

Portland, Oregon
FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT
For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

| | | | |
|---|--|---|--|
| 1. Name of Initiator Sheila Frugoli | | 2. Telephone No. 503-823-7817 | 3. Bureau/Office/Dept. Land Use Services - BDS |
| 4a. To be filed (hearing date): July 13, 2011 | 4b. Calendar (Check One) <div style="display: flex; justify-content: space-around;"> Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> 4/5ths <input type="checkbox"/> </div> | | 5. Date Submitted to Commissioner's office and FPD Budget Analyst: July 7, 2011 |
| 6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed | | 6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed | |

1) Legislation Title:

This is an appeal of a **quasi-judicial** action. There is no legislation involved.
Case number: **LU 10-194818 CU AD (6400 SE 101st)**

2) Purpose of the Proposed Legislation:

There is no legislation involved. This is an appeal of a **quasi-judicial** action (an appeal of a Land Use Review decision). Legislative Procedures described in Zoning Code Chapter 33.740 are handled by the Bureau of Planning & Sustainability. Quasi-Judicial Procedures described in Zoning Code Chapter 33.730, commonly known as "Land Use Reviews" are handled by the Bureau of Development Services. Quasi-judicial procedures allow for Type III Land Use Review decisions to be appealed to City Council, per 33.730.030.F.

In this case, the Land Use Reviews included: a) a Conditional Use Review; and b) an Adjustment Review:

- A Type III Conditional Use Review is required because food waste recycling is classified as a Waste-Related use.
- 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. An Adjustment Review is needed to vary from an applicable development standard.

The Hearings Officer's decision of approval with conditions has been appealed by Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett, represented by Thomas Rask, attorney. The appellants are challenging the Hearings Officer's decision and argue that all of the approval criteria have not been met.

3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?

The proposal is for an individual ownership in Southeast Portland, not an area.

- | | | | |
|---|---|------------------------------------|--------------------------------|
| <input type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast | <input checked="" type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East |

- ☐ Central City
☐ Internal City Government Services

FINANCIAL IMPACT

4) Revenue: Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

This is not a legislative action.

5) Expense: What are the costs to the City related to this legislation? What is the source of funding for the expense? *(Please include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the level of confidence.)*

This is not a legislative action.

6) Staffing Requirements:

This is not a legislative action, and so there are no staffing “requirements”.

Staff/responsibilities involved in processing the Land Use Review appeal are: The assigned Planner from BDS/Land Use Services (LUS) Division, Records Management staff from LUS, supervisory oversight, staff from PBOT, BES, BPS and potentially other city agencies who have been involved in this land use review.

- **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?** *(If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)* No.
- **Will positions be created or eliminated in future years as a result of this legislation?** No.

(Complete the following section only if an amendment to the budget is proposed.) None.

7) Change in Appropriations *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate “new” in Fund Center column if new center needs to be created. Use additional space if needed.)*

| Fund | Fund Center | Commitment Item | Functional Area | Funded Program | Grant | Sponsored Program | Amount |
|------|-------------|-----------------|-----------------|----------------|-------|-------------------|--------|
| | | | | | | | |
| | | | | | | | |

[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]

PUBLIC INVOLVEMENT

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

☒ **YES:** Please proceed to Question #9.

☐ **NO:** Please, explain why below; and proceed to Question #10.

9) If "YES," please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item? The impacts from this proposal are what the Conditional Use Review is considering. There is a difference of opinion about the anticipated impacts, which is why the Conditional Use Review decision was appealed to City Council. Please see the Hearings Officer's Decision for an assessment of the impacts (see link below).
<http://www.portlandonline.com/bds/index.cfm?c=46574&a=346971>

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved? The Zoning Code requires for a Type III Land Use Review that public notice be mailed to property owners within 300 feet of the subject site and that the site be posted for a minimum of 30 days prior to the first hearing before the Hearings Officer. The notice also goes to the neighborhood association and any city-recognized business associations. Notices of hearings are also posted on the BDS website. There are no other public involvement efforts on the part of city staff.

c) How did public involvement shape the outcome of this Council item? The appeal of this quasi-judicial action is a direct outcome of public involvement on the part of neighbors in opposition to the proposal.

d) Who designed and implemented the public involvement related to this Council item? City Council adopted the procedures outlined in the Zoning Code. The Bureau of Development Services implements these procedures.

e) Primary contact for more information on this public involvement process (name, title, phone, email): Sheila Frugoli, Senior Planner is the assigned planner for this quasi-judicial land use review. She prepared the public notices used for mailing and posting. Her phone is 503-823-7817, her e-mail address is:
Sheila.Frugoli@portlandoregon.gov. However, these procedural activities are not a public involvement process per se.

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not. No. Once City Council makes their decision, the project may proceed (if appeal is denied). If the appeal is denied, the neighbors/appellants could appeal to a higher level - the State Land Use Board of Appeals (LUBA). And, if appeal is upheld, the applicants may choose to appeal to a higher level (LUBA). Public involvement is not a component of the review done by the higher review bodies.

PAUL L. SCARLETT P. Scarlett 7-7-11

BUREAU DIRECTOR (Typed name and signature)

Motions – October 5, 2011 Council Meeting

1070 TIME CERTAIN: 2:00 PM – Appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett against Hearings Officer's decision to approve with conditions the application of Recology Oregon Material Recovery, Inc. for 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 at 6400 SE 101st Avenue (Hearing; Previous Agenda 950; LU 10-194818 CU AD)

Motion to amend Hearings Officer's decision with additional conditions concerning odor, insect pest management, good neighbor agreement and no commercial waste:
Moved by Commissioner Fritz and seconded by Mayor Adams. (Y-4; N-1 Leonard)

Motion to tentatively deny appeal and uphold Hearings Officer's decision with modifications; prepare findings for November 2, 2011 at 11:00 a.m. Time Certain:
Moved by Mayor Adams and seconded by Commissioner Fish. (Y-4; N-1 Leonard)

10/05/11

Commissioner Fritz, Proposed additional conditions to the Recology Conditional Use:

- (I) Odor: Confirmed violations of Title 33 odor standard (33.262.070) shall be subject to BDS Code Enforcement policies.
- (J) Insect Pest Management: 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.
- (K) Good Neighbor Agreement: 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 the applicant. 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.
- (L) The facility may only be used to process Residential Source food wastes. No Commercial Source food waste is permitted.

Parsons, Susan

From: Rees, Linly
Sent: Monday, August 01, 2011 12:01 PM
To: Parsons, Susan
Subject: RE: Letter to Council re: Recology in Lents

I think you should ask staff not give that letter to the Council members if that is still possible. If not, we may want to have Council make a general statement at the next hearing that any letters that were received late are not included in the record.

Linly Rees
Deputy City Attorney
Portland City Attorney's Office
(503) 823-4047
linly.rees@portlandoregon.gov
(Note: New e-mail address)

-----Original Message-----

From: Parsons, Susan
Sent: Monday, August 01, 2011 11:59 AM
To: Rees, Linly
Subject: RE: Letter to Council re: Recology in Lents

Good thinking-I didn't notice the date of the letter.
I've just checked the file and it is not there. I've date stamped it, and in this type of email, we retain the email cover sheet with the record of exactly when the testimony was received.

Will keep it in the file as you indicated. I did sent it out to Council (reflexively, before I emailed you.) Was that ok?

Sue Parsons
Assistant Council Clerk
City of Portland
503.823.4085
please note new email address:
Susan.Parsons@portlandoregon.gov

-----Original Message-----

From: Rees, Linly
Sent: Monday, August 01, 2011 11:34 AM
To: Parsons, Susan
Subject: RE: Letter to Council re: Recology in Lents

I agree that any letters received after July 27 at 5 pm are late and should not be included in the record. However, you should keep the letter in the file, and I think (correct me if I'm wrong) you have a stamp to indicate that it was received late or something like that. One question for you: I noticed that this letter is dated July 22nd. Is it possible that it was received in hard copy before the July 27 deadline?

Linly Rees
Deputy City Attorney
Portland City Attorney's Office
(503) 823-4047
linly.rees@portlandoregon.gov
(Note: New e-mail address)

-----Original Message-----

From: Parsons, Susan
Sent: Monday, August 01, 2011 9:40 AM

To: Rees, Linly
Subject: FW: Letter to Council re: Recology in Lents

Linly--

My understanding is the record was closed 7/27, so this testimony should not be added.
Would you please confirm? (Karla is on vacation for a couple of weeks.)

Thanks much.
Sue

-----Original Message-----

From: Karen Wolfgang [mailto:independencegardenspdx@gmail.com]
Sent: Monday, August 01, 2011 7:34 AM
To: Moore-Love, Karla
Subject: Letter to Council re: Recology in Lents

I have attached a letter that I would like to share with all Council members.

Thank you for your assistance,
Karen

--

Karen Wolfgang, MA
Owner & Project Coordinator
Independence Gardens LLC * CCB#186008
<http://www.IndependenceGardensPDX.com>
503-929-7170 (cell)

NOT FOR RECORD
Rec'd after 7/27/11
deadline.

Parsons, Susan

From: Parsons, Susan on behalf of Moore-Love, Karla
Sent: Monday, August 01, 2011 9:09 AM
To: Adams, Sam; Commissioner Fish; Commissioner Fritz; Leonard, Randy; Saltzman, Dan
Subject: FW: Letter to Council re: Recology in Lents

Attachments: Letter to City Council re Recology.pdf



Letter to City
Council re Reco

Sue Parsons
Assistant Council Clerk
City of Portland
503.823.4085
please note new email address:
Susan.Parsons@portlandoregon.gov

-----Original Message-----

From: Karen Wolfgang [mailto:independencegardenspdx@gmail.com]
Sent: Monday, August 01, 2011 7:34 AM
To: Moore-Love, Karla
Subject: Letter to Council re: Recology in Lents

I have attached a letter that I would like to share with all Council members.

Thank you for your assistance,
Karen

--

Karen Wolfgang, MA
Owner & Project Coordinator
Independence Gardens LLC * CCB#186008
<http://www.IndependenceGardensPDX.com>
503-929-7170 (cell)



July 22, 2011

To Whom it May Concern,

I am writing to express my business's enthusiasm for the expansion of Recology's operation in the Freeway Lands industrial park at 101st and Foster Rd. in the Lents neighborhood. Assuming the community-inclusive negotiation of a good neighbor agreement that sufficiently addresses the concerns voiced by local citizens, we are confident that Recology's expansion will benefit both our community and the city as a whole.

Independence Gardens builds edible garden infrastructure and teaches Portlanders how to grow their own food; in our business, we generate quite a bit of compostable waste, primarily in the yard debris category. We offload most of it at Recology, as it is reasonably priced and conveniently located near our home in Lents. While we don't expect to generate much food waste as a part of our business, we appreciate the need to scale up the curbside collection program for compostables in our city. This move is a high priority, and it is one that our business fully supports.

Far from being fearful about the addition of a well-managed food waste transfer facility to the existing industrial park, we are thrilled to welcome the operation to our neighborhood. Its presence here gives us an opportunity to highlight the role Lents plays in carrying out our collective commitment to divert biodegradable materials from the waste stream and recycle them into beneficial soil amendments. I am satisfied by the descriptions of the measures Recology intends to implement in order to control vectors, as well as alleviate noise and traffic concerns. Indeed, even an eventual expansion would be welcomed, especially if it could replace some of the activity on that site that involves the release of noxious chemicals, such as the asphalt operation.

During the process, I expect to see continued conversation between Recology and concerned neighbors, and hope that it will be conducted in a collaborative manner. And I would like to see the City assist in making this a transparent and inclusive process so that the Lents neighborhood can proudly welcome this important project.

Please don't hesitate to get in touch if you have any questions about our support for Recology's food waste transfer operation at the Foster Rd. site or our hopes for the Lents neighborhood in making our city ever more sustainable.

Sincerely,

Karen Wolfgang
Owner, Independence Gardens LLC

7-13-11

Record is open
until: 5:00 PM
July 27

Staff respond by:
5:00 PM Aug 10th

All Parties rebutt:
5:00 PM AUG 24th

BUREAU of Development
Services

City Council Appeal Packet LU 10-194818 CU AD

7-8-2011

Appeal Statement

Appealed Decision

E. Exhibits

1. Bureau of Environmental Services
2. Bureau of Transportation

Appeal Hearing Procedure



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



Type III Decision Appeal Form

LU Number: 10-194818

FOR INTAKE, STAFF USE ONLY

Date/Time Received 5/12/11 9:41 AM

Received By JM H

Appeal Deadline Date 4:30 5/12/11

☒ Entered in Appeal Log

☒ Notice to Auditor

☒ Notice to Dev. Review

☒ Action Attached

Fee Amount 5,077-

[Y] ☒ Fee Waived

Bill # 3233227

[Y] [N] Unincorporated MC

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

The appeal must be filed by the deadline listed in the Decision

Development Site
Address or Location Recology Facility at SE 101st Avenue

Date 5/12/2011

Land Use Number LU10-194818CU AD

Appellant's Name Cottonwood Capital Property Management, LLC, Frank Fleck, Gary Gossett
c/o Kell, Alterman & Runstein LLP

Street Address 520 SW Yamhill St., Ste. 600

City Portland State OR Zip Code 97204

Day Phone (503) 222-3531 FAX (503) 227-2980 email msharp@kelrun.com

Appellant's Interest in the case (applicant, neighbor, etc.) Neighbors, interested parties

Appellant's Statement Please describe how the proposal meets or does not meet approval criteria, or how the City erred procedurally. The statement must address specific approval criteria or procedures and include the appropriate code citation(s).

See attached Exhibit "B"

Appellant's Signature See attached Exhibit "A"

To file this appeal, take the following to the Development Services Center

Thomas R. Rask

Attorney for Appellants

☐ This completed appeal form

☐ A copy of the Type III Decision being appealed

☐ An appeal fee as follows:

☐ Appeal fee as stated in the Decision, payable to City of Portland

☐ Fee waiver for ONI Recognized Organizations approved

☐ Fee waiver for low income individual approved (attach letter from Director)

☐ Fee waiver for Unincorporated Multnomah County recognized organizations is signed and

CASE NO.

EXHIBIT H.T.I.01

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

The appeal must be filed by the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 a.m. and 3:00 p.m. on Tuesday through Friday. On Mondays, and between 3:00 - 4:30 p.m. on Tuesday through Friday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

**Exhibit B to Appeal
Appellant's Statement
LU 10-194818 CU AD (HO 4110004)**

Appellant respectfully appeals the Decision of the Hearings Officer, dated April 27, 2011 and attached hereto as Exhibit C, ("Decision") in case number LU-10-194818 CU AD (HO 4110004). The Decision grants applicant a Conditional Use Permit ("CUP") to expand an existing Material Recovery Facility ("MRF") from a dry, non-putrescible recycling center to a Waste-Related MRF, allowing the acceptance of food waste and yard debris for transfer to composting facilities ("Project"). The proposed expansion will result in an additional 110 daily truck trips to the site, and will more than double the amount of waste presently received daily at the site (from 200 tons per day to 450 tons per day).

The expansion of the MRF to allow for Waste-Related uses requires Conditional Use Approval, because Waste-Related uses may "have significant adverse effects on the environment", "overburden public services" and "create major nuisances" (Title 33, City of Portland Planning and Zoning Code section 33.815.010). Appellant hereby challenges the Project as follows under the following sections of the City of Portland Planning and Zoning Code ("PCC"). Appellant advances that as all of the criteria for the Project CUP have not been met, that the Decision to grant the Project CUP should be overturned. (PCC 33.815.080)(Applicant must show all of the approval criteria for the CUP).

- Odors. Applicant's only evidence related to odors is oral testimony by applicant itself that odors will not be significant because all waste will be contained inside a building equipped with an "aerated floor and negative air system," that odors will be scrubbed with a wood chip containing "biofilter" and that all wastes will be removed from the site within 48 hours. Applicant does not present any technical or expert evidence as to the design of the aerated floor, the negative air system and/or the biofilter or any evidence that this type of system will contain and/or manage odors effectively. Additionally, Applicant presents no discussion as to the mitigation measures that will be implemented in the event that odors are significant and/or waste is held on site for more than 48 hours. Thus, Applicant fails to present evidence necessary to meet odor related criteria. (PCC 33.815.220 C; D, E; 33.262.070).
- Vectors. Applicant presents no technical or expert evidence to show that the Project will not attract vectors, such as rats and mosquitoes. Rather, Applicant merely states that because the waste will be off-loaded inside a building, which has "roll-up" doors that can be closed, vectors will be prevented from entering in the first instance and that a fully enclosed space will allow employees to monitor and manage

pests. Applicant fails to submit any technical or other credible evidence that the Project will not attract vectors, disease carrying or otherwise, and/or that the Project design will prevent vectors. Applicant thus fails to meet the criteria related to vectors. (PCC 33.815.220 C, D, E).

- Noise. Applicant presents no technical or expert evidence to show that the Project will not generate increased or significant noise. Applicant merely states that because the sound of garbage truck off-loading and other distribution activities will be conducted at least 200 feet from adjacent sites and during business hours (7 a.m. – 5 p.m.) that noise will not differ from or exceed other noise in the area. This statement lacks credible evidence and thus Applicant thus fails to meet the criteria related to noise. Applicant also fails to show how the Project will meet and satisfy the Oregon Department of Environmental Quality's noise regulations and/or the City's noise standards, set forth in Title 18 "Noise Control". (PCC 33.815.220 C, D, E; PCC 33.262.050).
- Dust/Air Pollution. Applicant presents no technical or expert evidence to show that the Project will not generate dust or other air pollution. Applicant relies on the fact that the Project site is paved to conclude that there will be no dust or air pollution attributed to the Project. This statement lacks credible evidence and Applicant thus fails to meet this criteria. (PCC 33.815.220 C, D, E).
- Stormwater/Water Pollution. Applicant presents no technical or expert evidence to show that the Project will not generate stormwater and/or contribute to water pollution. Applicant proposes that stormwater from impervious surfaces and leachate run off drain/flow to numerous existing catch basins and eventually either flow through a biofilter and or drain into a detention pond, ultimately returning to the City water system. Applicant does not provide any technical design documents or analysis as to the feasibility or effectiveness of this containment/filter system and thus there is no evidence that stormwater and/or leachate will be treated effectively. Additionally, Applicant fails to establish through expert or technical evidence that stormwater and/or leachate will not, in fact, runoff into Johnson Creek. Moreover, as noted by the City's Environmental Services Department by letter dated March 9, 2011, the Project may require a modification to the existing NPDES Permit. As such, the Project may be considered a "New Source" generator as defined in 40 C.F.R. Section 122.2 triggering site specific environmental review required by the National Environmental Policy Act of 1969 ("NEPA"), 33 U.S.C. 4321 et seq. (PCC 33.815.220 C, D, E; PCC 33.254.040 C).

- **Traffic Impacts and Safety.** The Waste-Related use proposed will generate 110 additional trips per day. Applicant concludes, based upon a traffic study conducted by Kittleson & Associates, that because peak traffic hours generated by the Project do not occur at the peak hours of bicycle/pedestrian uses of Springwater Trail, which bisects the site, and peak hours at the intersection of SE Foster Road and SE 101st Avenue, that there are no traffic impacts or safety concerns related to the Project. However, the traffic study appears flawed, as Manual Counts for "peak hours" of traffic were only taken on two occasions, September 14, 2010 and September 15, 2010. Kittleson concluded, based upon this limited study of the area that peak hours are from 10:00 a.m. – 2:00 p.m. along SE 101st Avenue, and 3:30 p.m. – 5:30 p.m. for Springwater Trail. This finding, coupled with a historical crash history report for SE Foster Road and SE 101st Avenue, Kittleson concluded that the existing transportation facilities are sufficient to facilitate any increase in traffic and that there will be no adverse impacts to the Springwater corridor. A finding of no significant traffic impacts and safety concerns is not warranted by this limited study and as such the study is flawed and the criteria not met. (PCC 33.815.220 C, D, E, F; PCC 33.254.040 A; PCC 33.254.050; PCC 33.805.040 A, E).
- **Impacts to Environmentally Sensitive Areas.** Environmentally sensitive areas, designated with the Environmental Conversation or Environmental Protection overlay zone, run through the site and abut the site to the South and East (Decision, p. 12). The Hearings Officer found that there were no environmental impacts based upon the finding of no significant impacts related to the nuisance impacts in PCC 33.815.220 C (odors, vectors, noise dust/air pollution, stormwater, see above). Because these findings are flawed in the first instance, the finding of no impact in this section is flawed as well. Moreover, Applicant provided no technical or expert evidence to support Applicant's contention that there are no environmental impacts associated with the Project and as such this criteria is not met. (PCC 33.815.220 D; PCC 33.805.040 F).
- **Nuisance/Mitigation Plan.** Applicant has not submitted a mitigation plan that addresses potential nuisance impacts which might be created by the proposed use. The plan must address noise, vibration, odors, dust, mud and vectors. Applicant's plan, which is set forth in Applicant's Findings of Fact and Conclusions of Law in two (2) small paragraphs, is simply to offload all Waste inside the existing building, to inspect the road for waste generated by vehicles traveling to the Project site, post signs prohibiting littering and manage incoming organic food waste by ensuring that they are generally removed from the site within 24-48 hours of delivery. This plan is not supported by

technical or expert evidence that the plan is feasible or effective and is based upon flawed conclusions. This, this criteria is not met. (PCC 33.254.060).

- Public Benefit/Impacts. Applicant fails to show that the public benefit of the Project outweighs any potential impacts associated with the Project. Applicant does not provide any technical or expert evidence in this regard. Rather, Applicant merely discusses that the Project's nuisance related impacts are nonexistence and/or mitigated and that the City can make this finding. However, as discussed above, Applicant's nuisance and traffic impacts analysis are flawed and thus the impacts may outweigh the public benefit. Applicant also does not consider that there is enough capacity and existing waste transfer stations and thus the Project is not necessary in the first instance. Other waste transfer stations that are capable of receiving the subject waste materials and providing the subject services relating to the Project include, among others, Waste Management Troutdale; Pride Recycling Sherwood, Metro South Oregon city, Republic Services Wilsonville, Waste Management Forest Grove, Waste Connections Vancouver, Washington, and Metro Central Portland. (PCC 33.815 I).

**Exhibit A to Appeal
Appellant's Signatures
LU 10-194818 CU AD (HO 4110004)**

This Appeal is respectfully submitted by:

Cottonwood Capital Property Management, LLC
6350 S. 3000 E., Suite 510
Salt Lake City, Utah 84121
801.278.0700

By: _____
Gregg Christensen
Executive V.P.

Frank Fleck
7507 SE 105th Avenue
Portland, OR 97266
503.771.8090

By: Frank Fleck
Frank Fleck

Gary Gossett

Portland, OR

By: Gary Gossett
Gary Gossett

**Exhibit A to Appeal
Appellant's Signatures
LU 10-194818 CU AD (HO 4110004)**

This Appeal is respectfully submitted by:

Cottonwood Capital Property Management, LLC
6350 S. 3000 E., Suite 510
Salt Lake City, Utah 84121
801.278.0700

By: _____


Gregg Christensen
Executive V.P.

Frank Fleck
7507 SE 105th Avenue
Portland, OR 97266
503.771.8090

By: _____

Frank Fleck

Gary Gossett

Portland, OR

By: _____

Gary Gossett



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100
Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

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

**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

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

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

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Sheila Frugoli

Site Address: 6400 SE 101st Avenue

CASE NO.
EXHIBIT H.2 I.2

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

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:59 a.m. on April 6, 2011, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 11:37 a.m. The record was held open until 4:30 pm on April 7, 2011 for new written evidence, and until 4:30 pm on April 14, 2011 for Applicant's rebuttal. The Applicant request that the record be closed effective April 11, 2011 (Exhibit H-16). The Hearings Officer closed the record on April 14, 2011.

Testified at the Hearing:

Sheila Frugoli, BDS Staff Representative

Michael Robinson, 1120 NW Couch Street, 10th floor, Portland, OR 97209

Dave Dutra, 6161 SW 61st Avenue, Portland, OR 97210

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

Frank Fleck, 7507 SE 105th Avenue, Portland, OR 97266

Proposal: Applicant proposes to accept mixed 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 trucks per day. Blended food waste and landscape material will also be accepted from private self-haulers and the general public.

The mixed yard debris/food waste material will be unloaded inside the existing large industrial building. Inside the building, the material will be sorted and mixed with yard and other wood waste materials that are currently accepted at the Subject Property. The compostable material will be loaded onto semi-trucks, estimated at approximately 10 per day, for shipment to an off-site composting facility. The mixed 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.

Applicant intends to install a biofilter aeration system to control odors inside the building. Also inside the building, Applicant 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 operate 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.

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. 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.

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

II. 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. Applicant's proposed use will be located on the Subject Property, a 6.2-acre leased area, located approximately in the center of the 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 onto 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 are largely done outside of structures, i.e., exterior development. A vegetated hillside, with primarily trees and ground cover, defines the southern edge of the Site.

SE Foster Boulevard at SE 101st Avenue provides access to the Site. 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 Site. A two-lane bridge spans over the creek, providing passage into the Site and the Subject Property.

The I-205 Interstate 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 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, the area is developed with a mix 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 there are numerous large vacant lots. Many are City-owned and zoned as Open Space. The Bureau of Environmental Services (BES) has implemented projects 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 the dense vegetation, SE Knapp is not visible from the Subject Property. There is continuous vegetation along the south side of the Site. 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. Directly across SE Knapp, there is a 6.2-acre site that is residentially zoned, but vacant. Further south 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).

Neighborhood Review: A Notice of Public Hearing was mailed on March 14, 2011. As of the completion of the staff report, two written responses were received from notified property owners in response to the proposal. The written responses (Exhibits F.1 and F.2) raised concerns related to livability (attract vermin, birds, and odors) and traffic. Concerns were also raised related to possible impacts of the proposed development upon the environmentally zoned properties and publicly owned properties in close proximity to the Subject Property. One written response objected to the notice given to neighboring/nearby properties of the application and BDS staff decision.

Hearings Officer Note: The concerns raised regarding traffic and nuisance impacts will be discussed below under relevant approval criteria. A Request for Response was mailed to City agencies and the Lents Neighborhood Association on February 7, 2011. Comments were requested

by March 7, 2011. The Applicant installed five posting boards along the public street frontages of the site and one at the SE 101st entrance on March 5, 2011. A public notice that invites interested persons to attend the public hearing and/or send written comments to the Hearings Officer was mailed on March 14, 2011, over 3 weeks in advance of the hearing. The public notice was mailed to owners of property that is located within 400 feet of the site. Hearings before the Hearings Officer are only scheduled during the day. Finally, all public and City agency comments sent to BDS staff are included in the file. The file is a public record and available for review. The Hearings Officer finds that the Zoning Code-required public notification requirements have been followed and met.

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 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; located in the southeast quadrant of the Site and is zoned IH. Of the approximate 100-acre Site, only 6.2 acres, the Subject Property, will be dedicated to a Waste-Related use. The remainder of the Site will continue to be used for industrial and employment purposes. Further, the properties to the north contain employment and industrial activities.

The mixed 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. 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. When the activity is discontinued, the building and land will be available for other industrial use. In

both the short and long term, there are adequate adjacent lands available for development of more intense industrial uses. Therefore, the Hearings Officer finds this criterion is met.

- 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 will continue to be available for industrial uses. At the closest point, the Subject Property is at least 190 feet from the Site's south property line. A 6-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. There is a large construction material storage area, a landscape material exterior sales facility, and numerous salvage and recycling facilities.

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 finds, because the Subject Property is a rather small portion of a much larger property, that "self-haulers" and the general public who wish to utilize Applicant's services could easily get lost. To reduce confusion and conflict with other truck and industrial traffic, BDS staff recommended a condition be imposed that requires the Applicant to provide clear directional maps in information made available to customers and commercial haulers. Also, BDS staff recommended that two signs, one at each gate to the facility, should be installed. BDS stated that the signs must include contact information and a telephone number so that an Applicant's representative may be contacted at any time.

According to the submitted traffic report, prepared by Kittelson and Associates (Exhibits A.2, A.5 and A.6), the trucks—commercial garbage haulers and Recology trucks, the homeowners and small "self-haulers" and other vehicle traffic associated with activities at the facility will not overwhelm the street system. Applicant'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.

In summary, Applicant's traffic consultant, PBOT and BDS staff concluded that this proposal will not significantly alter the overall industrial character of the area because additional traffic will be minimal and the transfer/processing of waste materials will occur within a building. The Hearings Officer concurs with Applicant's traffic consultant, PBOT and BDS staff. Further, the Hearings Officer finds that Applicant should provide information (i.e. a

directional map) instructing customers to the Subject Property mixed yard debris/food waste facility. The Hearings Officer finds that Applicant must install two signs, one at each entry gate. With compliance with these conditions, the Hearings Officer finds that this approval criterion is met.

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

Findings: Waste-Related uses have the potential, through operational and physical features, to create noxious odors, excessive noise, air and water pollution and traffic issues. BDS staff, prior to the issuance of the BDS Staff Report (Exhibit H.2), received e-mail correspondence from two nearby property owners who expressed concerns about the operation of Applicant's facility (Exhibits F.1 and F.2). An opponent of this application (Fleck) testified at the public hearing and submitted a letter into the evidentiary record (Exhibit H.11) expressing concerns about the possibility that operation of the Applicant's facility could create noxious odors. Another opponent submitted a letter (Exhibit H.8) into the evidentiary record expressing concern that operation of Applicant's facility will unnecessarily attract vermin/rodents. The preceding issues raised by neighbors and/or opponents are appropriate to be considered under this approval criterion.

Odor: If this application is approved, there will be no processing of food wastes on the Subject Property. The application anticipates the delivery of loads containing a mixture of yard debris and food waste; food wastes are estimated to be less than 5% (by weight). Applicant testified, at the hearing, 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. Applicant testified that within 48 hours (most material from the Subject Property on the same day as it is received) the mixed yard debris/food waste will be removed from the Subject Property to an off site composting location. Applicant's representative testified that 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 a biofilter. The biofilter material is 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.

Applicant'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.

The Hearings Officer finds that so long as the Applicant follows the proposed operation plan (all mixed yard debris/food waste delivered into the building with an aerated concrete floor, and negative air system, and material removed within 48 hours of delivery), odors should not be a significant problem for neighboring properties.

Disease-Carry Vector: Because the food waste material will be off-loaded inside a 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 space allows employees to monitor and manage pests. As noted above, any mixed yard debris/food waste material that remains on the Subject Property overnight will be covered by a biofilter (hog fuel/yard debris). The Hearings Officer finds that covering the mixed yard debris/food waste and the location of the material within a fully enclosed building will deter disease-carrying vector (vermin).

Noise: The sound of garbage truck off-loading and other distribution activities will be minimal given that 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 5 p.m., Monday through Friday, and Saturdays 8 a.m. to 5 p.m. 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 site.

Dust/Air Pollution: All traffic areas of the Subject Property and the composting 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.

Stormwater/Water Pollution: Because the Applicant is proposing no new development or exterior changes, BES has determined that the proposal will not impact the existing stormwater system and/or the Johnson Creek resources. To address BES Source Control requirements, the Hearings Officer finds that a condition is necessary that requires containment and off-site disposal of leachate waste. 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).

Traffic Impacts and Safety: Applicant addressed, in the application, possible traffic capacity and safety issues. Applicant's traffic consultant indicated, in the Traffic Analysis (Exhibits A.5 and A.6), that the expanded use (including the retail sale of soils and landscape materials) will result in 400 daily trips, with 40 occurring in the a.m. peak hour and 20 in the p.m. peak hour. Applicant's traffic consultant stated that of the 110 increased daily trips, an estimated 90 (45 in/45 out) will be 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 Applicant'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 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 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.

In summary, the Hearings Officer finds the impacts resulting from approval of this application are expected to be minimal, with no significant health or safety risk to nearby uses. To control odors and water quality impacts, conditions will require the retrofitting of the building to install the aeration system and leachate collection system. Through compliance with conditions, this criterion is met.

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

Findings: 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 (Exhibits F.1, F.2 and H.8). 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 (Exhibit F.2). Another opponent stated that odors emanating from the Subject Property would discourage use and public enjoyment of the Springwater Corridor Trail.

The Hearings Officer incorporates the findings for PCC 33.815.220 C into the findings for this approval criterion. The Hearings Officer found, in the findings for 33.815.220 C above, that odor impacts would not be significant. Therefore, the Hearings Officer finds that 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 Hearings Officer finds that no credible evidence is in the record to support the contention, by an opponent, that flood waters would impact the operations occurring entirely within the building at the Subject Property. Further, the Hearings Officer finds (based upon Applicant'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 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.

As noted in the findings for PCC 33.815.220 C above, the Hearings Officer found that environmental, vector, dust, and stormwater runoff impacts resulting from approval of this application will be minimal or nonexistent. Therefore, the Hearings Officer finds this approval criterion is met.

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

Findings: 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 other material. The trash will be collected and hauled to a landfill. All waste will be off-loaded and processed inside the building. Applicant's representative, at the public hearing, testified that litter control is overseen by METRO and the Oregon Department of Environmental Quality ("DEQ"). Applicant's representative stated that Applicant will be responsible for litter control on roadways for a distance of up to one-quarter of a mile from the Subject Property. Applicant, in its application materials, indicated that it will instruct waste haulers using the Subject Property that loads must be enclosed/covered. The Hearings Officer incorporates the findings for PCC 33.815.220 C above into the findings for this approval criterion. The Hearings Officer finds this approval criterion is met.

- 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 Site directly fronts SE 100th and SE 103rd Avenues; both streets terminate at the Site. SE 101st 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 access at 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. The Applicant 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 the Applicant's transportation analysis (Exhibits A.2, A.5 and A.6) and expressed no concerns. As outlined in the Applicant'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 finds 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.

To address neighbors' concerns regarding additional truck traffic impacting the residential area located south of the site, PBOT staff recommended a condition be applied to truck traffic associated with Applicant's use of the Subject Property. PBOT suggested that if the owners of

the Site ever obtain access from SE Knapp, the condition of approval in this case will prohibit trucks traveling to/from the Subject Property from using SE Knapp. Applicant 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 the condition that restricts future access to the Subject Property, the Hearings Officer 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 did not raise 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 has no concerns.

BES reviewed the proposed improvements and has 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 as a condition the installation of a leachate collection and containment system. The liquid waste will be taken off of the Site and the Subject Property for disposal.

Based on the comments from City bureau representatives, the Hearings Officer 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. The Hearings Officer 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 noted 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. Applicant submitted a traffic impact study to assess the adequacy of transportation services (Exhibits A.2, A.5 and A.6). Currently the Site generates approximately 290 trips per day. The Waste-Related use will generate 110 additional trips per day. Applicant anticipates 35 garbage trucks coming to the Site and Subject Property to dump loads and 10 semi-truck trips hauling away the processed food waste to the off-site composting facility. Applicant's traffic consultant estimated that the proposed use at the Subject Property facility would generate an additional 90 new truck trips (45 in, 45 out) and 20 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. Applicant's traffic consultant and PBOT concurred that the estimated vehicle trips can easily be accommodated on the private internal road. The Hearings Officer finds this standard can be 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: 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 within 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. A condition will require the installation of a liquid waste collection facility. With compliance with the condition, the Hearings Officer finds that this application will comply 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. The Hearings Officer finds that 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: The Hearings Officer finds that a condition will require the installation of two signs, one at each gate of the facility. The signs must include the necessary contact information.

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, the Applicant's traffic consultant submitted a traffic impact study to assess the adequacy of transportation services (Exhibits A.2, A.5 and A.6). The traffic study analyzed the SE Foster and SE 101st intersection and the crossing over the Springwater Trail. PBOT Engineering and Development reviewed the consultant's traffic study and concluded that the transportation system is adequate to support the proposed use. The Hearings Officer finds that this criterion is met.

33.254.060 Nuisance Mitigation Plan The applicant 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: Below are the 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: 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. Equipment will meet noise standards stated in Title 18, Nuisance Abatement and Noise Control. The Hearings Officer 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 Hearings Officer 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, the Applicant intends to install a biofilter aeration system and will capture the liquid waste from the processing building and remove it off site. A condition will require the installation of both systems as identified in the submitted plans. If the facility finds that the biofilter system does

not adequately reduce detectable odors, it must implement other means of addressing the off-site impacts in order to achieve ongoing compliance with this Zoning Code requirement. At the request of one of the opponents (Exhibit H.11), Applicant agreed to include an additional condition of approval relating to the recording and reporting of any litter, noise, odor, dust, traffic and vector complaints (See Condition G.). The Hearings Officer finds that with the requirement that all transfers of mixed yard debris/food waste occur within the building located on the Subject Property, the removal of mixed yard debris/food waste within 48 hours of its being deposited at the Subject Property, the installation of floor negative aeration system and the use of biofilter material on any mixed yard debris/food waste left in the building overnight, this standard can be met.

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 will not require excessively bright or special lighting such as strobe lights. The Hearings Officer 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. Applicant stated at the public hearing that, pursuant to METRO and DEQ requirements, Applicant is responsible for litter control (related to Applicant's operation at the Subject Property) for a distance of up to ¼ mile from the Subject Property. The Hearings Officer 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 the Applicant finds that the enclosure does not adequately restrict insects and/or mammals, the Applicant must implement other means for controlling the disease carrying

pests, in order to achieve ongoing compliance with this Zoning Code requirement. The Hearings Officer finds this standard will be met.

33.254.070 Reclamation Plan for Landfills The applicant 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 the applicant 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. The Hearings Officer 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. Applicant 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. The Hearings Officer 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 Hearings Officer finds this standard will be 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.

- 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. Therefore, this criterion does not apply.

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

Findings: The facility and another facility operated by Applicant (N Suttle Road and currently under review- 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. 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 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 this proposed use of the Subject Property (Exhibits F.1, F.2, H.8 and H.11). The Hearings Officer finds 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. The Hearings Officer considered each of opponents' concerns in the findings above. The Hearings Officer finds, based upon Applicant's proposed operation plan and conditions that will be imposed upon Applicant'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 Applicant's use of the Knapp entrance to the Site.

Overall, the Hearings Officer finds the public benefits are great and possible negative impacts are relatively low. The Hearings Officer finds the public benefits outweigh the potential negative impacts. The Hearings Officer 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 the applicant 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: The Applicant 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 the Applicant's transportation analysis and had no concerns. As outlined in the Applicant'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 Applicant'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 the Applicant'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 Hearings Officer concurs with the conclusions reached by PBOT and the Applicant's traffic consultants and finds this approval criterion is met.

- 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 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) the Applicant's submitted traffic analysis (Exhibits A.2, A.5 and A.6) 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 Hearings Officer 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.

- 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.

- 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. The Hearings Officer finds no mitigation is needed. This criterion does not apply.

- 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.

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

Applicant requested Conditional Use approval in order to begin accepting mixed 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 some of the concerns raised by

opponents, the Hearings Officer included conditions of approval. The conditions are intended to mitigate potential impacts (i.e. odor, vector, traffic, etc.) upon nearby properties which could be created by the application.

IV. DECISION

Approval of 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

Approval of 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 (10-188549 CO) 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. 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.
- F. 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).
- G. 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, a copy of the complaint log must be delivered by mail to the Lents Neighborhood Association Chairperson (per Office of Neighborhood Involvement website information) and the East Portland Neighborhood Office. Access, so long as 24-hour advance notice is given, shall be provided at the Subject Property by Recology (or any successor in interest) to the Bureau of Development Services for the purposes of reviewing the complaint log.

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.


Gregory J. Frank, Hearings Officer

April 27, 2011
Date

| | |
|---|--|
| Application Determined Complete: | January 28, 2011 |
| Report to Hearings Officer: | March 25, 2011 |
| Decision Mailed: | April 28, 2011 |
| Last Date to Appeal: | 4:30 p.m. , May 12, 2011 |
| Effective Date (if no appeal): | May 13, 2011 Decision may be recorded on this date. |

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$5,077.00 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chairperson or other person-authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded. The applicant, builder, or a representative may record the final decision as follows:
- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

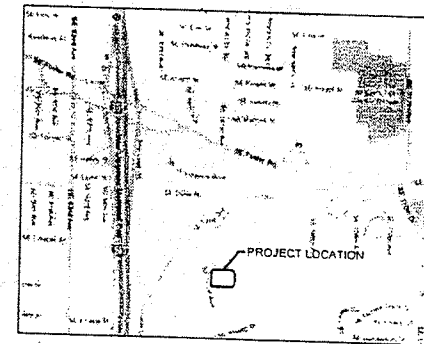
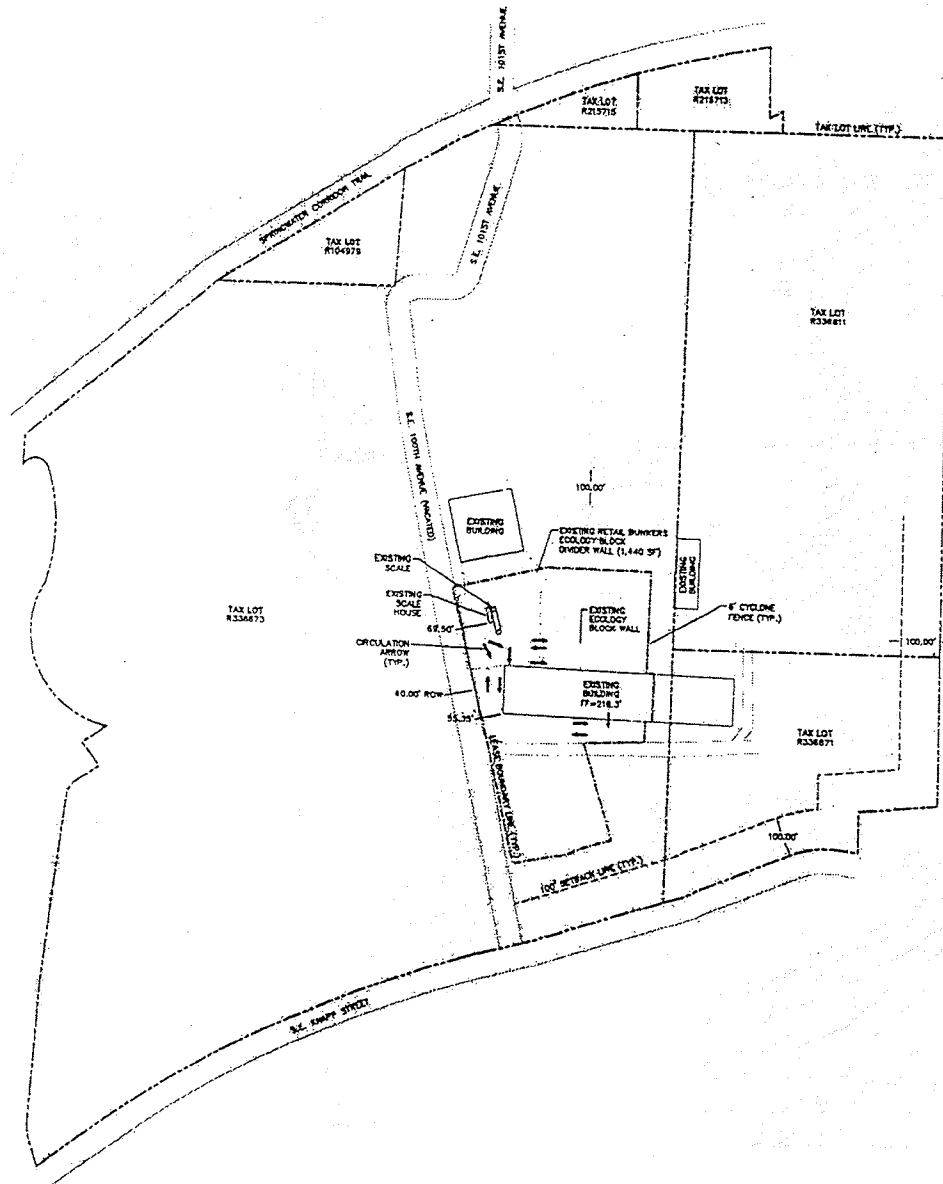
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
 - 1. Project Proposal and Response to Approval Criteria
 - 2. Traffic Analysis, prepared by Kittelson and Associates, dated October 18, 2010
 - 3. Applicant's letter responding to staff's application completeness review
 - 4. Ground Lease Document
 - 5. Traffic Analysis Letter, dated February 6, 2011
 - 6. Traffic Analysis Addendum, dated March 9, 2011
 - 7. Request for Evidentiary Hearing and 120-Day Waiver
- B. Zoning Map (**attached**)
- C. Plans and Drawings
 - 1. Site Plan, submitted January 28, 2011 (**attached**)
 - 2. Partial Site Plan with Floor Plan, submitted January 28, 2011 (**attached**)
 - 3. Partial Existing Conditions Plan, submitted January 28, 2011
 - 4. Building Elevations – Existing Building, submitted January 28, 2011
 - 5. Aerial Photo showing existing conditions, submitted January 28, 2011
 - 6. Site Plan, submitted November 19, 2010
- D. Notification information
 - 1. Request for Response
 - 2. Posting Letter Sent to Applicant
 - 3. Notice to be Posted
 - 4. Applicant's Statement Certifying Posting
 - 5. Mailing List
 - 6. Mailed Notice
- E. Agency Responses
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. TRACS Print-Out – “No Concerns” Response from Bureau of Parks, Forestry Division, Site Development Review Section of Bureau of Development Services, Life Safety Review Section of Bureau of Development Services
- F. Letters
 - 1. Larry and Darcy Niemeyer, March 9, 2011, opposes proposal (theniemeyers@comcast.net)
11045 SE Henderson Portland OR 97266
 - 2. Gary Gossett, March 13, 2011, opposes proposal (botanytrek@hotmail.com)
- G. Other
 - 1. Original LUR Application
 - 2. LUR Application with Owner Information
 - 3. Site History Research

4. Incomplete Application Letter to Applicant from Staff
 5. Pre-Application Conference Summary Report
 6. Copy of Easement, with Stipulations, Granting Property Owner Access Rights Through City-Owned Springwater Corridor, submitted from Parks Bureau staff
- H. Received in the Hearings Office
1. Hearing Notice - Frugoli, Sheila
 2. Staff Report - Frugoli, Sheila
 3. 4/4/11 e-mail from Frank and Debra Fleck - Frugoli, Sheila
 4. 3/30/11 letter, Loftus to Frugoli - Frugoli, Sheila
 5. 3/23/11 letter, Michael C. Robinson to Frugoli - Frugoli, Sheila
 6. Plan - Robinson, Michael
 7. PowerPoint presentation printout - Frugoli, Sheila
 8. Letter - Christensen, Gregg
 9. Request to be added to mailing list - DeLapp, Laurie
 10. Letter - Fleck, Frank and Debra
 11. 4/6/11 letter - Fleck, Frank and Debra
 12. Business cards for Metzler and Rawson to be added to mailing list - Metzler, Bill and Rawson, Stephanie
 13. 4/7/11 letter - Robinson, Michael
 14. 4/7/11 letter - Robinson, Michael
 15. 4/7/11 Memo with attachment - Frugoli, Sheila
 - a. 4/7/11 letter from Robinson - Frugoli, Sheila
 16. Final written argument - Robinson, Michael

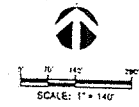
LA 10-194818 CA AD
Exhib. # C.1



SITE VICINITY MAP
SCALE: NONE

NOTES

1. TAX LOT LINES ARE BASED ON OS INFORMATION AND ARE SHOWN FOR REFERENCE ONLY.



PBS

Engineering & Environmental
1110 Main Street
Vancouver, WA 98660
360.470.4331 Main
800.727.0160 Fax
www.pbsema.com

**RECOLOGY OREGON MATERIAL
RECOVERY, INC. - FOSTER ROAD**
6400 SE 101ST AVENUE
PORTLAND, OREGON 97266



SITE LOCATION

PROJECT: 17986.001
OWNER: JC
DRAWN: JVS
DATE: JANUARY 26, 2011
APPROVED:

C0.0

CONDITIONAL USE
CIVIL BRANCH 02



 Site
 Also Owned



NORTH

This site lies within the:
JOHN SON CREEK BASIN PLAN DISTRICT

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

STANDARD MATERIAL
NEW 212.08
10' 10" 46' NORTH 71° 30' 16"
12' 10" 46' WEST 200.00'
12' 10' 46' SOUTH 71° 30' 16"

STANDARD MATERIAL
NEW 211.41
12' 10' 46' NORTH 71° 30' 16"
12' 10' 46' WEST 200.00'

STANDARD MATERIAL
NEW 210.90
12' 10' 46' NORTH 71° 30' 16"
12' 10' 46' WEST 200.00'

STANDARD MATERIAL
NEW 210.93
12' 10' 46' NORTH 71° 30' 16"
12' 10' 46' WEST 200.00'

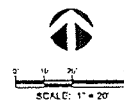
LEASED AREA SUMMARY:

| | |
|--------------------------------|---------------------|
| TOTAL AREA | 248,047 SF (1,072') |
| IMPERVIOUS AREA | 248,047 SF (1,072') |
| BUILDING COVERAGE | |
| TOTAL BUILDING FOOTPRINT | 48,251 SF (11.24%) |
| BUILDING AREA FOOTPRINT | 45,981 SF (11.24%) |
| SCALE HOUSE BUILDING FOOTPRINT | 340.87 (0.013%) |

*PERCENTAGE OF THE LEASED AREA ONLY.

GENERAL NOTES

- CONTRACTOR SHALL FIELD VERIFY THE LOCATION, ALIGNMENT, DEPTH AND INVERTS OF ALL EXISTING UTILITIES PRIOR TO BEGINNING CONSTRUCTION AND ORDERING MATERIALS. NOTIFY OWNER IMMEDIATELY OF EXISTING UTILITY CONFLICTS WITH NEW CONSTRUCTION.
- REPAIR AND OR REPLACE ALL SIDEWALK, WALLS, PAVEMENT, LANDSCAPE, UTILITIES ETC. THAT ARE DISTURBED BY CONSTRUCTION OF NEW UTILITIES TO SAME CONDITION OR BETTER.
- WQ-FILTERS (AIR) FOR ODOOR CONTROL WILL BE DONE IN PORTABLE CONTAINERS APPROXIMATELY 3'X6'X6' FILLED WITH 4 FEET OF MINERAL FIBER FILTRATION. THE CONTAINERS WILL BE OPEN ON TOP. EXCESS MOISTURE/RAIN WATER WILL DRAIN BACK INTO THE SYSTEM INSIDE THE BUILDING THROUGH DRAINS AND WILL BE RECYCLED BACK THROUGH THE SYSTEM OR STORED IN POLY TANK FOR TRANSFER OFF-SITE TO AN APPROVED DISCHARGE LOCATION.
- PROPOSED NEW ACTIVITIES INSIDE THE BUILDING INCLUDE THE TRANSFER OF ORGANIC WASTE TO AND FROM THE FACILITY AND THE REMOVAL OF THE MAINTENANCE SLOPE TO MAKE ROOM FOR THE ORGANIC WASTE TRANSFER. MAINTENANCE OF VEHICLES WILL NO LONGER TAKE PLACE AT THIS FACILITY INSIDE THIS BUILDING.
- NO DISCHARGE TO THE SANITARY SEWER OR STORMWATER IS PROPOSED WITH THIS PROCESS.



NOTICE TO EXCAVATORS:
ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THESE RULES ARE SET FORTH IN OUR 852-501-0010 THROUGH OUR 852-501-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER.

(NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503)-235-1483).

POTENTIAL UNDERGROUND FACILITY OWNERS

Dig Safely.

Call the Oregon Dig-Safe Center
1-800-332-2344

EMERGENCY TELEPHONE NUMBERS

WE: NATURAL GAS
M-F 7am-8pm 503-276-4211 (x1 4313)
AFTER HOURS 503-228-4211
PG&E 503-464-7777
OWESI 1-800-573-1311
ON: BUREAU OF WATERWORKS 503-825-1700
CITY WATER 503-825-4874
VERIZON 1-800-463-1000

PBS

Engineering + Environmental
1310 Main Street
Vancouver, WA 98660
360 490 4331 Main
Fax 360 490 4331
www.pbsdm.com

RECOLOGY OREGON MATERIAL
RECOVERY, INC. - FOSTER ROAD
6400 SE 101ST AVENUE
PORTLAND, OREGON 97266

PARTIAL
PROPOSED
SITE PLAN

PROJECT: 1/10/2011
DATE: 1/10/2011
DRAWN: JC
CHECKED: JC
DATE: JANUARY 29, 2011
SCALE:

C2.0

CONDITIONAL USE
CIVIL DRAWINGS

LE/10-194818 CU AD
Exhibit C.2



CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Dan Saltzman, Commissioner ■ Dean Marriott, Director

LAND USE RESPONSE

Date: March 9, 2011
To: Sheila Frugoli, BDS Land Use Services 503-823-7817
From: Jocelyn Tunnard, BES Development Services 503-823-5780
Jennifer Antak, BES Watershed Services
Greg East, BES Pollution Prevention
Subject: LU 10-194818 CU
Location: 6400 SE 101ST AVE **Quarter Section:** 3740
R No: R022400260, R551002230, R551002240, R992211480, R992221570, R992222590

The following conditions of approval and informational comments are based on the land use review information provided to the Bureau of Environmental Services (BES). The applicant may contact me with any questions or concerns.

Proposal Summary: Conditional Use and 1 Adjustment to add food waste to existing Waste Related use. Changes to site circulation; no new buildings.

BES Response Summary: BES has no objections to the required Conditional Use Review to allow food waste to be accepted at this site for recycling. Refer to comment #2 below under Stormwater Management & Water Resources.

Sanitary Services

1. There is an 18-inch (that varies in diameter) concrete public sanitary gravity sewer located along the southern boundary of this site (BES project # 2484).

Stormwater Management & Water Resources

The stormwater runoff generated from the proposed development must meet the requirements of the City of Portland's Stormwater Management Manual current at the time of building plan review. For all projects, the Stormwater Hierarchy must be addressed. The applicant may contact BES with any questions or for additional information. The current 2008 Stormwater Management Manual (SWMM) can be found at: <http://www.portlandonline.com/bes/> under Publications and then go to Manuals.

1. There is no public storm-only sewer available to this property.
2. BDS has indicated there will be no exterior improvements/alterations and no new impervious area will be constructed as part of this project and it appears non-conforming upgrades are not required. An Adjustment to waive the required L1 landscaping standard in the required setback area had previously been requested, but appears to no longer be part of this review. Also, it appears this project will not need to bring existing areas into compliance with current landscaping requirements per Chapter 33.258.070, which would trigger Section 1.5 of the

E1

SWMM and require new landscaped areas to be utilized as vegetated stormwater facilities where feasible. Therefore, **BES has no objections to the required Conditional Use Review to allow food waste to be accepted at this site for recycling.**

Conditions of Approval

BES has no recommended conditions of Land Use Review approval.

Additional Information

1. Refer to BES Pre-Application Conference Response dated August 31, 2010 for additional information.
2. The site plan submitted for land use review identifies the existing private sanitary and storm system that serves the existing building being reviewed under this project, as required by BES. The information provided is sufficient for land use review, however, be aware that at the time of building permit review the label for the existing storm system will likely need to be revised because the label "SS" is typically used to identify sanitary sewers.
3. Be aware, there are a number of BES restoration projects located in areas surrounding this site. These projects are being designed to restore and improve the Johnson Creek flood plain area.

Building Permit Information

1. *SWMM Chapter 4 Requirements*: Design requirements from Chapter 4 of the SWMM (Source Controls) that may pertain to this project are briefly described below with the corresponding Chapter 4 section noted. BES recommends the applicant review Chapter 4 to help recognize other requirements that may apply to this project at the building permit review stage. BES recommends that requirements related to site contamination be addressed prior to submitting for building permit review to help avoid potentially long delays.
 - a. *Temporary Dewatering (Section 4.4 and Title 17 Chapters 34, 36, 39)*: This area is served by a separated sewer system. During construction, groundwater (estimated based on seasonally adjusted USGS data to be approximately 21-30 feet below grade surface) or precipitation water that is removed from the construction area and discharged to a City sewer requires pre-authorization/approval through the BES Batch Discharge Program. Fees are assessed for temporary construction discharges to the public sewer system - see the BES website for current rates and information about dewatering as it relates to construction projects.
 - b. *Solid Waste and Recycling (Section 4.5)*: Solid waste (including grease bins/drums/boxes) and recycling (plastic, paper, glass, etc.) areas require a structural cover with a paved surface beneath the receptacles, a bermed or graded isolated area beneath the cover to protect from stormwater run-on, and a drain to the sanitary sewer within the isolated covered area.
 - c. *Fuel Dispensing Areas (Section 4.7)*: Fuel dispensing areas generally require a canopy, pavement around the fueling area, and a drain beneath the cover that discharges to the sanitary sewer through a spill control manhole. Shut-off valves are required after the spill control manhole and on the adjacent storm sewer system.
 - d. *Vehicle Washing Areas (Section 4.9)*: Vehicle washing areas must be paved and isolated through berms or grading to protect from stormwater run-on. The paved area

must drain through an oil and water separator prior to discharging to the sanitary sewer. This area must include a structural cover.

- e. *Solid Bulk Material Storage and Processing (Section 4.10)*: The exterior storage or processing of bulk materials requires further review by BES Pollution Prevention. There are high-risk and low-risk materials. The stored materials will be evaluated to determine if the materials will leach out into stormwater. Some of the pollution controls that may be required are: pavement of the area, protection from stormwater run-on and runoff, a structural cover, and secondary containment.
 - f. *Solid Waste and Recycling (Section 4.5)*: Solid waste (including grease bins/drums/boxes) and recycling (plastic, paper, glass, etc.) areas require a structural cover with a paved surface beneath the receptacles, a bermed or graded isolated area beneath the cover to protect from stormwater run-on, and a drain to the sanitary sewer within the isolated covered area.
2. *Extra Strength Sewer Charge Program (Title 17 Chapter 34 & 36)*: The proposed business is required to comply with the City's Extra Strength Sewer Charge (ESSC) Program; therefore, the owner is required to install a sampling location. A sampling manhole is preferred but, if not feasible, an 8" sampling tee on the waste line will be allowed. The sampling location must be downstream of any treatment devices and must account for all flows leaving the business or establishment. The sampling tee location cannot be located in a public right-of-way or in an area that is highly trafficked by foot or vehicle.
 3. *Current NPDES or NEC Permit (Title 17 Chapter 39)*: This site is currently covered under a National Pollutant Discharge Elimination System (NPDES) stormwater permit. Please contact the City's permit manager for the site, Daryl Houtman, at 503-823-5535 to inquire how this proposal will impact the stormwater permit and building application.

**RESPONSE TO THE BUREAU OF DEVELOPMENT SERVICES
LAND USE REVIEW REQUEST**

**Portland Transportation
Development Review
Bureau of Transportation Engineering & Development**

LU: 10-194818-000-00-LU

Date: March 11, 2011

To: Sheila Frugoli, Bureau of Development Services, B299/R5000

From: Robert Haley, B106/800, 503-823-5171

Applicant: Recology *Dave Dutra*
RECOLOGY
4044 N SUTTLE RD
PORTLAND OR 97217

Location: 6400 SE 101ST AVE

TYPE OF REQUEST: Type 3 procedure CU - Conditional Use

DESCRIPTION OF PROJECT

Conditional Use and 1 Adjustment to add food waste to existing Waste Related use. Changes to site circulation; no new buildings.

RESPONSE

Portland Transportation/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.

BACKGROUND/PROPOSAL

Recology Oregon Material Recovery operates a MRF on SE 101st Avenue in southeast Portland. This facility currently accepts mixed dry waste from residential and commercial customers. This waste is delivered to the site, primarily by commercial vehicle, during the weekday and on weekends. Weekday hours are 7:00 a.m. to 5:00 p.m. and Saturday hours are 8:00 a.m. to 5:00 p.m. These times will remain the same with the proposed modifications to the operations. As part of an expanded recycling effort, Recology is proposing to modify the existing MFR building to enable the acceptance of organic food wastes in addition to the current dry waste capabilities. This will require internal modifications to the existing materials recovery building so that the organic food wastes can be received, properly mixed, and reloaded for transport to an off-site composting facility. No new buildings, expansion of existing buildings, or site access modifications are proposed as part of this plan.

The original transportation assessment letter did not explicitly account for a portion of the site (no more than 3,000 square feet) that will be used for a more focused sale of soil amendment (mulch and shredded bark) material to the general public. 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 existing uses at the site generate 290 daily trips, with 15 occurring in the am peak hour, and 5 occurring in the pm peak hour. The expanded use including the soil amendment sales will result in 400 daily trips, with 40 occurring in the am peak hour, and 20 in the pm 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 soils amendment sales. The peak hours are not anticipated to occur at the peak hours of bike/pedestrian uses of the Springwater Trail.

Site Conditions and Adjacent Land Uses

The existing MFR is located off of SE 101st Avenue in a predominately heavy industrial area. Figure 1 illustrates the site vicinity map. The site is currently zoned Heavy Industrial "IH". All adjacent land uses involve various kinds of heavy industrial businesses.

Street Classifications

At this location, SE Foster Road is classified as a Major City Traffic Street, Major Transit Priority Street, City Bikeway, City Walkway, Major Truck Street, and a Major Emergency Response Street.

SE 101st Avenue is classified as a Truck Access Street and a Local Service Street for all other modes.

Although the site is located in a predominately heavy industrial area, the popular Springwater recreational corridor bisects the study area approximately ¼ mile north of the Recology site. This corridor crosses SE 101st Avenue via an at-grade intersection. To accommodate the at-grade crossing of SE 101st Avenue, both the north and south approaches of SE 101st Avenue are stop controlled. In addition, bike lanes are striped on SE 101st Avenue to the north of the Springwater Corridor. This striping is similar to that used in City Bike Boulevards and not typical of a traditional bike lane. Access to the corridor is accompanied by bollards and decorative features to help distinguish the path location. In addition, a raised crosswalk is provided at the intersection of the Springwater Corridor with SE 101st Avenue. Each of these treatments helps to alert users and minimize potential conflicts between pedestrians and cyclists and industrial-related traffic.

Traffic Volumes and Peak Hour Operations

Manual turning-movement counts were conducted at the SE Foster Road/SE 101st Avenue intersection and site access driveway in September 2010. The counts were conducted on a typical mid-week day during the morning (7:00 to 9:00 a.m.) and evening (4:00 to 6:00 p.m.) peak periods. The morning peak hour was found to occur between 7:00 and 8:00 a.m. while the evening peak hour was found to occur between 4:55 and 5:55 p.m. As traffic volumes along SE 101st Avenue are relatively minimal, both of these peak time periods represent the peak traffic conditions on SE Foster Road. Further, as noted previously, the p.m. peak hour is outside the daily operations of Recology (which closes at 5:00 pm).

Springwater Corridor Bicycle/Pedestrian Volumes

Given the significance of the Springwater Corridor as a major recreational/commuter route for pedestrians and cyclists, twelve-hour modal counts were obtained at the SE 101st Avenue crossing. 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.

Current and Future Levels of Service

All three study intersections, SE Foster and SE 101st, SE 101st and Springwater Corridor Trail, and SE 101st and the site driveway are expected to continue to operate acceptably at LOS A in the even with the

additional traffic generated by the proposed uses.

Traffic Safety

The crash history at the SE Foster Road/SE 101st Avenue intersection was reviewed in an effort to identify potential safety issues associated with the intersection. Crash records were obtained from ODOT for the most recent five-year period available: January 1, 2004 through December 31, 2008.

There were four crashes reported at the SE Foster Road/SE 101st Avenue intersection during the five-year study period. The four crashes reveal no distinctive or correctable patterns in the type of crashes, severity, time of day, or traffic conditions. As far as the SE 101st Avenue crossing of the Springwater corridor, there were no vehicular/pedestrian/bicycle related crashes at this location within the five-year study period. In addition, there were no pedestrian or bicycle-related crashes at the SE 101st Avenue/SE Foster intersection.

Proposed Expanded Use Plans

As previously stated, the existing materials recovery building is proposed to be internally modified so that the organic food wastes can be received, properly mixed, and reloaded for transport to an off-site composting facility. The proposal also includes a limited retail use for the sale of soil amendments. No new buildings, expansion of existing buildings, or site access modifications are proposed as part of this plan. As a result, the ability for the site to begin accepting this new material can occur relatively quickly.

Trip Generation

The existing MRF is currently open for business between the hours of 7:00 a.m. and 5:00 p.m. During the regional weekday a.m. and p.m. peak traffic hours (7:00-8:00 a.m. and 4:55-5:55 p.m.), the site generates relatively minimal traffic volumes. Recology estimates that the accommodation of food waste is not anticipated to generate a significant increase in weekday a.m. and p.m. peak hour traffic. It is estimated that the site will see an increase in roughly 45 new truck trips to/from and 20 new vehicle trips related to the soil amendments sale to the site between the hours of 8:00 a.m. and 4:00 p.m. These trucks will consist of garbage style trucks (approximately 35 trucks) delivering food waste (mixed with organic waste) and semi-trucks (approximately 10 trucks) hauling away the processed waste for delivery to an off-site composing facility. Based on this information and the inability to precisely estimate the arrival/departure patterns of the added truck trips during the weekday a.m. and p.m. peak hours, it is assumed that the expanded use of the recycling center will generate a doubling of existing weekday a.m. and p.m. peak hour trips. This is much greater than anticipated by Recology. While conservative, this estimate will account for any variability in projected traffic increased with the expanded use.

Impacts to the Springwater Corridor

As previously noted, the acceptance of food waste at the MRF could 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. Given, the presence of 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, and the lack of any historical safety issues, and the relatively minimal increased in site traffic suggests that the expanded use of the MRF will have no significant impact to pedestrians and bicyclists along the corridor.

In accordance with the pre-application conference materials, Kittelson & Associates, Inc. has completed a review of Section 33.815.220.F (items 1 and 2) for waste related conditional uses. Specifically, items 1. and 2. of the *Public Services* section are addressed below.

F. Public Services

1. SE 101st Avenue is currently designated as a Local Service Traffic Street and a Truck Access Street. As outlined in the transportation analysis, the proposed expanded use is not anticipated to have a significant trip generation impact or generate trip types that are inconsistent with these two applicable street designations.

2. As outlined in the transportation analysis section of this report, the transportation system is capable of supporting the additional traffic estimated to be generated by the proposed expanded use. In summary, SE Foster Road and SE 101st Avenue can support the recycling center/soil amendment sales from a capacity, safety, and access standpoint. The proposed use is not anticipated to have any detrimental impacts on the overall safety of the Springwater corridor crossing along SE 101st Avenue.

Section 33.805.040.A

A review of Section 33.805.040.A has been prepared to address adjustments to the existing zoning code. Specifically, a review of the loading, driveway locations, parking access restricted street, and parking spaces has been prepared.

A. The proposed expanded use does not include any driveway modifications to SE 101st Avenue, does not modify access for trucks or passenger cars, or modify the orientation or amount of parking spaces. As such, there no applicable transportation related adjustments to current zoning code regulations.

Neighbor Concerns

The Bureau of Development Services received an email from a neighbor bordering the southern boundary of the site on SE Knapp Street. The south side of SE Knapp Street is zoned primarily for single-family and low density multi-residential uses. 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 the access to the site from SE Knapp Street would be prohibited 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.

Transportation System Development Charges (Chapter 17.15)

System Development Charges (SDCs) may be assessed for this development. The applicant can receive an estimate of the SDC amount prior to submission of building permits by contacting Rich Eisenhauer at 503-823-7080.

Driveways and Curb Cuts (Section 17.28)

Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of building permits.

RECOMMENDATION

No objection to approval subject to the following conditions:

- Recology owned vehicles are prohibited from accessing (ingress and egress) the site from SE Knapp Street.
- Recology shall provide written notification to all businesses that will have vehicles coming to the site related to Recology activities that instructs their drivers to not use SE Knapp Street for access (ingress and egress) to the site.

**GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR
EVIDENTIARY/DE NOVO APPEALS**

1. SUBMISSION OF TESTIMONY

- a. Testimony may be submitted in writing to the Council Clerk, 1221 SW Fourth Avenue, Room 140, Portland, Oregon 97204. Written comments must be received by the time of the hearing and should include the case file number.
- b. Testimony may be submitted orally (see below).

2. HEARINGS PROCESS

- a. The order of appearance and time allotments is generally as follows:

| | |
|----------------------------------|----------------|
| Staff Report | 10 minutes |
| Appellant | 10 minutes |
| Supporters of Appellant | 3 minutes each |
| Principal Opponent of the Appeal | 15 minutes |
| Other Opponents of the Appeal | 3 minutes each |
| Appellant Rebuttal | 5 minutes |
| Council Discussion | |

- b. The applicant has the burden of proof to show that each and every element of the approval criteria can be satisfied. If the applicant is opposing the Hearings Officer's recommendation, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the application must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidence submitted in support of the application demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong criteria are being applied or additional approval criteria should be applied.
- d. The failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the Hearings Officer decision are available for review, by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 823-4085 (TDD: 823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.