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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

3 RENA CUSMA, EXECUTIVE OFFICER)
OF THE METROPOLITAN SERVICE)
4 DISTRICT OF PORTLAND, OREGON,)
5) LUBA No. 87-093
Petitioner,)
6 vs.) FINAL OPINION
AND ORDER
7 CITY OF OREGON CITY,)
8 Respondent.)

9 Appeal from City of Oregon City.

10 John B. Leahy and Colleen M. Morgan, Portland, filed a
11 petition for review and Colleen M. Morgan argued on behalf of
12 petitioner. With them on the brief was Williams, Fredrickson,
Stark & Weisensee, P.C.

13 Edward J. Sullivan, Portland, filed a brief and argued on
14 behalf of the City of Oregon City. With him on the brief was
Mitchell, Lang & Smith.

15 BAGG, Chief Referee.

16 AFFIRMED 03/16/88

17 You are entitled to judicial review of this Order.
18 Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 The Metropolitan Service District (Metro) appeals the
4 denial of its request for modification of a conditional use
5 permit under which it operates a solid waste transfer station
6 in the city. Metro asks that LUBA reverse the city's decision
7 or remand it for additional findings consistent with the
8 evidence.

9 STANDING

10 Standing is an issue in this case. Petitioner says it
11 timely filed a notice of intent to appeal, appeared before the
12 city planning commission and was entitled to notice of the
13 decision sought to be reviewed. Petitioner also alleges it was
14 aggrieved by denial of its application. Metro argues these
15 facts entitle it to standing under ORS 197.830(3).

16 Respondent City claims that while Metro appeared in the
17 proceedings below, notice of intent to appeal was brought in
18 the name of Rena Cusma, executive officer of the district.
19 Respondent argues Ms. Cusma was not a party to the city's
20 proceedings and did not appear before the city. Respondent
21 adds that Ms. Cusma was not entitled to notice and hearing on
22 the decision. Further, respondent argues that in her capacity
23 as Metro's executive officer, Ms. Cusma is neither aggrieved
24 nor has interests adversely affected by the decision.

25 While it does appear that the appeal was brought in the
26 name of Rena Cusma, the text of the petition for review makes

1 it quite clear that it is the district itself that is
2 interested in the city's action, not any individual employee of
3 the district. The addition of Ms. Cusma's name as executive
4 officer on the title page of the notice of intent to appeal and
5 the petition for review is surplusage only. The Board
6 concludes, therefore, that it is the district bringing this
7 proceeding, and the district is entitled to standing.

8 FACTS

9 The Clackamas Transfer and Recycling Center (CTRC) is
10 located between Washington Street and the Southern Pacific
11 railway line in Oregon City. The property is zoned M-2, Heavy
12 Industrial, in the city's zoning map. Metro received a
13 conditional use permit from the city for a solid waste transfer
14 facility at this location on June 24, 1981. A condition of
15 that initial permit stated the facility is limited to 400 tons
16 of solid waste per day. The condition has been varied from
17 time to time over the life of the permit, and the tonnage limit
18 is now 700 tons per day. The increase to 700 tons per day was
19 made in June, 1986, and was viewed as temporary. In January,
20 1987, the planning commission made its annual review of the
21 permit and again approved operation of the transfer station
22 with a 700 ton per-day limit.

23 The current application for unlimited tonnage was made on
24 June 30, 1987. The planning commission held a hearing on
25 July 28, 1987 and denied the application. The city
26 commissioners affirmed that denial. This appeal followed.

FIRST ASSIGNMENT OF ERROR

"Metro asserts the city's tonnage limitation on the CTRC is inconsistent with Metro's regional solid waste planning and disposal responsibilities, and therefore invalid. ORS 268.380 et. seq., ORS 268.317 and ORS Chapter 459.

Metro argues the city is without legal authority to impose a tonnage limit on the CTRC.¹ The city responds that LUBA has no authority to review this claim.

Respondent advises it rejected the preemption argument because Metro did not raise this issue in its notice of review to the city commission as required by the city's code Section 11-13-4(E). Because of this failure, the city says it was under no obligation to consider Metro's argument; and, consequently LUBA has no authority to review this claim.

Oregon City Code Section 11-13-4(E) provides

"Review by the City Commission upon notice of review by an aggrieved party shall be limited to the grounds relied upon in the petition or request for review."

Metro's notice of appeal to the city commission does not list the issue of Metro's preeminent authority over local government as a part of the appeal. Metro's challenges to the planning commission decision as listed in the notice are limited to specific findings by the planning commission about tonnage limitations and environmental concerns.

After conclusion of the city's consideration of Metro's appeal, the city provided Metro with the opportunity to comment on the proposed findings. Metro did so comment, and argued to the city that it lacked authority to impose tonnage limitations

1 "because of the statutory scheme contained in ORS Chapter
2 459." See Record 24. The city then responded to this point in
3 its adopted findings. The city stated it rejected the argument
4 because Metro did not raise the issue on review to the city,
5 because the Metro Solid Waste Management Plan was not made a
6 part of the record in this proceeding and, lastly,

7 "the commission finds no basis for any preemption in
8 clearly inconsistent provisions of the city's
9 acknowledged Comprehensive Plan and implementing
10 ordinances on the one hand, and Metro's Solid Waste
Management Plan on the other, even if this Commission
were requested to, and did take official notice of
Metro's Solid Waste Management Plan." Record 20.

11 The city went on to conclude that

12 "its zoning ordinance allows the city to set
13 restrictions on conditional uses * * *." Id.

14 Metro did not comply with the provisions of the city code
15 requiring notice of the issues on appeal. Under the city code,
16 the city was not obliged to consider arguments not raised in
17 the notice of appeal. See Muhs v. Jackson Co., 12 Or LUBA 201
18 (1984). However, the city did consider Metro's preeminence
19 argument in its final order. Under these circumstances, the
Board believes it may consider Metro's argument.²

20 Metro states it is the regional planning coordinator for
21 the Portland metropolitan area. See ORS 197.190. Metro is
22 responsible for regulating and controlling solid waste
23 disposal. ORS 268.317. Metro also is given broad power under
24 ORS 459.095(1). This statute provides

25 "(1) No ordinance, order, regulation or contract
26 affecting solid or liquid waste disposal,

1 resource recovery or solid waste management shall
2 be adopted by a local government unit if such
3 ordinance, order, regulation or contract
4 conflicts with regulations adopted by the
5 commission pursuant to ORS 459.045 or with a
6 solid waste management plan or program adopted by
7 a metropolitan service district and approved by
8 the department or any ordinances or regulations
9 adopted pursuant to such plan or program."

10 Consistent with its regional planning authority, Metro may

11 "recommend or require cities and counties, as it
12 considers necessary, to make changes in any plan to
13 assure that any plan and any actions taken under it
14 conform to the district's functional plan adopted
15 under subsection (2) of this section." ORS 268.390(4).

16 Pursuant to this statutory authority, Metro adopted a solid
17 waste management plan in 1974. Metro argues that its plan
18 preempts any inconsistent local action. Metro posits the
19 city's tonnage limit is such an inconsistent local action.
20 Metro says a tonnage limit is inconsistent with "the regional
21 nature of solid waste disposal." Petitioner's Brief at 7.
22 Metro urges that its request to modify the 400 ton limitation
23 is an acknowledgement that the regional solid waste problem,
24 for which Metro is responsible, will not be met with this
25 limitation in place.³

26 Respondent argues that in order for the doctrine of
preemption of local authority to apply, one must first
determine whether the action of the local government is
authorized by charter or statute and whether the local action
contravenes any state or federal law. See La Grande/Astoria v.
PERB, 21 Or 137, 576 P2d 1204 (1978). According to respondent
city, it was acting under its statutory and charter authority

1 in adopting its comprehensive plan and implementing ordinances
2 and, in this case, applying a tonnage limit as a condition to
3 its grant of a conditional use permit.

4 The city further argues that where, as here, the city acts
5 within its enabling authority, the issue then becomes whether
6 the action is incompatible with some state or federal
7 legislative policy. Respondent city argues this action is not
8 inconsistent with any such law or policy.

9 As noted earlier, ORS Chapter 268 providing for the
10 establishment of the Metropolitan Service District and
11 ORS Chapter 459, providing for regulation of solid waste, grant
12 Metro broad powers. See ORS 268.300. Those powers include the
13 power to "dispose, and provide facilities for disposal of solid
14 and liquid wastes." ORS 268.310(2). See also ORS 268.317. In
15 addition, Metro has the power to coordinate all planning
16 activities affecting land use within Metro boundaries.
17 ORS 197.190. This broad power includes specific power
18 prohibiting the adoption of an ordinance which conflicts with
19 Metro's Solid Waste Management Plan or a program adopted by the
20 district. ORS 459.095(1).

21 Notwithstanding these provisions, Metro cites nothing in its
22 Solid Waste Management Plan which prohibits the local
23 government from adopting controls on Metro owned or operated
24 facilities. Indeed, part of Metro's plan provides that

25 "existing zoning of the site and surrounding areas
26 should be industrial, or the land must be rezoned
industrial, or a conditional use permit must be

1 obtained." Metro Solid Waste Management Plan 14-6;
2 14-7.

3 With this provision, Metro appears to recognize the
4 existence of local zoning controls (and, arguably, limits to
5 Metro's broad authority). Metro's plan does not establish
6 tonnage limits or otherwise suggest that some local regulation
7 of Metro's facilities is preempted. LUBA finds the statutes
8 cited by Metro and the Metro Solid Waste Plan do not clearly
9 establish the preemption Metro asserts. The Board concludes
10 the city is free to establish the tonnage limit consistent with
11 its own land use controls.

12 The First Assignment of Error is denied.

13 SECOND ASSIGNMENT OF ERROR

14 "The City's order denying the deletion of the tonnage
15 limitation is not supported by substantial evidence."

16 Petitioner divides this assignment of error into several
17 parts. Each part alleges the evidence is sufficient to show
18 compliance with a particular Oregon City Code requirement and
19 that the city's evidence is insufficient to support denial of
20 each of the cited city code requirements.

21 "A. OCCC 11-6-1(A)(2). The characteristics of the
22 site are suitable for the proposed use considering
23 size, shape, location, topography, existence of
24 improvements and natural features."

25 Under this criterion, the city found the facility was
26 originally sized to accommodate a maximum delivery of 400 tons
per day. The city cites Metro's application for a site plan
and design review made in October 1981 showing it was sized to

1 receive an average daily delivery of 350 tons per day.
2 Additional capacity to cover a 50 ton surge or overflow results
3 in the 400 ton figure. The city went on to find Metro
4 testified at the July 28, 1987, hearing that if the facility
5 were operated on a 24-hour-a-day basis, the capacity could
6 exceed 3,000 tons per day.

7 The city found the facility has been operating in excess of
8 the 400 ton figure for the past five years. The city concluded
9 that the character of the site, particularly considering the
10 size of the facility, makes it unsuitable for the proposed
11 request to allow unlimited tonnage.

12 Petitioner complains that

13 "a reasonable mind could not have found that the
14 original 400 tons per day capacity level was either
15 permanent or an indication of the facilities [sic]
16 capacity to handle more waste per day." Petition for
17 review at 10.

18 Petitioner notes testimony at the planning commission
19 hearing showed that the tonnage limit "had more to do with
20 conditions existing at the time of the original conditional use
21 permit rather than with the true capacity of the facility."
22 Record 21-22, 57-59. Petitioner argues the capacity of the
23 facility is not how much garbage can be held at a particular
24 time, but how fast the garbage can be removed from the pit, how
25 many people can be lined up at the "tipping well" and how many
26 people can move in and out of the facility.

27 Metro adds the fact the facility has processed more than
28 400 tons per day since the granting of the original conditional

1 use permit results in an acknowledgement by the city that the
2 CTRC has a capacity of over 400 tons per day. Metro presents
3 additional testimony showing that persons originally making
4 application were mistaken in the capacity of the facility
5 (Record 57-59).

6 The Board understands petitioner's challenge to be limited
7 to the city's conclusion that this site is not suitable for
8 more than a 400 ton per day transfer station. That is, the
9 facility is sized for 350 (or 400) tons per day and no more.
10 The record includes a "project history" at Record 84-87. The
11 history shows that the permit included a condition stating that
12 the facility would be sized for a maximum of 400 tons per day.
13 This sizing was established by the applicant. There is
14 testimony in the record that Metro's original application
15 stated the pit was sized for an average daily delivery of 350
16 tons. Record 58.

17 While the evidence relied upon by the city may be
18 sufficient to show that the original application stated the
19 facility was "sized" for a particular level of delivery, the
20 evidence does not appear to address the question of whether the
21 "characteristics of the site are suitable for the proposed use
22 considering size, shape, location, topography, existence of
23 improvements in natural features." Also, there is no evidence
24 the city considered the physical characteristics of the CTRC
25 when it established the original 400 ton limit. The Board
26 recognizes the city argues that it may interpret the word

1 "size" in its code to mean the limit placed upon the applicant
2 in the original conditional use permit. However, given the
3 other factors included in the criterion, the city's
4 interpretation is unreasonable. See Alluis v. Marion County,
5 64 Or App 478, 668 P2d 1242 (1983). The finding, and the
6 evidence cited, does not discuss the capacity of the facility
7 in terms of the physical capacity of the station or physical
8 features of the location. The criterion demands such a
9 discussion.

10 Petitioner is correct that the city's finding is not
11 supported by substantial evidence in the record. However, this
12 finding does not mean that the city's decision must be reversed
13 or remanded. If sufficient reason exists to deny the request
14 for unlimited tonnage capacity, the condition may be upheld.
15 Weyerhauser v. Lane Co., 7 Or LUBA 42 (1982).⁴

16 "B. OCCC 11-6-1(A)(3). The site and proposed
17 development is timely, considering the adequacy of
18 transportation systems, public facilities and services
19 existing or planned for the area affected by the use.

19 Petitioner states that the "main issue" in the application
20 of this particular criterion is the alleged increase in traffic
21 resulting from an unlimited tonnage capacity at the CTFC.
22 Petitioner claims Metro met its burden by showing that traffic
23 increases will be offset by other factors, that traffic is not
24 a problem in the area, and that an increase in tonnage would
25 not result in a substantial increase in traffic or some other
26 traffic problem. Metro adds that the building of an Oregon

1 City bypass highway and the closure of the Rossman Landfill
2 will help reduce traffic impacts.⁵

3 Respondent disagrees. The city found the proposed tonnage
4 increase would result in an additional 100-135 garbage truck
5 trips per day. Record 16. It found that Metro failed to
6 adequately address the impacts of such a traffic increase, and
7 concluded Metro failed to meet its burden under this
8 criterion. See Record 53. Respondent city points out that the
9 district's testimony, claiming no increased traffic burden, is
10 based on the district's apparently erroneous premise that only
11 20 additional trips per day would occur as a result of the
12 increased tonnage limit. However, since the city found the
13 increase was closer to 100-135 trips per day, from a Metro
14 representative's own testimony, the city argues that Metro's
15 view of the resultant traffic burden is erroneous. The
16 district simply did not address the impact of the additional
17 100-135 vehicle trips per day, according to the city.

18 The Board concludes the city's evidence is sufficient to
19 support its conclusion of noncompliance for this criterion.
20 The city found that Metro did not address the impact of the
21 increased traffic. Metro does not point to evidence showing
22 the impact of 100-135 additional trips per day will not result
23 in an increased traffic burden beyond that permitted under the
24 city's code.

25 This subassignment of error is denied.

26 "C. OCCC 11-6-1(A)(4)". The proposed use will not

1 alter the character of the surrounding area in a
2 manner which substantially limits, impairs, or
precludes the use of surrounding properties for the
primary uses listed in the underlying district."

3
4 Under this claim, petitioner first notes that the city
5 pointed to no evidence in the record supporting its claim that
6 an increase in noise would result if the tonnage limit were
7 increased. Petitioner adds that there are now no noise
8 problems evident beyond the building "in part due to industry
9 noise and traffic noise in the area." Petitioner's Brief at 14.

10 Petitioner adds that the nearby Rossman Landfill is to be
11 closed. Any noise over and above that expected when the
12 original conditional use permit was issued would be offset by a
13 decrease in noise from the closure of the landfill, according
14 to Metro.

15 The city's findings make only a passing reference to
16 noise. The city's findings address odor and litter. The
17 Board's review will be limited to the odor and litter issues.

18 Petitioner claims the city's conclusion that there will be
19 an increase in odor problems is not supported by substantial
20 evidence. Metro does not argue there is no odor emanating from
21 the CTRC, but claims odors have remained unchanged since the
22 original conditional use permit was granted. Metro says that
23 odor stems from both the surface area and the length of time
24 the surface area is exposed; and, therefore, an unlimited
25 tonnage volume should not produce more odor than that existing
26 now.

1 The city cites testimony by planning staff and a nearby
2 resident that odors emanating from the facility are a problem.
3 There is additional evidence from a city planner stating that
4 she continues to hear complaints about odors on hot still days
5 and damp days with no wind. Record 40, 90. The fact that the
6 city chose to believe its planner and a nearby resident is not,
7 according to the city, error.

8 The city does not cite evidence showing that an increase in
9 the tonnage limit will result in more odor. The city evidence
10 only supports the conclusion that an odor problem exists.
11 Therefore, the Board finds petitioner is correct that there is
12 no evidence showing odor problems will increase if the tonnage
13 limit is lifted.

14 Petitioner next argues that the city's findings that litter
15 will have a negative impact on the area are not supported by
16 substantial evidence. Metro acknowledges that some litter
17 results from the CTRC, but any litter problem is primarily the
18 result of private haulers failing to put tarpolins over their
19 loads. Record 22, 42. Metro also claims the record shows the
20 percentage of private haulers is minor. Record 42, 54. Metro
21 argues an increased tonnage limit will result largely in
22 increasing commercial haulers, but only a small increase in the
23 number of private haulers. Metro adds that it continues to
24 work on litter problems and will remain committed to minimizing
25 negative impacts inherent to such a facility. Record 98.

26 Respondent city relies on a staff report showing that the

1 litter problems have not been resolved. See Record 39-40, 89.
2 There is testimony of a nearby resident that while litter is
3 picked up, the litter bags are not collected promptly. There
4 is additional evidence by a district representative that
5 private users constitute a majority of the users, and that
6 private users would constitute at least a portion of the
7 additional facility use if the application for increased
8 tonnage is approved.

9 The city's conclusion that litter problems will worsen when
10 increased tonnage is allowed is supported by testimony in the
11 record regarding litter resulting from, generally, private
12 haulers. There is evidence to suggest that the number of
13 private haulers will increase as a result of the increased
14 tonnage limit, and that increase will result in further
15 litter. Record 48-49, 53-54. We conclude the city's findings
16 of noncompliance with OCC 11-6-1-A-4 is supported by
17 substantial evidence in the record, in part.

18 "D. OCC 11-6-1(A(5)). The proposal satisfies the
19 goals and policies of the Oregon City Comprehensive
20 Plan which apply to the proposed use. (Ord. 1982,
21 6-11-81)."

22 Under this assignment of error, petitioner advises the
23 city's comprehensive plan states that solid waste is a regional
24 concern requiring regional solutions. The city erroneously
25 uses this policy, according to Metro, to condemn the proposal
26 because Metro has "not kept its promises * * *." Record 19.
The city found Metro did not establish other transfer and

1 recycling centers. Had it done so, the existing facility could
2 operate at a level of approximately 400 tons per day, according
3 to the city. Record 19. The city concludes the "intent" of
4 the policy was violated because solid waste disposal is a
5 regional concern and because Metro has failed to implement
6 regional solutions.

7 The Board does not agree that the city's finding is a basis
8 for denial. The policy states as follows:

9 "2. Solid waste disposal is a regional concern
10 requiring regional solutions. Oregon City
11 acknowledges MDS's responsibility to prepare and
12 implement a solid waste management plan,
13 acknowledges the MDS 'Procedures for Siting
14 Sanitary Landfills', and will participate in
15 these procedures as appropriate."

16 The city's Solid Waste Policy II is not an approval criterion.
17 Rather, the policy is a general statement of the city's belief
18 about the nature of solid waste disposal.

19 Further, the city's order states the "intent" of the policy
20 is violated. Given this vague characterization of the
21 violation, it does not appear that the city is doing more, in
22 this finding, than chiding Metro. LUBA finds no error as
23 alleged.

24 "E. OCC 11-6-1(B). Permits for conditional uses
25 shall stipulate restrictions or conditions which may
26 include, but are not limited to, a definite time limit
to meet such conditions, provisions for a front, side
or rear yard greater than the minimum dimensional
standards of the Zoning Ordinance, suitable
landscaping, off-street parking, and any other
reasonable restriction, condition or safeguard that
would uphold the spirit and intent of the zoning
ordinance, and mitigate adverse effect upon the
neighborhood properties by reason of the use,

1 extension, construction or alteration allowed as set
2 forth in the findings of the Planning Commission."

3 Petitioner argues the findings under this criterion are
4 inadequate to support a denial. Metro advises the evidence in
5 the record shows that Metro has met its regional burden, and an
6 increase in the tonnage limit of the CTRC is in furtherance of
7 this regional solution.

8 The city found this criterion allows it to set restrictions
9 or conditions upon conditional use permits. Record 19. The
10 city concluded that limitations on tonnage are reasonable, and
11 that Metro's request is not reasonable "because it would impose
12 on the City of Oregon City a burden that requires a regional
13 solution that should be borne region-wide." The commission
14 then concludes that it is under no obligation to modify the
15 permit "even if such application complied with all the criteria
16 in Section 11-6-1(A). Record 20.

17 This criterion authorizes the city to impose conditions on
18 conditional use applications. It does not establish an
19 independent basis to approve or deny a permit application. The
20 city's discussion under this criterion about Metro's failure to
21 fulfill its responsibility for a regional solution to the solid
22 waste issue has nothing to do with attaching conditions which
23 "uphold the spirit and intent of the zoning ordinance, and
24 mitigate adverse effect[s] * * *." The finding is nothing more
25 than a statement of the city's view of Metro's posture in the
26 case. LUBA finds no error as alleged.

1 The Second Assignment of Error is sustained in part.
2 However, because the city's findings of noncompliance with
3 certain approval criteria are sustained, LUBA has no basis to
4 reverse or remand the city's decision.

5 THIRD ASSIGNMENT OF ERROR

6 "The City's Comprehensive Plan requires that the
7 disposal of solid waste be managed with a regional
8 focus. Conditional uses must be consistent with the
9 City's Comprehensive Plan. OCCC 11-6-1(A)(5)."

10 Under this last assignment of error, Metro argues that the
11 city misconstrued its comprehensive plan in denying this
12 request. Metro claims the CTRC is a regional facility, and a
13 tonnage limit interferes with disposal needs of the region.

14 LUBA understands petitioner to argue that because the plan
15 provides that solid waste is a matter of regional concern, any
16 restriction upon Metro's regional responsibilities is a
17 violation of the plan.

18 As discussed under assignment of error number one, the
19 Board does not read Metro's authority as broadly as Metro
20 wishes. Similarly, LUBA declines to declare that the regional
21 nature of the solid waste problem means the city has given
22 Metro all city responsibility to control land uses within its
23 jurisdiction.⁶

24 The Third Assignment of Error is denied.

25 The city's decision is affirmed.

FOOTNOTES

1

Metro quarrels with what it believes to be a city demand that Metro site a Washington County transfer facility before any modification of the tonnage limit will be considered. The Board does not read the city's order to condition any proposed change in the tonnage facility on a new transfer station. The city's decision tests the application against various city ordinance criteria, and the Board does not read the order to establish a contingency as petitioner describes.

2

Respondent also claims Sec. 15(1)(a), Chapter 729 Or Law 1987 prohibits LUBA's consideration of Metro's complaint. The law provides that a local appeal procedure applicable to applications for development of property entirely within the urban growth boundary shall:

"(a) Require an applicant or appellant to raise any issue before the local governing body with sufficient specificity so as to have afforded the governing body, and applicant, if appropriate, an adequate opportunity to respond to and resolve each issue.

The statute goes on to require that the local government must notify the applicant and "other persons as otherwise provided by law" that, among other things,

"failure to raise an issue in person or by letter precludes appeal and that failure to specify to which criterion the comment is directed precludes appeal based on that criterion * * *."

In this case, there is no assertion by respondent city that it provided this notice to the petitioner, and the Board therefore concludes the limitation is not applicable in this case.

3

Included in Metro's brief is a Resolution 88-820A. This resolution, adopted in January, 1988, claims that the imposition of a tonnage limit is contrary to the district Solid Waste Management Plan. However, Metro cites nothing in the Solid Waste Management Plan showing that a tonnage limit is, indeed, contrary to the district Solid Waste Management Plan. The Board therefore declines to consider Resolution 88-820A as authority for Metro's position.

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4 The city adds a statement that

"The characteristics of the site, particularly considering the size of the existing facility which is the only structure before the commission at this time, makes it unsuitable for the proposed request to allow unlimited tonnage at the facility." Record 14-15.

This conclusion is based on nothing other than the city's findings concerning an original capacity of the CTRC.

5 Metro cites no evidence to show these changes will be made. Petitioner's claims are speculative.

6 The Board expresses no opinion whether Metro has the authority to specifically limit the city's power to impose conditions on Metro's operations through Metro's Solid Waste Plan or by some other enactment.