



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

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

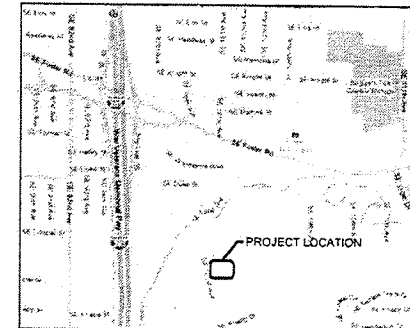
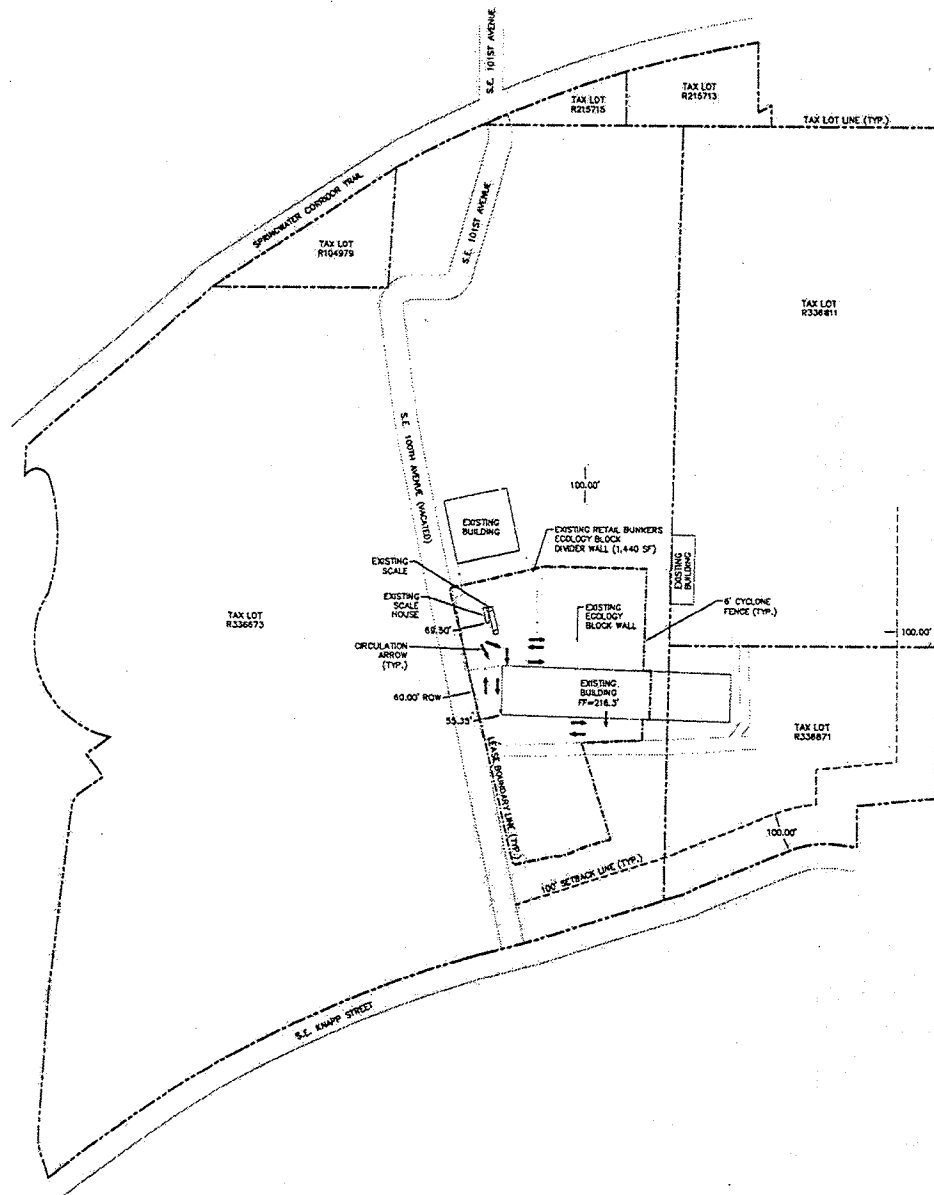
4. Incomplete Application Letter to Applicant from Staff
5. Pre-Application Conference Summary Report
6. Copy of Easement, with Stipulations, Granting Property Owner Access Rights Through City-Owned Springwater Corridor, submitted from Parks Bureau staff

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

Exhibit B (Nov 23, 2010)

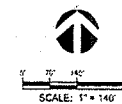
Ln 10-194818 CAD
Exhib. 1 C.1



SITE VICINITY MAP
SCALE: NONE

NOTES

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



SCALE: 1" = 140'

PBS
Engineering +
Environmental
1310 Main Street
Vancouver, WA 98660
360.690.4331 Main
360.727.0140 Fax
www.pbseia.com

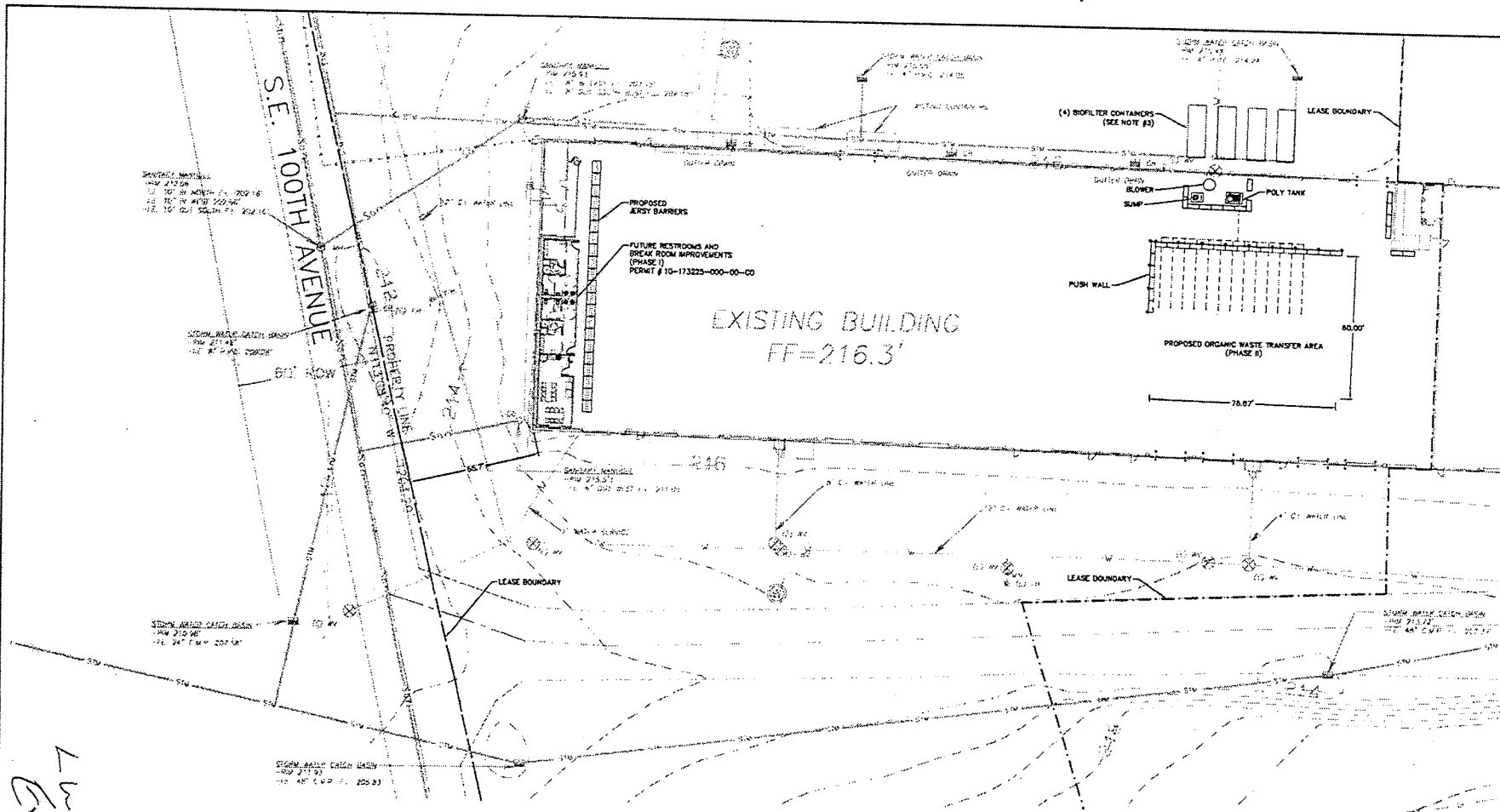
**RECOLOGY OREGON MATERIAL
RECOVERY, INC. - FOSTER ROAD**
6400 SE 101ST AVENUE
PORTLAND, OREGON 97266

SITE LOCATION

PROJECT: 17058.001
DRAWN: JC
CHECKED: DTS
DATE: JANUARY 26, 2011
BY: [signature]

C0.0

CONDITIONAL USE
CIVIL DRAWING



PORTLAND, OREGON
 100' 0" NORTH
 100' 0" WEST
 100' 0" EAST
 100' 0" SOUTH

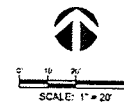
STORM WATER CATCH BASIN
 100' 0" NORTH
 100' 0" WEST
 100' 0" EAST
 100' 0" SOUTH

STORM WATER CATCH BASIN
 100' 0" NORTH
 100' 0" WEST
 100' 0" EAST
 100' 0" SOUTH

STORM WATER CATCH BASIN
 100' 0" NORTH
 100' 0" WEST
 100' 0" EAST
 100' 0" SOUTH

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.
- BIO-FILTERS (AIR) FOR ODOR CONTROL WILL BE DONE IN PORTABLE CONTAINERS APPROXIMATELY 22'X8'X10' FILLED WITH 4 FEET OF MATERIAL FOR 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 INVOLVE 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.



LEASED AREA SUMMARY:	
TOTAL AREA	268,047 SF (100%)
IMPERVIOUS AREA	268,047 SF (100%)
BUILDING COVERAGE:	
TOTAL BUILDING FOOTPRINT	48,337 SF (17.7%)
BUILDING 4A FOOTPRINT	48,997 SF (18.2%)
SCALE HOUSE BUILDING FOOTPRINT	140 SF (0.05%)

*PERCENTAGE OF THE LEASED AREA ONLY.

NOTICE TO EXCAVATORS:
 ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 852-001-0000 THROUGH OAR 852-001-0010. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER.
 (NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503)-232-1987.)

POTENTIAL UNDERGROUND FACILITY OWNERS

Dig Safely.
 Call the Oregon One-Call Center
 1-800-332-2344

EMERGENCY TELEPHONE NUMBERS

NW NATURAL GAS
 24-Hour Burn 503-276-4211 Ext 4313
 AFTER HOURS 503-226-4211
 PCE 503-484-7277
 ONECALL 1-800-523-1311
 CITY DEPT OF MAINTENANCE 503-823-1700
 CITY WATER 503-823-4874
 VERIZON 1-800-463-1000

PBS
 Engineering - Environmental
 1210 Main Street
 Vancouver, WA 98660
 360.490.4331 Main
 360.722.0740 Fax
 www.pbsenv.com

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

PARTIAL
 PROPOSED
 SITE PLAN

PROJECT: 14000001
 DRAWN: JC
 CHECKED: DG
 DATE: JANUARY 29, 2011
 APPROVED:

C2.0

CONDITIONAL USE
 CIVIL DRAWING

Exhibit C.2
 L-10-194818 CAD