findings:

As stated above, most of the Site, beyond the Subject Property, will continue to be available for industrial uses. As described in the Analysis section above, the Site is occupied by a myriad of industrial business and uses – Manufacturing and Production, Warehouse and Freight Movement, Wholesale Sales and Industrial Service uses. Most of the industrial uses are conducted outside of structures with exterior activities and development. There is a large construction material storage area, a landscape material exterior sales facility, and numerous salvage and recycling facilities located on the Site. North of SE Foster Boulevard, near SE 103rd Avenue is a 16.8-acre industrial site used for auto salvaging and wrecking.

At the closest point, the Subject Property is at least 190 feet from the Site's south property line. A six-foot tall chain-link fence has been installed to follow the boundary of the Subject Property, providing separation of the Waste-Related use and the other industrial activities on the Site. The waste-related and recycling operation will not stand out visually or operationally from other uses on the Site. The Waste-Related facility will conduct its operations entirely within an existing large warehouse-type building.

The Hearings Officer, based upon Recology's traffic consultant, PBOT and BDS staff's conclusions, found that the proposal will not significantly alter the overall industrial character of the area because new, additional traffic will be minimal and because the transfer/processing of waste materials will occur within a building. The Hearings Officer also found that Recology should be required to provide information (*i.e.* a directional map) instructing customers to the Subject Property mixed yard debris/food waste facility. The Hearings Officer required Recology to install two signs, one at each entry gate. With the above conditions, the Hearings Officer found that this approval criterion is met.

According to the submitted traffic report, prepared by Kittelson and Associates ("Kittelson") (Exhibits A.2, A.5 and A.6), the vehicles associated with activities at the facility – which include the franchised, residential-source garbage hauler trucks, Recology trucks, homeowners and small "self-haulers" and other vehicle traffic – will not overwhelm the street system.

Recology's traffic consultant expressed its professional opinion that peak weekday traffic occurs between 7:00 and 8:00 a.m. at SE Foster and SE 101st. The existing uses at the Site generate 290 trips, with 15 occurring in the a.m. peak hour and five occurring in the p.m. peak

hour. Retail sales currently occur at the Subject Property with most transactions occurring during the weekend. The expanded use including the soil amendment sales will result in 400 daily trips, with 40 occurring in the a.m. peak hour and 20 in the p.m. peak hour. Of those 110 increased daily trips, it is expected that 90 (45 in/45 out) will be trucks and 20 (10 in/10 out) will be vehicles related to the proposed soil amendment sales. The peak hours are not anticipated to occur at the peak hours of bicycle/pedestrian uses of the Springwater Trail. PBOT concurred with Kittelson's conclusions.

The City Council has weighed Appellants' arguments and Recology's responses. The City Council determined that additional conditions were necessary to maintain the overall character of the industrial area and proportion of industrial uses in the immediate area. Specifically, the Council saw the need to restrict the intensity and/or type of food waste that may be accepted at the site. To minimize potential negative impacts to surrounding uses to be consistent with the analysis and findings of the Hearings Officer, Council imposes Condition G which restricts the blended yard debris and food waste to only come from only residential sources. To limit the size of the facility's operation, condition I limits the hours and days when food-waste may be accepted at the Subject Property. And condition K limits the hours when Recology trucks may transport the materials to the off-site composting facility. And this condition applies a limit of the number of Recology trucks allowed to transport the food-waste material. Further, Condition J limits the number of garbage hauler trucks delivering food waste to the facility to 35 round trips per day. With conditions, the City Council finds that this criterion is satisfied.

- C. There will be no significant health or safety risk to nearby uses.

Findings:

Opponents expressed concerns to the Hearings Officer about the potential of the facility, through operational and physical features, to create noxious odors, excessive noise, air and water pollution and traffic issues. Also concerns were raised that the use would unnecessarily attract vermin/rodents. These concerns were identified by the Appellants and aired by opponents of the proposal at the City Council appeal hearing. The City Council addresses each of the issues raised by opponents.

Odor: The Appellants contend that Recology did not submit sufficient evidence to show that the Facility will not generate foul odors that will not threaten the health and safety of nearby uses. They contended that Recology failed to submit details and specifics explaining how the proposed biofiltration system will counteract odors as well as how it will be monitored and maintained.

The City Council finds that substantial evidence has been submitted to show this will not occur as explained below.

There will be no processing or composing of food wastes on the Subject Property. Recology anticipates the delivery of loads containing a mixture of residential yard debris and food waste; food wastes are estimated to be less than 5% (by weight). Recology's representative testified that it has operated the Metro Central transfer station in Portland, receiving up to 20,000 pounds per day, without receiving any odor complaints. Recology testified that trucks

carrying mixed yard debris/food waste arrive at the Subject Property, drive to the building, back into the building through bay doors and dump the material onto the floor. The concrete floor of the building, at the location where the material is dumped, has channels covered by perforated grating. Furthermore, if mixed yard debris/food waste is not removed the same day as it is delivered, then it (mixed yard debris/food waste) will be covered/treated with yard debris and/or hog fuel already located on the Subject Property. Covering the yard debris/food waste will minimize odors escaping from the mixed yard debris/food waste.

Odors will be controlled, while in the building, with the installation of an aerated floor and negative air system. Specifically, the system entails vent holes being drilled in the floor of the building. A fan will be used to pull the air into the holes, into pipes that then lead to a biofilter. The biofilter is comprised of wood chips which are used to scrub the odor. Also, the liquid by-product from the waste material, aka leachate, will be collected and piped into a tank and transported off site.

For example, all incoming organics will be mixed with yard debris to assist in moisture absorption, which will reduce odors. Furthermore, most material will be removed from the Facility the same day it arrives, and all materials will be removed within 48 hours after arrival at the Facility. Recology will regularly wash equipment that loads, unloads, and pushes organic material. Trained staff will monitor odors to ensure that this myriad of practices is effective.

Recology submitted evidence documenting the proposed improvements to the building such as the aeration system and biofilters, the leachate collection system and the truck loading area. An Operation Plan and Nuisance Mitigation Plan were also submitted. Further, Recology submitted reports from technical experts which explained how the various systems and operating protocol would achieve their intended results. The Gage Report, states, "Engineered biofilters are the best available odor control system for compost facilities and organic waste management transfer stations and are accepted and approved for this purpose by most air quality agencies nationwide." These reports provide the details the Appellants argued were missing.

To control the amount of food waste and/or blended organic material processed at the facility, which will control potential impacts such as odor, Council imposes the following conditions: Condition G that prohibits commercial source food waste from arriving at this Site.

Condition C requires an aeration and biofilter system must be installed to negate food waste odors; Condition H requires organics containing food waste be removed from the Subject Property and Site within 48 hours of delivery to the Subject Property); Condition I requires Recology or any successor in interest to accept food waste deliveries/deposits only between the hours of 7 a.m. to 5 p.m. Monday through Friday and 8 a.m. to 5 p.m. on Saturdays. And, Condition P specifies that confirmed violations of Title 33 odor standards (33.262.070) will be subject to Bureau of Development Services code enforcement policies. The City Council finds that Recology's substantial evidence and the conditions of approval demonstrate that this criterion is and can be satisfied. For these reasons, the City Council rejects Appellants' contentions relating to odor impacts and finds that odor will not pose a significant health or

safety risk to nearby uses, including the uses in the surrounding industrial park and to uses beyond the industrial park.

Disease-Carrying Vector: Because the food waste material will be off-loaded entirely inside an enclosed building and will not be exposed to the outdoors at the Subject Property, there will be less likelihood of the facility attracting insects or rodents, such as rats. The building has roll-up doors that can be closed when loading activities are not occurring. A fully enclosed building allows employees to monitor and manage pests. Any mixed yard debris/food waste material that remains on the Subject Property overnight will be covered by a biofilter consisting of hog fuel/yard debris. Covering the mixed yard debris/food waste with a biofilter and the location of the material within a fully enclosed building will deter disease-carrying vector (vermin).

Recology submitted a Nuisance Mitigation Plan and Operations Plan. The Council finds the information is credible. Except where the Plans conflict with conditions of approval, these documents should guide the facility. The Nuisance Mitigation Plan states an independent pest control company will be on contract to serve the facility. The Plan states that flies, rodents and birds will be minimized. Because flies and yellow jackets create a particular concern, Condition E requires Recology to amend the submitted Nuisance Mitigation Plan to identify specific actions that will be taken to control these insects.

Through compliance with Condition E, this criterion is satisfied.

Noise: The sound of garbage truck off-loading and other distribution activities will be minimal because the facility will be located at least 200 feet from adjacent sites and the truck loading activities will be limited to daytime operating hours – 7 a.m. to 6 p.m., Monday through Friday, and Saturdays 8 a.m. to 6 p.m. as required by Conditions of Approval I and K. The truck off-loading will also occur within a building. The Hearings Officer finds that noise from this facility will not differ or exceed the noise generated by other truck and material loading activities located at the Jameson (Freeway Lands) site or from other industrial uses at the Site and because of traffic noise from the Freeway.

The Appellants contended that there was no evidence in the record that the Facility would satisfy applicable noise standards of the City and the DEQ. Recology submitted a study by noise expert Kerri G. Standlee, P.E. of Daly Standlee & Associates, Inc. concluding that, in his best professional judgment, Recology's solid waste recovery and organic waste transfer operations at the Facility will be only a minor contributor to noise levels at surrounding residences. Mr. Standlee explained that, even assuming an extreme scenario where noise levels at the Facility effectively doubled due to the new operations, he had determined that the Facility operations would comply with the City's noise standards set forth in PCC 33.262.050 and PCC 33.815.220.C, D, and E, as well as applicable DEQ noise standards. Mr. Standlee also concluded that no additional mitigation measures would be necessary to ensure compliance with these standards. Mr. Standlee reached these conclusions based upon his personal observations of the Subject Property and the Site and surrounding area, his assessment of existing noise conditions, and his prediction of future noise levels associated with the future addition of organic waste transfer operations at the Facility in the manner

described in the Application. Mr. Standlee's expert testimony constitutes substantial evidence and opponents did not offer their own noise study.

Further, as explained above, because the Site is within an existing 100-acre industrial park and testimony in the record demonstrates that the existing industrial uses in the Site generate noise and because of the noise from the Freeway the limited noise from trucks to and from the Subject Property, which are similar to trucks already at the Site for other industrial uses, will not cause the City's noise standards to be violated. Further, the City Council heard evidence from Recology that the backup warning beeper noise associated with trucks is exempted from the requirements of PCC Title 18.

The Hearings Officer concluded that Recology successfully demonstrated that noise would not create a significant health or safety risk to nearby uses. Recology submitted additional substantial evidence at the appeal hearing which the City Council finds further substantiates the Hearings Officer's conclusion. Additionally, the City Council has imposed Condition of Approval Q which provides "before Recology (or any successor in interest) may conduct processing, sorting, grading and clearing operations during nighttime hours 10 p.m. to 7 a.m., they must submit to the City of Portland Noise Control Officer and the Bureau of Development's Services Code Compliance Division, additional noise analysis from a licensed engineer demonstrating compliance with the Title 18.). Based on the above, the City Council finds that noise will not create a significant safety or health risk to nearby uses in either the 100-acre industrial park or to any uses beyond the industrial park Site.

Dust/Air Pollution: All traffic areas of the Subject Property and the interior building floor area are paved. The Subject Property currently accepts yard debris. The Hearings Officer finds that the transfer of food waste inside a building will not generate additional dust.

The opponents contended that the Application does not satisfy PCC 33.815.220.C because the Application does not explain in detail how the Facility's proposed aeration system and associated biofilters will control indoor ambient air quality and dust as required by the City and DEQ. The City Council denies this argument for three reasons.

First, Recology will implement dust control measures at the Facility in accordance with the submitted Nuisance Mitigation Plan and Operation Plan by using water or a misting system to mist loads of waste and the exterior stockpiles, scales, and access road, as needed. Recology currently implements these measures as part of its existing operations as required by its permits with Metro and DEQ; moreover, Metro conducts unannounced inspections to ensure compliance with these dust control and other measures. Recology is bound to operate the Facility consistently with the NMP and Operations Plan.

Compliance with specific DEQ air quality standards is not a mandatory City approval criterion. As such, the City cannot approve, deny, or condition the Application based upon its compliance or non-compliance with DEQ air quality standards. However, Recology acknowledges that it must comply with applicable DEQ standards in order to obtain a DEQ permit and that a DEQ permit is necessary to operate the Facility. Council received testimony regarding the regulatory roles of DEQ and Metro for Waste-Related Uses. Both agencies impose separate permitting and compliance requirements and have staff dedicated to

inspections and compliance monitoring. To facilitate inspections, Council is imposing Condition O which requires Recology to allow unscheduled/unannounced visits into the facility for DEQ, Metro Solid Waste and City of Portland code inspections.

The City Council has weighed the argument in evidence submitted by the opponents and Recology concludes that substantial evidence demonstrates that dust and air pollution will not cause a significant health or safety risk to nearby uses.

Stormwater/Water Pollution: Because Recology is proposing no new development or exterior changes to the Subject Property, and because of the leachate collection system, BES has determined that the proposal will not impact the existing stormwater system and/or the Johnson Creek resources. Stormwater from impervious surfaces are proposed to drain/flow to numerous existing catch basins and eventually drain/flow into a detention pond (located on the west side of the Site). To address BES Source Control requirements, the City Council found that a condition is necessary that requires containment and off-site disposal of leachate waste. Condition of Approval D requires an internal drain and containment system.

The Appellants contended that the Application did not satisfy PCC 33.815.220.C because of possible stormwater impacts. The opponents identified two separate contentions under this heading. First, they asserted that the Application did not include sufficient detail regarding stormwater permitting for the Facility. The Appellants further contend that the Facility may require modifications to existing National Pollutant Discharge Elimination System ("NPDES") permits for the site.

Section 2.3 of the Facility's Operations Plan states as follows:

"Mixed dry solid waste will be tipped, sorted, and processed inside Building 4A and will not be exposed to stormwater. Likewise, organic loads will be tipped and reloaded within building 4A, and not exposed to stormwater. Clean yard debris and wood will be stored in outside piles, and metal is stored in outdoor drop boxes. These materials will be in contact with rain and can generate stormwater runoff. However, best management practices (BMPs) will be implemented in accordance with the industrial complex's Stormwater Pollution Control Plan and the runoff will be monitored as part of the industrial complex's National Pollutant Discharge Elimination System (NPDES) stormwater permit.

"BMPs listed in the stormwater pollution control plan (SWPCP for the Freeway Land Complex (Appendix A) will be used to manage stormwater runoff...Stormwater is treated as part of the overall Freeway Land Complex stormwater system." Operations Plan, Exhibit N at pages 2-3.

Recology submitted an Operations Plan that explains that stormwater from the Facility will drain into numerous catch basins before discharging into an existing culvert. Consistent with the Operations Plan, City BES staff determined that the proposal would not impact the stormwater system and/or Johnson Creek resources and thus no new stormwater permits

would be required in conjunction with the Facility. The Appellants do not contend that staff erred in reaching this conclusion.

Second, the Appellants contend that vehicle traffic associated with the Facility may impact and contaminate stormwater. Specifically, the Appellants contend that the tires and/or undersides of trucks may become contaminated with organic waste which could then be tracked outside the Facility, ultimately leading to commingling stormwater and leachate from food waste. The Appellants' scenario is highly speculative. In fact, Recology has designed the Facility and its operations to ensure that trucks will not track organic material outside the Facility, as explained in the submitted NMP:

"The collection trucks which [are] delivering the organics to the facility will back into a roll up door, and deposit the organics into the aerated floor. Once they have tipped their load onto the floor, they will leave through the same roll up door they entered through, thus not allowing their tires to encounter any organic materials and track it outdoors. Organics collection trucks are provided fresh water to rinse off any residual food wastes from the exterior of their vehicle on the concrete aerated floor after unloading." NMP, Exhibit H at p.6.

The City Council has weighed the argument and evidence submitted by opponents and Recology and finds that stormwater/water pollution will not cause a significant health or safety risk to nearby uses for the reasons stated above. The City Council finds that this criterion is satisfied. The City Council addresses under approval criterion D the contention that stormwater/water pollution would adversely affect Johnson Creek or groundwater resources.

Traffic Impacts and Safety: Recology addressed in its application the possible traffic capacity and safety issues. Recology's traffic consultant indicated in the Traffic Analysis (Exhibits A.5 and A.6) that the use (including the retail sale of soils and landscape materials) will result in 400 total daily trips, with 40 occurring in the a.m. peak hour and 20 in the p.m. peak hour. Recology's traffic consultant stated that of the 110 increased daily trips from the proposed use, an estimated 90 (45 in/45 out) will be trucks (garbage and semi-trailer trucks) and 20 (10 in/10 out) will be vehicles related to the proposed soil amendment sales.

Peak hour trips generated by this application, based upon Recology's traffic consultant's reports, are not anticipated to occur at the peak hours of bicycle/pedestrian uses of the Springwater Trail. Manual turning movement counts, conducted by Recology's traffic consultant, were taken at the SE Foster Road and SE 101st Avenue intersection and site access driveway in September 2010. The counts were taken at typical peak periods. Also counts were taken at the Springwater Corridor crossing. The consultant found that peak weekday vehicular activity along SE 101st Avenue occurs between 10:00 a.m. and 2:00 p.m., while peak Springwater Trail use occurs between 3:30 p.m. and 5:30 p.m. The consultant concluded that the intersection of SE Foster and 101st Avenue, the Springwater Trail and the site's driveway, are all expected to continue to operate acceptably at Level of Service A, even with the additional traffic generated by the proposed use. The traffic consultant found that over a recent 5-year period, there were only four vehicle crashes reported at the SE Foster Road and

SE 101st Avenue intersection and at the Springwater Trail crossing there were no vehicular/pedestrian/bicycle related crashes.

The City Council finds that substantial evidence in the record demonstrates, and is confirmed by PBOT, that the Springwater Trail users are not impacted by Recology's existing use and will not be impacted by the additional trucks from the conditional use primarily because the trucks will go to and from the site at a time when the trail is not at its busiest. Further, the physical characteristics of the street crossing of the Springwater Trail provide ample opportunity for automobile and truck drivers to see trail users and for trail users to see crossing automobiles and trucks. The street crossing is controlled in both directions for vehicles by stop signs, thus giving pedestrians and bicyclists on the trail the right-of-way. The City Council agrees with the Hearing Officer's findings and concludes that this criterion is satisfied.

In summary, the City Council finds the impacts resulting from approval of this application are expected to be minimal, with no significant health or safety risk created to nearby uses from the issues identified in these findings including odor, noise, vector, dust and air pollution, stormwater and water pollution and traffic safety. To control odors and water quality impacts, conditions will require the retrofitting of the building to install the aeration system and leachate collection system. Conditions also limit Waste-Related truck trips to and from the site. Additional conditions assure that the NMP will include vector control, avoid contaminated floodwaters and provide that the Facility will operate as represented by Recology. Through compliance with the cited conditions, this criterion is met.

- D. There will not be significant detrimental environmental impacts to any nearby environmentally sensitive areas;

Findings: The opponents raised the issue of whether the conditional use will cause significant detrimental impacts to Johnson Creek. Johnson Creek is an environmentally sensitive area. They also raised an issue concerning the areas to the south and east.

Environmentally sensitive areas, designated with the Environmental Conservation or Environmental Protection overlay zone, run through the Site and abut the Site to the south and east. The designations follow the Johnson Creek waterway. Opponents expressed concern that approval of this application would result in negative impacts to nearby Johnson Creek and the Springwater Corridor Trail). One opponent indicated that Johnson Creek has a history of overflowing its banks and that when that happens, water pollution will occur when the creek water mixes with the mixed yard debris/food waste). Another opponent stated that odors emanating from the Subject Property would discourage use and public enjoyment of the Springwater Corridor Trail.

The City Council incorporates the findings for PCC 33.815.220 C into the findings for this approval criterion. For the reasons discussed above, odor impacts will not be significant, and odors emanating from operations at the Subject Property will not have significant detrimental impacts on users of the Springwater Corridor Trail or other nearby environmental resources.

The City Council finds that the Subject Property is located approximately 800 feet from Johnson Creek on the north and about 400 feet from the forested hillside to the south. In addition, vehicles will access the Subject Property over existing roadways that will not be expanded. No new development is proposed in any area designated as an environmentally sensitive area.

The opponents also contended that Recology has failed to consider the impacts of the Facility's leachate management system on area groundwater. The opponents contended that there are no details regarding how the leachate management system will be monitored for leaks and how any leaks will be contained. The opponents further contended that because a portion of the leachate management system is subsurface, any leaks will readily migrate into the shallow groundwater of the area and then commingle with surface water in Johnson Creek.

Recology submitted a response to this contention. In the Holtech Letter, Robert B. Roholt, P.E. explained that the collection piping system will be constructed of heavy-duty materials that will prevent leaking. Moreover, the system will be tested to ensure that it operates without leaking. Furthermore, he opines that a leak would be readily detectable because the vacuum blower would be rendered ineffective. The City Council finds that, as designed, the system will operate in a manner that satisfies PCC 33.815.220.C, D, and E and 33.254.040.B. Further, the piping system is enclosed in concrete which would prevent contamination. Therefore, the risk of a leak in the leachate system is quite low and would be immediately apparent, which will prevent impacts to area groundwater and surface water.

Further, the Hearings Officer finds (based upon Recology's representative's statements that close to 95% of the mixed yard debris/food waste will be yard debris) that there is no evidence in the record to suggest that even if flood waters would intrude inside the building on the Subject Property, that the mixed yard debris/food waste would significantly impact environmental resources. The City Council concurs with Recology's evidence showing that the Subject Property did not flood during the 1996 flood and because of the 800' distance to Johnson Creek, it is unlikely to flood. However, to address unforeseen, extreme flooding conditions, Council imposes Condition R which requires Recology to remove food waste and leachate before flooding thus assuring that only a very remote chance of contamination exists.

The Subject Property portion of the Site is located at least 800 feet from the environmentally designated waterway and at least 100 feet from the tree covered hillside on the southern edge of the Site. Vehicle access to the Subject Property will be provided on an existing internal roadway that crosses, via a bridge, over the Environmental overlay zones. No new development is proposed within the Environmental zones.

With addition of Condition R, the City Council agrees with the Hearings Officer and finds this approval criterion is met.

- E. The proposed use adequately addresses potential nuisance-related impacts such as litter;

Findings: The issue raised here is whether the Subject Property will cause odor, litter, noise, dust/air pollution and stormwater/water pollution which have not been adequately addressed.

The mixed yard debris/food waste materials will be delivered to a building located on the Subject Property. Inside the building, trash (nonorganic waste) will be separated from the compostable material. The trash will be separately collected and hauled to a landfill. All waste will be off-loaded and processed inside the enclosed building. Recology's representative at the public hearings testified that litter control is overseen by Metro and the Oregon Department of Environmental Quality ("DEQ"). Recology's representative stated that Recology will be responsible for litter control on roadways for a distance of up to one-quarter of a mile from the Subject Property. As further explained in the Recology Response to the Shaw Environmental Report in Exhibit "P," the litter patrols occur daily. In addition, Recology owns and operates a vacuum sweeper truck on a regular basis as a best management practice. This activity also serves to counteract litter. Recology, in its application materials, indicated that it will instruct waste haulers using the Subject Property that loads must be enclosed/covered. Based on the credible evidence Recology submitted, the City Council finds Recology's proposal adequately addresses potential nuisance-related impacts, including litter, as explained above and in the findings addressing PCC 33.815.220 C above.

The Appellants contend that there is no credible evidence that Recology will control litter at the Facility. However, Section 4.1 of the NMP describes the protocol at the Facility for preventing and controlling litter as follows:

"In accordance with Section 5.7 of the facility's Metro License, operations personnel will keep all areas within the site and all vehicle access roads within 1/4 mile of the site free of litter and debris as generated as a result of the facility's operation. Regular litter patrols will be conducted by Recology staff for this purpose." NMP, Exhibit H at p.6.

Recology will operate the Facility consistent with its NMP and Operations Plan, which will prevent and mitigate nuisance-related impacts. The Hearings Officer applied a condition (Condition N) that requires Recology to maintain a complaint log that documents all nuisance complaints. The log must identify the nature of the complaint and Recology's action or response to it. The log must be maintained for a year and annually a copy of the log must be sent to the neighborhood association and district coalition office. Recology must also provide a copy of the complaint log, other required logs, record and reports to DEQ, Metro and Bureau of Development Services code enforcement staff.

Furthermore, the Council decision requires Recology to meet in good faith with the Lents Neighborhood Association for the purpose of developing a Good Neighbor Agreement (Condition F). The agreement, if completed, could include mitigation actions to address possible impacts to neighborhood livability.

With Conditions of Approval C, D, E, F, G, H, I, J, K, N, O, P, Q and R, which will assure that potential nuisance-related impacts are adequately addressed, the City Council finds that this criterion is satisfied.

F. Public services.

1. The proposed use is in conformance with either the street designations shown in the Transportation Element of the Comprehensive Plan;
2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access requirements; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes; and

Findings: The issue raised here is the amount of new traffic from the Subject Property in addition to existing traffic from the Site and whether it will affect the operation of nearby streets.

The Site directly abuts SE 100th and SE 103rd Avenues; both streets terminate at the Site. SE 101st (a vacated public street) provides a connection from SE Foster Boulevard and SE Woodstock. SE 101st terminates north of the Site at SE Woodstock. However, the primary vehicle entrance to the Site is provided via easements through Tax Lot 6600 and the Springwater Corridor. The Springwater Corridor, a public bicycle and pedestrian off-road path, abuts most of the Site's northern property line. SE Knapp Street follows most the Site's southern property line. A tall chain link fence and locked gate restricts vehicular access to SE Knapp.

The Transportation Element of the Comprehensive Plan designates the abutting and nearby streets as follows:

Rights-of-Way	Traffic Classification	Transit Classification	Bicycle Classification	Pedestrian Classification
SE Foster Boulevard	Major City Traffic Street	Major Transit Priority Street	City Bikeway	City Walkway
SE Woodstock Boulevard	Local Service	None	Local	Local
SE 100 th Avenue	Local Service	None	Local	Local
SE 100 th Avenue	Local Service	None	Local	Local
SE 103 rd Avenue	Local Service	None	Local	Local
SE Knapp Street	Local Service	None	Local	Local

The Site is not within a designated Freight District. Recology is requesting an Adjustment to standard 33.254.030; see findings for PCC 33.805.010 below. Waste-Related uses are required to be located so that vehicle access is from a Major City Traffic Street or to streets within a designated Freight District.

PBOT reviewed Recology's transportation analysis (Exhibits A.2, A.5 and A.6) and expressed no concerns. As outlined in Recology's response, and summarized above, under the findings for approval criterion PCC 33.815.220 C, the proposed new Waste-Related use is not anticipated to have a significant trip generation impact or generate trip types that are inconsistent with the street designations. PBOT noted, and the Hearings Officer agrees, that

the transportation system is capable of supporting the additional traffic that is estimated to be generated by the use. The Hearings Officer found that SE 101st Avenue and SE Foster Road can support the new use from a capacity, safety, and access standpoint. The use is not anticipated to have any detrimental impacts on the overall safety of the Springwater Trail crossing at SE 101st Avenue.

PBOT staff noted that the acceptance of food waste at the Recology facility would generate no more than 90 new truck trips (45 in, 45 out), and 20 new vehicle trips (10 in, 10 out) related to the sale of soil amendments over the course of a typical weekday. The arrival/departure patterns of these additional truck trips are anticipated to be spread throughout the normal business hours. The presence of the stop-control on the SE 101st Avenue approaches, the slow travel speeds along SE 101st Avenue, the effectiveness of the design of the existing crossing location, the lack of any historical safety issues, and the relatively minimal increase in traffic all suggest that the expanded use will have no significant impact to pedestrians and bicyclists using the trail.

At the City Council hearing, PBOT reviewed and agreed with the Kittelson report's conclusions as to trip generation, lack of adverse impact on service and lack of adverse impact on the trail users. PBOT testified that two (2) days of traffic studies is accepted practice and did not result in a flawed traffic study. So that the facility will continue to operate consistent with the initial proposal, Council has imposed conditions that limit the number of truck trips that are associated with the Waste-Related use. Condition J and K will limit the number of daily trucks delivering the mixed food/yard debris waste to the site and Recology's trucks that haul the waste off-site. The cap ensures that traffic to and from the site will be consistent with the analysis included in the Kittelson report which concludes that the existing roads and intersections are capable of supporting the proposed use.

To address neighbors' concerns regarding additional truck traffic impacting the residential area located south of the site, Condition M restricts truck access onto the site only from SE Foster and 101st Avenue. Even if the owners of the Site ever obtain access from SE Knapp, this condition of approval prohibits trucks traveling to/from the Subject Property from using SE Knapp. Recology must also notify, in writing, all companies (including the commercial haulers) that SE Knapp may not be a route taken to the Site and/or Subject Property. .

Through compliance with Conditions J, K and M , the City Council finds this criterion is met.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: The Police Bureau received notice of this application and had no issues or objections. Both the Fire and Water Bureaus reviewed the proposal set forth in the application and noted that no additional water service related improvements would be required. The

Subject Property has an existing 1" metered service which has a billing address of 10010 SE Woodstock Boulevard that provides water to this location from the existing 12" CI water main in SE 100th Avenue.

The Fire Bureau reviewed the proposal and had no concerns.

BES reviewed the proposed improvements and had no objections. BES noted that source control requirements must be met for the building permit. To address water quality requirements and reduce noxious odors, BES required the installation of a leachate collection and containment system as a condition of approval. The liquid waste collected will be taken off of the Site and the Subject Property for disposal.

Because BES has indicated that the proposed use is acceptable and can be approved, this standard is, by definition, satisfied. As described in Recology's Operations Plan, all organic wastes will be tipped and reloaded within enclosed buildings and therefore will not be exposed to stormwater. Opponents raise no legitimate concerns regarding stormwater disposal, and do not attempt to argue that BES has not deemed Recology's stormwater disposal system to be acceptable for the proposed use. The City Council finds that stormwater services will be adequate.

Based on the responses received from City bureau representatives, the City Council agrees with the Hearings Officer and finds that this criterion is met.

- G. The proposal complies with the regulations of Chapter 33.254, Mining and Waste-Related uses;

Findings: The regulations of Chapter 33.254 and discussion of how the proposal addresses them are as follows:

33.254.020 Limitations

- A. **Accessory uses.** Concrete batching, asphalt mixing, rock crushing, or clay bulking in connection with a Mining use are prohibited except in IH and IG zones.
- B. **Hazardous wastes.** The disposal of hazardous wastes, as defined by OAR 340.100 to 340.110, is prohibited.

Findings: The proposed use involves the acceptance of food (organic) waste that is sorted and then transported to off of the Site and Subject Property for composting. The proposal does not involve mining activity or disposal of hazardous waste. No party argued that this criterion was not satisfied. The City Council finds this development standard is met.

33.254.030 Location and Vehicle Access Uses must be located so that vehicle access is restricted to Major City Traffic Streets or to streets in Freight Districts, as designated in the Transportation Element of the Comprehensive Plan.

Findings: This application includes a request for an Adjustment to this standard. As discussed under criterion 33.815.220.F1 and 2 above, the Site and Subject Property do not

have direct access from a street that is a designated Major City Traffic Street or is within a designated Freight District. SE 101st Avenue provides a connection from SE Foster Boulevard and SE Woodstock. SE 101st terminates north of the Site at SE Woodstock. The primary vehicle entrance to the Site is provided via easements through Tax Lot 6600 and the Springwater Corridor. The roadway that runs through the Site in a north/south direction is not a public street. *See* the findings under Adjustment Review criteria, below.

33.254.040 Operations

- A. **On-site queuing.** The site layout must include adequate areas to accommodate the peak number of vehicles expected to come to the site at any one time.

Findings: The Subject Property is located within a lease boundary in approximately the center of the Site. Recology submitted a traffic impact study to assess the adequacy of transportation services (Exhibits A.2, A.5 and A.6). Currently the Subject Property generates approximately 290 trips per day. The Waste-Related use will generate 110 additional trips per day. Because of the limits in Conditions of Approval J and K, Recology anticipates 35 garbage trucks round trips coming to and from the Site and Subject Property to dump loads and 5 semi-truck trips hauling away the processed food waste to the off-site composting facility. Recology's traffic consultant Kittelson estimated that the proposed use at the Subject Property facility would generate an additional 20 other retail trips (10 in, 10 out) over the course of a typical weekday. The traffic consultant indicated that 40 daily trips (for prior and new uses) for the Subject Property would occur during the morning "peak" and 20 daily trips would occur during the afternoon "peak" time. Kittelson and PBOT concurred that the estimated vehicle trips can easily be accommodated on the private internal road.

No party argued Recology failed to satisfy this criterion. As described in the Recology response, an existing requirement under the facility's current Metro Solid Waste License is that Recology must provide sufficient capacity to adequately accommodate all on-site vehicle traffic, and Recology does not allow persons delivering material to the facility to park or queue on public streets or roads. As shown on the site plan, the site includes 6.2 acres and provides more than enough area for existing vehicle traffic, as well as for the additional 35 inbound trucks per day that would be in the queue for unloading organic material in building.

The City Council agrees with the Hearings Officer and finds that this standard is met.

- B. **Processing of waste products.** In the case of Waste-Related uses other than landfills and composting operations, all activities relating to the receiving, sorting, processing, storage, transfer, and shipping of wastes must take place entirely within enclosed structures. The transfer of waste products from one vehicle or container to another vehicle or container and the cleaning of such vehicles or containers must be done within a containment area designed to ensure that waste materials will be confined so as to not enter the groundwater or any water body.

Findings:

There is no dispute that all waste handling activities on the site will take place entirely within an enclosed structure and, therefore, the first requirement is met. The mixed yard debris/food waste will be unloaded from trucks and vehicles, sorted, and temporarily stored inside a fully-enclosed building; not to exceed 48 hours. The organic food waste material will then be transferred to an off-site location for decomposition into compost. If vehicles are cleaned, it will occur in the building. A drain and piping system that collects the leachate liquid will be required to be installed in the building. The residual liquid waste will be removed from the Site and Subject Property. Condition of Approval D requires the installation of a liquid waste collection facility.

Opponents' contention under this standard is that there is insufficient evidence to conclude that waste materials will not enter the groundwater or surface water. Opponents assert it is conceivable that debris could be tracked out of the facility on the wheels of a truck, and debris could theoretically end up in stormwater runoff on the site, which opponents speculate might somehow end up in the groundwater. Recology's Response, Exhibit P at pages 5-6 addresses this argument as follows:

"The facility has been designed so that tracking of organics from the inside of the building to the surrounding roads outdoors will not occur. This is achieved by having designated unloading and loading areas, limiting equipment that comes in contact with the organics, good housekeeping and wash practices, and regular inspections.

"The collection trucks which delivering the organics to the facility will back into a roll up door, and unload the organics onto the aerated floor. The truck tires will not come in contact with the organics. Once they have unloaded the organics, the truck will leave through the same roll up door they entered through, thus not allowing their tires to encounter any organic materials and track it outdoors.

"The semi-trucks that will transport the organics offsite will enter a different roll up door, to the left of the aerated pad. A dedicated loader will be used to load the organics into the semi-truck, while it is parked parallel to the aerated floor. Once the truck is loaded, the truck will then continue through the building, driving out through a roll up door on the opposite side of the building from which they entered. Again, the truck tires will not encounter any organic materials.

"The only equipment that will encounter organics will be the loader used to move, bulk, and load the organics. This loader will be washed down with water as needed. The wash water will be captured by the leachate collection system, and stored within the liquid storage tank. The contents of this tank are hauled offsite for treatment and disposal at an unassociated permitted facility. At no time will leachate or wash water contaminate or even enter the stormwater system. Equipment is currently washed within the building, in

compliance with the facility Operations Plan. There has never been an instance where wash water has exited the building, or contaminated stormwater runoff.

"In addition, Recology owns a vacuum sweeper truck, and uses this equipment at its facilities to sweep and collect any debris or sediment from paved areas. This best management practice is extremely effective controlling solids that might otherwise contaminate stormwater runoff. The sweeper truck is currently used onsite at least weekly, and can be used daily should the need arise.

"Recology environmental compliance staff currently conducts monthly stormwater inspections which evaluate the conditions of the catch basins within Recology's leasehold, condition of waste storage areas, conditions of spill kits onsite, and stormwater best management practices employed at the facility. These inspections are documented, and will continue throughout future operations.

"The Freeway Land Industrial Complex is currently covered by the General 1200-Z Stormwater Discharge Permit. All operational activities are communicated regularly to the landlord, so that they may include these activities within their Stormwater Pollution Control Plan. Recology's operations have not contributed to contamination of stormwater at the facility." Recology Response, Exhibit P at pages 5-6.

Further, the procedures for washing trucks onsite are addressed in Section 3.8 of the Operations Plan, which was submitted to the City Council. That Plan provides that washing trucks is not permitted in outdoor areas, and trucks will only be washed if necessary inside the building, and wash water will be contained within the building on the floor by using temporary berms and absorbed with residuals, wood chips, eco bags, booms and/or other absorbent materials.

With the imposition of Condition D, the City Council agrees with Hearings Officer and finds that Recology's proposal complies with this standard.

- C. Liquid waste pretreatment.** The use, if other than a sewage treatment facility, must provide pretreatment of any liquids being discharged into the City's stormwater or sanitary disposal system. The pretreatment must meet the standards of the Bureau of Environmental Services.

Findings:

As stated above, the residual liquid from the food waste will be contained and removed from the Site and Subject Property. Surface stormwater will be directed to a detention pond located on the west side of the Subject Property. BES has reviewed the proposal and finds no concerns.

This standard requires that the facility must provide pretreatment of any liquids being discharged into the City's stormwater or sanitary disposal system. There is no issue under this standard because Recology has accepted a condition of approval proposed by BES that requires the installation of a leachate collection and containment system that will allow liquid waste to be collected and taken offsite for disposal.

The Appellants argued that the record does not include details regarding exactly how and where the leachate will be monitored, transported once collected, and that Recology has not provided details regarding its disposal permits. This issue is also addressed in the Recology Response document attached as Exhibit P, which explains as follows:

"Shaw Environmental's claims center around concerns related to the tracking out of materials from inside of the building. Further claims suggest the need for a pre-treatment system or permit for the disposal of leachate. This is an inaccurate statement. Recology has identified options for licensed and permitted facilities to accept the leachate collected from the operation for offsite treatment and discharge. These include the use of existing facilities that have the design capability and necessary permits to handle the leachate generated from the organics collection system." Recology Response, Exhibit P at page 11.

The City Council agrees with BES, Recology, and the Hearings Officer and finds this standard is met.

D. Posted information. A sign must be posted near the entrance to the site, stating the telephone number(s) where a representative of the use may be reached at all times.

Findings:

Section 33.254.040.D requires the posting of a sign near the entrance of the Waste-Related use. The sign must give contact information – a telephone number and representative name. The Hearings Officer found that because the Subject Property is a rather small portion of a much larger property, "self-haulers" and the general public who wish to utilize Recology's services could easily get lost. To reduce confusion and potential conflict with other truck and industrial traffic, a condition will require Recology to provide clear directional maps in information made available to customers and commercial haulers. Also, two signs, one at each gate to the facility, must be installed. The signs must include contact information and a telephone number so that a Recology representative may be contacted at any time.

The City Council agrees with the Hearings Officer. Condition B will require the installation of two signs, one at each gate of the facility. The signs must include the necessary contact information. This standard will be satisfied.

33.254.050 Traffic Impact Study A traffic impact study must be submitted for the proposed use. As part of the study, measures must be proposed for mitigating traffic impacts resulting from vehicles going to and from the site. The study must also include a plan and mechanisms to ensure that traffic, especially trucks, travel primarily on truck routes or major City traffic

streets when near the site. The traffic study must include information of proposed access points, types of vehicles, and frequency of trips.

Findings: As discussed under criterion 33.815.220.F, Recology's traffic consultant, Kittelson, submitted a traffic impact study to assess the adequacy of transportation services (Exhibits A.2, A.5 and A.6) and an additional study to the City Council. The traffic study analyzed the SE Foster and SE 101st intersection and the street crossing over the Springwater Trail. PBOT Engineering and Development reviewed Kittelson's traffic studies and concluded the transportation system was adequate to support the proposed use and was based on sound analysis. Appellants disputed the professional traffic study provided by Kittelson but failed to provide a study of their own. Appellants disputed the estimates regarding the number of trucks that will deliver organic waste to the site, and argued that "because the CUP is not capped," there no limit on the actual number of trucks.

Appellants' concerns are addressed with Conditions J and K which set a "trip cap" for the Waste-Related activities. The "trip cap" ensures that traffic to and from the site will be consistent with the analysis included in the Kittelson TIA, which results in a conclusion that the existing roads and intersections are capable of supporting the proposed use. This standard is met.

33.254.060 Nuisance Mitigation Plan Recology must submit a mitigation plan that addresses potential nuisance impacts which might be created by the proposed use. The plan must include the following components:

A. Off-site impacts. The plan must document that the use will comply with the off-site impact standards stated in Chapter 33.262;

Findings: Recology submitted a Nuisance Mitigation Plan. Below are the specific regulations of 33.262 and discussion of how the proposal addresses them:

33.262.050 Noise The City noise standards are stated in Title 18, Nuisance Abatement and Noise Control. In addition, the Department of Environmental Quality has regulations which apply to firms adjacent to or near noise sensitive uses such as dwellings, religious institutions, schools, and hospitals.

Findings: The Hearings Officer determined that noise generated by the mixed yard debris/food waste transfer operation will result primarily from the use of trucks and other vehicles used for the delivery and removal of the waste-related product. The trucks and equipment are similar to that used by many nearby industrial uses. Trucks and other vehicles will deliver and pick-up the mixed yard debris/food waste, on the Subject Property, in a building. Separation of materials and equipment moving the mixed yard debris/food waste will occur inside the building. Recology's application and supporting materials indicate equipment will meet noise standards stated in Title 18, Nuisance Abatement and Noise Control. Recology submitted a Noise Study that was prepared by a licensed engineer. Condition Q requires Recology to document the noise level (lower decibel) standards will be met if the facility conducts nighttime operations. Based on this credible evidence, the City Council finds that this standard will be met.

33.262.060 Vibration

- A. Vibration standard.** Continuous, frequent, or repetitive vibrations which exceed 0.002g peak may not be produced. In general, this means that a person of normal sensitivities should not be able to feel any vibrations.
- B. Exceptions.** Vibrations from temporary construction and vehicles which leave the site (such as trucks, trains, airplanes and helicopters) are exempt. Vibrations lasting less than 5 minutes per day are also exempt. Vibrations from primarily on-site vehicles and equipment are not exempt.
- C. Measurement.** Seismic or electronic vibration measuring equipment may be used for measurements when there are doubts about the level of vibration.

Findings: This proposal does not involve activities such as manufacturing or demolition that requires heavy pounding or breaking of materials and therefore will not create vibrations. The City Council agrees with the Hearings Officer and finds that the proposal will comply with this standard.

33.262.070 Odor

- A. Odor standard.** Continuous, frequent, or repetitive odors may not be produced. The odor threshold is the point at which an odor may just be detected
- B. Exception.** An odor detected for less than 15 minutes per day is exempt.

Findings: The food waste will be confined within a fully-enclosed building. Furthermore, Recology intends to install a biofilter aeration system and will capture the liquid waste from the processing building and remove it off site under Condition D. The condition requires the installation of both systems as identified in the submitted plans. If the biofilter system does not adequately reduce detectable odors, Recology must implement other means of addressing the off-site impacts in order to achieve ongoing compliance with this Zoning Code, DEQ and Metro requirements. See findings under approval criterion 33.815.220. C.

The City Council finds that with conditions that limit the daily number of garbage truck deliveries of blended food/yard debris waste, and require the removal of mixed yard debris/food waste within 48 hours of its being deposited, the installation of floor negative aeration system and the use of a biofilter system, this standard can be met. The Council also adopts and incorporates here the findings adopted above regarding odor under 33.815.220.C as further support for the Council's determination that Recology has satisfied this standard.

33.262.080 Glare

- A. Glare standard.** Glare is illumination caused by all types of lighting and from high temperature processes such as welding or metallurgical refining. Glare may not

directly, or indirectly from reflection, cause illumination on other properties in excess of a measurement of 0.5 foot candles of light.

B. Strobe lights. Strobe lights visible from another property are not allowed.

Findings: The proposal in this application does not propose nor will it require excessively bright or special lighting such as strobe lights. The City Council agrees with the Hearings Officer and finds that this standard will be met.

B. Litter. For Waste-Related uses, the plan must address litter generated on the site and litter along roadways leading to the use that is generated by vehicles coming to the site. The plan must also address illegally dumped waste products near the site. The plan must provide for regular litter removal. The plan must also include means to limit litter from vehicles coming to site; and

Findings: The dumping, pick-up and sorting of yard debris/food (Waste-Related use activities) will occur within an enclosed building. All litter is placed in a drop box that is then transported to a landfill for proper disposal. Recology's representatives stated at the public hearing that, pursuant to Metro and DEQ requirements, Recology is responsible for litter control (related to Recology's operation at the Subject Property) for a distance of up to ¼ mile from the Subject Property. The City Council agrees with the Hearings Officer and finds this standard will be met.

C. Dust, mud, and vector control. The plan must provide mechanisms to limit impacts from dust, mud, and disease carrying organisms such as rats and mosquitoes.

Findings: All traffic areas of the Subject Property are paved. Yard debris is currently accepted at the business operating on the Subject Property. The transfer of mixed yard debris/food will occur inside a building and will not generate additional dust outside the building. If Recology finds that the enclosure does not adequately restrict insects and/or mammals, Recology must implement other means for controlling the disease carrying pests.

Recology's NMP must be amended to specifically address control of flies and yellow jackets per Condition E. Once amended, the NMP will address all of the potential nuisance impacts from the proposed use, and therefore, this standard will be satisfied.

33.254.070 Reclamation Plan for Landfills Recology for a landfill use in the Waste-Related use category must submit a reclamation plan. The Bureaus of Buildings and Environmental Services will provide a technical review of the plan. Mining uses are subject to State requirements for reclamation plans.

A. Contents of the reclamation plan. The reclamation plan must include the following:

1. Phasing and schedule of work to be conducted;
2. Phasing and schedule of reclamation to be conducted;
3. Materials to be used in the reclamation;
4. The effect of the reclamation on surface and subsurface drainage patterns;

5. Plans for future use of the land; and
6. A discussion of how the proposed reclamation plan is consistent with the future potential uses of the land, according to the zoning and the Comprehensive Plan designation.

B. Performance guarantee. The review body as part of the conditional use review may require Recology to post a bond or other security with the City to ensure the completion of the reclamation plan. The security must comply with the regulations for performance guarantees stated in 33.700.050.

Findings: The proposal does not include a landfill. Therefore, this requirement does not apply.

33.254.080 Setbacks, Landscaping, and Screening Waste-Related uses are subject to the following setback, landscaping, and screening requirements. Mining uses are subject to State requirements for setbacks, landscaping, and screening.

A. Setback distance. Waste-Related uses must be set back 100 feet from all property and street lot lines that abut C, E, or I zones. A 200-foot setback is required along all property and street lot lines that abut OS or R zones.

Findings: The Subject Property boundary is at least 250 feet from the closest residentially-zoned property to the south of the Site. The closest property zoned Open Space is located over 700 feet away. The Subject Property is located well beyond the required 100 feet from the Site's property line boundaries. No party asserted that this requirement was not satisfied. The City Council agrees with the Hearings Officer and finds the setback standards for this facility are met.

B. Landscaping and screening requirements. The setback must be landscaped to at least the L1 standard. A fence at least 6 feet high must be provided on the interior side of the setback. The fence must be screened by a high hedge meeting the L3 standard. The landscaping standards are stated in Chapter 33.248, Landscaping and Screening. In addition, gates with fencing at least 6 feet high must be provided across all entrances. The property owner must maintain the fencing and gates in good repair.

Findings: The Subject Property is located on the Site where there is additional existing industrial development. Recology leases and operates a compost/recycling facility currently on the Subject Property. Zoning Code section 33.258.070.D.2.c(2) exempts uses within ground lease areas from screening requirements. Screening is not required along the boundaries of the leased area that is interior to the site. Hence, no additional landscaping is required. A perimeter fence, that appears to be 8 feet tall, currently encloses the site along its entire boundary. No party asserted that this requirement was not satisfied. The City Council agrees with the Hearings Officer and finds this standard will be met.

33.254.090 Activities in Required Setbacks Extraction, movement, or stockpiling of mineral and aggregate resources or the disposal or storage of waste products within a required

setback is prohibited. The tops and toes of cut and fill slopes must remain outside the required setback. Structures, exterior storage, and parking areas for trucks or equipment are not allowed within the required setbacks. Required setbacks include all setbacks approved by the State for Mining uses.

Findings: Because the waste-related materials and activities will be confined within a fully-enclosed structure and will be set back significantly from the property lines, the City Council finds Recology's activities will not occur within the required setbacks and this standard is met.

33.254.100 Underground Utilities All underground lines and conduits on a mining or landfill site and within 50 feet of the site must be protected from damage from the use. This includes storm and sanitary sewers, and water, gas, and electric lines.

Findings: The proposed activity is for the processing of food waste and not mining or excavation. This requirement does not apply to this application.

- H. There is a reclamation or redevelopment plan which will ensure that the site will be suitable for an allowed use when the mining or landfill use is finished; and

Findings: The proposed activity is not mining or landfill. This criterion does not apply to this application.

- I. Public benefits of the use outweigh any impacts which cannot be mitigated.

Findings:

The Hearings Officer found that this facility and another facility operated by Recology (North Suttle Road and currently under review in LU 10-203967 CU AD) will allow the City of Portland to implement its food waste composting program. These facilities will serve as transfer stations allowing garbage haulers to deliver the blended food and yard debris waste.

The application explains that composting businesses typically require transfer facilities in order to aggregate smaller loads into large shipments to the composting facilities. Many deliveries, in smaller trucks, from the urban area go to a single point where the waste is separated and aggregated for composting. The material is then consolidated into larger trucks and is shipped to a composting facility. This reduces the number of truck trips to the composting facility, provides a place that efficiently sorts and consolidates the organic material, and offers another means of reducing the amount of materials being deposited into a landfill. For this use, the material is being diverted from the waste stream going to landfills, and is recycled into compost for beneficial uses. The above represents the public benefits of the application in this case.

Nearby residents and property owners raised concerns about the proposed use to the Hearings Officer (Exhibits F.1, F.2, H.8 and H.11). The Hearings Officer found that the primary concerns expressed by opponents involved the possible emission of odors, the possible attraction of vermin, possible impacts on nearby environmentally zoned/used properties and

traffic impacts. As explained in the findings above, the Hearings Officer and the City Council considered each of opponents' concerns. The Hearings Officer found, based upon Recology's proposed operation plan and conditions of approval that will be imposed upon Recology's operation on the Subject Property, that the risk of odor and vermin impacts on the neighboring properties is relatively low. The Hearings Officer found no probable impacts will occur on nearby environmentally zoned properties. The Hearings Officer found that traffic impacts will be significantly mitigated by prohibiting Recology's use of the Knapp entrance to the Site. Both opponents and Recology restated the arguments summarized here before the City Council.

The standard is whether potential unmitigated impacts are outweighed by public benefits. Based on these findings, the potential impacts identified by opponents are addressed by Recology's credible, substantial evidence and representations as to the operation of the Subject Property and, to the extent necessary, mitigated through the conditions of approval imposed in this decision. The City Council agrees with the Hearings Officer and finds the public benefits are great and possible negative impacts are relatively low.

The opponents argue that there is no "public benefit" because there are existing transfer facilities with capacity to handle the additional food waste. However, the criterion at issue does not require an alternatives analysis or evidence of "public need" as suggested by the opponents. Rather, the criterion requires a finding that there will be public benefits of the use that will outweigh any impacts that cannot be mitigated. As described above, the City Council finds that adding a new facility in this particular location will provide public benefit by helping the city to implement its food waste composting program and providing a central location that will reduce the number of truck trips and efficiently sort the organic material. The City Council agrees with the Hearings Officer and finds this standard is met.

Adjustments

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply citywide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that Recology has shown that approval criteria A. through F., below, have been met.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: Recology is requesting an Adjustment to waive the vehicle access standard for Waste-Related uses (Zoning Code standard 33.254.030). The purpose of the Mining and Waste-Related development standard, as stated in Section 33.254.010 of the Zoning Code, is as follows:

These regulations:

- Reduce the impacts and nuisances resulting from mining and Waste-Related uses on surrounding land uses;
- Reduce the transportation impacts from these uses;
- Ensure that land used for these purposes is restored so that it may be reused; and
- Provide security measures so that these land uses are not a safety hazard to other land uses or to nearby residents.

PBOT reviewed Recology's transportation analysis and had no concerns. As outlined in Recology's response, and summarized above, the proposed new Waste-Related use is not anticipated to have a significant trip generation impact or generate trip types that are inconsistent with the street designations (Exhibit E.2). PBOT agreed with Recology's traffic studies (Exhibits A.2, A.5, and A.6) that the transportation system is capable of supporting the additional traffic that is estimated to be generated by the use. SE 101st Avenue and SE Foster Road can support the new use from a capacity, safety, and access standpoint. PBOT and Recology's traffic studies concluded that the proposed use is not anticipated to have any detrimental impacts on the overall safety of the Springwater Trail crossing at SE 101st Avenue. The City Council agrees with the Hearings Officer and concurs with the conclusions reached by PBOT and Kittelson and finds this approval criterion is met.

The opponents contended that the requirement at issue is not the type of standard for which an adjustment can be granted. Appellants pointed to PCC 33.805.030.B that describes what regulations are eligible for adjustments. That section provides, in relevant part, that adjustments are prohibited for regulations that constitute "an exception to a qualifying situation for a regulation, such as zones allowed or items being limited to new development." PCC 33.805.030.B.4. As an example of such an "exception," the code references a City regulation that says manufactured dwelling parks are allowed only in the R3 and R2 zones, and notes that an adjustment could not be granted to allow a manufactured dwelling park in any other zone.

Recology argued that the regulation to be adjusted is merely an access restriction regarding vehicle access on certain city streets. Unlike the situation contemplated by PCC 33.805.030.B.4, this regulation is not a "qualifying situation for a regulation", like the example provided in the code. The example provided in the code describes a requested adjustment to a use standard where a specific use is prohibited in the zone at issue. That situation is also specifically referenced in the first sentence of the code at issue, which states "such as zones allowed or items being limited to new development." The regulation being requested for adjustment does not relate to zoning restrictions or other "qualifying situations." Rather, the

regulation at issue creates an access restriction regarding Major City Traffic Streets. The proposed use is located in an existing industrial park area that is already accessed by large trucks. The Hearings Officer's decision to approve the adjustment is consistent with existing access to the site, and this application is appropriate and eligible for an adjustment under the applicable City criteria. The City Council concurs with the Hearings Officer's decision.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the classification of the adjacent streets and the desired character of the area; and

Findings: The Subject Property is in the IH zone. The IH zone is intended to provide areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The proposal is consistent with the adjacent streets' classifications as described in the findings regarding 33.815.220.F. Because the public streets leading to the Site are intended to provide access to this Site, the adjustment is consistent with the desired industrial character of the area, because it allows truck traffic to access the Site as is occurring now.

The Site and Subject Property are located within the Outer Southeast Community Plan boundary. The plan, adopted in March 1996, specifically addresses the "Freeway Lands" site as follows:

Industrial Areas (page 35): The Freeway Land Company site was zoned a combination of EG and Heavy Industrial. This will allow office and commercial uses to locate on the outside edges of the site and the continuation of heavy industrial uses in the interior.

As noted above, PBOT reviewed (Exhibit E.2) Recology's submitted traffic analysis and has determined that the transportation system can support the new use from a capacity, safety, and access standpoint. Therefore, the proposed access from a vacated street will not negatively impact the intended character of the IH zone or the desired industrial character of the Freeway Land site. The City Council agrees with the Hearings Officer and finds this approval criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one Adjustment is requested. This criterion does not apply to this application.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City-designated scenic resources are shown on the zoning map by the "s" overlay zone. Historic resources are designated by a large dot. There are no such resources present on this site. This criterion does not apply to this application.

- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: There are no detrimental impacts created by allowing the new Waste-Related use to use the existing access to the existing Site and Subject Property and therefore no impacts must be mitigated. Also, as described above in these findings, to the extent there could be any potential detrimental impacts arising out of Recology's proposed use of the Site, there is substantial evidence in the record to support findings that Recology will mitigate any such impacts. The City Council concurs with the Hearings Officer's finding that this criterion is met.

- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings. No development or activity is proposed within the Environmental zone as a result of the Adjustment. This criterion does not apply to this application.

Development Standards

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

III. CONCLUSIONS

Recology requested Conditional Use approval in order to begin accepting mixed residential yard debris/food waste at the Subject Property for recycling. An Adjustment is requested to waive the requirement that the Waste-Related use be located so that street access is from a Major City Traffic Street or a street in a designated Freight District. The mixed yard debris/food waste will be delivered to the Subject Property via garbage collection trucks, approximately 35 trucks per day. Mixed yard debris/food waste will also be accepted from private self-haulers and the general public. Compostable mixed yard debris/food waste will be transported to a final location for composting.

In order for this proposal to meet the approval criteria and to address concerns raised by opponents, the City Council has imposed numerous conditions of approval. The conditions are intended to reduce potential impacts (*i.e.* odor, vector, traffic, etc.) upon nearby properties which could be created by Recology's use of the Site.

IV. DECISION

It is the City Council's decision to deny the appeal of Cottonwood Capital Property Management, LLC, Frank Fleck, and Gary Gossett, and to uphold the Hearings Officer's decision as modified by imposing additional and modified conditions of approval. The effect of the Council's decision is to:

Approve a Conditional Use to establish a Waste-Related use that accepts and processes food waste that is blended with yard debris, within a fully-enclosed building, as described in Exhibits A.1 through A.6, and

Approve an Adjustment to waive the Waste-Related location and access requirements (Section 33.254.030) to allow access onto the facility from a private driveway (vacated SE 100th Avenue), subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-194818 CU AD." All requirements must be graphically represented on the required plans and must be labeled "REQUIRED."
- B. Two signs, which identify the food waste recycling operation, must be installed on entrance gates to the facility. The signs must include 24-hour emergency contact information.
- C. An aeration and biofilter system must be installed to negate food waste odors.
- D. An internal drain and containment system must be installed to collect the liquid waste (leachate) inside the food waste processing building. The leachate must be taken to an off-site location for disposal.
- E. Prior to obtaining occupancy approval from the Bureau of Development Services, Recology must revise the Nuisance Mitigation Plan (*identified as Exhibit H in the Recology July 27, 2011 submittal to Council*) to address the control of flies and yellow jackets and submit the revised plan to the Bureau of Development Services.
- F. Prior to obtaining occupancy approval from the Bureau of Development Services, Recology must meet in good faith with the Lents Neighborhood Association for the purpose of reaching agreement on a Good Neighbor Agreement. "Good faith" shall include at a minimum scheduling and being available to meet with the Association for a minimum of 3 dates before opening of the facility, within a 3-month time period from the effective date of this decision. Facilitation shall be provided through the Office of Neighborhood Involvement or a facilitator acceptable to both parties provided by Recology. A report with a list of persons who attended the meetings, comments from both sides and any participant or observer wishing to comment on the process and outcome, and documentation of any Agreement shall be submitted to the Bureau of Development Services, the Office of Neighborhood Involvement, and City Council offices prior to commencing use of the building for food waste processing. The Good Neighbor Agreement discussions could include potential mitigation for possible impacts on neighborhood livability.
- G. The Recology (or any successor in interest) facility may only be used to process Residential Source food wastes. No Commercial Source food waste is permitted.

- H. Organics containing food waste shall be removed from the Subject Property and Site within forty-eight (48) hours of delivery to the Subject Property.
- I. Recology (or any successor in interest) will accept food waste deliveries/deposits only between the hours of 7 am to 5 pm Monday through Friday and 8 am to 5 pm on Saturdays.
- J. Recology (or any successor in interest) will limit the number of garbage hauler trucks delivering food waste to the facility, to a maximum of 35 round trips per day.
- K. Recology (or any successor in interest) will limit the number of truck trips to and from the site per day, for the purpose of removing food waste from the site to 10 trips (or 5 round trips) per day. Recology (or any successor in interest) will transport the blended food waste from the site only between the hours of 7 am to 6 pm, Monday through Friday and 8 am to 6 pm on Saturdays.
- L. All public information, including Internet and marketing information, must include a directional map that identifies the Recology facility within the larger 100-acre industrial site and identifies the site's entrance at SE 101st and SE Foster Boulevard.
- M. Recology (or any successor in interest) trucks and any associated businesses, including commercial haulers, must be instructed to use only the SE Foster and SE 101st Avenue access; access to/from the Subject Property via SE Knapp shall not be permitted (excepting for emergency response vehicles).
- N. Recology (or any successor in interest) must document all nuisance complaints that are received, including but not limited to: litter, noise, odors, dust, traffic and vectors. For every nuisance complaint received, the facility will record, in a complaint log, the following information:
- The nature of the complaint; and
 - The date and time the complaint was received; and
 - The name, address and telephone number (if provided) of the person or persons making the complaint; and
 - The Recology (or any successor in interest) employee who received the complaint; and
 - Any actions taken by Recology (or any successor in interest) employee(s) to resolve the complaint.

A record of all complaints and action taken must be maintained at the facility for a minimum of one (1) year. Annually, and upon request, a copy of the complaint log must be delivered by mail to the Lents Neighborhood Association Chairperson (per Office of Neighborhood Involvement website information), the East Portland Neighborhood Office and to the BDS Code Compliance Division. Recology (or any successor in interest) will provide Department of Environmental Quality Solid Waste representatives, Metro Solid Waste representatives, and the Bureau of Development Services access to review the complaint log and other required logs, records and reports.

- O. Recology (or any successor in interest) will allow unscheduled/unannounced visits into the facility by the Department of Environmental Quality Solid Waste representatives, Metro Solid Waste representatives, and City of Portland code inspectors.
- P. Confirmed violations of Title 33 odor standards (33.262.070) shall be subject to Bureau of Development Services code enforcement policies.
- Q. Between the hours of 7 am and 10 pm, Recology (or any successor in interest) shall operate in compliance with the City's Noise Control Title 18. Before Recology (or any successor in interest) may conduct the processing, sorting, grinding and cleaning operations during nighttime hours 10 pm to 7 am, they must submit to the City of Portland Noise Control Officer and the Bureau of Development Services Code Compliance Division, additional noise analysis from a licensed engineer demonstrating compliance with Title 18, specifically pertaining to reduced sound levels applicable between 10 pm and 7 am. BDS verification of violations of Title 18 shall be subject to immediate issuance of Noise Citation civil penalties.
- R. Recology (or any successor in interest) must remove all food-waste materials and collected leachate from the site prior to flooding. The site may not accept food waste until the City of Portland determines that the Johnson Creek high-water level has dropped below flood stage at the Recology facility location.

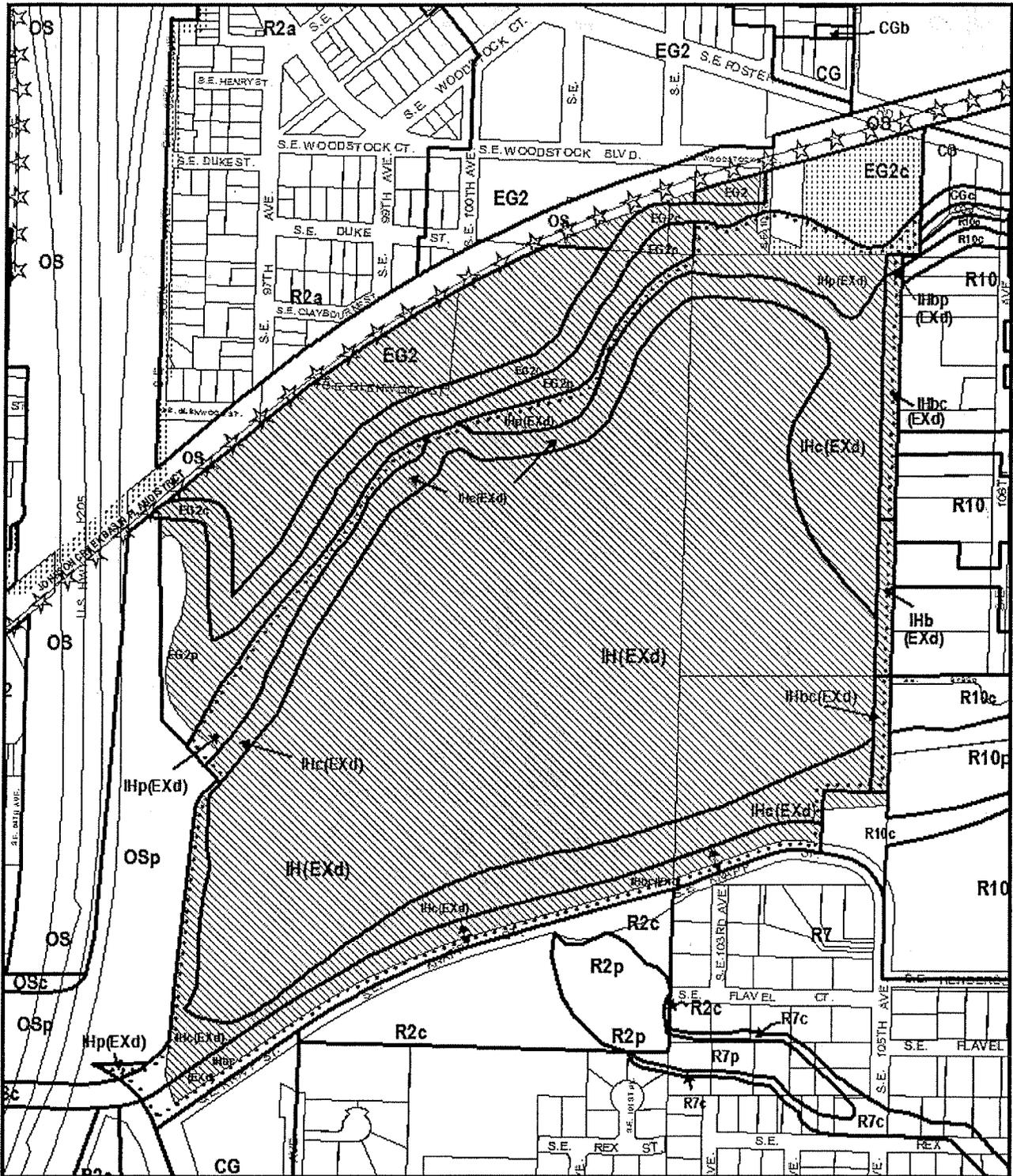
VII. APPEAL INFORMATION

Appeals to the Land Use Board of Appeals (LUBA)

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

Attachments:

Zoning Map
Site Plan (Exhibit C.1)



ZONING

-  Site
-  Also Owned



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 10-194818 CU</u>
1/4 Section	<u>3740,3741,3840</u>
Scale	<u>1 inch = 400 feet</u>
State Id	<u>1S2E21A 100</u>
Exhibit	<u>B (Nov 23,2010)</u>

