

# **ANNOTATED MINUTES**

Thursday, November 7, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

## **REGULAR MEETING**

*Chair Beverly Stein convened the meeting at 9:34 a.m., with Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present and Vice-Chair Dan Saltzman excused.*

***AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, CONSIDERATION OF THE FOLLOWING ITEM WAS UNANIMOUSLY APPROVED.***

### **DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

UC-1      Intergovernmental Revenue Agreement 102907 with the Regional Drug Initiative for Support Staff Dedicated to the Initiative

***UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, THE AGREEMENT WAS UNANIMOUSLY APPROVED.***

### **CONSENT CALENDAR**

***UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-9) WAS UNANIMOUSLY APPROVED.***

### **SHERIFF'S OFFICE**

C-1      Package Store Liquor License Renewal for BIG BEARS CROWN POINT MARKET, 31815 E CROWN POINT HIGHWAY, TROUTDALE

C-2      Package Store Liquor License Renewal for CORBETT COUNTRY MARKET, 36801 NE CROWN POINT HIGHWAY, CORBETT

- C-3      Retail Malt Beverage Liquor License Renewal for BOTTOMS UP, 16900 NW ST. HELENS ROAD, PORTLAND
- C-4      Retail Malt Beverage Liquor License Renewal for WILD WOOD GOLF COURSE, 21881 NW ST. HELENS ROAD, PORTLAND
- C-5      Restaurant Liquor License Renewal for BIG BEARS CROWN POINT MARKET, 31815 E CROWN POINT HIGHWAY, TROUTDALE

#### **DEPARTMENT OF AGING SERVICES**

- C-6      Amendment 2 to Intergovernmental Agreement 400016 with Oregon Senior and Disabled Services to Fund Continued Services for the Elderly

#### **DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-7      Amendment 1 to Intergovernmental Agreement 102907 with the Regional Drug Initiative Reducing the Amount of Funding Available for Personnel Expenses

#### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

- C-8      ORDER Granting a Sewer Easement to the City of Gresham for Construction of the Vance Area II Mid-County Collector Sewer

#### ***ORDER 96-197.***

- C-9      NSA 22/23-95 Report to the Board the Hearing's Officer Decision Regarding an Appeal of an Administrative Decision for Approval of a Lot Line Adjustment and a Permit for a Manufactured Home on Property Located at 30600 NE LAMPERT ROAD, CORBETT

#### **REGULAR AGENDA**

#### **PUBLIC COMMENT**

- R-1      Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

***NO ONE WISHED TO COMMENT.***

#### **NON-DEPARTMENTAL**

- R-2        RESOLUTION Agreeing to the City of Portland's Request for the Transit Oriented Area Development Tax Exemption Program

**COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. MIKE SABA EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION REGARDING BOARD REVIEW OF THE EXEMPTION PROGRAM IN ONE YEAR. RESOLUTION 96-198 UNANIMOUSLY APPROVED.**

- R-3        Intergovernmental Agreement 500337 with Centennial School District Implementing a \$575,000 One Time Only Payment Included in the 1996-97 Adopted Budget
- R-4        Intergovernmental Agreement 500347 with Corbett School District Implementing a \$40,000 One Time Only Payment Included in the 1996-97 Adopted Budget
- R-5        Intergovernmental Agreement 500357 with David Douglas School District Implementing a \$410,000 One Time Only Payment Included in the 1996-97 Adopted Budget
- R-6        Intergovernmental Agreement 500367 with Gresham-Barlow School District Implementing a \$550,000 One Time Only Payment Included in the 1996-97 Adopted Budget
- R-7        Intergovernmental Agreement 500377 with Parkrose School District Implementing a \$360,000 One Time Only Payment Included in the 1996-97 Adopted Budget
- R-8        Intergovernmental Agreement 500387 with Portland Public Schools Implementing a \$7,650,000 One Time Only Payment Included in the 1996-97 Adopted Budget
- R-9        Intergovernmental Agreement 500397 with Reynolds School District Implementing a \$400,000 One Time Only Payment Included in the 1996-97 Adopted Budget
- R-10       Intergovernmental Agreement 500417 with Sauvie Island School District Implementing a \$5,000 One Time Only Payment Included in the 1996-97 Adopted Budget

**AT THE REQUEST OF CHAIR STEIN, COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF AGREEMENTS R-3 THROUGH R-10. DAVE WARREN EXPLANATION, ADVISING THE RIVERDALE SCHOOL DISTRICT AGREEMENT WOULD BE SUBMITTED AT ANOTHER TIME. CHAIR STEIN, COMMISSIONERS KELLEY, COLLIER AND HANSEN COMMENTS, ADVISING THAT THE ONE TIME FUNDING TO THE SCHOOL DISTRICTS WAS NOT EXTRA, BUT WAS TAKEN FROM COUNTY BUDGET AND PROGRAMS; THAT THE COUNTY GAVE UP ITS FISCALLY PRUDENT 5% GENERAL FUND RESERVE IN ORDER TO ASSIST THE SCHOOLS; THAT THE SCHOOL SUPERINTENDENTS WERE THE ONES WHO ESTABLISHED THE AMOUNTS PORTIONED OUT; AND THAT THE BOARD IS PLEASED TO CONTINUE ITS WORKING PARTNERSHIP WITH THE SCHOOLS. AGREEMENTS UNANIMOUSLY APPROVED.**

#### **DEPARTMENT OF SUPPORT SERVICES**

- R-11 Intergovernmental Agreement 500317 with the State of Oregon Regarding Senate Bill 1145 Facilities Lease and Sublease Documents

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, R-11 WAS UNANIMOUSLY POSTPONED TO TUESDAY, NOVEMBER 26, 1996.**

#### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-12 RESOLUTION Authorizing Acquisition of Certain Property for Construction of the NE 207<sup>th</sup> Avenue Connector, Between NE Halsey Street and NE 223<sup>rd</sup> Avenue at NE Glisan Street

**COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-12. BOB THOMAS EXPLANATION AND REQUEST FOR AMENDMENT DELETING THE LEGAL DESCRIPTIONS OF TWO PARCELS**



**RECENTLY ACQUIRED BY THE COUNTY. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, EXHIBIT PAGES 4 THROUGH 8 WERE UNANIMOUSLY DELETED FROM RESOLUTION. RESOLUTION 96-199 UNANIMOUSLY APPROVED, AS AMENDED.**

- R-13 ORDER Authorizing Publication of Notice of Private Sale of Certain Landlocked, Unbuildable Tax Foreclosed Property to Adjacent Property Owner Aurica Manu, Pursuant to ORS 275.225

**COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-13. KATHY TUNEBOG EXPLANATION. ORDER 96-200 UNANIMOUSLY APPROVED.**

- R-14 CU 6-96/SEC 18/96 Report to the Board the Hearings Officer Decision Regarding an Approval, Subject to Conditions, of a Conditional Use Permit and an SEC Permit for the Mining of Approximately 250 Acres on Property Located at 14545 NW ST. HELENS ROAD.

**CHAIR STEIN ADVISED APPLICANT APPEALED DECISION. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT A DE NOVO HEARING BE SCHEDULED FOR 9:30 AM, WEDNESDAY, NOVEMBER 27, 1996.**

*There being no further business, the regular meeting was adjourned at 9:55 a.m. and the executive session convened at 10:00 a.m.*

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Thursday, November 7, 1996 - 10:15 AM  
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

**EXECUTIVE SESSION**

- E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(d) for Labor Negotiator Consultation Concerning Possible Labor Negotiations. Presented by Darrell Murray.

***EXECUTIVE SESSION HELD.***

*There being no further business, the meeting was adjourned at 10:47 a.m.*

*OFFICE OF THE BOARD CLERK  
FOR MULTNOMAH COUNTY, OREGON*

***Deborah L. Bogstad***

*Deborah L. Bogstad*



## MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
SUITE 1510, PORTLAND BUILDING  
1120 SW FIFTH AVENUE  
PORTLAND, OREGON 97204  
CLERK'S OFFICE • 248-3277 • 248-5222  
FAX • (503) 248-5262

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR	•248-3308
DAN SALTZMAN •	DISTRICT 1	• 248-5220
GARY HANSEN •	DISTRICT 2	•248-5219
TANYA COLLIER •	DISTRICT 3	•248-5217
SHARRON KELLEY •	DISTRICT 4	•248-5213

# AGENDA

## MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

**NOVEMBER 4, 1996 - NOVEMBER 8, 1996**

*Thursday, November 7, 1996 - 9:30 AM - Regular Meeting .....Page 2*

*Thursday, November 7, 1996 - 10:15 AM - Executive Session.....Page 4*

*Thursday Meetings of the Multnomah County Board of Commissioners are \*cable-cast\* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

*Thursday, 9:30 AM, (LIVE) Channel 30*

*Friday, 10:00 PM, Channel 30*

*Sunday, 1:00 PM, Channel 30*

*\*Produced through Multnomah Community Television\**

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

Thursday, November 7, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

## **REGULAR MEETING**

### **CONSENT CALENDAR**

#### **SHERIFF'S OFFICE**

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- C-2      *Package Store Liquor License Renewal for CORBETT COUNTRY MARKET, 36801 NE CROWN POINT HIGHWAY, CORBETT*
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*Line Adjustment and a Permit for a Manufactured Home on Property  
Located at 30600 NE LAMPERT ROAD, CORBETT*

**REGULAR AGENDA**

**PUBLIC COMMENT**

- R-1      *Opportunity for Public Comment on Non-Agenda Matters. Testimony  
Limited to Three Minutes Per Person.*

**NON-DEPARTMENTAL**

- R-2      *RESOLUTION Agreeing to the City of Portland's Request for the Transit  
Oriented Area Development Tax Exemption Program*
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Implementing a \$575,000 One Time Only Payment Included in the 1996-  
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**DEPARTMENT OF SUPPORT SERVICES**

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**(OR IMMEDIATELY FOLLOWING REGULAR MEETING)**  
*Multnomah County Courthouse, Room 602*  
*1021 SW Fourth, Portland*

**EXECUTIVE SESSION**

- E-1      *The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(d) for Labor Negotiator Consultation Concerning Possible Labor Negotiations. Presented by Darrell Murray. 45 MINUTES REQUESTED.*



**DAN SALTZMAN, Multnomah County Commissioner, District One**

1120 S.W. Fifth Avenue, Suite 1500 • Portland, Oregon 97204 • (503) 248-5220 • FAX (503) 248-5440

**M E M O R A N D U M**

TO: Clerk of the Board  
Board of County Commissioners

FROM: Jan Ball, Commissioner Saltzman's Office

RE: November 7, 1996

DATE: October 10, 1996

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Please note that Commissioner Saltzman will be unable to attend the BCC meeting on November 7, 1996. He will be at the 1996 Western Regional Symposium on Child Abuse and Sexual Assault in Eugene, Oregon.

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 10 PM 3:07  
MULTNOMAH COUNTY  
OREGON

MEETING DATE: NOV 07 1996

AGENDA NO: UC-1

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Renewal of a **retroactive** intergovernmental revenue agreement between Regional Drug Initiative and Department of Community and Family Services for support of staff dedicated to the Initiative.

**BOARD BRIEFING**

Date Requested: \_\_\_\_\_

Requested By: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

**REGULAR MEETING**

Date Requested: Next Available Meeting Date

Amount of Time Needed: \_\_\_\_\_

**DEPARTMENT:** Community and Family Services

**DIVISION:** \_\_\_\_\_

**CONTACT:** Lorenzo Poe/Norma Jaeger

**TELEPHONE:** 248-3691

**BLDG/ROOM:** B166/7th

**PERSON(S) MAKING PRESENTATION:** Lorenzo Poe/Norma Jaeger

**ACTION REQUESTED:**

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

**SUGGESTED AGENDA TITLE**

**Retroactive intergovernmental agreement between Regional Drug Initiative and Department of Community and Family Services.**

11/13/96 ORIGINALS TO CHRIS WHITE

**SIGNATURES REQUIRED:**

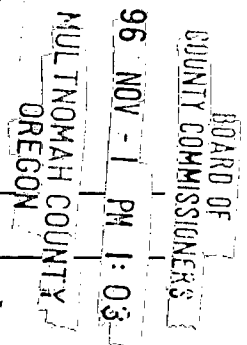
**ELECTED OFFICIAL:** \_\_\_\_\_

**OR**

**DEPARTMENT MANAGER:** Lorenzo Poe

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

**Any Questions: Call the Office of the Board Clerk 248-3277/248-5222**







# MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES  
421 SW SIXTH AVENUE, SUITE 700  
PORTLAND, OREGON 97204  
PHONE (503) 248-3691  
FAX (503) 248-3379  
TDD (503) 248-3598

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TO: Board of County Commissioners

FROM: Lorenzo Poe, Director *Lorenzo Poe*  
Department of Community and Family Services

DATE: August 22, 1996

SUBJECT: Retroactive Intergovernmental Revenue Agreement between Regional Drug Initiative and  
Department of Community and Family Services

**I. Recommendation/Action Requested:** The Department of Community and Family Services recommends Board of County Commissioner approval of for the period July 1, 1996 through December 31, 1996.

**II. Background/Analysis:** This retroactive agreement between the Regional Drug Initiative (RDI) and the Department of Community and Family Services, Behavior Health Program renews the partnership between the two organizations in this multi-agency effort to combat drug abuse in Multnomah County. RDI reimburses the County for approximately 12.5 Department FTE and associated motor pool expenses.

**III. Financial Impact:** This agreement supplies up to \$320,000 in funding to the County from the Regional Drug Initiative to support staff and \$1,200 for motor pool expenses. Funding for the project is uncertain beyond December 31, 1996.

**IV. Legal Issues:** N/A

**V. Controversial Issues:** N/A

**VI. Link to Current County Policies:** This agreement is in keeping with the County's commitment to reducing the impact of drug abuse on families and to participating in multi-agency efforts to address urgent benchmarks.

**VII. Citizen Participation:** The Regional Drug Initiative is governed by a task force comprised of a cross section of persons from the public and private sectors.

**VIII. Other Government Participation:** The Portland Public School District, Multnomah County School Districts, City of Gresham Police Department, City of Portland Police Department, Multnomah County Sheriff's Office, City of Portland and Clackamas County are all partners in support of the goals of this initiative.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☐

Contract #102907

Prior-Approved Contract Boilerplate: Attached; XX Not Attached

Amendment #       

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$25,000 <input type="checkbox"/> Intergovernmental Agreement Under \$25,000	<input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input type="checkbox"/> Intergovernmental Agreement <input checked="" type="checkbox"/> Intergovernmental Revenue Agreement  <div style="text-align: center;"> <b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b>                  RECOMMENDED BY <u>UC-1</u> DATE <u>11/7/96</u>  <u>DEB BOGSTAD</u>  <b>BOARD CLERK</b> </div>

Department: Community & Family Services

Division:       

Date: August 22, 1996

Administrative Contact: Chris White

Phone: 248-3691 ext 6062

Bldg/Room 166/7th

Description of Contract: Revenue agreement to reimburse County for personnel and motor pool expenses for the Regional Drug Initiative.

RFP/BID #: N/A

Date of RFP/BID:       

Exemption Expiration Date:       

ORS/AR #        Contractor is ☐ JMBE ☐ JWBE ☐ JQRF ☐ JN/A ☐ None

Original Contract No.        (Only for Original Renewals)

Contractor Name: <b>Regional Drug Initiative</b> Mailing Address: <b>522 SW 5th, Suite 1310</b> Phone: <b>(503) 294-7074 (Fax 294-7044)</b> Employer ID# or SS#: <b>N/A</b> Effective Date: <b>July 1, 1996</b> Termination Date: <b>December 31, 1996</b> Original Contract Amount: \$ Total Amt of Previous Amendments: \$ Amount of Amendment: \$ Total Amount of Agreement: <b>\$ 321,200</b>	Remittance Address (if different) <u>      </u>  <table style="width:100%;"> <tr> <th style="text-align: left;">Payment Schedule</th> <th style="text-align: left;">Terms</th> </tr> <tr> <td><input type="checkbox"/> Lump Sum \$ <u>      </u></td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input checked="" type="checkbox"/> Monthly \$ <u>Expenditures</u></td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input type="checkbox"/> Other \$ <u>      </u></td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. <u>      </u></td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements Not to Exceed \$ <u>      </u></td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ <u>      </u>	<input type="checkbox"/> Due on Receipt	<input checked="" type="checkbox"/> Monthly \$ <u>Expenditures</u>	<input type="checkbox"/> Net 30	<input type="checkbox"/> Other \$ <u>      </u>	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. <u>      </u>		<input type="checkbox"/> Requirements Not to Exceed \$ <u>      </u>		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
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<input type="checkbox"/> Requirements Not to Exceed \$ <u>      </u>																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

**REQUIRED SIGNATURES:**

Department Manager: *Lorenzo Palmis* Date: 9/6/96

Purchasing Director:        Date:       

(Class II Contracts Only)  
County Counsel: *Katie Gault* Date: 11/1/96

County Chair/Sheriff: *Billie Jean* Date: 11/7/96

Contract Administration:        Date:         
(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	Inc/Dec Ind.
01	156	010	1666			2102		9102F	Revenue	321,200	

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Contracts Administration, Initiator, Finance

S:\ADMIN\CEU\CONT97\RD197.CAF

## AGREEMENT

An agreement between the Regional Drug Initiative ("RDI") and Multnomah County ("County" or "Contractor") to provide staff assistance to the Regional Drug Initiative.

### RECITALS:

1. The Regional Drug Initiative, a legal entity formed by intergovernmental Agreement, pursuant to ORS 190.010(5), (RDI) seeks to continue an effort with Multnomah County to implement programs and services to combat drug abuse in Multnomah County.
2. The County (Contractor) seeks to enter into an agreement with RDI to delineate the means by which the County will be reimbursed for personnel and motor pool costs for RDI staff.
3. The period of the contract is from July 1, 1996 through December 31, 1996.

### AGREED:

#### I. Scope of Services

The County (Contractor) will provide staffing to perform the duties as outlined in the attached job descriptions.

#### II. Compensation and Method of Payment

The County (Contractor) will be compensated by RDI for personnel and motor pool costs incurred. Payment to the County for eligible expenses will be made not more frequently than monthly upon submission of a statement of expenditures from the County. Supporting documentation of actual expenditures must be included in these submissions. Total compensation to the County for the period of July 1, 1996 through December 31, 1996, shall not exceed \$320,000. Personnel costs shall be for the following positions:

Program Administrator	1.00 FTE
Community Liaisons (4)	4.00 FTE
Senior Office Assistant	1.00 FTE
Program Development Specialist	.80 FTE
Office Assistant II	.50 FTE
Program Development Specialist (2)	2.00 FTE
Program Development Specialist (1)	.50 FTE
Lead Program Development Specialist	1.00 FTE
Office Assistant II	1.00 FTE
Office Assistant II	.50 FTE
Office Assistant I	.25 FTE

Estimated motor pool costs are \$1,200.

### III. Project Manager

The RDI Project Manager shall be Carol Stone or such other person as shall be designated in writing by the RDI Chair, Charles A. Moose.

The Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein, and to carry out any other RDI actions referred herein.

### IV. General Contract Provisions

- A. **TERMINATION FOR CAUSE.** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner his/her obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, RDI shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Agreement shall, at the option of RDI, become the property of RDI and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contractor shall not be relieved of liability to RDI for damage sustained by RDI by virtue of any breach of the Agreement by the Contractor, and RDI may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due RDI from the Contractor is determined.

- B. **TERMINATION FOR CONVENIENCE.** RDI and Contractor may terminate this Agreement at any time by mutual written agreement. If the Agreement is terminated by RDI as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contract by this Agreement less payments of compensation previously made.
- C. **REMEDIES.** In the event of termination under Section A hereof by RDI due to a breach by the Contractor, then RDI may complete the work either itself or by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the amount actually paid to the Contractor hereunder plus the remaining unpaid balance of the compensation provided herein, then the Contractor shall pay to RDI the amount of excess.

The remedies provided to RDI under Section A and C hereof for a breach by the Contractor shall not be exclusive. RDI also shall be entitled to any other equitable and legal remedies that are available.

In the event of breach of this Agreement by RDI, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Section B hereof.

- D. **CHANGES.** RDI may, from time to time, request changes in the scope of services or terms and conditions hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, shall be incorporated in written amendments to this Agreement. Any change that increases the amount of compensation payable to the Contract must be approved by the RDI Task Force.
- E. **MAINTENANCE OF RECORDS.** The Contractor shall maintain records on a current basis to support its billings to RDI. RDI or its authorized representative shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the Contractor regarding its billings or its work hereunder. The Contractor shall retain these records for inspection, audit, and copying for three years from the date of completion or termination of this Agreement.
- F. **AUDIT OF PAYMENTS.** RDI, either directly or through a designated representative, may audit the records of the Contractor at any time during the three-year period established by Section E above.

If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, the Contractor shall repay the amount of the excess to RDI.

- G. **INDEMNIFICATION.** The Contractor shall hold harmless, defend, and indemnify RDI and RDI's officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the Agreement. Contractors indemnification obligation is subject to, and within the limits of, the Oregon Tort Claims Act, ORS 30.260 through 30.300.
- H. **LIABILITY INSURANCE.** The Contractor shall maintain public liability and property damage insurance that protects the Contractor and RDI actions, and suits for damage to property or personal injury, including insurance shall provide coverage for not less than \$100,000 for personal injury to each person, \$50,000 for each occurrence involving property damages; or a single limit policy of not less than \$50,000 covering all claims per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured RDI and its officers, agents, and employees. The insurance shall provide that it shall not terminate or be canceled without 30 days' written notice first being given to RDI Project Manager. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy has been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Agreement.

The Contractor shall maintain on file with RDI a certificate of insurance certifying the coverage required under this section. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by RDI.

In lieu of filing the certificate of insurance required herein, Contractor shall furnish a declaration that Contractor is self-insured for public liability and property damage for a minimum of the amounts set forth in 30.270.

- I. **WORKER'S COMPENSATION INSURANCE.** The Contractor shall obtain workers' compensation insurance coverage for all of its workers, employees and subcontractors either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before this Agreement is executed. A certification of insurance, or copy thereof, shall be attached to this Agreement, and shall be incorporated herein and made a term and part of this Agreement. The Contractor further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

In the event the Contractor's workers' compensation insurance coverage expires during the term of this Agreement, the Contractor agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and the Contractor agrees to provide RDI such further certification of worker's compensation insurance as renewals of said insurance occur. In lieu of filing the certificate of insurance required herein, Contractor shall furnish a declaration that Contractor is self-insured for public liability and property damage for a minimum of the amounts set forth in 30.270.

- J. **SUBCONTRACTING AND ASSIGNMENT.** The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the written approval of RDI. The Contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in this Agreement. Notwithstanding RDI approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and RDI shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Worker's Compensation. The Contractor shall not assign this Agreement in whole or in part or any right or obligation hereunder, without prior written approval of RDI.

- K. **INDEPENDENT CONTRACTOR STATUS.** The Contractor is engaged as an independent contractor and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder.

The Contractor and its subcontractors and employees are not employees of RDI and are not eligible for any benefits through RDI, including without limitation federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

- L. **REPORTING REQUIREMENTS.** No RDI officer or employee, during his or her tenure of for one year thereafter, shall have any interest, direct, or indirect in this Agreement or the proceeds thereof.

M. No RDI officer or employees who participate in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

N. **CONTRACT ADMINISTRATION.** The Contractor will comply with the provisions of the OMB Circular A-128, particularly regarding cash depositories, program income, standards for financial management systems, property management, procurement standards and audit requirement. The Contractor is required to submit two copies of their audit in conformance with A-128 no later than 30 days after its completion.

Additionally, the Contractor, shall comply with the provision of OMB Circular A-87, Cost Principles for State and Local Governments.

O. **OREGON LAW AND FORUM.** This Agreement shall be construed according to the law of the State of Oregon.

Any litigation between RDI and the Contractor arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

P. **AVAILABILITY OF FUNDS.** It is understood by all parties to this Agreement that the funds used to pay for services provided herein are provided by RDI solely through the RDI Trust Fund. In the event that funding is reduced, recaptured, or otherwise made unavailable to the city, RDI reserves the right to terminate the Agreement as provided under Section B hereof, or change the scope of services as provided under section D hereof.

Q. **COMPLIANCE WITH LAWS.** In connection with its activities under this Agreement, the Contractor shall comply with all applicable federal, state, and local laws and regulations.

V. Period of Agreement

This agreement shall be in effect for the period starting July 1, 1996 and ending December 31, 1996.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

In witness whereof, the parties hereto have caused this Agreement to be executed by their authorized officers.

REGIONAL DRUG INITIATIVE:

MULTNOMAH COUNTY, OREGON:

By \_\_\_\_\_  
Chief Charles A. Moose, Ph.D.,  
RDI Chair

By \_\_\_\_\_  
Norma Jaeger      Date  
Operations Manager

By \_\_\_\_\_  
John Trachtenberg      Date  
RDI Vice Chair

By Lorenzo Poe, Jr. 9/16/96  
Lorenzo A. Poe, Jr.      Date  
Director  
Children and Family Services Department

By Beverly Stein  
Beverly Stein      Date 11/7/96  
Multnomah County Chair

REVIEWED:

Laurence Kressel, County  
Counsel for Multnomah County, Oregon

By Katie Gaetjens 11/1/96  
Katie Gaetjens      Date

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # UC-1      DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK



MEETING DATE: NOV 7 1996

AGENDA #: C-1

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

## AGENDA PLACEMENT FORM

SUBJECT: OLCC License Renewal

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

DEPARTMENT: Sheriff's Office DIVISION: \_\_\_\_\_

CONTACT: Sergeant Bart Whalen TELEPHONE: 251-2431

BLDG/ROOM #: 313/124

PERSON(S) MAKING PRESENTATION: Sergeant Bart Whalen

### ACTION REQUESTED:

☐ INFORMATIONAL ONLY    ☐ POLICY DIRECTION    ☒ APPROVAL    ☐ OTHER

### SUGGESTED AGENDA TITLE:

This is an OLCC Package Store License Renewal Application for:

Big Bear Crown Point Market  
31815 E. Crown Point Highway  
Troutdale, Oregon 97060

*11/12/96 ORIGINAL TO Sgt. Bart Whalen*

The backgrounds have been checked on applicants: Phillip J. Dufresne and Judy K. Dufresne and no criminal history can be found on the above.

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Barton Whalen*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
OCT 30 PM 3:48

Any questions: Call the Office of the Board Clerk 248-3277 or 248-5222

**Oregon Liquor Control Commission**  
PO Box 22297, Milwaukie, OR 97269 1-800-452-6522  
**License Renewal Application**

**IMPORTANT:** Failure to fully disclose any information requested, or providing false or misleading information on this form is grounds to refuse to renew the license. Your license expires December 31, 1996

License Type: <b>Package Store</b>	District: <b>1</b>	County/City: <b>2600</b>	RO#: <b>R00236A</b>	421/203
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**BIG BEARS CROWN POINT MARKET INC**  
31815 E CROWN POINT HWY  
TROUTDALE OR 97060

Licensee(s) **BIG BEARS CROWN POINT MARKET INC**

Tradename **BIG BEARS CROWN POINT MARKET**  
31815 E CROWN POINT HWY  
TROUTDALE OR 97060

**Instructions:**

1. Answer all questions completely on the renewal application.
2. Have each partner or an authorized corporate officer sign the renewal application.
3. Have the local governing body endorse the renewal application.
4. Return completed renewal application along with the appropriate license fee due before December 11, 1996 to avoid late fees.

Operational Questions:	Responses:										
(1) Please list a daytime phone number.	Phone Number: <u>645-2255</u>										
(2) Please list all <u>arrests or convictions</u> for any crime, violation, or infraction of any law during the last year even if they are <u>not liquor</u> related for anyone who holds a financial interest in the licensed business. Attach additional sheet of paper to back of form if needed.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Name</th> <th style="width: 20%;">Offense</th> <th style="width: 20%;">Date</th> <th style="width: 20%;">City/State</th> <th style="width: 20%;">Result</th> </tr> </thead> <tbody> <tr> <td colspan="5" style="text-align: center;">N/A</td> </tr> </tbody> </table>	Name	Offense	Date	City/State	Result	N/A				
Name	Offense	Date	City/State	Result							
N/A											
(3) Will anyone share in the profits who is not a licensee? If yes, please give name(s) and explain.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:										
(4) Were there any changes of ownership (ie: add/drop partners, change to corporations, etc.) not reported to the OLCC in the last year?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:										

<b>Endorsement</b> - Please take this form to your local governing body that is listed below before you return it to the OLCC.	
The County of <u>MULTNOMAH</u> recommends that this license be GRANTED <u>X</u> REFUSED <u>  </u> on (date) <u>11/7/96</u>	
Signed: <u>[Signature]</u>	Title of Signer: <u>BEVERLY STEIN, COUNTY CHAIR</u>

License Fees and Late Fee Schedule & Amounts - Do not mail cash.	Dollar Amount (\$)
License Fee for Package Store	50.00
TOTAL FEE TO PAY >>>>PLEASE PAY THIS AMOUNT<<<<	50.00
<b>Late Fees</b>	
IF Renewal Application Is Received After December 11, 1996 but before January 01, 1997	Add 12.50 To Total Due
IF Renewal Application Is Received On or After January 01, 1997.	Add 20.00 To Total Due

Print Name	Signature	Date	Social Security #	Date of Birth
Phill P J. DuFresne	<u>[Signature]</u>	108	543-08-9303	11-28-44
Judy K. DuFresne	<u>[Signature]</u>	808	4543-54-1223	8-19-45

MEETING DATE: NOV 7 1996

AGENDA #: C-2

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

## AGENDA PLACEMENT FORM

SUBJECT: OLCC License Renewal

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

DEPARTMENT: Sheriff's Office DIVISION: \_\_\_\_\_

CONTACT: Sergeant Bart Whalen TELEPHONE: 251-2431

BLDG/ROOM #: 313/124

PERSON(S) MAKING PRESENTATION: Sergeant Bart Whalen

### ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

### SUGGESTED AGENDA TITLE:

This is an OLCC Package Store License Renewal Application for:

Corbett Country Market  
36801 NE Crown Point Highway  
Corbett, Oregon 97019

The backgrounds have been checked on applicants: Suzanne McCarthy and Neil McCarthy

and no criminal history can be found on the above.

11/12/96 ORIGINAL TO Sgt. Bart Whalen

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Barton Whalen*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 3:48  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any questions: Call the Office of the Board Clerk 248-3277 or 248-5222

**Oregon Liquor Control Commission**  
 PO Box 22297, Milwaukie, OR 97269 1-800-452-6522  
**License Renewal Application**

**IMPORTANT: Failure to fully disclose any information requested, or providing false or misleading information on this form is grounds to refuse to renew the license. Your license expires December 31, 1996**

License Type: <b>Package Store with Pumps</b>	District: <b>1</b>	County/City: <b>2600</b>	RO#: <b>R00351A</b>	421/203
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**CORBETT COUNTRY MARKET INC**  
 36801 NE CROWN POINT HWY  
 CORBETT OR 97019

Licensee(s) **CORBETT COUNTRY MARKET INC**

Tradename **CORBETT COUNTRY MARKET**  
 36801 NE CROWN POINT HWY  
 CORBETT OR 97019

**Instructions:**

1. Answer all questions completely on the renewal application.
2. Have each partner or an authorized corporate officer sign the renewal application.
3. Have the local governing body endorse the renewal application.
4. Return completed renewal application along with the appropriate license fee due before December 11, 1996 to avoid late fees.

Operational Questions:	Responses:																				
(1) Please list a daytime phone number.	Phone Number: <u>695-2234</u>																				
(2) Please list all <u>arrests or convictions</u> for any crime, violation, or infraction of any law during the last year even if they are <u>not liquor</u> related for anyone who holds a financial interest in the licensed business. Attach additional sheet of paper to back of form if needed.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Name</th> <th style="width: 25%;">Offense</th> <th style="width: 25%;">Date</th> <th style="width: 25%;">City/State</th> <th style="width: 20%;">Result</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	Name	Offense	Date	City/State	Result															
Name	Offense	Date	City/State	Result																	
(3) Will anyone share in the profits who is not a licensee? If yes, please give name(s) and explain.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:																				
(4) Were there any changes of ownership (ie: add/drop partners, change to corporations, etc.) not reported to the OLCC in the last year?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:																				
(5) Package Store Licenses with Gas Pumps: Report actual grocery inventory at cost (DO NOT INCLUDE BEER OR WINE).	\$ <u>36,750.</u>																				

**Endorsement - Please take this form to your local governing body that is listed below before you return it to the OLCC**

The County of MULTNOMAH recommends that this license be GRANTED ☒ REFUSED ☐ on (date) 11/7/96

Signed: Beverly Stein Title of Signer BEVERLY STEIN, COUNTY CHAIR

License Fees and Late Fee Schedule & Amounts - Do not mail cash.	Dollar Amount (\$)
License Fee for Package Store with Pumps	50.00
<b>TOTAL FEE TO PAY &gt;&gt;&gt;&gt;PLEASE PAY THIS AMOUNT&lt;&lt;&lt;&lt;</b>	<b>50.00</b>
<b>Late Fees</b>	
IF Renewal Application Is Received After December 11, 1996 but before January 01, 1997	Add 12.50 To Total Due
IF Renewal Application Is Received On or After January 01, 1997.	Add 20.00 To Total Due

Print Name	Signature	Date	Social Security #	Date of Birth
SUZANNE MCCARTHY	<u>Suzanne McCarthy</u>	<u>10/16/96</u>	<u>540-42-6581</u>	<u>9-4-41</u>
NEIL MCCARTHY	<u>N. J. MCCARTHY</u>	<u>10-17-96</u>	<u>542-40-2895</u>	<u>8-11-38</u>

MEETING DATE: NOV 7 1996AGENDA #: C-3ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

**AGENDA PLACEMENT FORM**SUBJECT: OLCC License Renewal

BOARD BRIEFING:

DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:

DATE REQUESTED: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

DEPARTMENT: Sheriff's Office

DIVISION: \_\_\_\_\_

CONTACT: Sergeant Bart WhalenTELEPHONE: 251-2431BLDG/ROOM #: 313/124PERSON(S) MAKING PRESENTATION: Sergeant Bart WhalenACTION REQUESTED:☐ INFORMATIONAL ONLY☐ POLICY DIRECTION☒ APPROVAL☐ OTHERSUGGESTED AGENDA TITLE:

This is an OLCC Retail Malt Beverage License Renewal Application for:

Bottoms Up!  
 16900 NW St Helens Rd  
 Portland, Oregon 97231

The backgrounds have been checked on applicants: Glen Anderson and Chong Anderson  
 and no criminal history can be found on the above.

11/12/96 ORIGINAL TO Sgt. Bart Whalen

SIGNATURES REQUIRED:

ELECTED

OFFICIAL: \_\_\_\_\_

(OR)

DEPARTMENT  
MANAGER: \_\_\_\_\_Barton Whalen

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

BOARD OF  
 COUNTY COMMISSIONERS  
 MULTNOMAH COUNTY  
 OREGON  
 96 OCT 30 PM 3:48

Any questions: Call the Office of the Board Clerk 248-3277 or 248-5222

**Oregon Liquor Control Commission**  
PO Box 22297, Milwaukie, OR 97269 1-800-452-6522  
**License Renewal Application**

**IMPORTANT: Failure to fully disclose any information requested, or providing false or misleading information on this form is grounds to refuse to renew the license. Your license expires December 31, 1996**

<b>License Type:</b> Retail Malt Beverage	<b>District:</b> 1	<b>County/City:</b> 2600	<b>RO#:</b> R02213A	<b>421/201</b>
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**CGR, INC.**  
16900 NW ST HELENS RD  
PORTLAND OR 97231

**Licensee(s)** CGR, INC.

**Server Education Designee(s)**  
ANDERSON, CHONG  
ANDERSON, GLEN

**Tradename** **BOTTOMS UP!**  
16900 NW ST HELENS RD  
PORTLAND OR 97231

**Instructions:**

1. Answer all questions completely on the renewal application.
2. Have each partner or an authorized corporate officer sign the renewal application.
3. Have the local governing body endorse the renewal application.
4. Return completed renewal application along with the appropriate license fee due before **December 11, 1996** to avoid late fees.

\*\*

Operational Questions:	Responses:
(1) Is there a change in your Server Education Designee? If yes, please list their name and Social Security Number.	Name <u>N/A</u> SS# _____
(2) Please list a daytime phone number.	Phone Number: <u>503-621-9115 &amp; 621-9844</u>
(3) Please list all <u>arrests or convictions</u> for any crime, violation, or infraction of any law during the last year even if they are <u>not liquor</u> related for anyone who holds a financial interest in the licensed business. Attach additional sheet of paper to back of form if needed.	Name _____ Offense _____ Date _____ City/State _____ Result _____ <p style="text-align: center; font-size: 1.5em;">N/A</p>
(4) Will anyone share in the profits who is not a licensee? If yes, please give name(s) and explain.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:
(5) Were there any changes of ownership (ie: add/drop partners, change to corporations, etc.) not reported to the OLCC in the last year?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:
(6) Did you make any significant changes in operation during the past year that you have not reported to the OLCC, such as changes in menu, hours of operation, or remodeling?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:

**Endorsement - Please take this form to your local governing body that is listed below before you return it to the OLCC**

The County of MULTNOMAH recommends that this license be GRANTED X REFUSED \_\_\_\_\_ on (date) 11/7/96

Signed: Beverly Stein Title of Signer BEVERLY STEIN, COUNTY CHAIR

License Fees and Late Fee Schedule & Amounts - Do not mail cash.	Dollar Amount (\$)
License Fee for Retail Malt Beverage	200.00
Server Education student fee	2.60
<b>TOTAL FEE TO PAY</b> >>>>PLEASE PAY THIS AMOUNT<<<<	<b>202.60</b>
<b>Late Fees</b>	
IF Renewal Application Is Received After December 11, 1996 but before January 01, 1997	Add 50.00 To Total Due
IF Renewal Application Is Received On or After January 01, 1997.	Add 80.00 To Total Due

Print Name	Signature	Date	Social Security #	Date of Birth
CHONG ANDERSON	<u>[Signature]</u>	10-22-96	541-64-4738	2/28/43
GLEN ANDERSON	<u>[Signature]</u>	10-22-96	538-64-3180	3-23-67

MEETING DATE: NOV 7 1996

AGENDA #: C-4

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

## AGENDA PLACEMENT FORM

SUBJECT: OLCC License Renewal

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

DEPARTMENT: Sheriff's Office DIVISION: \_\_\_\_\_

CONTACT: Sergeant Bart Whalen TELEPHONE: 251-2431

BLDG/ROOM #: 313/124

PERSON(S) MAKING PRESENTATION: Sergeant Bart Whalen

### ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

### SUGGESTED AGENDA TITLE:

This is an OLCC Retail Malt Beverage License Renewal Application for:

Wildwood Golf Course  
21881 NW St Helens Road  
Portland, OR 97231

The backgrounds have been checked on applicants: Kay O'Meara and Bill O'Meara

and no criminal history can be found on the above.

11/12/96 ORIGINAL to Sgt. Bart Whalen

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_

(OR)  
DEPARTMENT  
MANAGER: Bart Whalen

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any questions: Call the Office of the Board Clerk 248-3277 or 248-5222

**Oregon Liquor Control Commission**  
 PO Box 22297, Milwaukie, OR 97269 1-800-452-6522  
**License Renewal Application**

**NEED  
SVED**

**IMPORTANT: Failure to fully disclose any information requested, or providing false or misleading information on this form is grounds to refuse to renew the license. Your license expires December 31, 1996**

<b>License Type: Retail Malt Beverage</b>	<b>District: 1</b>	<b>County/City: 2600</b>	<b>RO#: R20457A</b>	<b>421/201</b>
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**O'MEARA BILL**  
 21881 NW ST HELENS RD  
 PORTLAND OR 97231

**Licensee(s) O'MEARA BILL**  
**O'MEARA KAY**

**Server Education Designee(s)**

**Tradename WILD WOOD GOLF COURSE**  
 21881 NW ST HELENS RD  
 PORTLAND OR 97231

**Instructions:**

1. Answer all questions completely on the renewal application.
2. Have each partner or an authorized corporate officer sign the renewal application.
3. Have the local governing body endorse the renewal application.
4. Return completed renewal application along with the appropriate license fee due before December 11, 1996 to avoid late fees.

\*\*

Operational Questions:	Responses:
(1) Is there a change in your Server Education Designee? If yes, please list their name and Social Security Number.	Name <u>NO</u> SS#
(2) Please list a daytime phone number.	Phone Number: <u>621-383402</u>
(3) Please list all <u>arrests or convictions</u> for any crime, violation, or infraction of any law during the last year even if they are <u>not liquor</u> related for anyone who holds a financial interest in the licensed business. Attach additional sheet of paper to back of form if needed.	Name      Offense      Date      City/State      Result  <u>none</u>
(4) Will anyone share in the profits who is not a licensee? If yes, please give name(s) and explain.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:
(5) Were there any changes of ownership (ie: add/drop partners, change to corporations, etc.) not reported to the OLCC in the last year?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:
(6) Did you make any significant changes in operation during the past year that you have not reported to the OLCC, such as changes in menu, hours of operation, or remodeling?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:

**Endorsement - Please take this form to your local governing body that is listed below before you return it to the OLCC.**

The County of MULTNOMAH recommends that this license be GRANTED X REFUSED    on (date) 11/7/96

Signed: Beverly Stein Title of Signer BEVERLY STEIN, COUNTY CHAIR

License Fees and Late Fee Schedule & Amounts - Do not mail cash.		Dollar Amount (\$)
License Fee for Retail Malt Beverage		200.00
Server Education student fee		2.60
TOTAL FEE TO PAY	====>PLEASE PAY THIS AMOUNT<====	202.60
Late Fees		
IF Renewal Application Is Received After December 11, 1996 but before January 01, 1997		Add 50.00 To Total Due
IF Renewal Application Is Received On or After January 01, 1997.		Add 80.00 To Total Due

Print Name	Signature	Date	Social Security #	Date of Birth
Kay O'meara	Kay O'meara	10-11-96	542-76-5554	7-26-61
Bill O'Meara	Bill O'Meara	10-11-96	542-84-1135	9-6-60



MEETING DATE: NOV 7 1996

AGENDA #: C-5

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

## AGENDA PLACEMENT FORM

SUBJECT: OLCC License Renewal

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

DEPARTMENT: Sheriff's Office DIVISION: \_\_\_\_\_

CONTACT: Sergeant Bart Whalen TELEPHONE: 251-2431

BLDG/ROOM #: 313/124

PERSON(S) MAKING PRESENTATION: Sergeant Bart Whalen

### ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

### SUGGESTED AGENDA TITLE:

This is an OLCC Restaurant License Renewal Application for:

Big Bear Crown Point  
31815 E. Crown Point Highway  
Troutdale, Oregon 97060

The backgrounds have been checked on applicants: Phillip J. Dufresne and Judy K. Dufresne and no criminal history can be found on the above.

11/12/96 ORIGINAL to Sgt Bart Whalen

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: Barton Whalen

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 3:47  
MULTNOMAH COUNTY  
OREGON

Any questions: Call the Office of the Board Clerk 248-3277 or 248-5222

**Oregon Liquor Control Commission**  
PO Box 22297, Milwaukie, OR 97269 1-800-452-6522  
**License Renewal Application**

**IMPORTANT:** Failure to fully disclose any information requested, or providing false or misleading information on this form is grounds to refuse to renew the license. Your license expires December 31, 1996

License Type: Restaurant	District: 1	County/City: 2600	RO#: R00236B	421/205
--------------------------	-------------	-------------------	--------------	---------

**BIG BEARS CROWN POINT MKT INC**  
31815 E CROWN POINT HWY  
TROUTDALE OR 97060

Licensee(s) **BIG BEARS CROWN POINT MKT INC**

Server Education Designee(s)  
**DUFRESNE, PHILLIP J**

Tradename **BIG BEAR CROWN POINT MARKET**  
31815 E CROWN POINT HWY  
TROUTDALE OR 97060

**Instructions:**

1. Answer all questions completely on the renewal application.
2. Have each partner or an authorized corporate officer sign the renewal application.
3. Have the local governing body endorse the renewal application.
4. Return completed renewal application along with the appropriate license fee due before December 11, 1996 to avoid late fees.

\*\*

Operational Questions:	Responses:										
(1) Is there a change in your Server Education Designee? If yes, please list their name and Social Security Number. <u>NO</u>	Name _____ SS# _____										
(2) Please list a daytime phone number.	Phone Number: _____										
(3) Please list all <u>arrests or convictions</u> for any crime, violation, or infraction of any law during the last year even if they are <u>not liquor</u> related for anyone who holds a financial interest in the licensed business. Attach additional sheet of paper to back of form if needed.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Name</th> <th>Offense</th> <th>Date</th> <th>City/State</th> <th>Result</th> </tr> </thead> <tbody> <tr> <td colspan="5" style="text-align: center;">N/A</td> </tr> </tbody> </table>	Name	Offense	Date	City/State	Result	N/A				
Name	Offense	Date	City/State	Result							
N/A											
(4) Will anyone share in the profits who is not a licensee? If yes, please give name(s) and explain.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:										
(5) Were there any changes of ownership (ie: add/drop partners, change to corporations, etc.) not reported to the OLCC in the last year?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:										
(6) Did you make any significant changes in operation during the past year that you have not reported to the OLCC, such as changes in menu, hours of operation, or remodeling?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:										

**Endorsement** - Please take this form to your local governing body that is listed below before you return it to the OLCC.

The County of MULTNOMAH recommends that this license be GRANTED ☒ REFUSED ☐ on (date) 11/7/96

Signed: Beverly Stein Title of Signer BEVERLY STEIN, COUNTY CHAIR

**License Fees and Late Fee Schedule & Amounts - Do not mail cash.**

	Dollar Amount (\$)
License Fee for Restaurant	200.00
Server Education student fee	2.60
TOTAL FEE TO PAY >>>>PLEASE PAY THIS AMOUNT<<<<	202.60
Late Fees	
IF Renewal Application Is Received After December 11, 1996 but before January 01, 1997	Add 50.00 To Total Due
IF Renewal Application Is Received On or After January 01, 1997.	Add 80.00 To Total Due

Print Name	Signature	Date	Social Security #	Date of Birth
Phillip J. Dufresne	<i>Phillip J. Dufresne</i>	10-8-96	543-48-9303	11-28-44
Judy K. Dufresne	<i>Judy K. Dufresne</i>		543-54-1223	8-19-45

Meeting Date: NOV 7 1996  
Agenda No: C-6

(Above space for Board Clerk's Office Use ONLY)

AGENDA PLACEMENT FORM

Subject: Amendment to FY95/97 Intergovernmental Revenue Agreement with State Senior/Disabled Services Division, Human Resources Department

BOARD BRIEFING Date Requested:  
Amount of time:

REGULAR MEETING Date Requested: November 7, 1996  
Amount of time: Consent Calendar

DEPARTMENT: Aging Services DIVISION: NA

CONTACT: Caroline Sullivan/Kathy Gillette TELEPHONE: 248-3620

BLDG/RM #: 161/3rd floor

PERSON(S) MAKING PRESENTATION: Jim McConnell/Kathy Gillette

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE

Approval of Amendment 2 to intergovernmental agreement #50704-97 (Multnomah County #400016) with the State Senior and Disabled Services Division for the period July 1, 1995 through June 30, 1997, adding allocations for FY96-97.

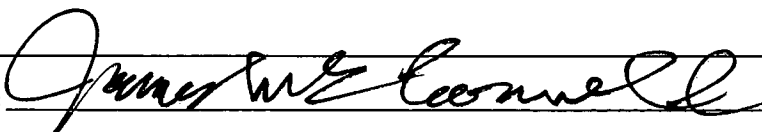
11/13/96 ORIGINALS to CAROLINE SULLIVAN

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER:



BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 29 AM 11:04  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES  
Any Questions: Call the Office of the Board Clerk 248-3277/248/5222



# MULTNOMAH COUNTY OREGON

AGING SERVICES DIVISION  
AREA AGENCY ON AGING  
421 S.W. 5TH, 3RD FLOOR  
PORTLAND, OREGON 97204  
SENIOR HELPLINE: (503) 248-3646 ADMINISTRATION: 248-3620  
TDD: 248-3683 FAX: 248-3656

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

## MEMORANDUM

TO: Beverly Stein, Chair  
Board of County Commissioners

FROM: Jim McConnell, Director  
Aging Services Division *Jim McConnell*

DATE: October 10, 1996

SUBJECT: Amendment 2 to FY95/97 Revenue Contract #50704-97 with State Senior and Disabled Services Division, Human Resources Department

Recommendation: The Aging Services Division recommends that the Board of County Commissioners approve the attached Amendment 2 to revenue contract #50704-97 with the State Senior and Disabled Services Division, for the period July 1, 1996 through June 30, 1997.

Analysis: This contract amendment adds allocation amounts of State and Federal funds to continue services for elderly residents in Multnomah County during FY96-97. Services include planning, coordination, advocacy, long term care, community services, adult care home licensing, Public Guardian and Conservatorship, and other services which benefit older residents of Multnomah County.

Amendment 2 continues revenues for FY96-97 in the amount \$12,777,472 from multiple Federal and State sources, including State Oregon Project Independence (OPI), Federal Older Americans Act of 1965, as amended, Federal Title XIX of the Social Security Act (Medicaid) and US Department of Agriculture (USDA). The funds support a continuation of the Aging Services System during year two of the plan of action.

Fiscal Impact: These revenues are included the FY96-97 County Budget. No budget action is required.

Legal Issues: None

Controversial Issues: None

Link to Current County Policies: This amendment is to the revenue contract with the state Senior and Disabled Services Division and adding State and Federal funding to be used during FY96-97 to implement the Area Agency on Aging Plan of Action for FY95/97. The plan, required by the federal Older Americans Act, includes descriptions, goals and objectives for administration, planning, contracting, services, and budget for the service system for older residents of Multnomah County during FY95/97.

Initiatives and goals from the Aging Services Division strategic plan AGING CHALLENGES OF TOMORROW are included in the Area Plan document.

This plan is consistent with County Program Budget Performance Trends, Key Results, and Issues and Opportunities.

Citizen Participation: The Portland Multnomah Commission on Aging (PMCoA) held public hearings in April 1995 on the plan funded through this contract. The PMCoA and its AAA Committee have reviewed and approved the plan.



# CONTRACT APPROVAL FORM

(See Administrative Procedure #2106)

MULTNOMAH COUNTY OREGON

Contract # 400016

Amendment # 2

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$25,000	<input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement  APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-6 DATE 11/7/96 DEB BOGSTAD BOARD CLERK

Department Aging Services Division \_\_\_\_\_ Date October 23, 1996Contract Originator Caroline Sullivan/Kathy Gillette Phone 248-3620 Bldg/Room 161/3rd floorAdministrative Contact Caroline Sullivan/Kathy Gillette Phone 248-3620 Bldg/Room 161/3rd floor

Description of Contract Amends State revenue contract with Senior & Disabled Services Division  
providing funding for Aging Services administration, long term care, and contracted  
community services by addition of revenues for FY 96/97. Covers year 2 of 2 year plan for ASD.

RFP/BID # \_\_\_\_\_ Date of RFP/BID \_\_\_\_\_ Exemption Exp. Date \_\_\_\_\_

ORS/AR # \_\_\_\_\_ Contractor is ☐ MBE ☐ WBE ☐ QRFContractor Name Oregon Senior and Disabled Services Division \_\_\_\_\_Mailing Address 500 Summer Street NESalem OR 97310-1015Phone (503) 378-4728Employer ID# or SS# N/AEffective Date July 1, 1995Termination Date June 30, 1997Original Contract Amount \$ 12,777,472 (FY97)

Total Amount of Previous Amendments \$ \_\_\_\_\_

Amount of Amendment \$ \_\_\_\_\_

Total Amount of Agreement \$ 12,777,472Remittance Address \_\_\_\_\_  
(If Different) \_\_\_\_\_

Payment Schedule

Terms

☐ Lump Sum \$ \_\_\_\_\_ ☐ Due on receipt☐ Monthly \$ \_\_\_\_\_ ☐ Net 30☐ Other \$ \_\_\_\_\_ ☐ Other \_\_\_\_\_☐ Requirements contract - Requisition required.

Purchase Order No. \_\_\_\_\_

☐ Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager James W. LennellPurchasing Director  
(Class II Contracts Only) Katie DaultonCounty Counsel Shelly Beem

County Chair / Sheriff \_\_\_\_\_

Contract Administration  
(Class I, Class II Contracts Only) \_\_\_\_\_Encumber: Yes ☐ No ☐Date October 23, 1996

Date \_\_\_\_\_

Date 10/26/96Date November 7, 1996

Date \_\_\_\_\_

VENDOR CODE		VENDOR NAME							TOTAL AMOUNT	\$	
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC/ DEC IND
01.			SEE ATTACHED								
02.											
03.											
* If additional space is needed, attach separate page. Write contract # on top of page.											

INSTRUCTIONS ON REVERSE SIDE

WHITE - CONTRACT ADMINISTRATION

CANARY - INITIATION

PINK - FINANCE

CONTRACT APPROVAL FORM SUPPLEMENT  
AGING SERVICES DIVISION

CONTRACTOR: STATE OF OREGON/SENIOR & DISABLED SERVICES DIVISION  
CONTRACT #: MC #400016 (SDSD #50704-97)  
DATE: JUNE 29, 1995

MOD #: 2  
MOD DATE:

LINE	FUND	AGENCY	ORG CODE	REVENUE CODE	LGFS DESCRIPTION	ORIGINAL AMOUNT	MOD 1 FY95-96	MOD 2	MOD 3	FINAL AMOUNT
1	156	011	1700	2063	III-D	34,443				34,443
2	156	011	1700	2064	III-B	708,615				708,615
3	156	011	1700	2065	III-C1	331,742				331,742
4	156	011	1700	2066	III-C2	481,330				481,330
5	156	011	1700	2067	III-F	25,000				25,000
6	156	011	1700	2070	VII-B	8,727				8,727
7	156	011	1700	2387	OPI	975,644				975,644
8	156	011	1700	2609	TITLE XIX	10,209,471				10,209,471
9	156	011	1700	2399	OPI-ALZ	2,500				2,500
10	156	011	1700	2391	SDSD MEN HLTH	0				0
TOTAL						12,777,472	0			12,777,472

FILE:F:\USERS\CONTRACT\SDCAF96.WQ1

DEPARTMENT  
OF HUMAN  
RESOURCES

Human Resources Bldg.

SENIOR AND  
DISABLED  
SERVICES  
DIVISION

Encouraging  
independence,  
dignity and  
quality of life

AMENDMENT TO  
INTERGOVERNMENTAL AGREEMENT

1. This agreement is between the State of Oregon, acting by and through its Department of Human Resources, Senior and Disabled Services Division, hereinafter called "DIVISION," and

Multnomah County Aging Services Division  
421 SW Fifth, 3rd Floor-B161  
Portland OR 97204-2238

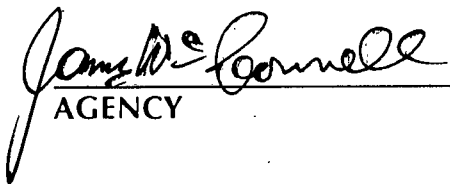
hereinafter called "AGENCY."

2. This is amendment number 2 to original agreement #50704
3. Agreement # between DIVISION and AGENCY shall be amended as follows: New language is underlined; [language to be deleted or replaced is bracketed].

III. STATEMENT OF WORK

Under this agreement, AGENCY shall conduct activities and provide services as indicated in the Area Plan, which by reference is made a part of this agreement, and which is hereby amended to reflect program and budget changes as shown on Attachments 1 and 2, and the General Provisions, Part VI of this agreement.

4. In performing the above, it is understood and agreed that all other terms and conditions of the original agreement are still in effect.

  
AGENCY

DIVISION  
Administrator/Delegate

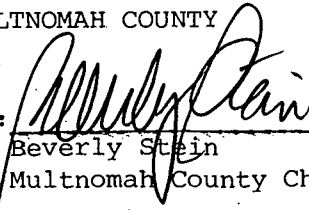
October 23, 1996

Date

Date

MULTNOMAH COUNTY

BY:

  
Beverly Stein  
Multnomah County Chair

11/7/96

Date

REVIEWED:

LAURENCE KRESSEL, County Counsel  
For Multnomah County

Date

  
Katie Gaetjens

Assistant County Counsel

10/26/96

Date

500 Summer St. NE, Salem, OR 97310-1015 • (503) 945-5811 Voice/TTY  
Toll Free 1-800-282-8096 Voice/TTY • (503) 373-7823 Fax



John A. Kitzhaber  
Governor

"We do not discriminate in employment, services or activities."

\* OPI - Homemaker Services - Includes \$100,000 in CEP expenditures



ATTACHMENT #2, Contract # 50704-2

District 2 Multnomah  
FY1996-1997

Date Revised: 09/25/96

SECTION III E-2, ALLOCATED FUNDS, CONTRACTED FUNDS, AND TRANSFERS

	LTC ADMIN TYPE B	OAA PART B	OAA PART C-1	OAA PART C-2	OAA PART D	OAA PART F	OAA VII B	OPI 60+	OPI <60	Other State Funds	TOTAL FUNDS
SDSD-AR-96-9 FY '97 Allocation		\$521,689	\$656,406	\$185,993	\$18,815	\$0	\$0		\$0	\$0	\$1,382,903
Carryover Amount	\$10,209,471	\$90,276	\$67,323	\$0	\$15,628	\$25,000	\$8,727	\$978,144	\$0	\$0	\$11,394,569
OAA Transfers	XXXXXX	\$96,650	(\$391,987)	\$295,337	\$0	\$0	\$0	(\$2,500)	\$2,500	\$0	\$0
Total Funds Available	\$10,209,471	\$708,615	\$331,742	\$481,330	\$34,443	\$25,000	\$8,727	\$975,644	\$2,500	\$0	\$12,777,472
Contracted This Amendment	\$10,209,471	\$708,615	\$331,742	\$481,330	\$34,443	\$25,000	\$8,727	\$975,644	\$2,500	\$0	\$12,777,472
Uncontracted Funds Available	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Negative numbers indicated with parentheses.

\* Reserved for OPI Client Employed Payments through SDSD \$100,000

FOR TYPE B AAAs:

XIX Regular Allocation	\$14,837,387
Local Funds	\$1,909,725
XIX Match on Local Funds	\$2,414,039
<b>TOTAL LTC ADMIN</b>	<b><u>\$19,161,131</u></b>

MEETING DATE: NOV 7 1996

AGENDA NO: C-7

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Renewal of a **retroactive** intergovernmental revenue agreement amendment between Regional Drug Initiative and Department of Community and Family Services for support of staff dedicated to the Initiative.

**BOARD BRIEFING**

Date Requested: \_\_\_\_\_

Requested By: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

**REGULAR MEETING**

Date Requested: Next Available Meeting Date

Amount of Time Needed: \_\_\_\_\_

**DEPARTMENT:** Community and Family Services

**DIVISION:** \_\_\_\_\_

**CONTACT:** Lorenzo Poe/Norma Jaeger

**TELEPHONE:** 248-3691

**BLDG/ROOM:** B166/7th

**PERSON(S) MAKING PRESENTATION:** Lorenzo Poe/Norma Jaeger

**ACTION REQUESTED:**

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

**SUGGESTED AGENDA TITLE**

Retroactive intergovernmental agreement amendment #102907 between Regional Drug Initiative and Department of Community and Family Services to reduce funding due to federal cuts.

11/13/96 ORIGINALS TO CHRIS WHITE

**SIGNATURES REQUIRED:**

**ELECTED OFFICIAL:** \_\_\_\_\_

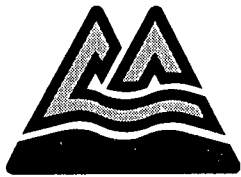
OR

**DEPARTMENT MANAGER:** Lorenzo Poe

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 28 PM 3:31  
MULTNOMAH COUNTY  
OREGON

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

*Any Questions: Call the Office of the Board Clerk 248-3277/248-5222*



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES  
421 SW SIXTH AVENUE, SUITE 700  
PORTLAND, OREGON 97204  
PHONE (503) 248-3691  
FAX (503) 248-3379  
TDD (503) 248-3598

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TO: Board of County Commissioners

FROM: Lorenzo Poe, Director *Lorenzo Poe mcs*  
Department of Community and Family Services

DATE: October 23, 1996

SUBJECT: Retroactive Intergovernmental Revenue Agreement Amendment between Regional Drug Initiative and Department of Community and Family Services

**I. Recommendation/Action Requested:** The Department of Community and Family Services recommends Board of County Commissioner approval of this amendment with RDI for the period July 1, 1996 through June 30, 1997.

This amendment is retroactive due to funding cuts which RDI was notified of after the start of the fiscal year. The subsequent assessment of the impact of these cuts delayed the development of this amendment.

**II. Background/Analysis:** This amendment reduces the amount of funding available and thus the amount of staff supported by the agreement. A reduction in federal funds for RDI has resulted in the need to make these adjustments.

The original agreement is being routed at this time as well. It was originally ready for signature in late August, retroactive to July 1, 1996. Just as the signature process was beginning, RDI got word that their federal funding was being cut. The original agreement was then held pending decisions about potential staffing cuts. Once the impact of the cuts was known, the amendment was developed with a limited number of staff and which also extended the agreement through June 30, 1997, from an original expiration date of December 31, 1996.

**III. Financial Impact:** This amendment reduces total funds available by \$5,200 for a new total of \$316,000. These funding reductions make it necessary to eliminate all but 3.58 FTE as of 10/15/96. The total contract is only reduced by \$5,200 because it is extended through June 30, 1996.

Federal funds may be reinstated in the future. Should this happen, another amendment will be developed to restore funding and possibly staffing levels.

**IV. Legal Issues:** N/A

**V. Controversial Issues:** N/A

**VI. Link to Current County Policies:** Continues County's commitment to reducing the impact of drug abuse on children and families.

**VII. Citizen Participation:** RDI is governed by a task force comprised of a cross section of persons from the public and private sectors.

**VIII. Other Government Participation:** The Portland Public School District, Multnomah County School Districts, City of Gresham Police Department, Multnomah County Sheriff's Office, City of Portland and Clackamas County are all partners in support of this initiative.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☐

Contract #102907

Prior-Approved Contract Boilerplate: Attached; XX Not Attached

Amendment # 1

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$25,000 <input type="checkbox"/> Intergovernmental Agreement Under \$25,000	<input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input type="checkbox"/> Intergovernmental Agreement <input checked="" type="checkbox"/> Intergovernmental Revenue Agreement  <b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b> AGENDA # <u>C-7</u> DATE <u>11/7/96</u> REGIONAL DRUG INITIATIVE DEB BOGSTAD <b>BOARD CLERK</b>

Department: Community & Family Services

Division: \_\_\_\_\_

Date: October 22, 1996

Administrative Contact: Chris White

Phone: 248-3691 ext 6062

Bldg/Room 166/7th

Description of Contract: Amendment to revenue agreement to reimburse County for personnel and motor pool expenses for the Regional Drug Initiative; decreases funding/personnel due to RDI funding cuts.

RFP/BID #: N/A

Date of RFP/BID: \_\_\_\_\_

Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ Contractor is ☐ JMBE ☐ JWBE ☐ JQRF ☐ JN/A ☐ None

Original Contract No. \_\_\_\_\_ (Only for Original Renewals)

Contractor Name: <b>Regional Drug Initiative</b> Mailing Address: <b>522 SW 5th, Suite 1310 Portland, OR 97204</b> Phone: <b>(503) 294-7074 (Fax 294-7044)</b> Employer ID# or SS#: <u>N/A</u> Effective Date: <b>July 1, 1996</b> Termination Date: <b>June 30, 1996</b> Original Contract Amount: \$ <b>321,200</b> Total Amt of Previous Amendments: \$ _____ Amount of Amendment: \$ <b>(5,200)</b> Total Amount of Agreement: \$ <b>316,000</b>	Remittance Address (if different) _____  <table> <thead> <tr> <th>Payment Schedule</th> <th>Terms</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input checked="" type="checkbox"/> Monthly \$ <u>Expenditures</u></td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input type="checkbox"/> Other \$ _____</td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements Not to Exceed \$ _____</td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </tbody> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input checked="" type="checkbox"/> Monthly \$ <u>Expenditures</u>	<input type="checkbox"/> Net 30	<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. _____		<input type="checkbox"/> Requirements Not to Exceed \$ _____		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Payment Schedule	Terms																
<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt																
<input checked="" type="checkbox"/> Monthly \$ <u>Expenditures</u>	<input type="checkbox"/> Net 30																
<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other																
<input type="checkbox"/> Requirements contract - Requisition Required																	
Purchase Order No. _____																	
<input type="checkbox"/> Requirements Not to Exceed \$ _____																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

## REQUIRED SIGNATURES:

Department Manager: Lorenzo Poe Date: 10/24/96

Purchasing Director: \_\_\_\_\_ Date: \_\_\_\_\_

(Class II Contracts Only)  
County Counsel: Latie Dantz Date: 10/30/96

County Chair/Sheriff: Willy Cain Date: 11/7/96

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	Inc/Dec Ind.
01	156	010	1666			2102		9102F	Revenue	-5200	

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Contracts Administration, Initiator, Finance

S:\ADMIN\CEU\CONT97\RD197.CF2

MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY AND FAMILY SERVICES  
CONTRACT #102907, AMENDMENT #1

DURATION OF AMENDMENT: July 1, 1996 TO: June 30, 1997  
CONTRACTOR NAME: Regional Drug Initiative TELEPHONE: 503 294-7074  
CONTRACTOR ADDRESS: 522 SW 5th Avenue, Suite 1310 IRS NUMBER: N/A  
Portland, OR 97204

This amendment is to that certain contract dated July 1, 1996, between the Multnomah County Department of Community and Family Services, referred to as the "COUNTY" and Regional Drug Initiative, referred to as the "CONTRACTOR". It is understood by the parties that all conditions and agreements in the original contract not superseded by the language of this amendment are still in force and apply to this amendment.

**PART I: CHANGES**

**RECITALS:**

3. The period of the contract shall be from July 1, 1996 through June 30, 1997.

**AGREED:**

**II. Compensation and Method of Payment**

*(Language in original agreement replaced by the following)*

A. The County (Contractor) will be compensated by RDI for personnel and motor pool costs incurred up to \$316,000 under the terms of this agreement. These funds are comprised of approximately \$22,000 from the RDI Trust Account (\$12,000 of which will be reimbursed from the State Office of Alcohol and Drug Abuse Programs) and the remainder of approximately \$294,000 from RDI's grant from the Center for Substance Abuse Prevention. Payment to the County for eligible expenses will be made not more frequently than monthly upon submission of a statement of expenditures from the County. Supporting documentation of actual expenditures must be included in these submissions.

B. Personnel costs shall be adjusted to the following for the term of this agreement:

1. July 1, 1996 - June 30, 1997

1	Program Administrator	1.0 FTE
1	Senior Office Assistant	1.0 FTE
1	Program Development Specialist	1.0 FTE
1	Program Development Specialist	.58 FTE <sup>1</sup>

2. July 1, 1996 - October 15, 1996

1	Community Liaison	.29 FTE
---	-------------------	---------

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<sup>1</sup>\$12,000 to be paid from the Trust Account, remainder to be paid from the CSAP Grant.

3. July 1, 1996 - September 30, 1996

3	Community Liaisons	.75 FTE
1	Lead Program Development Specialist	.25 FTE
1	Program Development Specialist	.20 FTE <sup>2</sup>
2	Office Assistants II	.25 FTE
1	Office Assistant I	.12 FTE
1	Office Assistant II (Gresham)	.25 FTE
1	Program Development Specialist (Gresham)	.25 FTE

C. Motor Pool costs of up to \$1,200.

**PART II: AMENDMENT NARRATIVE**

A. Extends agreement expiration date from December 31, 1996 to June 30, 1997.

B. Adjusts personnel costs to reflect changes due to a decrease in funding available for the project.

In witness whereof, the parties hereto have caused this contract to be executed by their authorized officers.

MULTNOMAH COUNTY

CONTRACTOR

BY Lolingo Poe ms 10/24/96  
Director, Dept of Community & Date  
Family Services

BY \_\_\_\_\_  
Agency Authorized Signer Date

BY Beverly Stein 11/7/96  
Beverly Stein Date  
Multnomah County Chair

**REVIEWED:**

LAURENCE KRESSEL, County Counsel for  
Multnomah County, Oregon

By Kate Gault 10/30/96  
Date

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS

AGENDA # C-7 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

<sup>2</sup>This position funded entirely from the RDI Trust Account.

MEETING DATE: NOV 7 1996

AGENDA NO: C-8

ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request approval of a Permanent Sewer Easement to the City of Gresham.

BOARD BRIEFING: Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: \_\_\_\_\_

Amount of Time Needed: 5 minutes

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-5132 X2331

BLDG/ROOM #: 166/300/Tax Title

PERSON(S) MAKING PRESENTATION: \_\_\_\_\_

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

The City of Gresham, Department of Environmental Services needs to acquire a permanent sewer easement and a temporary sewer construction easement over real property owned by Multnomah County for the Vance Area II Mid-County Collector Sewer.

Sewer Easement attached.

11/13/96 ORIGINAL EASEMENT & COPIES OF  
ALL TO KATHY TUNEBERG

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 29 AM 11:04  
MULTNOMAH COUNTY  
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: [Signature]

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

Granting a Sewer Easement to the	)	<b>ORDER</b>
City of Gresham for Construction of	)	<b>96-197</b>
the Vance Area II Mid-County	)	
Collector Sewer	)	

**WHEREAS**, the City of Gresham, Department of Environmental Services, has requested a permanent sewer easement and a temporary sewer construction easement over real property owned by Multnomah County for the Vance Area II Mid-County Collector Sewer: and

**WHEREAS**, the grant of an easement upon the parcel of land as described in the attached Sewer Easement, dedicated to the public for the purpose of constructing, inspecting and maintaining a sewer or sewers through, under, and along said parcel, will benefit the public; and

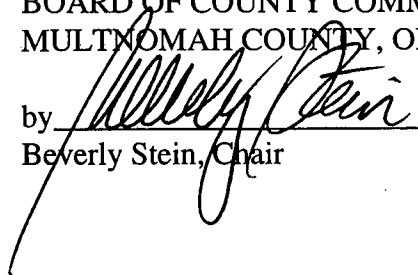
**WHEREAS**, consideration of \$0.00 (zero) offered by the City of Gresham for the Easement is sufficient and the Board being fully advised in the matter; now therefore;

**IT IS HEREBY ORDERED** that Chair of the Multnomah County Board of County Commissioners approves the attached Sewer Easement and that the County Chair be and hereby is authorized to execute the same on behalf of Multnomah County.

DATED this 7th day of November, 1996.




BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

by   
Beverly Stein, Chair

**REVIEWED:**

Laurence Kressel, County Counsel  
for Multnomah County, Oregon

by   
Matthew O. Ryan, Assistant County Counsel



**SANITARY SEWER EASEMENT  
(1S 3E 05CD 1300)**

Mid-County Vance Area II Collector Sanitary Sewer  
Project No 3095

In consideration of the sum of **\$0.00 (zero)** and/or other good and valuable consideration, **Multnomah County, a political subdivision, a municipal corporation duly organized and incorporated under the laws of the State of Oregon** (Grantor), convey to the City of Gresham, a municipal corporation (Grantee) the following perpetual and temporary easements:

(A) A perpetual easement and right-of-way over the following described property:

That portion of the southwest quarter of Section 5, Township 1 South, Range 3 East, Willamette Meridian, Multnomah County, Oregon being more particularly described as follows:

The southerly twenty feet of Tract "A" of Foxglove, a duly recorded plat in Multnomah County, Oregon.

1. The easement is for the purpose of constructing, maintaining, and repairing a pipeline for conveying sewage, industrial waste, and surplus waters of the area to be served by the line.
2. Grantee, its agents, contractors, and invitees shall have a perpetual right-to-enter upon the above described real estate at any time that it may see fit to construct, maintain, and repair a pipeline of such dimensions as may now or hereafter be required for the purpose of conveying sewage, industrial waste, and surplus waters of the area served by this line which is known as **Vance Area II Mid-County Collector Sewer** of the City of Gresham.
3. The Grantor will not be allowed to build any permanent structure or make any site alterations over and above the permanent easement described above.
4. The easement shall run with the land and is binding on Grantor's heirs, personal representatives, successors, and assigns.

(B) A temporary easement over the following described property:

A thirty-foot-wide strip of land, the southerly side of which is coincident with the northerly side of the perpetual easement described above.

The temporary easement is only for the original excavation and construction of the sewer line. Upon completion of the construction, the easement shall cease.

(C) The easement shall take effect on **December 1, 1996.**

=====

1S 3E 05CD 1300  
R-99220-2240

Tax Statement shall be sent to: NO CHANGE

**After recording return to 166/300/Tax Title**

STATE OF OREGON

)

) ss

COUNTY OF MULTNOMAH

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 1996, before me, a Notary Public in and for the State of Oregon, personally appeared Bonnie R. Kraft, who being duly sworn, did say that she is the City Manager of the City of Gresham, acknowledged to me that she is authorized to execute this instrument on behalf of the City of Gresham.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires:\_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Bonnie R. Kraft, City Manager  
City of Gresham

APPROVED AS TO FORM:

\_\_\_\_\_  
Matt Baines, Deputy City Attorney  
City of Gresham

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of Commissioners this 7th day of November, 1996, by authority of an Order of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

by Beverly Stein  
Beverly Stein, Chair

REVIEWED:

Laurence Kressel, County Counsel  
for Multnomah County, Oregon

by Matthew O. Ryan  
Matthew O. Ryan, Assistant County Counsel

SEWER EASEMENT APPROVED:

Larry F. Nicholas, Director  
Department of Environmental Services

by Larry F. Nicholas  
Larry Nicholas

SEWER EASEMENT APPROVED:

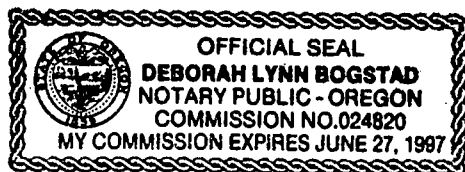
Janice Druian, Director  
Assessment & Taxation

by K. A. Tuneberg  
Kathy Tuneberg

STATE OF OREGON                    )  
  ) ss  
COUNTY OF MULTNOMAH        )

*On this 7th day of November, 1996, before me, a Notary Public in and for the County of Multnomah and State of Oregon, personally appeared Beverly Stein, Chair, Multnomah County Board of Commissioners, to me personally known, who being duly sworn did say that the attached instrument was signed and sealed on behalf of the County by authority of the Multnomah County Board of Commissioners, and that said instrument is the free act and deed of Multnomah County.*

*IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate, written.*



*Deborah Lynn Bogstad*  
Notary Public for Oregon  
My Commission expires: 6/27/97

Meeting Date: NOV 7 1996  
Agenda No: C-9  
Est. Start Time: 9:30

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Report to the Board the Hearings Officer's decision on NSA 22/23-95

**BOARD BRIEFING**      Date Requested:  
                                 Amt. of Time Needed:  
                                 Requested By:

**REGULAR MEETING**      Date Requested:      November 7, 1996  
                                 Amt. of Time Needed:      5 minutes

**DEPARTMENT:**      DES      **DIVISION:** Transportation & Land Use Planning  
**CONTACT:**      Bob Hall      **TELEPHONE:** 248-3043  
                                 **BLDG/ROOM:** 412 / 109

**PERSON(S) MAKING PRESENTATION:** Stuart Farmer

**ACTION REQUESTED**

☐ Informational Only      ☐ Policy Direction      ☒ Approval      ☐ Other

**SUGGESTED AGENDA TITLE**

Report to the Board the Hearings Officer's decision regarding an appeal of an administrative decision for approval of Lot Line Adjustment and a permit for a manufactured home

**SIGNATURES REQUIRED**

**Elected Official:** \_\_\_\_\_  
or  
**Department Manager:** KB Louise L. Nicholas

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 2:33  
MULTNOMAH COUNTY  
OREGON



BOARD HEARING OF NOVEMBER 7, 1996

TIME 9:30am

CASE NAME Kelly Jung

NUMBER

NSA 22/23-95

1. Applicant Name/Address

Kelly Jung  
P.O. Box 30182  
Portland, OR 97294

2. Action Requested by Applicant

Approval of a Lot Line Adjustment between two illegally divided parcels now owned by two separate individuals.

ACTION REQUESTED OF BOARD

- ☒ Affirm Plan.Com./Hear.Of  
☐ Hearing/Rehearing  
☐ Scope of Review  
☐ On the record  
☐ De Novo  
☐ New Information allowed

3. Planning Director Decision

Approve request for Lot Line Adjustment to legalize two parcels created by an illegal land division.

4. Hearings Officer Decision:

Reversal of Planning Director decision.

5. If recommendation and decision are different, why?

One of the applicants withdrew their consent to the application after the Planning Director decision was issued, but prior to the hearing before the Hearing Officer. The Hearing Officer found that the owner who withdrew consent had a property right to the illegally divided property that would be eliminated if the application were to be approved without consent of all owners.

**ISSUES**  
(who raised them?)

6. The Hearing Officer considered the following issues raised by both the applicant and appellant:

- Whether an applicant has the authority to withdraw an application approved by the Planning Director while the case is under appeal to the Hearings Officer. She determined they did.
- Whether ORS 197.177 requires the county to consider and decide a land division application if less than all of the owners of an existing legal parcel have consented. She determined that it did.
- Whether ORS 197.177 requires the county to approve the application. She determined it did not.

7. Do any of these issues have policy implications? Explain.

No, these are interpretations of code language, not the plan policies which generated those code standards.

**MULTNOMAH CNTY, OREGON**  
**DECISION OF LAND USE HEARINGS OFFICER**

**Case File:** NSA 22/23-95

**Proposed Action(s) and Use(s):** Lot Line Adjustment & NSA Site Review

**Matter Appealed:** Decision of Planning Director Approving NSA 22/23-95

**Location of Proposal:** 30600 NE Lampert Road

**Legal Description of Property:** Parcel #1 - Lot 13 Banner Acres  
Parcel #2 - Portions of Lots 10, 11 & 12, Banner Acres  
known as Tax Lot 2 prior to September 15, 1987

**Zoning Designation:** General Management Area, Residential - GGR-10

**Applicants/Owners:** Kelli Jung                      Mark Lux  
PO Box 30182                      30600 NE Lampert Road  
Portland, OR 97294                      Corbett, OR 97019

**Appellants:** Richard Ray, Maureen R. Michelson, Gary Spoerle,  
Michael & Jordis Yost, Susan & Lee McElroy and Mary  
Blankevoort

**Applicant Jung's Counsel:** Dorothy S. Cofield  
Attorney at Law  
12725 SW 66<sup>th</sup> Avenue, Suite 107  
Portland, OR 97223  
(503) 639-5566 (phone)  
(503) 598-7758 (fax)

**Appellant's Attorney:** Daniel Kearns  
Preston, Gates & Ellis  
3200 US Bancorp Tower  
111 SW Fifth Avenue  
Portland, OR 97204

**Hearings Officer:** Liz Fancher

**RECEIVED**  
OCT 21 1996

**Multnomah County**  
**Zoning Division**

## **I. DECISION**

The Hearings Officer hereby reverses the Planning Director's Decision approving Kelli Jung's request for a Lot Line Adjustment in the above-referenced case, based upon the following findings of fact and conclusions of law.

## **II. EXHIBIT LIST**

The following documents were accepted into the record of the above-referenced land use application by the Hearings Officer at or following the September 18, 1996 hearing regarding this application:

- H-1 September 18, 1996 Letter from Dorothy S. Cofield to Liz Fancher
- H-2 Appellants' Hearing Memorandum
- H-3 September 8, 1996 Letter from Rick Ray to Liz Fancher
- H-4 September 30, 1996 Letter from Daniel Kearns to Liz Fancher
- H-5 October 1, 1996 Fax Memo and Letter from Mark Lux to Liz Fancher
- H-6 October 2, 1996 Letter from Dorothy Cofield to Liz Fancher with Applicant's Closing Arguments
- H-7 October 4, 1996 Fax Cover Sheet and Letter from Daniel Kearns to Liz Fancher

## **III. PROCEDURAL MATTERS**

The Hearings Officer received a letter from Daniel Kearns dated October 4, 1996 requesting the right to submit new evidence into the record to rebut new evidence provided by Applicant's attorney, Dorothy Cofield. Mr. Kearns claims that ORS 197.763 (6)(e) requires that the Hearings Officer allow him this right. The Hearings Officer chose, however, to proceed to decide this case without deciding the merits of Mr. Kearns' objection and without considering the substantive issues raised in the October 4, 1996 letter. As the Hearings Officer decided the case in favor of Mr. Kearns' clients, there was no prejudice to his clients from any alleged violation of ORS 197.763 (6)(e).

The land use application that commenced this case was signed by Kelli Jung and by Mark Lux. Cynthia Ulmer-Lux's name was listed on the application but she did not sign the application.

## **IV. FINDINGS**

On June 28, 1996, the Planning Director approved a lot line adjustment that proposed to move a lot line that bisects a section of property owned by Mark Lux and Cynthia Ulmer-Lux. The lot line was moved to the east and south to create a new, lawful lot line between the Jung and Lux property. The current lot line between the Lux and Jung properties was created as the result of



deeds that conveyed portions of a legal lot, "Tax Lot 2," by a number of deeds that affected a number of adjoining lots. Tax Lot 2 is the lot marked '2' on Exhibit 2 of the Planning Director's decision. The lot line moved by the Planning Director's decision is located on the western boundary of Tax Lot 2. In making this decision, the Director determined that Tax Lot 2 and Lot 13 of Banner Acres were legally created parcels of land, as defined by NSA land use regulations. The Planning Director's decision complied with the requirements of MCC 11.15.3566 which govern lot line adjustment decisions.

Enid Jones became the owner of Lot 13, Banner Acres prior to 1968. During 1968 and 1969, in a series of land sales involving Lots 10, 11 and 12 of Banner Acres, Enid Jones acquired "Tax Lot 2" in the shape and location shown on Exhibit 2 of the Planning Director's Decision. At that time, Jones also owned Lot 13. By 1969, Tax Lot 2 consisted of portions of Lots 10, 11 & 12 of Banner Acres. In 1969, it was lawful to transfer and create lots by deed.

In 1987, Enid Jones conveyed Lot 13, Banner Acres, together with the portions of Lot 10 & 12 of Banner Acres that were a part of Tax Lot 2, to The Mortgage Group, Inc. This conveyance did not include the portion of Tax Lot 2 that had come from the original Lot 11. The Appellants' attorney, Daniel Kearns, claims that Tax Lot 2 and Lot 13 were not owned by the same person in 1987 based upon a tax map he attached as Exhibit 2 to Exhibit H-2 of the current land use application. The map referenced by Mr. Kearns does not, however, establish separate ownership, just that the County Tax Assessor had assigned different account numbers to Tax Lot 2 and Lot 13. The Hearings Officer finds to the contrary based upon Exhibit 4 of Hearings Exhibit H-2. It is not known whether Enid Jones and The Mortgage Group, Inc. were intending to effectuate a lot line adjustment between Lot 13 and Tax Lot 2 or whether they were intending to transfer two lots.

No land use approval was obtained to approve the partial transfer of Tax Lot 2, as was then required by Multnomah County. Lot 13, Banner Acres and the portions of Lots 10 and 12 included in old Tax Lot 2 conveyed by Jones, are now owned by Mark Lux and Cynthia Ulmer-Lux.

In 1987, the minimum lot size applicable to the Jung and Lux properties was 38 acres. The 1987 transfer changed legal ownership patterns in the area but did not create new lawful parcels, for land use planning and development purposes.

At some time after 1987, Enid Jones transferred the portion of Tax Lot 2 (the portion that originally came from Lot 11, Banner Acres) not conveyed to The Mortgage Group, Inc. to Kelli Jung. At some time, Kelli Jung purchased the portion of Lot 11 of Banner Acres which lies to the south of Tax Lot 2.

On July 11, 1996, the Appellants filed an appeal of the Planning Director's decision approving the lot line adjustment requested by Mark Lux and Kelli Jung. On July 24, 1996, Mark Lux and

Cynthia Ulmer-Lux sent a letter to Multnomah County stating their wish to withdraw the lot line adjustment application.

## **V. LEGAL QUESTIONS AND ANALYSIS**

### **QUESTION #1**

**Does an applicant for land use approval in Multnomah County have the authority to withdraw a land use application approved by the Planning Director while such a case is under appeal to the Hearings Officer?**

### **ANSWER**

**YES.** Multnomah County has adopted no procedural ordinance to preclude an applicant for land use approval to withdraw a land use application prior to the time that the decision becomes final. The Planning Director's decision is not a final decision while it is being appealed to the Hearings Officer. The Land Use Board of Appeals held in the cases of *Randall v. Wilsonville*, 8 Or LUBA 185 (1983) and *Friends of Lincoln City v. Newport*, 5 Or LUBA 346 (1982) that land use applicants may withdraw their land use applications at any time prior to the date that the local government has rendered a final land use decision. In a later case, *Torgeson v. City of Canby*, 19 Or LUBA 214 (1990), LUBA made it clear that a local land use decision that is appealable to another local body is not a final decision and may be withdrawn at any step in the local appeal process. As a result, Mr. Lux<sup>1</sup> and Ms. Jung have the ability to withdraw the pending land use application by asking that their joint application be withdrawn. The cited LUBA cases hold that once a land use application is withdrawn, the local government loses jurisdiction of the matter and any decision rendered by the government becomes a nullity. *Randall*, at p. 190. The cited LUBA cases do not, however, determine the effect of a withdrawal of a land use application when one of two applicants refuses to request withdrawal nor the effect of a withdrawal of an application filed pursuant to the provisions of ORS 197.177. The later question is addressed below.

### **QUESTION #2**

**Does ORS 197.177 require Multnomah County to consider and decide an application for the creation of lots or parcels if less than all of the owners of an existing legal parcel have applied for the approval?**

---

<sup>1</sup>As Cynthia Ulmer-Lux did not sign the application and the evidence indicates that Mr. Lux did not act as her agent in signing the application, there is no need for her to agree to withdrawal of the application.

## **ANSWER**

**YES.** ORS 92.177 states that the County *shall* consider and may approve an application “for approval of the creation of lots or parcels which were improperly formed without approval of the governing body” notwithstanding the fact that less than all of the owners of the existing legal lot or parcel have applied for approval. Ms. Jung has filed an application to create a legal lot from an improperly formed lot. As a result, the Hearings Officer must review and decide this case despite the fact that Mr. Lux has withdrawn his consent to consideration of this application and Cynthia Ulmer-Lux never consented to filing of the land use application. ORS 92.177 creates an exception to the holdings of the above-referenced LUBA cases which state that a local government loses jurisdiction of a land use matter once a property owner withdraws a land use application.

## **QUESTION #3**

**Does ORS 92.177 require Multnomah County to approve the Jung application?**

## **ANSWER**

**NO.** ORS 92.177 gives Multnomah County the authority to approve such an application but does not require approval.

## **QUESTION #4**

**Must Multnomah County agree to move a parcel line that is located wholly within the boundary of the Lux property (between Lot 13 and Tax Lot 2) to the east to create a lawful parcel for development purposes for Kelli Jung, over the objection of Mr. and Mrs. Lux?**

## **ANSWER**

**NO.**

The Hearings Officer finds that Kelli Jung owns one legally created parcel, the portion of Lot 11, Banner Acres located to the south of Tax Lot 2 and an illegally created parcel that is a portion of Tax Lot 2 (as it existed between 1969 and 1987). Ms. Jung has the legal right to seek a boundary line adjustment between her legal parcel and her illegal parcel to move the northern lot line of the southern portion of Lot 11, Banner Acres to the north to the northern boundary of her illegally created parcel. This change will result in creating a legal parcel.

The Hearings Officer further finds that Mr. Lux and Ms. Ulmer-Lux own one legal lot, Lot 13 and an illegally created lot, the portion of Tax Lot 2 that was conveyed with Lot 13. They have a right to create one lawful lot that includes Lot 13 and the portion of Tax Lot 2 that was conveyed

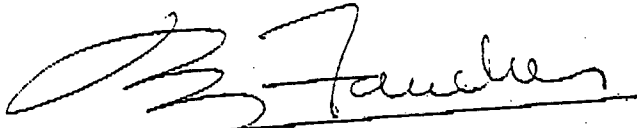
to them with Lot 13. They could accomplish this goal by filing a request for a lot line adjustment or by consenting to the pending lot line adjustment.

The result of gaining approval for either of the above-lot line adjustments would be to create a remainder parcel from Tax Lot 2 that would be a lawful parcel for land use planning purposes. If Ms. Jung files the application referenced above, the remainder of Tax Lot 2 owned by Mr. Lux and Ms. Ulmer-Lux would be a lawful parcel. It would have been created from a lawful parcel, Tax Lot 2, and would have a shape that corresponds to the area of Tax Lot 2 owned by the Lux family. Further, the Lux family might seek to obtain approval for such a lot by asking the County to move the Lot 11 lot line that adjoins Tax Lot 2 to the north to follow the outline of Ms. Jung's illegally created parcel that is located within Tax Lot 2 (the reverse of the pending Jung application). The creation of lawful parcel brings with it the potential right to develop the property and to sell it as a separate unit to a third party, a right that does not exist for an illegal parcel.

Based on the foregoing analysis, the Hearings Officer finds that the Lux family has a property interest in the property line that exists between Tax Lot 2 and Lot 13 and that Kelli Jung has a property interest in the property line that lies between Lot 11 (south section) and Tax Lot 2. The property line that Ms. Jung wishes to move is located wholly within the boundaries of the Lux property and is not her line to move. The Hearings Officer finds that the Takings Clause of the 5<sup>th</sup> Amendment of the US Constitution prevents the Hearings Officer from taking the Lux property right from the Lux family without just compensation for such property under the guise of correcting an unlawful lot situation. *Lucas v. South Carolina Coastal Council*, \_\_\_US\_\_\_, 112 S. Ct. 2886, 120 L.Ed.2d 798 (1992). As no funds are available to compensate the Lux family for this taking, the Hearings Officer cannot proceed to approve the pending lot line application.

SIGNATURE PAGE - APPEAL OF JUNG APPLICATION

Decision dated this 16<sup>th</sup> day of October, 1996.

A handwritten signature in cursive script, appearing to read "Liz Fancher", written over a horizontal line.

Liz Fancher, Hearings Officer  
Multnomah County

MEETING DATE: November 7, 1996

AGENDA #: R-2

ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Resolution Agreeing to the City of Portland's Request for Tax Exemption Program

BOARD BRIEFING:

DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:

DATE REQUESTED: Thursday, November 7, 1996

AMOUNT OF TIME NEEDED: 5 minutes

DEPARTMENT: Non-Departmental

DIVISION: Chair Beverly Stein

CONTACT: Maria Rojo de Steffey

TELEPHONE #: 248-3955

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: Chair Beverly Stein

### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

Resolution Agreeing to the City of Portland's Request for the Transit Oriented  
Area Development Tax Exemption Program

11/13/96 copies to Maria Rojo de Steffey

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_

(OR)

DEPARTMENT  
MANAGER: \_\_\_\_\_

*Beverly Stein*

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 OCT 31 PM 11:34

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Maria Rojo de Steffey

TODAY'S DATE: October 31, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

RE: RESOLUTION ENDORSING THE CITY OF PORTLAND'S REQUEST FOR THE  
TRANSIT ORIENTED DEVELOPMENT TAX EXEMPTION PROGRAM

I. Recommendation/Action Requested:

Approval of Resolution

II. Background/Analysis:

ORS 307.600 to 307.690, as amended by Chapter 596, Oregon Laws, 1995 effective on September 9, 1995, enables cities and counties to provide a limited property tax exemption for up to ten years to encourage the development of multiple-unit housing near light rail and major transit lines. The City of Portland is requesting through memo (attached) that the Board of County Commissioners formally endorse this program so that any exemption granted to a specific project will affect taxes representing the total combined tax rate.

III. Financial Impact:

According to the County's Budget Office, in a memo sent to the BCC on September 27, 1996, "granting an exemption for the five projects identified by the City of Portland does not impact the revenue stream of either the city or the county. The exemptions would shift the tax burden onto all other taxpayers in the county - although the net impact would be roughly \$.50 for each taxpayer." (See attached memo).

IV. Legal Issues:

Meets the legal requirements under the ORS.

V. Controversial Issues:

Tax exemptions can be controversial. In this case, as you can see in the financial impact, granting this endorsement does not unduly impact anyone. Also, some people are concerned about the impact of density development on their neighborhoods. Developing along the transit corridors allows for people to use public transportation rather than drive through neighborhoods.

VI. Link to Current County Policies:

Provides more affordable housing and other services to Multnomah County residents.

VII. Citizen Participation:

The Board of County Commissioners had two public briefings on this matter. Several housing advocates and citizens presented information. The City of Portland's Planning Commission held a public meeting and the Portland City Council received testimony at their regular public meeting.

VIII. Other Government Participation:

Tri-Met and City of Portland worked together to bring this proposal to the Portland City Council.





# MULTNOMAH COUNTY, OREGON

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**BOARD OF COUNTY COMMISSIONERS**

BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

**BUDGET & QUALITY OFFICE**

PORTLAND BUILDING  
1120 S.W. FIFTH, ROOM 1400  
P.O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503) 248-3883

TO: Barry Crook, Budget & Quality Manager  
FROM: J. Mark Campbell, Revenue Analyst  
DATE: September 27, 1996  
SUBJECT: Transit Oriented Development - Additional Information

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BOARD OF  
COUNTY COMMISSIONERS  
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In my previous memo, I stated the impact of tax exemption programs generally and highlighted the impact of the tax shift which would occur if an exemption were granted for the five projects outlined in Mike Saba's memo.

You have asked me to provide some additional information for the Board of County Commissioners to consider as they deliberate over this issue. Specifically, you wanted to know:

- ⇒ *What is the impact on the property tax system if a project is not developed because an exemption is not granted?*
- ⇒ *What impact is Measure 47 likely to have on this exemption program?*

As I noted before, granting an exemption for the five projects identified by the City of Portland does not impact the revenue stream of either the city or the county. The exemptions would shift the tax burden onto all other taxpayers in the county - although the net impact would be roughly \$.50 for each taxpayer.

The amount of the tax shift that would occur is nearly negligible because the total value of the projects is less than one-tenth of one percent of the total assessed value in Multnomah County. At some point the continued use of this tax exemption program could produce a significant shifting of the tax burden (assuming that overall value growth is sufficient to keep local governments out of compression). To put this in context, however, it would take roughly 50 projects with an average value of \$10 million apiece to begin to approach the magnitude of the tax shift which resulted from granting an SIP abatement to Fujitsu.

If, on the other hand, the projects were not developed the properties would remain on the tax roll at their present value. There would be no impact on the property tax revenue stream. Assuming the value is relatively negligible, and assuming that no other development occurred to increase the value, property taxes would continue to be based on the entire assessed value. If the value of the property were to increase, either through some type of alternative development or simple appreciation, the effect would be a reduction in the overall tax rate - if you conservatively assume the value of the land is about 10% of the value of the entire project and you assume 7% value growth, the reduction would amount to about five cents per taxpayer.

*Transit Oriented Development  
Tax Analysis - Multnomah County Budget & Quality  
September 27, 1996*

The second question is a little more problematic, given the many uncertainties surrounding the "Cut and Cap" initiative. The short answer is that the initial financial impact is the same as if there were no additional property tax limitation. It is my opinion, based on an interpretation of the provisions of Measure 47, that tax exemption programs would be upheld as contractual obligations entered into by local governments.

If a tax exemption is not granted, I believe that any new development of the type defined in the City of Portland's proposed program would be considered as new construction and, thus, would be taxed based on the incremental value of the improvements. This would help to mitigate the revenue loss forecast to occur under Measure 47 - although the overall relief provided would be very minimal.

If a tax exemption is granted, it is my understanding that HB 3133 contained a provision that allows for the taxation of the property value not attributable to the development. In other words, if the original value of the land were \$5 million and it increased to \$6 million the one million dollar increment would be taxable. Under Measure 47, the actual taxes collected would be based on the tax paid in FY 94-95 or 90% of the FY 95-96 amount. I hereafter, the tax collected could only increase by 3% per year. This again would ameliorate some of the impacts of the measure but, for the most part, it is negligible.

The major uncertainty I see from granting a property tax exemption under the auspices of this measure is - "How would the property be treated once the exemption expired?" I would offer the conjecture that it would be considered as new construction and the tax would be based on the assessed value at the time the exemption was granted, allowing for a 3% annual increase in the tax levied on the property. I only offer this as one interpretation of how this might be addressed; it is virtually impossible to know how this would, in fact, be implemented.

To summarize, the fiscal impacts of the decision to grant property tax exemptions for targeted development in transit corridors are negligible for local governments and minimal for school districts. Measure 47 does not appear to directly impact the program, although the question of how property would be taxed when an exemption expired is one that we can only speculate about. The impact to individual taxpayers, based on the five projects outlined by the City of Portland, would be a tax shift of approximately fifty cents.

Please let me know if I can provide additional information.



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF PLANNING

**Charlie Hales, Commissioner**  
David C. Knowles, Director  
1120 S.W. 5th, Room 1002  
Portland, Oregon 97204-1966  
Telephone: (503) 823-7700  
FAX (503) 823-7800

October 30, 1996

MEMORANDUM

TO: Maria Rojo  
Assistant to the Multnomah County Chair

FROM: Mike Saba  
Portland Planning Bureau

SUBJECT: County Endorsement of City's Property Tax Exemption for Transit  
Supportive Development

On October 23, 1996 the Portland City Council passed Ordinance No. 170667 (attached) adopting a new property tax exemption incentive for transit supportive residential and mixed use development. A directive contained in the ordinance requires staff to request formal endorsement of this program by the Multnomah County Board of Commissioners so that any exemption granted to a specific project will affect taxes representing the total combined tax rate.

Consistent with this directive, I am requesting consideration by the Board of a resolution endorsing this program. I understand that such a resolution is scheduled for November 7, 1996. If I can be of any help, please do not hesitate to call me at 823-7838. Thank you for your help in this matter.

cc: Mayor Katz and Members of the Portland City Council

## ORDINANCE No 17 06 67

\*Adopt a new Chapter 3.103 of the Portland City Code entitled "Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development" and amend portions of Chapters 3.102 and 3.104 (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. ORS 307.600 to 307.690, as amended by Chapter 596, Oregon Laws 1995, effective on September 9, 1995, enables cities and counties to provide a limited property tax exemption for up to ten years to encourage the development of multiple-unit housing near light rail and major transit lines.
2. In passing this legislation, the Legislature determined "that it is in the public interest to promote private investment in transit supportive multiple-unit housing in light rail station areas and transit oriented areas in order to maximize Oregon's transit investment to the fullest extent possible and that the cities and counties of this state should be enabled to establish and design programs to attract new development of multiple-unit housing, and commercial and retail property, in areas located within a light rail station area or transit oriented areas."
3. During the operation of the Eastside MAX light rail line during the last 10 years, there has not been along the station areas outside the Central City the level of transit supportive development envisioned by earlier planning efforts.
4. Tri-Met has identified vacant and underutilized development opportunity sites in its light rail station area development profiles.
5. It is in the public interest to encourage transit oriented development within walking distance of light rail stations and other major transit facilities in order to reduce vehicle miles traveled, traffic congestion, and air pollution.
6. This program will help implement the City's Comprehensive Plan, Portland's Livable City Housing Initiative, Community Plans, Tri-Met's Strategic Plan Land Use Goal, and Metro's 2040 Regional Growth Management Strategy.
7. Ordinance No. 169736, adopting the Outer Southeast Community Plan, passed on January 3, 1996 by the City Council authorized the following

policies, objectives, or action items which support the adoption of this program within the recommended eligible areas:

Lents Town Center Policy: Foster the development of a Lents Town Center that attracts employment opportunities, residential density, and recreational activities while reducing adverse environmental impacts.

Relevant Objectives:

2. Focus public resources on the development of the Town Center as a commercial, residential, and employment center.
4. Ensure a wide range of housing in terms of structure, ownership, rental patterns, and prices.

Action Items:

- TC5 Locate and design the future high capacity transit station in a manner which reinforces and becomes an integral part of the Lents Town Center.
- TC11 Increase multifamily housing densities around the I-205 interchange by expanding the R1 zone where reasonable.
- TC14 Designate the southern portion of the Freeway Land Company site as Central Employment (EXd) on the Comprehensive Plan Map to increase employment opportunities, a mixture of uses, and better design. As an interim measure, zone the site a combination of General Employment (EG2) and Heavy Industrial (IH) to allow existing uses to remain conforming.

Gateway Regional Center Subarea Policy IV: Foster the development of this area as a "Regional Center." Attract intense commercial and high-density residential development capable of serving several hundred thousand people. Promote an attractive urban environment by creating better pedestrian connections and providing more public open space.

Relevant Objectives:

9. Stimulate high-density residential development throughout the Gateway subdistrict.

Action Item:

- RC2: Construct housing in the 102nd Avenue transit station area for all income levels, including units affordable for low to moderate income households.

MAX LRT Corridor Policy V: Ensure that private development reinforces and is reinforced by the public light rail investment by encouraging development of intense commercial and dense residential uses near the MAX light rail stations.

## Relevant Objectives:

1. Encourage the redevelopment of large underused or auto-oriented sites along 122nd Avenue to a mixture of commercial and residential uses.
2. Improve the pedestrian orientation of buildings and streets around light rail stations.
3. Increase housing densities within one-quarter mile of a transit stop to at least medium-density multifamily, as the appropriate opportunity arises, and apply transit-supportive zones to commercially zoned land.

Outer Southeast Housing Policy: Provide a variety of housing choices for outer southeast community residents of all income levels by maintaining the existing sound housing stock and promoting new housing development.

## Relevant Objectives:

1. Construct 14,000 new housing units in the Outer Southeast Community Plan area by 2015.
  2. Stimulate production of new housing units by both private and nonprofit housing producers to accommodate expected population growth.
  5. Increase opportunities for multifamily housing in areas convenient to shopping and transit.
8. On August 27, 1996, the Portland Planning Commission held a public hearing to consider the Proposed Public Discussion Draft of the ordinance and voted to endorse the program with several changes which have been incorporated into the Recommended Draft transmitted to the Portland City Council.
  9. This program has also received the endorsement of the Tri-Met Board of Directors, the Housing and Community Development Commission, the Portland Development Commission, and the Multnomah County Board of Commissioners.
  10. The Portland City Council held a hearing on October 23, 1996 to determine whether multiple-unit housing including design elements benefiting the general public and enhancing the public's investment in light rail and public transit would not otherwise be built without the benefits provided by ORS 307.600 to 307.690. After the hearing, the City Council determined that such housing has not been built at the site areas proposed for eligibility for this program, and would not be built without the proposed benefits.

11. On July 1, 1996, the Bureau of Buildings transferred the responsibility for administering Chapter 3.102, Property Tax Exemption for Residential Rehabilitation and New Construction of Single-Unit Housing in Distressed Areas, to the Portland Development Commission, thereby requiring amendments to this Chapter reflecting these changes in administration.
12. ORS 307.600 to 307.690, as amended by Chapter 596, Oregon Laws 1995, effective on September 9, 1995, also enables cities and counties to provide the property tax exemption to for-sale multiple-unit projects.
13. It is in the public interest to include this opportunity to provide property tax exemption to for-sale multiple-unit projects within the Central City as well as in transit oriented areas, thereby requiring amendments to Chapter 3.104, Property Tax Exemption for New, Multiple-Unit Rental Housing.

NOW, THEREFORE, The Council directs:

- a. Title 3, Administration, of the City Code is amended by adding a new Chapter 3.103 to read as follows:

#### Chapter 3.103

#### PROPERTY TAX EXEMPTION FOR NEW TRANSIT SUPPORTIVE RESIDENTIAL OR MIXED USE DEVELOPMENT

##### Sections:

3.103.005	Purpose.
3.103.010	Definitions.
3.103.020	Eligible Projects and Sites.
3.103.025	Pre-application Procedure.
3.103.030	Application Procedure.
3.103.040	Public Benefits.
3.103.045	Approval Criteria.
3.103.050	Review of Application.
3.103.060	Exemption.
3.103.070	Termination.
3.103.080	Extension of Deadline.
3.103.090	Implementation.

##### **3.103.005 Purpose.**

The purposes of this property tax exemption are to encourage the development of high density housing and mixed use projects affordable to a broad range of the general public on vacant or underutilized sites within walking distance of light rail or fixed route transit service, and to enhance the effectiveness of the light rail or fixed route transit system.

**3.103.010 Definitions.** As used in this Chapter:

- A. "Full funding agreement" means an agreement executed by the Federal Transit Administration or other U.S. governmental agency which contains the terms and conditions applicable to the approval of a light rail project and the grant of federal funds for that project, which includes construction of planned stations and other light rail facilities.
- B. "Light rail station area" means an area defined, for the purposes of this Chapter, to be within a one-quarter mile radius of an existing or planned light rail station. A planned light rail station shall be defined as one that has achieved a full funding agreement.
- C. "Multiple-unit housing" means newly constructed structures, stories or other additions to existing structures, and structures converted in whole or in part from other uses to dwelling units that meet the following criteria:
  - 1. The structures must have eight or more dwelling units.
  - 2. The structures must not be designed or used as transient accommodation, including but not limited to hotels and motels.
  - 3. The structures must contain design elements benefiting the general public as specified in Section 3.103.040.
  - 4. The structures must:
    - a. Enhance the effectiveness of the light rail or fixed route transit system by providing pedestrian connection to a light rail line or mass transportation system; and
    - b. Contain housing units with rental rates or purchase prices which are accessible to a broad income range of the general public; and/or
    - c. Provide alternative public benefits and design features which further the purposes of this Chapter as demonstrated by compliance with the provisions of Section 3.103.040.
- D. "Pedestrian connection" means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for



redevelopment, pedestrian connection may also include rights-of-way or easements for future pedestrian improvements.

- E. "Transit oriented area" means an area defined in a local transportation, community, neighborhood or other local or regional plan to be within one-quarter mile of a fixed route transit service including bus lines.

### 3.103.020 Eligible Projects and Sites.

- A. The property tax exemption permitted by this Chapter is intended to benefit projects that emphasize:
1. The development of vacant or underutilized sites rather than sites where sound or rehabilitable multiple-unit housing exists;
  2. The development of multiple-unit housing, with or without parking, in structures that may include groundlevel commercial space;
  3. The development of multiple-unit housing, with or without parking, on sites with existing single-story commercial structures;
  4. The development of multiple-unit housing, with or without parking, on existing surface parking lots; and
  5. The development of units at rental rates or purchase prices which are accessible to a broad income range of the general public.
- B. Eligible projects shall be constructed or converted after the date of adoption of this program, and completed on or before July 1, 2006.
- C. For the purposes of this Chapter, eligible sites must be located within the following areas:
1. Light rail station areas within a one-quarter mile radius of an existing light rail station or a light rail station under construction on or before January 1, 1999, except that the site must be located outside the boundaries of the Central City Plan District as shown on Map 510-1 of Chapter 33.510 of the Portland Zoning Code. The distance from an eligible light rail station shall be measured from the center line of the right-of-way on which the station is located or from the center point of the intersection of one or more rights-of-way, as appropriate. Maps showing these areas are found at the end of this Chapter as Maps 3.103-1 through 3.103-5. If a portion of the project site falls within the one-quarter mile distance, the entire site shall qualify as a property eligible to apply for this exemption; and

2. Transit oriented areas within the Gateway Plan District as included on Map 526-1 of Chapter 526 of Title 33, Planning and Zoning, and shown at the end of this Chapter as Maps 3.103-5 (1 of 2 and 2 of 2); and
  3. Transit oriented areas within the Lents Town Center as delineated on Map 11 of the adopted Outer Southeast Community Plan and shown at the end of this Chapter as Maps 3.103-6 (1 of 4 through 4 of 4).
- D. In addition to the eligible areas noted above, the following criteria apply to individual projects:
1. Projects located on sites zoned R5, R7, R10, R20, or RF Single Dwelling Zones, as defined by Title 33, Planning and Zoning, are not eligible for the property tax exemption permitted by this Chapter.
  2. Multiple-unit projects which do not include ground floor commercial space must contain at least 35 housing units per net acre of site area to be eligible for the property tax exemption permitted by this Chapter.
  3. Mixed use projects containing ground floor commercial space must incorporate at least two times the amount of residential floor area to non-residential floor area and contain at least 20 housing units per net acre of site area.
  4. For the purposes of this Chapter, a rowhouse or townhouse development containing for sale or rental units is eligible so long as all other eligibility criteria of this Chapter are met.
- E. All eligible projects shall demonstrate that property tax exemption is necessary to achieve economic feasibility for the residential use, taking into account the additional costs incurred by the design features, public benefits, or minimum densities required in return for the incentives allowed by this Chapter.
- F. The City shall periodically review the areas eligible for the exemption granted to transit supportive development in response to transportation and/or community planning and policy initiatives which indicate the need to encourage desired development in other light rail station areas or transit oriented areas as defined in this Chapter. The basis for considering the inclusion of new light rail station areas shall be the establishment of a full funding agreement.

### **3.103.025 Pre-application Procedure.**

- A. A pre-application meeting will be required with the Portland Development Commission staff prior to submitting a complete application. On forms provided by staff, the prospective applicant shall include the following:

1. A schematic drawing, showing the site plan, including major features and dimensions of the proposed development;
  2. A statement describing the location of the proposed development; the number, size, and type of individual dwelling units; a preliminary pro forma showing expected rents or purchase prices of the dwelling units; the dimensions of the multiple-unit structure(s); the approximate amount of floor area dedicated to the types of uses envisioned; public and private access; parking and circulation plans; a description of the public benefits proposed; and any additional information that would demonstrate the eligibility of the project for the property tax exemption, including its physical and functional connection to the nearest transit service. However, certain items of information may be waived for projects under design or if applicants request guidance in order to submit material sufficient for a complete application.
- B. Prior to the meeting, the staff shall review the information supplied and contact, for purposes of facilitating the application process, those bureaus, bodies, or other governmental agencies which may be affected by, or have an interest in, the proposed development.
- C. The applicant shall meet with staff and discuss the proposed development. Thereafter, the Development Commission staff shall provide the applicant with a summary of the meeting, including recommendations designed to assist the applicant in the preparation of the exemption application. Staff guidance shall be provided indicating the minimum requirements for meeting the provisions of Section 3.103.040 of this Chapter.

### **3.103.030 Application Procedure.**

- A. A person seeking an exemption under the terms of this Chapter shall apply to the Portland Development Commission not later than September 1 of the calendar year immediately prior to the first assessment year for which the exemption is requested. The application for the exemption shall be on forms prescribed by the Commission staff and include the following information:
1. The applicant's name, address, and telephone number;
  2. A legal description of the property and property account number;
  3. A detailed description of the project, including the number, size, and type of dwelling units; dimensions of the multiple-unit structure(s), parcel size, proposed lot coverage of building, and amount of open space; type of construction; expected rents or purchase prices of the dwelling units; public and private access; parking and circulation plan; number of residential and commercial off-street parking spaces; the source of water and proposed method of sewage disposal; other utilities requirements; landscaping;

proposed amount of floor area dedicated to residential and nonresidential uses; a description of the public benefit(s) prescribed in 3.103.040 included in the project; and economic feasibility studies or market analysis, when appropriate. In addition, the application shall contain a detailed construction and operating cost analysis to demonstrate the applicant's economic need for the tax exemption. Evidence of cost comparisons may be required when appropriate;

4. A description of the existing use of the property, including if appropriate a justification for the elimination of existing sound and rehabilitable housing;
  5. A site plan and supporting maps, drawn to a minimum scale of one inch equal to 16 feet, or a scale suitable for reproduction on 8-1/2" by 11" paper, showing the development plan of the entire project including streets, driveways, sidewalks, pedestrian ways, off street parking, loading areas, location, design, and dimension of structures, use of land and structure(s), major landscaping features, existing and proposed utility systems, including sanitary and storm sewers, water, electric, gas and telephone lines; and
  6. Such other information required by state or local law or otherwise which is reasonably necessary to effectuate the purposes of this Chapter, including a demonstration of the project's physical and functional connection to the nearest transit service.
- B. Concurrent with the submission of the application, an application fee as established by the Portland Development Commission shall be required.

### **3.103.040 Public Benefits.**

- A. Purpose. The purpose of this Section is to achieve the type of higher density, transit oriented development desired by the adoption of this Chapter in addition to furthering other public policy goals of the City and the County. Therefore, a number of options are presented to the applicant in order to achieve one or more public benefits.
- B. Except for the provisions of Section 3.103.040 D below, all rental projects containing more than 15 units applying for the exemption under the terms of this Chapter must include within the project and for the term of the exemption at least 20 percent of the units for rent at rates which are affordable to households earning 60 percent or less of the area median income.
  1. For the units affordable to households earning 60 percent or less of the area median income under the terms of this Chapter, the units must be rented to households whose incomes do not exceed 60 percent of the area median income upon initial occupancy of the unit by that household. Subsequent monitoring of the incomes of these households is not required until the

affordable unit again becomes available for rent, at which time it must be rented to an income qualified household earning 60 percent of the area median income for the remaining term of the property tax exemption, unless another unit has subsequently been rented at an equivalent affordable rate to a qualified household so that the project continues to comply with all provisions of this Section.

2. Measurement of household income shall be determined using the U.S. Department of Housing and Urban Development's, or its successor agency's, annual household income for the Portland Metropolitan Area for a family of one person (for a studio apartment), two persons (for a one-bedroom apartment), three persons (for a two-bedroom apartment), or four persons (for a three-bedroom apartment). Affordability shall be defined as a rental rate which does not exceed 30 percent of the monthly gross income for a family earning 60 percent or less of the area median income.
- C. All projects containing housing units available for individual purchase shall receive the property tax exemption only for those for-sale units which are available at an initial purchase price which does not exceed 95 percent of the median purchase price for a condominium unit in Multnomah County as established by the U.S. Department of Housing and Urban Development for the purpose of determining FHA loan qualification. The unit must be sold to a household earning no more than 100 percent of the area median income for a family of four as established by the U.S. Department of Housing and Urban Development, or its successor agency, during the year of sale in order to retain its property tax exempt status.
1. In order to qualify for this exemption, such units must be owner-occupied during the term of the exemption. Should any unit become available for sale during the term of the exemption, it must be sold to a household earning no more than 100 percent of the area median income for a family of four as established by the U.S. Department of Housing and Urban Development, or its successor agency, during the year of sale in order to retain its property tax exempt status.
- D. As an alternative to the provisions of Section 3.103.040 B above, the project may instead provide one or more of the following public benefits, except that projects containing 15 or fewer units are exempt from the provisions of Section 3.103.040 B, above, and need include only one of the following public benefits:
1. At least 10 percent of the rental units must be affordable to households earning 30 percent or less of the area median income according to the equivalent formulas for determining affordable rent and household size as described in Sections 3.103.040 B. 1 and 2 above; or

2. At least 20 percent of the rental units must be dedicated during the term of the exemption by covenant to households which include persons with special needs, such as the mentally or physically disabled or other categories of persons as defined by the Federal Fair Housing Amendments Act of 1988; or
  3. At least 20 percent of the rental units must include three or more bedrooms; or
  4. The project must provide child care on-site or support child care through a service provider with a facility located within 1200 feet of a light rail station or within 400 feet of a transit stop at 25 percent of the annual value of the property tax exemption for each year of the term of the exemption, such in-lieu support being dedicated to project residents or other households earning 60 percent or less of the area median income; or
  5. The project must provide a residential unit per acre density equivalent to at least 80 percent of the applicable maximum density as allowed by the base zone as established by Title 33, Portland Zoning Code, except that this alternative shall not be available to projects on sites with R1 zoning. For sites with RH, IR, CN, CO, CM, CS, or CG zoning, this requires at least 68 units per net acre. For sites with RX, CX, EX, or other zoning, this requires at least 139 units per net acre.
- E. In addition to the applicable provisions of Sections 3.103.040 A through D above, the project must include at least one of the following:
1. Ground floor service or commercial use which is permitted and serves project residents, neighboring residents, and transit riders; or
  2. Office space or meeting room for community organizations; or
  3. Publicly accessible open space such as a landscaped plaza; or
  4. Family oriented recreational facilities for the children of project residents; or
  5. Transit amenities and transit or pedestrian design elements such as benches, bus shelters, directional signs, or an off-site pedestrian connection from the project to the nearest transit service.
- F. Staff from the Portland Development Commission shall confer, at a minimum, with the staffs of the Planning Bureau and the Office of Transportation for advice and confirmation regarding compliance with the relevant public benefits, plan policies, and transit oriented design features applicable to the project. Other bureaus or agencies indicating interest shall also be invited to comment. Written comments received from staff shall be entered into the record of the adopting report and recommendation presented before the City Council.

- G. The City Council shall specify the public benefits and transit oriented design features which are to be included in the proposed project. If the applicant fails to agree to include the public benefits as specified by the Council, the application shall be denied.

**3.103.045 Approval Criteria.** An application may be recommended for approval if the Portland Development Commission staff establishes conditions which ensure that:

- A. The project contains one or more of the public benefits described in Section 3.103.040;
- B. The project containing these public benefits, affordable units, and/or transit oriented design features would not otherwise be financially feasible without the benefit provided by the property tax exemption;
- C. The construction project will, at the time of completion, conform with the applicable provisions of Titles 17, 24, 32, 33, 34; and
- D. The applicant has complied with Sections 3.103.010, 3.103.020, 3.103.030, and 3.103.040.

**3.103.050 Review of Application.**

- A. Within 80 days of receipt of a complete application, the staff of the Portland Development Commission shall recommend to the Portland City Council that the application be denied or approved subject to conditions. Portland Development Commission staff may require modifications to the project design in order to further the public goals of this Chapter.
- B. If the recommendation is for approval, the report and recommendation shall contain a resolution stating the terms and conditions of approval, which shall be made available to the applicant, the City Council, and any interested agencies or individuals at least 14 days prior to consideration of the recommendation at a hearing conducted before the City Council.
- C. The City Council shall review the application and deny or approve it subject to conditions. Final action upon the application shall be in the form of a resolution that shall include: the owner's name and address; a description of the multiple-unit housing; the legal description of the property and the Assessor's property account number; and all conditions imposed and upon which approval of the application is based. An application not acted upon within 180 days from the date of application shall be deemed approved.

- D. If the application is denied, a notice of denial shall be sent to the applicant within 10 days following the denial. The notice shall state the reasons for denial.
- E. If the application is approved, the Portland Development Commission staff shall file with the Assessor a copy of the resolution approving the application.

#### **3.103.060 Exemption.**

- A. Except as provided for under subsection B., multiple-unit housing for which an exemption has been approved under the terms of this Chapter shall be exempt from ad valorem taxation for up to 10 successive years beginning July 1 of the year immediately following the calendar year in which construction is completed, determined by that stage in the construction process when, pursuant to ORS 307.330, the improvement would have gone on the tax rolls in the absence of the exemption. The exemption shall not include the land upon which the project is located, nor any improvement not part of the multiple-unit housing except for those improvements deemed a public benefit as specified in 3.103.040. The exemption provided in this section shall be in addition to any other exemption provided by law.
- B. In the case of a structure converted in whole or in part from other uses to multiple family, only the increase in value attributed to the conversion shall be eligible for the exemption.
- C. In either case, the value of the exemption shall not exceed 100 percent of its real market value.

**3.103.070 Termination.** If, after an application has been approved under this Chapter, the City finds that the work was not completed on or before July 1, 2006; that any provision of this Chapter has not been complied with; or that any agreement by the owner or requirement imposed is not being satisfied; the Portland Development Commission staff shall send a notice of proposed termination of the exemption to the owner's last known address.

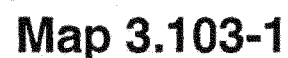
- A. The notice shall state the reasons for the proposed termination, and shall require the owner to appear before the City Council at a specified time, not less than 20 days after mailing the notice, to show cause, if any, why the exemption should not be terminated.
- B. If the owner fails to show cause why the exemption should not be terminated, the City Council shall adopt a resolution terminating the exemption. A copy of the resolution shall be filed with the County Assessor and a copy sent to the owner at his last known address within 10 days after its adoption.
- C. If the owner does not seek review of the termination of an exemption pursuant to ORS 34.010 to 34.100, upon final adjudication, the county officials having



possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under ORS 311.207 to 311.213, to provide for the assessment and taxation of any property for which exemption was terminated by the City or by a court, in accordance with the finding of the City or the court as to the assessment year in which the exemption is first to be terminated. The County Assessor shall make such valuation of the property as shall be necessary to permit such correction of the rolls. The owner may appeal any such valuation in the same manner as provided for appeals under ORS 311.207 to 311.213. Where there has been a failure to comply with ORS 307.670, the property shall become taxable beginning July 1 of the calendar year in which the noncompliance first occurred. Any additional taxes becoming due shall be payable without interest if paid in the period prior to the 16th of the month next following the month of correction. If not paid within such period, the additional taxes shall be delinquent on the date they would normally have become delinquent if timely extended on the roll or rolls in the year or years for which the correction was made.

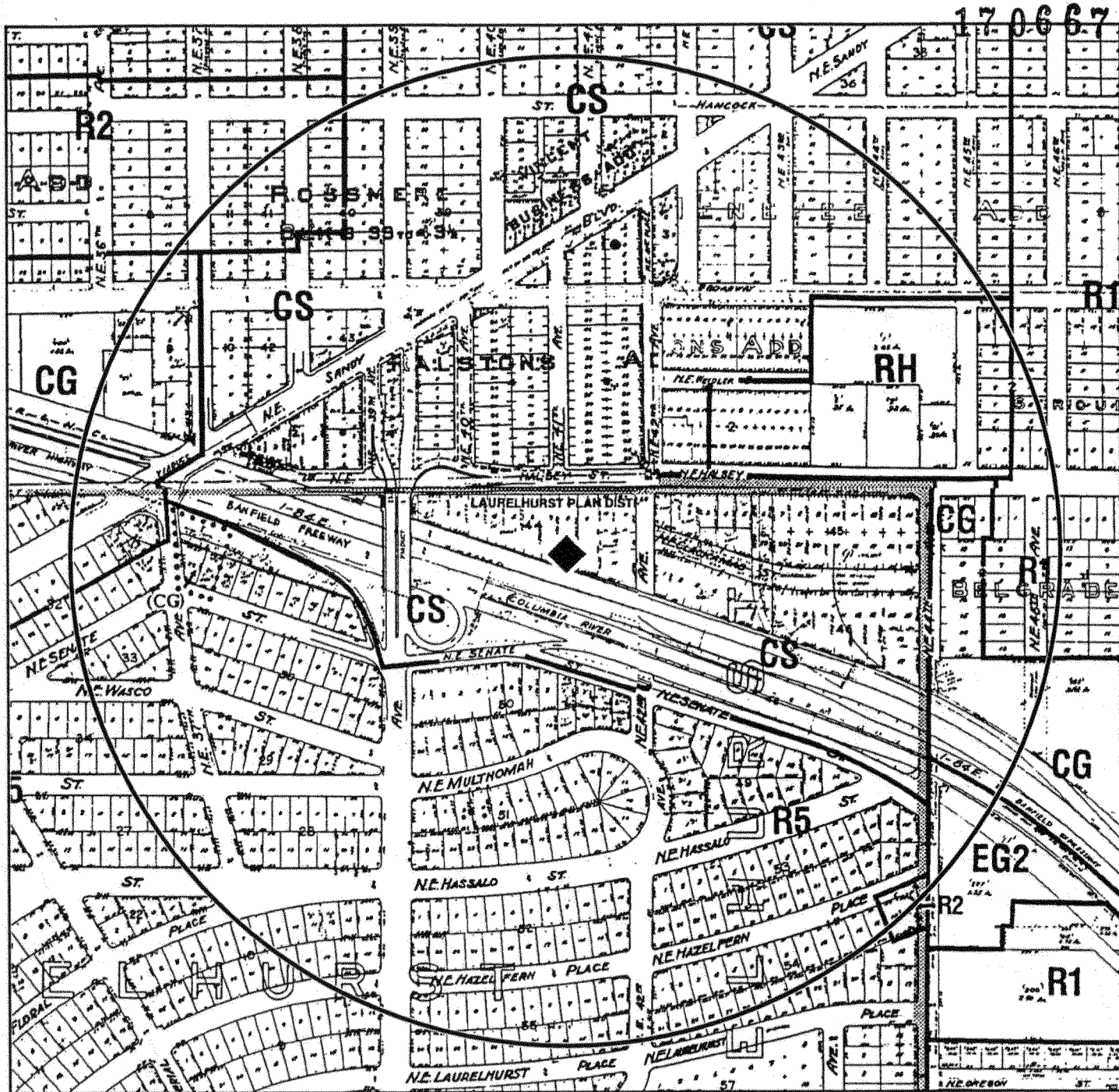
**3.103.080 Extension of Deadline.** Notwithstanding the provision of 3.104.070, if the City finds that construction of the multiple-unit housing was not completed by July 1, 2006, due to circumstances beyond the control of the owner, and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the City may extend the deadline for completion of construction for a period not to exceed 12 consecutive months.

**3.103.090 Implementation.** The Portland Development Commission shall establish procedures and prepare forms for implementation, administration, and monitoring for compliance with the provisions of this Chapter.



# Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

## Goose Hollow Light Rail Station Area

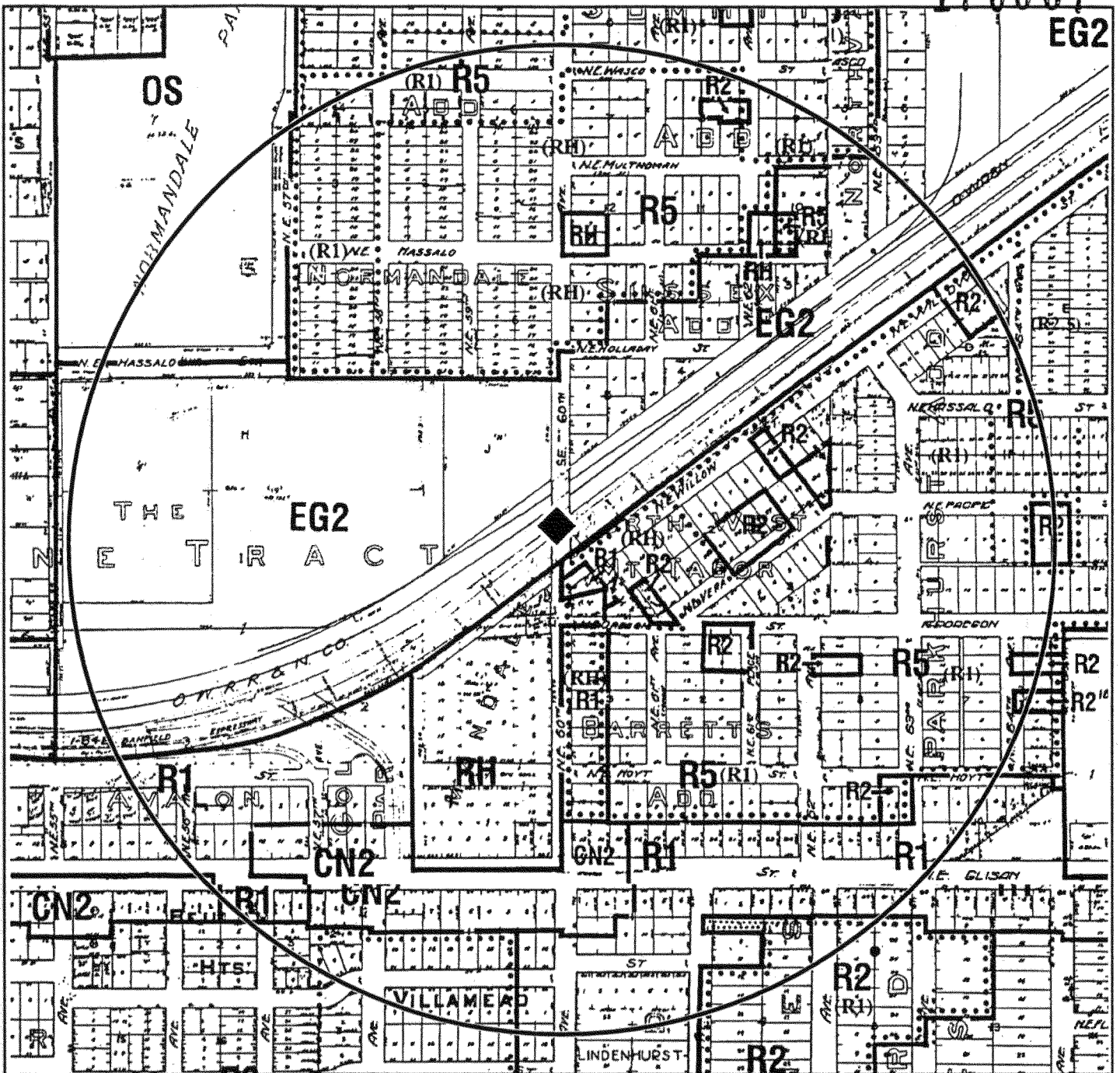


Map 3.103-2

# Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

Hollywood/42nd Avenue  
Light Rail Station Area

17 06 67  
EG2



Map 3.103-3

# Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

60th Avenue Light Rail Station Area

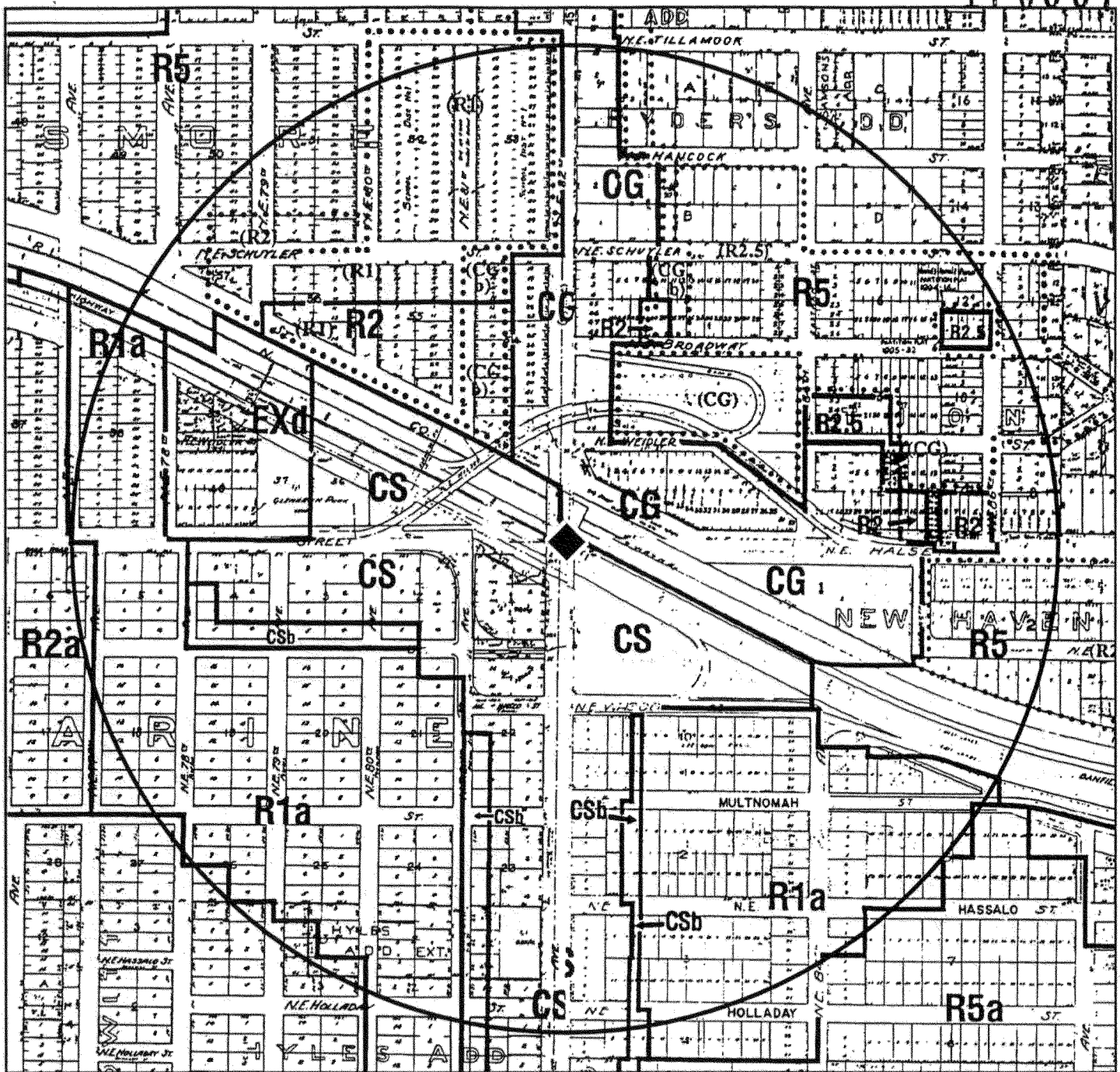
NORTH

0' 250' 500'  
Scale in Feet

Light Rail Station  
Location

25 Mile  
Radius





NORTH

0' 250' 500'

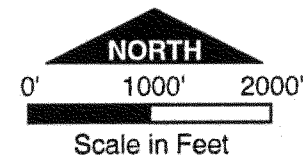
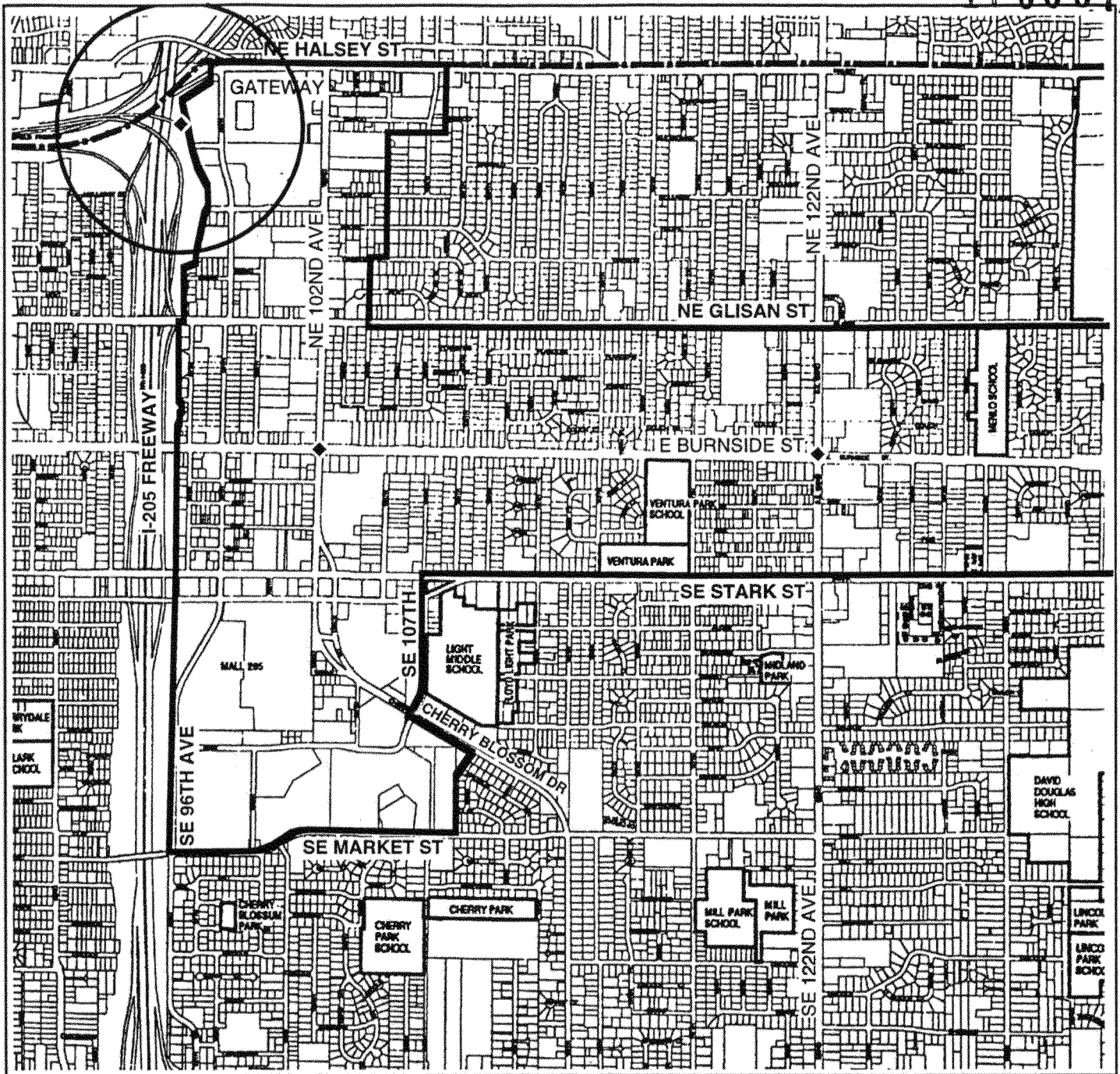
Scale in Feet

Light Rail Station  
Location25 Mile  
Radius

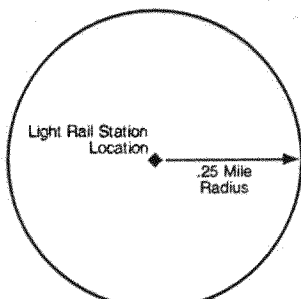
Map 3.103-4

# Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

## 82nd Avenue Light Rail Station Area



Plan District Boundary



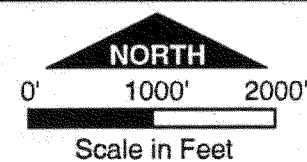
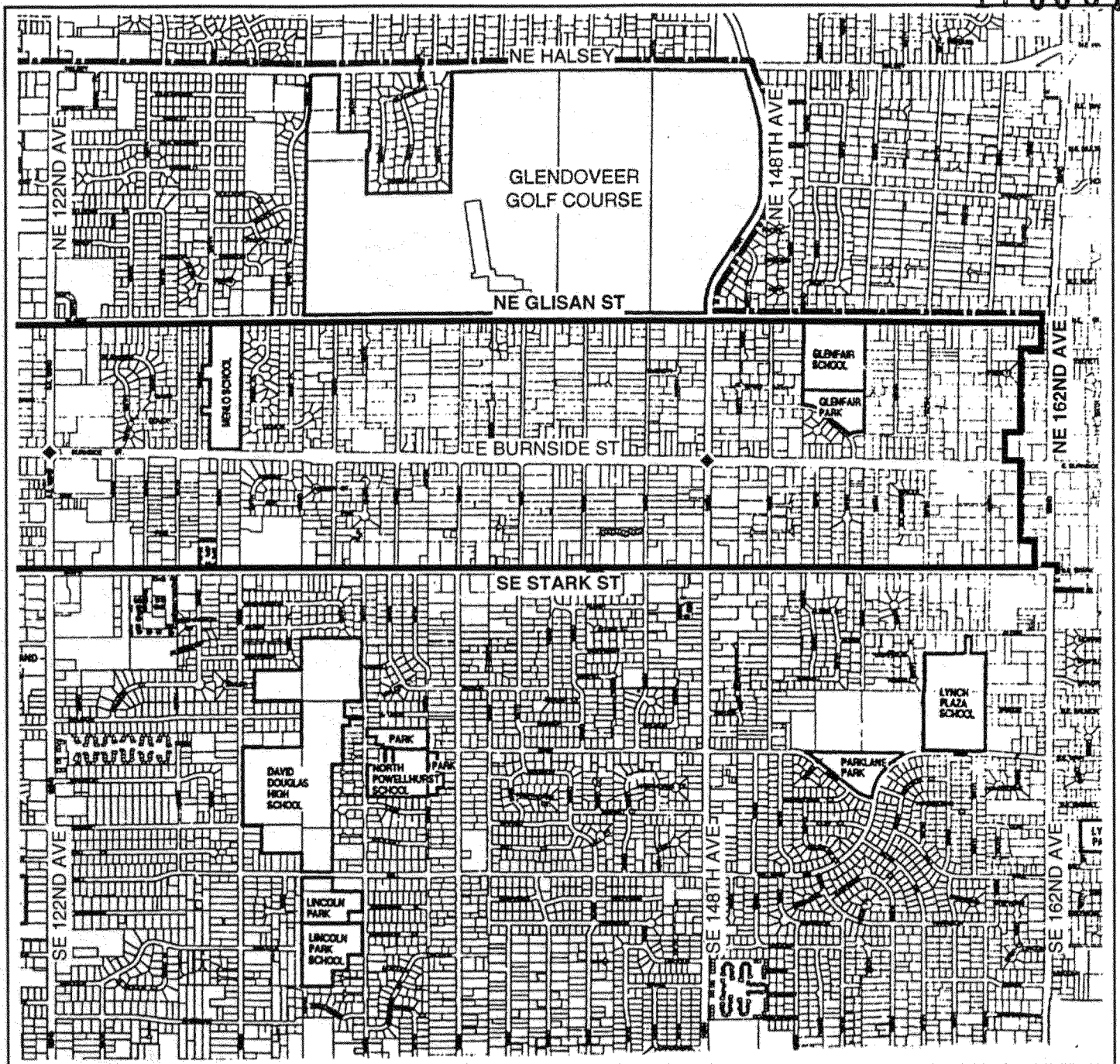
GTS/Graphics 10-15-96

Map 3.103-5

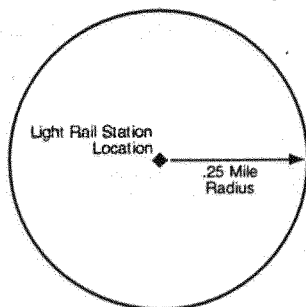
# Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

## Gateway Plan District Light Rail Station Areas and Transit Oriented Areas

Map 1 of 2



Plan District Boundary



GTS/Graphics 10-15-96

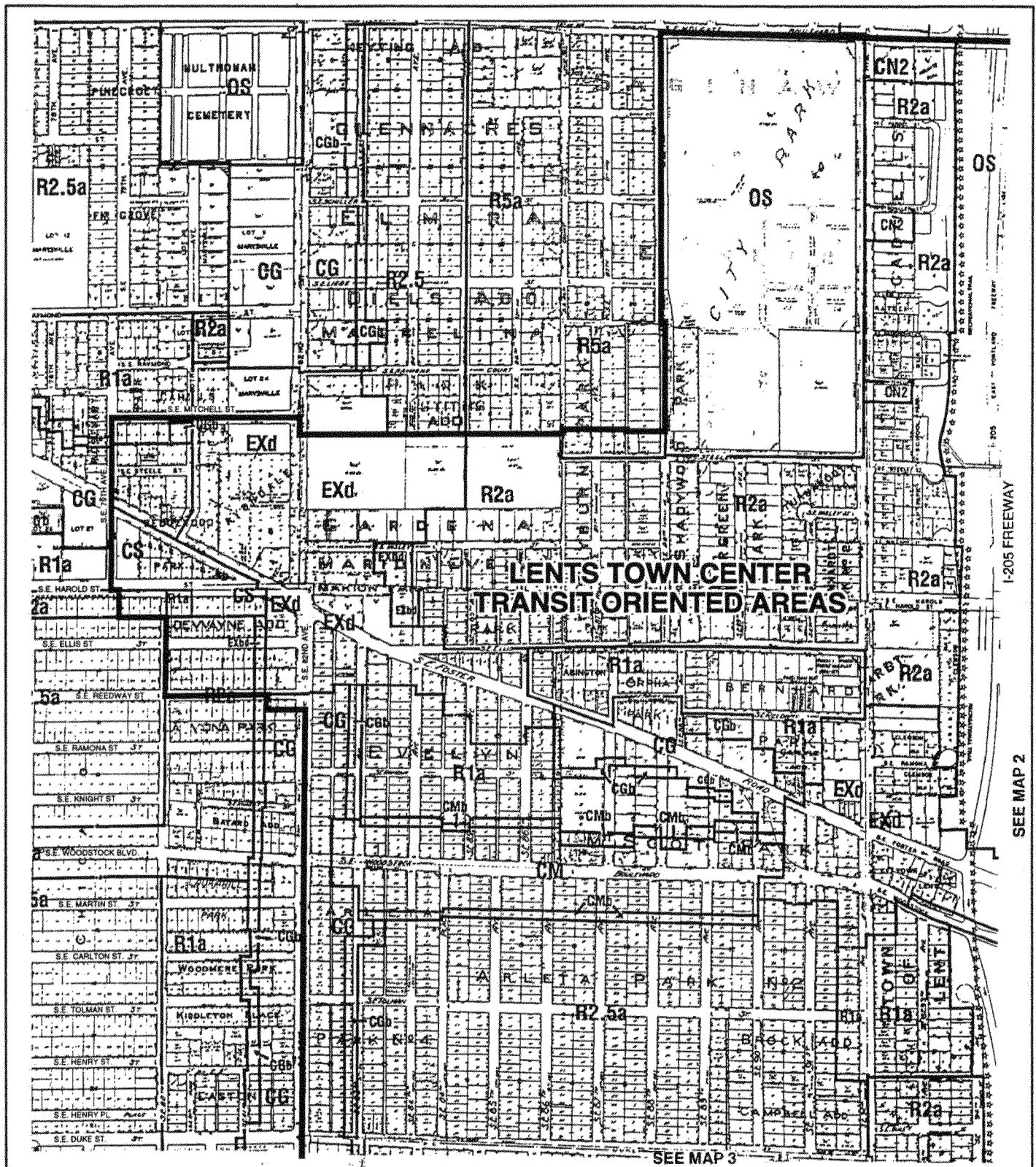
Map 3.103-5

# Property Tax Exemption for New Transit Supportive Residential or Mixed Use Development

## Gateway Plan District Light Rail Station Areas and Transit Oriented Areas

Map 2 of 2





SEE MAP 2

SEE MAP 3

NORTH

0' 400' 800'

Scale in Feet

Transit Oriented Area  
Boundary

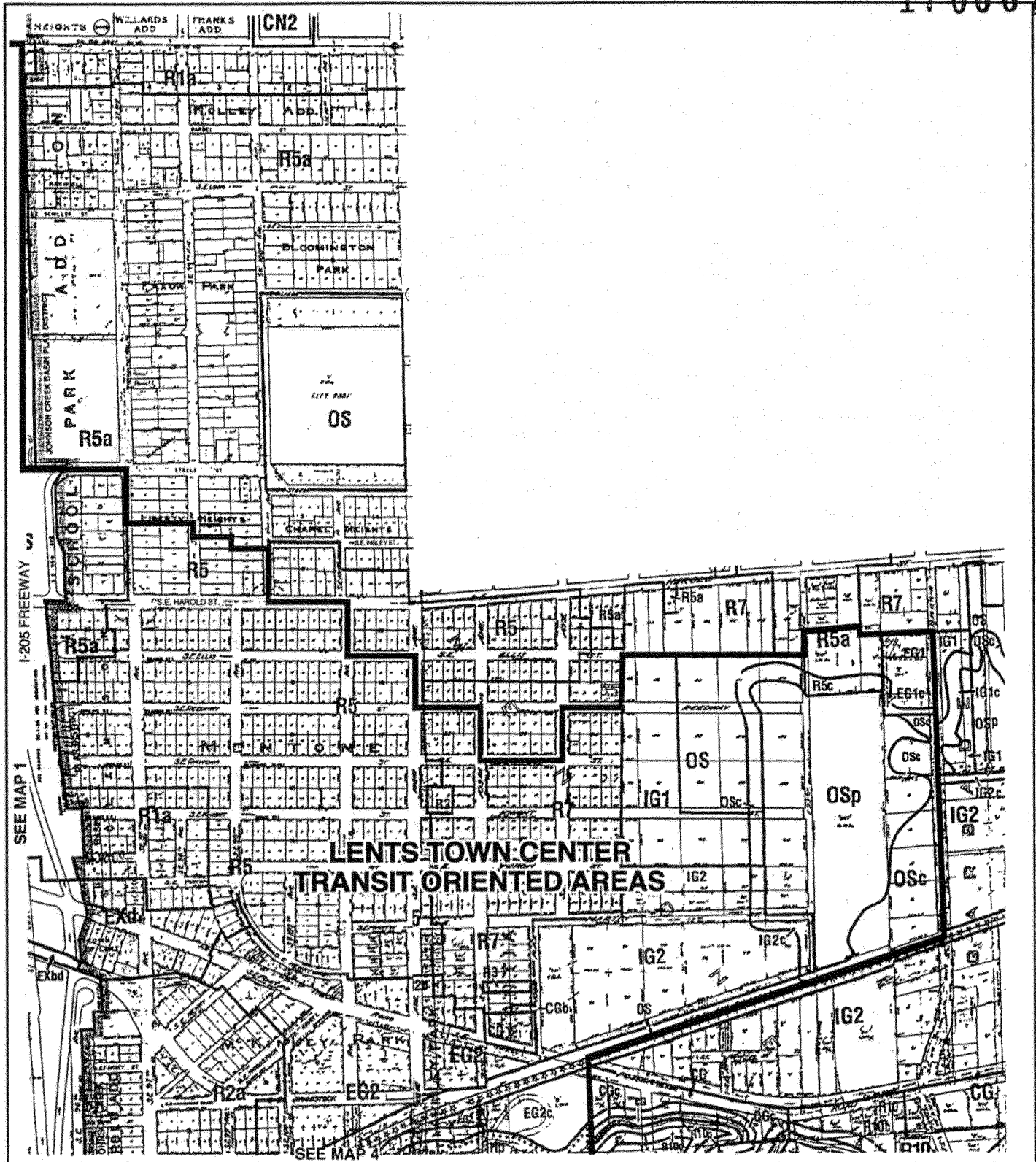
GTS/Graphics 10-15-96

# Map 3.103-6 Lents Town Center Transit Oriented Areas

Map 1 of 4

Bureau of Planning • City of Portland, Oregon





NORTH

0' 400' 800'

Scale in Feet

Transit Oriented Area  
Boundary

GTS/Graphics 10-15-96

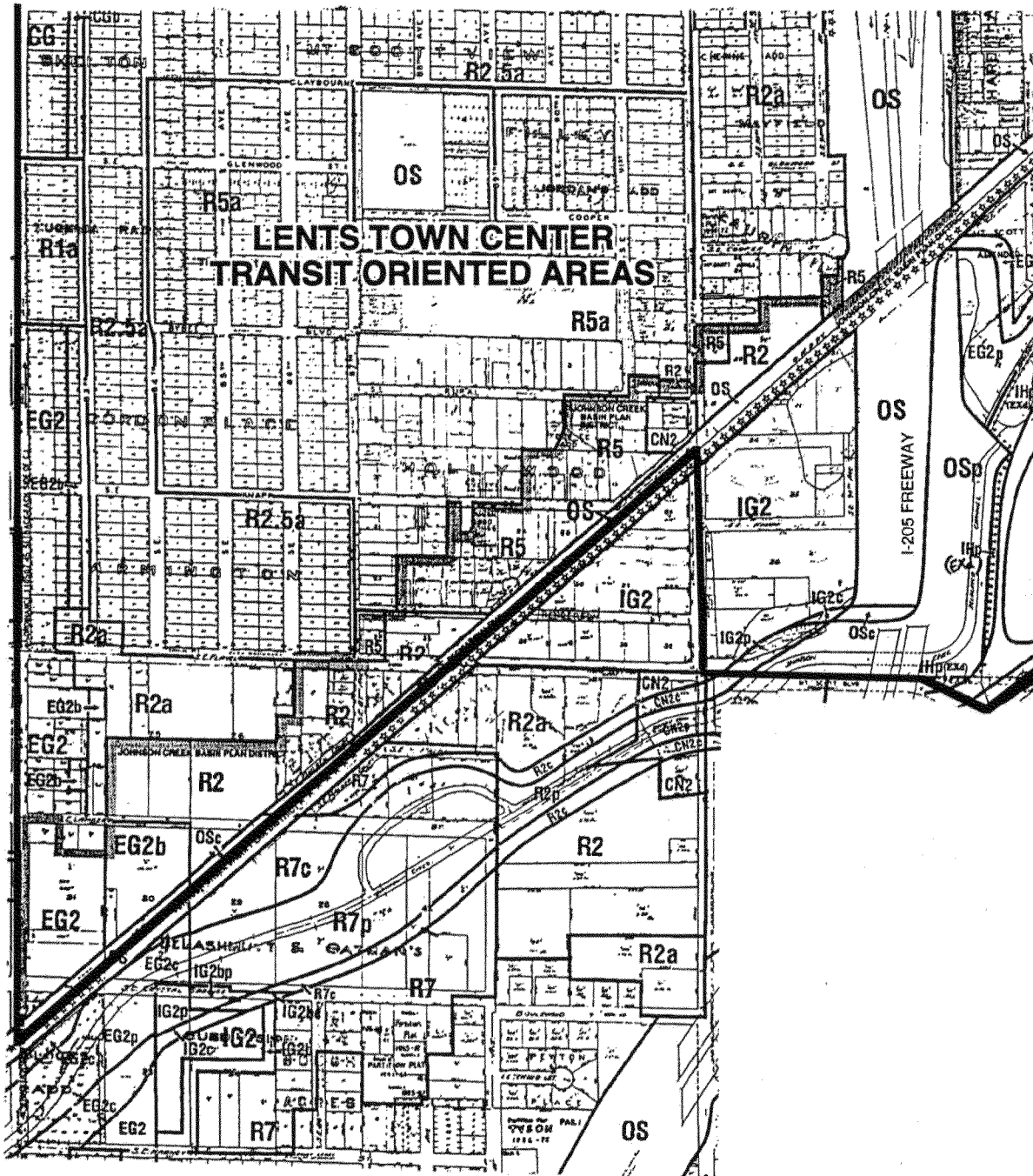
# Map 3.103-6

## Lents Town Center Transit Oriented Areas

Map 2 of 4

Bureau of Planning • City of Portland, Oregon

SEE MAP 1



SEE MAP 4

SEE MAP 4



0' 400' 800'

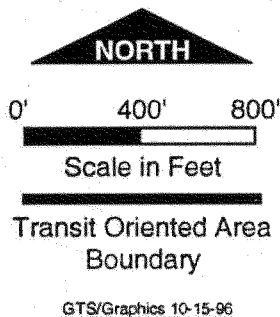
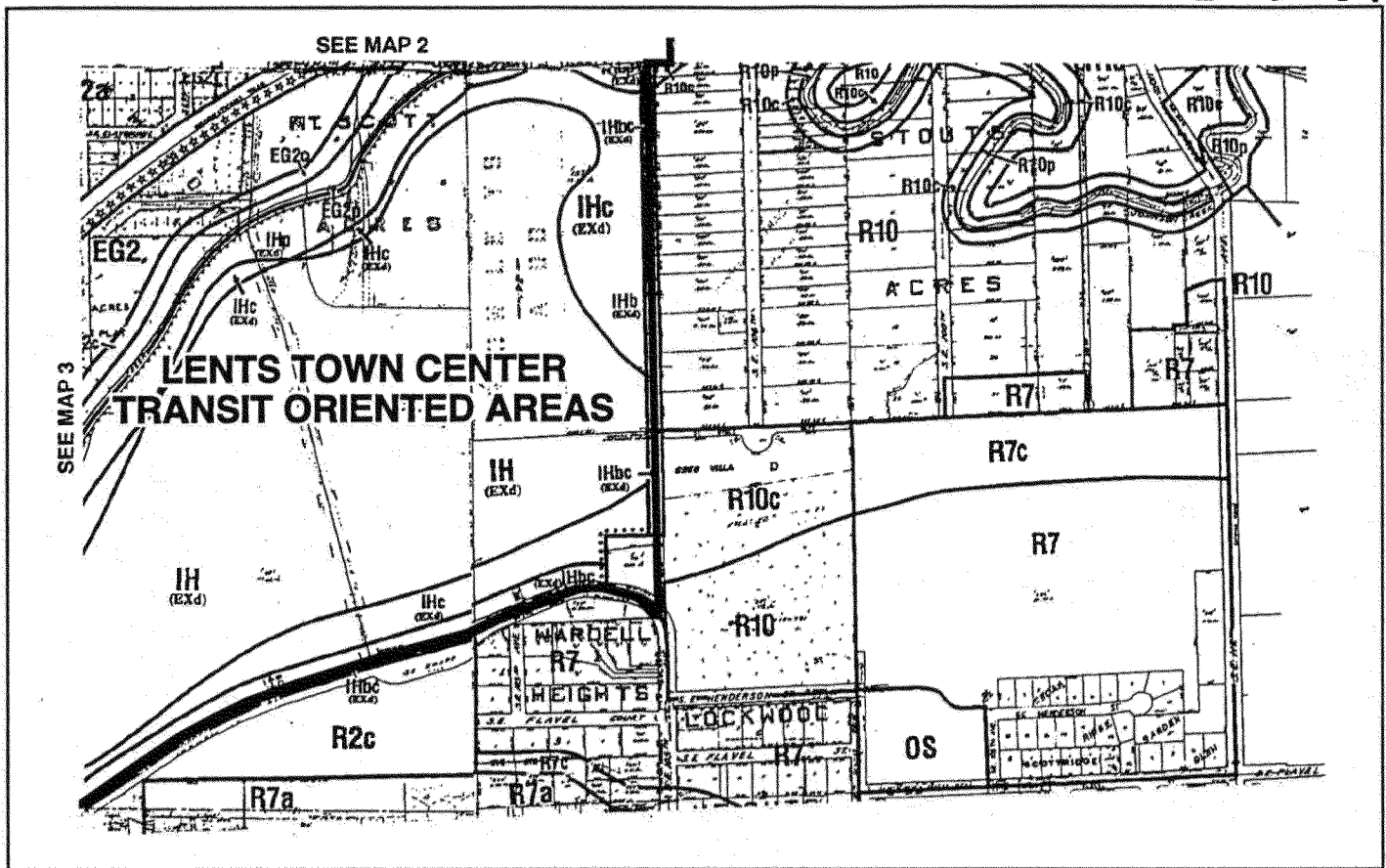
Scale in Feet

Transit Oriented Area  
Boundary

GTS/Graphics 10-15-96

# Map 3.103-6 Lents Town Center Transit Oriented Areas

Map 3 of 4



# Map 3.103-6 Lents Town Center Transit Oriented Areas

Map 4 of 4

Bureau of Planning • City of Portland, Oregon

- b. Section 3.102.100 of Chapter 3.102 of Title 3, Administration, of the City Code is repealed and Chapter 3.102 is amended as follows:

### Chapter 3.102

## PROPERTY TAX EXEMPTION FOR RESIDENTIAL REHABILITATION AND NEW CONSTRUCTION OF SINGLE-UNIT HOUSING IN DISTRESSED AREAS

### Sections:

- 3.102.010 Definitions.
- 3.102.020 Application for Limited Assessment.
- 3.102.030 Review of Application.
- 3.102.040 Certificate of Qualification.
- 3.102.050 Rental Agreement.
- 3.102.060 Assessment.
- 3.102.070 Annual Statements.
- 3.102.080 Termination.
- 3.102.090 Designation of Distressed Areas,
- [3.102.100 Sunset of the Exemption for Owner-Occupied Rehabilitation and New Single-Unit Residences in Distressed Areas.]

### 3.102.010 Definitions. As used in this Chapter:

- (1) "Distressed area" means those areas of the City designated by rule by the Bureau of Planning in consultation with the [Bureau of Buildings] Portland Development Commission, and the Bureau of Housing and Community Development that meet the requirements set out in ORS 308.450 (1).

- (2) - (6) No change.

### 3.102.020 Application for Limited Assessment.

- (1) (a) - (b) No change.

- (c) Plus a sum equal to the estimated appraisal costs to be incurred by the Assessors Office to the [Bureau of Buildings] Portland Development Commission concurrent with the submission of the application, the applicant also being liable for all additional costs incurred by the City or County due to the processing of the application for exemption. The application will include provisions so that the applicant can acknowledge:

- (i)- (ii) No change.

- (iii) That the applicant agrees, if the structure is not a newly constructed single-unit residence and is extended to be owner-occupied, to negotiate through the

[Bureau of Buildings] Portland Development Commission rental rates to be charged for the rehabilitated rental units during the period of limited assessment; and

(iv) No change.

(2) No change.

### 3.102.030 Review of Application.

(1) Within 90 days after receipt of a completed application and payment of all appropriate fees, the Commission shall approve the application if the [Bureau of Buildings] Portland Development Commission finds that the property is eligible property. Written notice of approval shall be sent to the applicant at his or her last known address within 10 days of approval, and shall verify the structure's noncompliance, and specify what rehabilitation improvements must be completed in order that the property be in substantial compliance.

(2) For a newly constructed single-unit residence, the [Bureau of Buildings] Portland Development Commission shall determine whether the location is within a distressed area at the time of application and may approve an application for limited property tax exemption for an eligible structure constructed prior to January 1, 1998 within a distressed area. Construction must begin while the area is designated as distressed in order to qualify.

(a) The [Bureau of Buildings] Portland Development Commission shall also determine that the new single-unit residence will have a market value, including the cost of the land, of no more than 120 percent of the median sales price of single family homes located within the city. Such price shall be determined by the Bureau of Planning as provided by Section 3.102.090(4).

(b) No change.

(c) The approval shall be in the form of a resolution that shall contain the owner's name and address, a description of the property or the assessor's property account number and the specific conditions upon which the approval of the application is based. The resolution shall direct the County Assessor to exempt the "structure from ad valorem taxes as provided in Section 3.102.060 (3), pending approval of the certificate of qualification by the [Bureau of Buildings] Portland Development Commission as provided in Section 3.102.050. A single resolution listing all approved properties and submitted annually for Council consideration before each upcoming tax [period] year shall be sufficient to meet this requirement.

(3) If the application is denied, the [Bureau of Buildings] Portland Development Commission shall state in writing the reasons for denial, and send it to the applicant within 10 days of denial. An applicant may appeal the denial to the City Council within 30 days after receipt of notice of denial.

**3.102.040 Rental Agreement.** No change.

**3.102.050 Certificate of Qualification.**

(1) Upon completion of the rehabilitation improvement or the new construction, the applicant shall file with the [Bureau of Buildings] Portland Development Commission an application for a certificate of qualification and, in the case of a rehabilitated structure intended to be nonowner-occupied, a copy of the rental rate agreement required by 3.102.040.

(2) Within 30 days of receipt of the application, the [Bureau of Buildings] Portland Development Commission shall determine whether the property qualifies for limited assessment under this Chapter. Approval shall be given if one of the following alternatives [are] is satisfied:

(a) - (b) No change.

(4) A copy of the certificate of qualification shall be sent to the applicant, and filed by the [Bureau of Buildings] Portland Development Commission with the Assessor within 20 days. In addition, copies of the application for limited assessment; the notice of approval; the rental agreement (if appropriate); the Resolution of approval (if appropriate); and the application for a certificate of qualification shall also be filed with the Assessor and shall be numbered with the applicant's application number, and shall be delivered in a single transmittal.

(5) No change.

**3.102.060 Assessment.**

(1) As provided by ORS 308.459, eligible rehabilitated property shall be assessed at no more than its assessed value as it appears in the last equalized assessment roll next preceding the date on which the application for limited assessment is filed with the Commission as provided for in 3.102.020. If the certificate of qualification is filed with the Assessor after [December 31] June 30 but prior to [April] August 1, the limited assessment shall apply with respect to the first assessment roll equalized after [April] August 1; if the certificate of qualification is filed after [April] August 1 but prior to [January] July 1, the limited assessment shall apply as of the following [January] July 1, and shall continue to apply thereafter for a total of 10 consecutive assessment rolls.

(2) No change.

(3) As provided by ORS 458.020, a newly constructed single-unit structure, exclusive of the land on which it is built, shall be exempt from ad valorem taxation for no more than 10 successive years beginning [January] July of the year

immediately following the calendar year in which application is approved under Section 3.102.040 of this Chapter. The exemption provided by this Chapter shall be in addition to any other exemption provided by laws for the property. However, the amount of assessed value exempted under this Chapter shall not exceed the true cash value of the structure determined as of the date that the property is inspected for purposes of making a determination under this Chapter.

(4) If all residential units in a multiple-unit housing project are subject to a low income rental assistance contract with an agency of the state or federal government, an exemption provided under the terms of this Chapter may be extended beyond the 10 year limitation set in Subsection (1) above to December 31 of the assessment year during which the termination date of the contract falls. [Within 10 days of the receipt of an application for an extension, the Bureau of Buildings shall transmit the application to the Portland.] The Development Commission staff shall review [the application] all applications for extension. Approval by the Development Commission staff shall be based on findings that:

(a) - (c) No change.

(5) - (7) No change.

**3.102.070 Annual Statements.** No change.

**3.102.080 Termination.**

(1) If subsequent to the issuance of a certificate of qualification, it is determined by the City that the new construction or the rehabilitation improvements were not completed on or before [January] July 1, 1998, or that any other provision of this Chapter is not being complied with, the [Bureau of Buildings] Portland Development Commission shall give notice in writing to the owner, mailed to the owner's last known address, of the proposed termination of the limited assessment, stating the reasons therefore; and requiring the owner to appear before the City Council and show cause why the limited assessment should not be terminated. This hearing shall be held not more than 20 days after the mailing of the notice.

(2) No change.

(3) However, if the City Council finds that the new construction or the rehabilitation improvements were not completed by [January] July 1, 1998, due to circumstances beyond the control of the owner, and that the owner had been acting and could reasonably be expected to act in good faith and with due diligence, the City Council may extend the deadline for completion for a period not to exceed 12 consecutive months.

(4) No change.



(5) As provided by Subsection (4) of ORS 308.477, if no appeal is taken as provided in Subsection (4) of this Section, or upon final adjudication, the county officials having possession of the assessment and the tax rolls shall correct the rolls in the manner provided for omitted property under ORS 311.207 to 311.213, to provide for the assessment and taxation of any value not included in the valuation of the new construction or the rehabilitation improvements during the period of limited assessment prior to termination by the Council or by a court, in accordance with the findings of the Council or the court as to the assessment year in which the limited assessment is to terminate. The Assessor shall make the valuation of the property necessary to permit correction of the rolls, and the owner may appeal the valuation in the manner provided under ORS 311.207 to 311.213. Where there has been a failure to comply, as provided in Subsection (1) of this Section, the property shall be revalued beginning [January] July 1 of the calendar year in which the noncompliance first occurred. Any additional taxes becoming due shall be payable without interest if paid in the period prior to the 16th day of the month next following the month of correction. If not paid within such period, the additional taxes shall thereafter be considered delinquent on the date they would normally have become delinquent if timely extended on the roll or rolls in the year or years for which the correction was made.

### **3.102.090 Designation of Distressed Areas.**

(1) The Bureau of Planning shall be the agency responsible for designating distressed areas. The [Bureau of Buildings] Portland Development Commission and Bureau of Housing and Community Development shall be consulted in the designation process. The designation of such areas shall occur in the form of a public hearing conducted before the City Planning Commission through a legislative process appealable to City Council. If there is no appeal, the decision of the Planning Commission shall be final. The Bureau of Planning shall make available maps indicating current distressed areas. The designation of the first distressed areas shall be conducted as nearly as possible in conjunction with the adoption of this ordinance implementing tax exemption in such designated areas. From the date of the first designation, a review of the areas for possible amendment of the boundaries of the distressed areas shall occur at least every three years.

(2) - (4) No change.

### **[3.102.100 Sunset of the Exemption for Owner-Occupied Rehabilitation and New Single-Unit Residences in Distressed Areas.**

(1) The program for owner-occupied rehabilitation and newly constructed single-unit residences in distressed areas shall sunset on July 1 of the tax year in which the value of the property exempted under this program equals or exceeds twenty million dollars. This does not preclude the City from reinstituting this program in the future subject to approval by the School Board of Portland School District No. 1.



(2) Five years from the date of adoption of the ordinance implementing this program in distressed areas, the city shall report to the School Board the dollar amount of exempted property at that time and the consequent impact on the district tax base.]

c. Chapter 3.104 of Title 3, Administration, of the City Code is amended as follows:

#### Chapter 3.104

### PROPERTY TAX EXEMPTION FOR NEW, MULTIPLE-UNIT [RENTAL] HOUSING

Sections: No change.

**3.104.010 Eligible Property.** To be eligible for the property tax exemption provided for by this Chapter a structure must meet all of the following criteria:

(1) Be a multiple-unit structure having 10 or more [rental] dwelling units, and that include design elements benefiting the public as described in this Chapter and approved by City Council, including new construction and structures converted in whole or part from other uses, but not designed, used or intended to be used as transient accommodations, hotels or motels.

(2) - (4) No change.

**3.104.020 Pre-application Conference.** No change.

**3.104.030 Application Procedure.**

(1) No change.

(2) Concurrent with the submission of the application, an application fee [of \$1200] as determined by the Bureau of Planning and the Portland Development Commission shall be required. In addition to the application fee, the applicant may be required to pay such other reasonable costs, including appraisal costs, incurred by the Assessor in processing the application. The Bureau of Planning shall collect any additional costs and pay the Assessor for the additional costs.

**3.104.040 Public Benefits.** In order to qualify for the exemption provided for by this Chapter, an applicant must agree to include in the project, a public benefit which may consist of, but is not limited to, one or more of the following:

(1) [Rental units] Dwelling units at rental rates or sales prices which are accessible to a broad income range of the general public;

(2) - (10) No change.

(11) All projects containing housing units available for individual purchase shall receive the property tax exemption only for those for-sale units which are available at an initial purchase price which does not exceed 95 percent of the median purchase price for a condominium unit in Multnomah County as established by the U.S. Department of Housing and Urban Development for the purpose of determining FHA loan qualification. The unit must be sold to a household earning no more than 100 percent of the area median income for a family of four as established by the U.S. Department of Housing and Urban Development, or its successor agency, during the year of sale in order to retain its property tax exempt status.

(a) In order to qualify for this exemption, such units must be owner-occupied during the term of the exemption. Should any unit become available for sale during the term of the exemption, it must be sold to a household earning no more than 100 percent of the area median income for a family of four as established by the U.S. Department of Housing and Urban Development, or its successor agency, during the year of sale in order to retain its property tax exempt status.

**3.104.045 Approval Criteria.** No change.

**3.104.050 Review of Application.** No change.

**3.104.060 Exemption.**

(1) Except as provided for under subsection (2), multiple-unit housing for which an exemption has been approved under the terms of this Chapter shall be exempt from ad valorem taxation for up to 10 successive years beginning [January] July 1 of the year immediately following the calendar year in which construction is completed, determined by that stage in the construction process when, pursuant to ORS 307.330, the improvement would have gone on the tax rolls in the absence of the exemption provided for in this Chapter. The exemption shall not include the land upon which the project is located, nor any improvement not part of the multiple-unit housing except for those improvement(s) deemed a public benefit as specified in 3.104.040. The exemption provided in this section shall be in addition to any other exemption provided by law.

(2) No change.

**3.104.070 Termination.** If, after an application has been approved under this Chapter, the City finds that the work was not completed on or before [January] July 1, [1998] 2006, that any provision of this Chapter has not been complied with, or that any agreement by the owner or requirement imposed by Council is not being satisfied, the Bureau of Planning may send a notice of proposed termination of the exemption to the owner's last known address.

(1) - (2) No change.

(3) If the owner does not seek review of the termination of an exemption pursuant to ORS 34.010 to 34.100, upon final adjudication, the county officials having possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under ORS 311.207 to 311.213, to provide for the assessment and taxation of any property for which exemption was terminated by the City or by a court, in accordance with the finding of the City or the court as to the assessment year in which the exemption is first to be terminated. The County Assessor shall make such valuation of the property as shall be necessary to permit such correction of the rolls. The owner may appeal any such valuation in the same manner as provided for appeals under ORS 311.207 to 311.213. Where there has been a failure to comply with ORS 307.670, the property shall become taxable beginning [January] July 1 of the calendar year in which the noncompliance first occurred. Any additional taxes becoming due shall be payable without interest if paid in the period prior to the 16th of the month next following the month of correction. If not paid within such period, the additional taxes shall be delinquent on the date they would normally have become delinquent if timely extended on the roll or rolls in the year or years for which the correction was made.

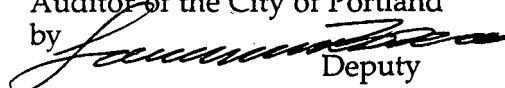
**3.104.080 Extension of Deadline.** Notwithstanding the provision of 3.104.070, if the City finds that construction of the multiple-unit housing was not completed by [January] July 1, [1998] 2006, due to circumstances beyond the control of the owner, and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the City may extend the deadline for completion of construction for a period not to exceed 12 consecutive months.

**3.104.090 Implementation.** No change.

Section 2. Staff is directed to request formal endorsement of this program by resolution from the Multnomah County Board of Commissioners in order that the property tax exemption apply to the entire tax rate of eligible sites within the City of Portland as required by ORS 307.610 (1).

Section 3. The Council declares that an emergency exists because it is necessary to make this property tax exemption available for prospective development projects whose financial backing depends on the certainty of this public incentive; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council **OCT 23 1996**  
 Commissioner Charlie Hales  
 Michael Saba:mps  
 October 10, 1996

**BARBARA CLARK**  
 Auditor of the City of Portland  
 by  Deputy

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Agreement to the City of Portland's     )  
Request for the Transit Oriented Area    )  
Development Tax Exemption Program     )

R E S O L U T I O N  
96-198

WHEREAS, ORS 307.600 to 307.691, enables cities and counties to provide a limited property tax exemption for up to ten years to encourage the development of multiple-unit housing near light rail and major transit lines; and

WHEREAS, in passing this legislation, the Legislature determined "that it is in the public interest to promote private investment in transit supportive multiple-unit housing in light rail station areas and transit oriented areas in order to maximize Oregon's transit investment to the fullest extent possible and that the cities and counties of this state should be enabled to establish and design programs to attract new development of multiple-unit housing, and commercial and retail property, in areas located within a light rail station area or transit oriented areas"; and

WHEREAS, during the operation of the Eastside MAX light rail line for the last ten years, there has not been the level of transit supportive development envisioned by earlier planning efforts along the station areas outside the Central City; and

WHEREAS, Tri-Met has identified vacant and underutilized development opportunity sites in its light rail station area development profiles; and

WHEREAS, it is in the public interest to encourage transit oriented development within walking distance of light rail stations and other major transit facilities in order to reduce vehicle miles traveled, traffic congestion, and air pollution; and

WHEREAS, this program will help implement the City of Portland's Comprehensive Plan, Portland's Livable City Housing Initiative, Community Plans, Tri-Met's Strategic Plan Land Use Goal, and Metro's 2040 Regional Growth Management Strategy; and

WHEREAS, the City of Portland has requested that Multnomah County agree to offer this tax exemption incentive for transit oriented area development as provided under ORS 307.610(1); and

WHEREAS, on August 13, 1996 a public briefing was held by the Multnomah County Board of Commissioners wherein the City of Portland presented its transit oriented area development program pursuant to ORS 307.610 to 307.691; and

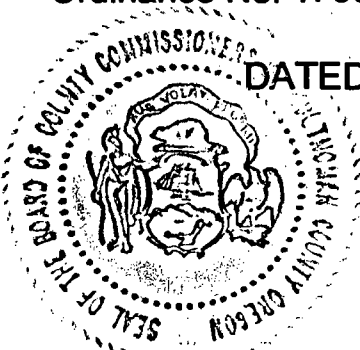
WHEREAS, at the August 13, 1996 briefing the Multnomah County Board of Commissioners made it clear that the County's agreement to grant any tax exemption for the City of Portland's transit oriented area development program was contingent upon the program providing: (1) affordable housing as a requirement of any development; or (2) the provision of additional services at housing sites addressing needs of tenants and occupants, such as child care; and (3) the ability to monitor and review the program's progress towards these objectives; and

WHEREAS, on October 1, 1996 a second public briefing was held by the Multnomah County Board of Commissioners and included in the revised City of Portland's transit oriented area development program proposal were affordable housing components, additional services and monitoring; and

WHEREAS, on October 23, 1996 the City of Portland adopted Ordinance No. 170667, providing in part a new section of the City Code, codified as Chapter 3.103, which implements all the above referenced elements the County required at section 3.103.040; now therefore

IT IS HEREBY RESOLVED that the Multnomah County Board of Commissioners agrees to the City of Portland's transit oriented area development tax exemption program adopted by the City of Portland through Ordinance No. 170667, and codified at P.C.C. Chapter 3.103(1996).

DATED this 7th day of November, 1996.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

REVIEWED:  
LAURENCE KRESSEL, COUNTY COUNSEL  
MULTNOMAH COUNTY, OREGON

  
Matthew O. Ryan, Assistant County Counsel

Page 2 of 2 - RESOLUTION

**PDC**  
**PORTLAND**  
**DEVELOPMENT**  
**COMMISSION**

Carl B. Talton  
Chairman

Martin Brantley  
Commissioner

Gale Castillo  
Commissioner

John D. Eskildsen  
Commissioner

E. Kay Stepp  
Commissioner

Vera Katz  
Mayor

Janet S. Burreson  
Executive Director

1900 S.W. Fourth Avenue  
Suite 100  
Portland, OR 97201-5304

503/823-3200

FAX 503/823-3368  
TTY 503/823-3366

internet  
[www.portlanddev.org](http://www.portlanddev.org)

Office of the Board Clerk  
106/1500/Multnomah County

Re: Property Tax Exemption for New Transit Supportive Residential or Mixed-Use  
Development

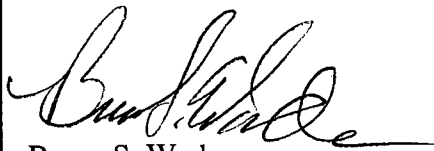
To: Office of the Board Clerk

On October 23<sup>rd</sup>, 1996, the Portland City Council adopted a new program designed to provide a limited ten-year property tax exemption to residential and mixed-use development constructed near selected transit stations or within designated town centers in S.E. Portland. When this program was endorsed by the Multnomah County Board of Commissioners on November 7<sup>th</sup>, it became possible to offer the tax exemption based on the consolidated tax rate to qualified projects.

The Portland Development Commission has been designated the agency to administer the program including processing applications for the tax exemption and notifying the county assessor of approved projects. The PDC is currently finalizing the application and monitoring procedures and program materials.

This letter is an offer to provide routine notification of applications under this new program. Should you or a representative of your organization wish to receive a notice regarding a pending project application, please fill in the enclosed form and return it to the Portland Development Commission. Should you have any questions regarding the program, please do not hesitate to call me at 823-3278.

Sincerely,



Bruce S. Wade  
Development Manager

Enclosure

BOARD OF  
COUNTY COMMISSIONERS  
97 MAR 20 PM 12:10  
MULTNOMAH COUNTY  
OREGON



RETURN THIS FORM TO:

Bruce S. Wade

Portland Development Commission

1900 SW Fourth Ave., Suite 100

Portland, OR 97201

Phone: (503)823-3278

Fax: (503)823-3368

**TOD Property Tax Exemption Notice Listing**

Organization Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

**PDC**  
**PORTLAND**  
**DEVELOPMENT**  
**COMMISSION**

Carl B. Talton  
Chairman

Martin Brantley  
Commissioner

Gale Castillo  
Commissioner

John D. Eskildsen  
Commissioner

E. Kay Stepp  
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Vera Katz  
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Executive Director

1900 S.W. Fourth Avenue  
Suite 100  
Portland, OR 97201-5304

503/823-3200

FAX 503/823-3368  
TTY 503/823-3366

internet  
[www.portlanddev.org](http://www.portlanddev.org)

Office of the Board Clerk  
106/1500/Multnomah County

Re: Property Tax Exemption for New Transit Supportive Residential or Mixed-Use  
Development

To: Office of the Board Clerk

On October 23<sup>rd</sup>, 1996, the Portland City Council adopted a new program designed to provide a limited ten-year property tax exemption to residential and mixed-use development constructed near selected transit stations or within designated town centers in S.E. Portland. When this program was endorsed by the Multnomah County Board of Commissioners on November 7<sup>th</sup>, it became possible to offer the tax exemption based on the consolidated tax rate to qualified projects.

The Portland Development Commission has been designated the agency to administer the program including processing applications for the tax exemption and notifying the county assessor of approved projects. The PDC is currently finalizing the application and monitoring procedures and program materials.

This letter is an offer to provide routine notification of applications under this new program. Should you or a representative of your organization wish to receive a notice regarding a pending project application, please fill in the enclosed form and return it to the Portland Development Commission. Should you have any questions regarding the program, please do not hesitate to call me at 823-3278.

Sincerely,



Bruce S. Wade  
Development Manager

Enclosure

BOARD OF  
COUNTY COMMISSIONERS  
97 MAR 12 PM 12:21  
MULTNOMAH COUNTY  
OREGON





RETURN THIS FORM TO:  
Bruce S. Wade  
Portland Development Commission  
1900 SW Fourth Ave., Suite 100  
Portland, OR 97201  
Phone: (503)823-3278  
Fax: (503)823-3368

TOD Property Tax Exemption Notice Listing
---

Organization Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

MEETING DATE: NOV 07 1996

AGENDA #: R-3  
ESTIMATED START TIME: 9:35

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500337 with Centennial School District

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy TELEPHONE #: 3822 / 3318

BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500337 with Centennial School District implementing a \$575,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 ORIGINAL & COPIES TO DAVE WARREN

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Peverly Flemer*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 4:55  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500337 Providing Supplemental Funding to Centennial School District

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$575,000 to Centennial School District

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000

#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ]

Contract #500337

Prior-Approved Contract Boilerplate: \_\_\_\_\_ Attached: ☒ Not Attached

Amendment # \_\_\_\_\_

<p><b>CLASS I</b></p> <p><input type="checkbox"/> Professional Services under \$25,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$25,000</p>	<p><b>CLASS II</b></p> <p><input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p><b>CLASS III</b></p> <p><input type="checkbox"/> Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p>AGENDA # <u>R-3</u> DATE <u>11/7/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;"><b>BOARD CLERK</b></p>
---	--	---

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400  
 Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_  
 Description of Contract: \_\_\_\_\_

Payment to Centennial School District as one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is ☐ JMBE ☐ JWB ☐ ESB ☐ JQRF ☐ JN/A ☐ None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name Centennial School District Remittance Address (if Different) \_\_\_\_\_  
 Mailing Address 18135 SE Brooklyn  
Portland, Oregon 97236  
 Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$575,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$575,000

Payment Schedule	Terms
Lump Sum \$ <u>575,000</u>	Due on Receipt
Monthly \$ _____	Net 30
Other \$ _____	Other _____

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager: *Reverly Stein* Encumber: Yes No ☒ X  
 Date: October 30, 1996

Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_

County Counsel: *Sandra L. Duggan* Date: 10-31-96

County Chair/Sheriff: *Reverly Stein* Date: November 7, 1996

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE 622336A				VENDOR NAME Centennial School District				TOTAL AMOUNT: \$575,000			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	575,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) the ADMINISTRATIVE SCHOOL DISTRICT 28-302 JT, MULTNOMAH AND CLACKAMAS COUNTIES, OREGON, known as the CENTENNIAL SCHOOL DISTRICT and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 10% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and

WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$575,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996.

3. Assist with the defense of this Agreement and/or its implementation.

#### C. The District agrees to:

1. Use the funds to assist in providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend, with the assistance of the County, this Agreement and/or its implementation against any legal challenge; and

3. Refund the \$575,000 if a court of law determines that this Agreement and/or its implementation are illegal, or as otherwise directed by the court.

SECTION V. GENERAL TERMS

A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

This Agreement may be amended by mutual agreement of the parties.

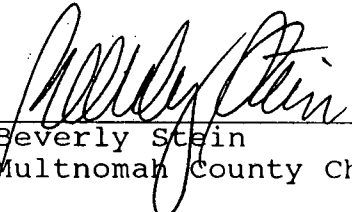
IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

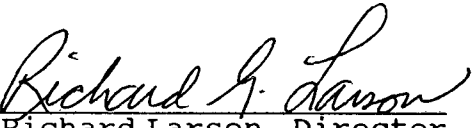
Multnomah County

Centennial School District

By

  
Beverly Stein  
Multnomah County Chair

By

  
Richard Larson, Director  
Business & Operations

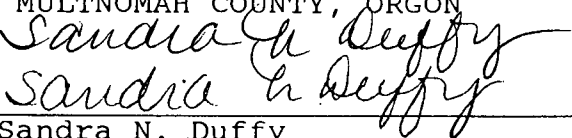
DATED November 7, 1996

DATED 10/16/96

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By

  
Sandra N. Duffy  
Chief Assistant County Counsel

00285EMK.IGA

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-3 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK



MEETING DATE: NOV 07 1996

AGENDA #: R-4

ESTIMATED START TIME: 9:37

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500347 with Corbett School District

BOARD BRIEFING:

DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:

DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental

DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy

TELEPHONE #: 3822 / 3318

BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500347 with Corbett School District implementing a \$40,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 original & copies to Dave Warren

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_

(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Peverly Stein*

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 OCT 30 PM 4:55

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500347 Providing Supplemental Funding to Corbett School District

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$40,000 to Corbett School District

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000

#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ]

Contract #500347

Prior-Approved Contract Boilerplate: \_\_\_\_\_ Attached: **X** Not Attached

Amendment # \_\_\_\_\_

<p><b>CLASS I</b></p> <p>[ ] Professional Services under \$25,000</p> <p>[ ] Intergovernmental Agreement under \$25,000</p>	<p><b>CLASS II</b></p> <p>[ ] Professional Services over \$25,000 (RFP, Exemption)</p> <p>[ ] PCRB Contract</p> <p>[ ] Maintenance Agreement</p> <p>[ ] Licensing Agreement</p> <p>[ ] Construction</p> <p>[ ] Grant</p> <p>[ ] Revenue</p>	<p><b>CLASS III</b></p> <p>[ ] Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p style="text-align: center;">AGENDA # <u>R-4</u> DATE <u>11/7/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;"><b>BOARD CLERK</b></p>
---	---	--

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400  
 Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_  
 Description of Contract: \_\_\_\_\_

Payment to Corbett School District as one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is [ ] JMBE [ ] WBE [ ] ESB [ ] QRF [ ] N/A [ ] None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name Corbett School District Remittance Address (if Different) \_\_\_\_\_

Mailing Address 35800 East Historic Columbia River Highway

Corbett, Oregon 97019

Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$40,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$40,000

Payment Schedule	Terms
Lump Sum \$ <u>40,000</u>	Due on Receipt
Monthly \$ _____	Net 30
Other \$ _____	Other _____

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager: *Deborah Stein* Encumber: Yes No **X**  
 Date: October 30, 1996  
 Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Class II Contracts Only)  
 County Counsel: *Deborah Stein* Date: 10-31-96  
 County Chair/Sheriff: *Deborah Stein* Date: November 7, 1996  
 Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Class I, Class II Contracts Only)

VENDOR CODE 622348A				VENDOR NAME Corbett School District				TOTAL AMOUNT: \$40,000			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	40,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) CORBETT SCHOOL DISTRICT NO. 39, known as CORBETT SCHOOL DISTRICT and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 1% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and

WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$40,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend this Agreement and its implementation against any legal challenge; and

3. Refund the \$40,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal.

### SECTION V. GENERAL TERMS

#### A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination

shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

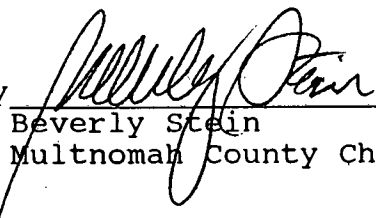
This Agreement may be amended by mutual agreement of the parties.

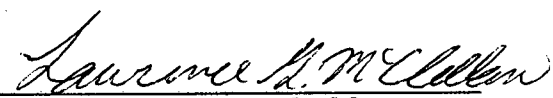
IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

Multnomah County

Corbett School District

By   
Beverly Stein  
Multnomah County Chair

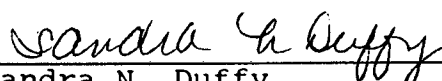
By   
Lawrence G. McClellan,  
Superintendent

DATED November 7, 1996

DATED 10/10/96

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra N. Duffy  
Chief Assistant County Counsel

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-4 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

MEETING DATE: NOV 07 1996

AGENDA #: R-5  
ESTIMATED START TIME: 9:39

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500357 with David Douglas School District

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy TELEPHONE #: 3822 / 3318  
BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500357 with David Douglas School District implementing a \$410,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 ORIGINAL & COPIES TO DAVE WARREN

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Peverly Klein*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 4:55  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222





# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500357 Providing Supplemental Funding to David Douglas School District

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$410,000 to David Douglas School District

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000

#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ]

Contract #500357

Prior-Approved Contract Boilerplate: Attached: ☒ Not Attached

Amendment #

<p style="text-align: center;"><b>CLASS I</b></p> <p>[ ] Professional Services under \$25,000</p> <p>[ ] Intergovernmental Agreement under \$25,000</p>	<p style="text-align: center;"><b>CLASS II</b></p> <p>[ ] Professional Services over \$25,000 (RFP, Exemption)</p> <p>[ ] PCRB Contract</p> <p>[ ] Maintenance Agreement</p> <p>[ ] Licensing Agreement</p> <p>[ ] Construction</p> <p>[ ] Grant</p> <p>[ ] Revenue</p>	<p style="text-align: center;"><b>CLASS III</b></p> <p>[ ] Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p>AGENDA # <u>R-5</u> DATE <u>11/7/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;"><b>BOARD CLERK</b></p>
---	---	--

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_

Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400

Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_

Description of Contract: \_\_\_\_\_

Payment to David Douglas School District as a one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is [ ] JMBE [ ] WBE [ ] ESB [ ] QRF [ ] N/A [ ] None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name David Douglas School District Remittance Address (if Different) \_\_\_\_\_

Mailing Address 1500 SE 130th Avenue

Portland, Oregon 97233

Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$410,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$410,000

Payment Schedule	Terms
Lump Sum \$ <u>410,000</u>	Due on Receipt
Monthly \$ _____	Net 30
Other \$ _____	Other _____

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

**REQUIRED SIGNATURES:**

Department Manager: *Peverly Flein* Encumber: Yes No ☒ Date: October 30, 1996

Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_

(Class II Contracts Only)

County Counsel: *Sandra L. Duffy* Date: 10-31-96

County Chair/Sheriff: *Peverly Flein* Date: November 7, 1996

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE <u>GV5173</u>				VENDOR NAME <u>David Douglas School District</u>				TOTAL AMOUNT: <u>\$410,000</u>			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	410,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) MULTNOMAH COUNTY SCHOOL DISTRICT NO. 40, also known as David Douglas School District and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 1% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and

WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$410,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend this Agreement and its implementation against any legal challenge; and

3. Refund the \$410,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal.

### SECTION V. GENERAL TERMS

#### A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination

shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

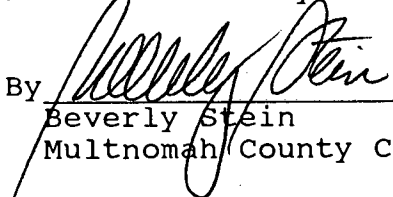
C. Amendments

This Agreement may be amended by mutual agreement of the parties.

IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have


HEREBY AGREED:

Multnomah County

By   
Beverly Stein  
Multnomah County Chair

DATED November 7, 1996

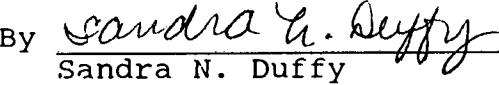
David Douglas School District

By   
Dr. Ronald A. Russell  
Superintendent

DATED 10-15-96

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra N. Duffy  
Chief Assistant County Counsel

00291EMK.IGA

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-5 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

MEETING DATE: NOV 07 1996

AGENDA #: R-6  
ESTIMATED START TIME: 9:41

(Above Space for Board Clerk's Use ONLY)

### AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500367 with Gresham-Barlow School District

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy TELEPHONE #: 3822 / 3318

BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

#### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

#### SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500367 with Gresham-Barlow School District implementing a \$550,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 ORIGINAL & COPIES TO DAVE WARREN

#### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Peverly Stein*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 4:55  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500367 Providing Supplemental Funding to Gresham-Barlow School District

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$550,000 to Gresham-Barlow School District

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000



#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ]

Contract #500367

Prior-Approved Contract Boilerplate: Attached: ☒ Not Attached

Amendment #

<p><b>CLASS I</b></p> <p>[ ] Professional Services under \$25,000</p> <p>[ ] Intergovernmental Agreement under \$25,000</p>	<p><b>CLASS II</b></p> <p>[ ] Professional Services over \$25,000 (RFP, Exemption)</p> <p>[ ] PCRB Contract</p> <p>[ ] Maintenance Agreement</p> <p>[ ] Licensing Agreement</p> <p>[ ] Construction</p> <p>[ ] Grant</p> <p>[ ] Revenue</p>	<p><b>CLASS III</b></p> <p>[ ] Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p style="text-align: center;">AGENDA # <u>R-6</u> DATE <u>11/6/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;"><b>BOARD CLERK</b></p>
---	---	--

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400  
 Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_  
 Description of Contract: \_\_\_\_\_

Payment to Gresham-Barlow School District as a one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is [ ] MBE [ ] WBE [ ] ESB [ ] QRF [ ] N/A [ ] None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name Gresham-Barlow School District Remittance Address (if Different) \_\_\_\_\_

Mailing Address 1331 NW Eastman Pkwy \_\_\_\_\_

Gresham, Oregon 97030

Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$550,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$550,000

Payment Schedule	Terms
Lump Sum \$ <u>550,000</u>	Due on Receipt
Monthly \$ _____	Net 30
Other \$ _____	Other _____

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager: *Reverly Stein* Encumber: Yes No ☒ Date: October 30, 1996

Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_

(Class II Contracts Only)

County Counsel: *Donald H. Duff* Date: 10-31-96

County Chair/Sheriff: *Reverly Stein* Date: November 7, 1996

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE <u>627454A</u>				VENDOR NAME <u>Gresham-Barlow School District</u>				TOTAL AMOUNT: <u>\$550,000</u>			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPT	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	550,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) GRESHAM-BARLOW SCHOOL DISTRICT NO. 10JT, also known as the Gresham-Barlow School District and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 10% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and

WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$550,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend this Agreement and its implementation against any legal challenge; and

3. Refund the \$550,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal.

### SECTION V. GENERAL TERMS

#### A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination

shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

This Agreement may be amended by mutual agreement of the parties.

IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

Multnomah County

Gresham-Barlow School  
District

By

Beverly Stein  
Multnomah County Chair

By

James D. Carlile  
James D. Carlile  
Superintendent

DATED November 7, 1996

DATED OCT. 14, 1996

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By

Sandra N. Duffy  
Sandra N. Duffy  
Chief Assistant County Counsel

00292EMK.IGA

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-6 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

MEETING DATE: NOV 07 1996

AGENDA #:

R-7

ESTIMATED START TIME: 9:43

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500377 with Parkrose School District

BOARD BRIEFING:

DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:

DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental

DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy

TELEPHONE #: 3822 / 3318

BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500377 with Parkrose School District implementing a \$360,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 ORIGINAL & COPIES TO DAVE WARREN

SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_

(OR)

DEPARTMENT  
MANAGER: \_\_\_\_\_

*Peverly Klein*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 4:55  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500377 Providing Supplemental Funding to Parkrose School District

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$360,000 to Parkrose School District

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000

#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.



# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ] Contract #500377

Prior-Approved Contract Boilerplate: Attached: ☒ Not Attached

Amendment #

<p style="text-align: center;"><b>CLASS I</b></p> <p>[ ] Professional Services under \$25,000</p> <p>[ ] Intergovernmental Agreement under \$25,000</p>	<p style="text-align: center;"><b>CLASS II</b></p> <p>[ ] Professional Services over \$25,000 (RFP, Exemption)</p> <p>[ ] PCRB Contract</p> <p>[ ] Maintenance Agreement</p> <p>[ ] Licensing Agreement</p> <p>[ ] Construction</p> <p>[ ] Grant</p> <p>[ ] Revenue</p>	<p style="text-align: center;"><b>CLASS III</b></p> <p>[ ] Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p>AGENDA # <u>R-7</u> DATE <u>11/7/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;">BOARD CLERK</p>
---	---	---

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400  
 Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_  
 Description of Contract: \_\_\_\_\_

Payment to Parkrose School District as a one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is [ ] MBE [ ] WBE [ ] ESB [ ] QRF [ ] N/A [ ] None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name Parkrose School District Remittance Address (if Different) \_\_\_\_\_

Mailing Address 10636 NE Prescott

Portland, Oregon 97220

Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$360,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$360,000

Payment Schedule	Terms
Lump Sum \$ <u>360,000</u>	Due on Receipt
Monthly \$ _____	Net 30
Other \$ _____	Other _____

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager: *Peverly Stein* Encumber: Yes No ☒ Date: October 30, 1996

Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_

(Class II Contracts Only)

County Counsel: *Sandra H. Duffy* Date: 10-31-96

County Chair/Sheriff: *Peverly Stein* Date: November 7, 1996

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE GV5551				VENDOR NAME Parkrose School District				TOTAL AMOUNT: \$360,000			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	360,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) MULTNOMAH COUNTY SCHOOL DISTRICT NO. 3, known as PARKROSE SCHOOL DISTRICT and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 1% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and

WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$360,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend this Agreement and its implementation against any legal challenge; and

3. Refund the \$360,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal.

### SECTION V. GENERAL TERMS

#### A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination

shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

This Agreement may be amended by mutual agreement of the parties.

IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

Multnomah County

Park Rose School District

By

Beverly Stein  
Multnomah County Chair

By

Jacki L. Cottingham  
Jacki L. Cottingham Ph.D.  
Superintendent

DATED November 7, 1996

DATED

10-9-96

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By

Sandra N. Duffy  
Sandra N. Duffy  
Chief Assisant County Counsel

00293EMK.IGA

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-7 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

MEETING DATE: NOV 07 1996

AGENDA #: R-8

ESTIMATED START TIME: 9:45

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500387 with Portland Public Schools

BOARD BRIEFING:

DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:

DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental

DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy

TELEPHONE #: 3822 / 3318

BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500387 with Portland Public Schools implementing a \$7,650,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 ORIGINAL & COPIES TO DAVE WARREN

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_

(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Peverly Blair*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 4:55  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500387 Providing Supplemental Funding to Portland Public Schools

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$7,650,000 to Portland Public Schools

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000

#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

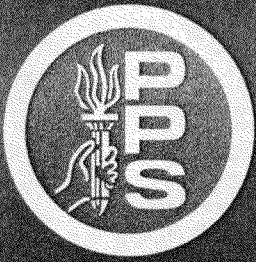
#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.

*A. Bogstad*



## PORTLAND PUBLIC SCHOOLS

501 North Dixon Street / Portland, Oregon 97227

Phone: (503) 249-2000

Mailing Address: P.O. Box 3107 / 97208-3107

OFFICE OF THE SUPERINTENDENT

Donald D. McElroy  
Executive Deputy Superintendent

October 9, 1996

Mr. Dave Warren  
Principal Budget Analyst  
Multnomah County  
1120 S.W. Fifth Avenue  
P. Box Box 849  
Portland, Or 97207-0849

**RE: Intergovernmental Agreement for  
Multnomah County to Transfer Funds to the  
Portland Public School District**

Dear Mr. Warren:

Thank you so very much for your October 4, 1996, communication containing the Agreement that, when ratified by your Board of County Commissioners, will allow you to transfer a \$7,650,000 fund to the Portland School District for use in the operation of the school system. This District does agree to make use of the funds in full compliance with the "Purpose" specified in the Agreement. Our budget and financial offices are directed to maintain a strict accounting of the expenditure of these funds and to provide such information to you when you need it. The Agreement has been fully described and is most acceptable to the Portland School Board of Education, Superintendent and Administration.

We receive your impressively supportive assistance with warm and sincere gratitude. As you have recognized, the school districts of the County have been undergoing, and continue to suffer from a severe funding crisis. For the Board of County Commissioners, with the help of County staff, to execute such an important, tangible demonstration of meaningful assistance is one of, if not the, most meaningful indicators of school support that has been demonstrated by the County government in the history of our intergovernmental relations. You have and deserve our total appreciation. Thank you



Mr. Dave Warren  
October 9, 1996  
Page 2

very much from the students, families, staff and Board of the School District.

Your development of the Agreement is excellent as it stands, and I am enclosing our signed copy of the contract for your processing.

If you have any instructions or questions for us, I will always be happy to receive your call. I am hand carrying our brief acceptance/disbursement resolution to the Board for the Thursday, October 10, 1996, business agenda. It will be approved.

Cordially,



Donald D. McElroy  
Executive Deputy Superintendent

Attachments:

- Agreement
- Resolution

c: Portland Board of Education  
Jack Bierwirth, Superintendent  
Lynn Ward, Budget Officer  
Scott Cooley, Controller

Bill Farver  
Deb Bogstad  
Sandra Duffy

Acceptance of Funds  
Multnomah County, Oregon  
July 1, 1996 through June 30, 1997

WHEREAS, Multnomah County, Oregon, in recognizing the fiscal crisis that the school districts in the county are facing, has agreed to transfer funds during the 1996-1997 fiscal year to the various school districts within the County in a temporary measure of assistance to benefit students; therefore be it,

RESOLVED, That the Portland School District hereby gratefully accepts the transfer of \$7,650,000 for the 1996-1997 fiscal year and that the Executive Deputy Superintendent be authorized to sign the necessary documents to receive and dispense the funds.



# MULTNOMAH COUNTY, OREGON

---

**BOARD OF COUNTY COMMISSIONERS**

BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

**BUDGET & QUALITY**

PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

---

TO: Donald McElroy, Executive Deputy Superintendent  
Portland School District No. 1

FROM: Dave Warren, Principal Budget Analyst **DCW**  
Multnomah County

DATE: October 4, 1996

SUBJECT: Intergovernmental Agreement to transfer funds

---

Attached is the contract negotiated by the Multnomah County Counsel's Office that will allow us to pay you your share of the \$10,000,000 1996-97 allotment from Multnomah County to school districts.

I would not be surprised if you would like the money sooner rather than later. Let me tell you how our process for all intergovernmental contracts works. When the signed contract is in the Chair's hands, she can bring it before the Board of County Commissioners for ratification. The Chair cannot execute intergovernmental agreements without Board authorization. Generally, the process of creating an agenda for a Board meeting takes a week. That is, the Clerk of the Board must have the agenda item by noon of the Thursday before the Board meeting where it will be voted on.

I would like to be able to send the Board of County Commissioners a packet of all the intergovernmental agreements for them to approve at their November 7 meeting. To do that, I should have your signed contract by Wednesday, October 30. If that is not going to work for you, please let me know. I will send the contracts I have by October 30 to the Board for ratification on November 7, and send those that come in later to the Board in subsequent weeks.

Now, all this assumes that the contract is agreeable to you as it stands. If you have issues with the contract, please do not hesitate to talk to Sandy Duffy in the Multnomah County Counsel's Office (248-3318). Other questions, I will try to answer. I am at 248-3822.

c. Bill Farver  
Deb Bogstad  
Sandy Duffy

RECEIVED  
OCT 08 1996

OFFICE OF THE SUPERINTENDENT  
SCHOOL DIST. NO. 1

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) PORTLAND SCHOOL DISTRICT NO. 1, known as PORTLAND PUBLIC SCHOOL DISTRICT and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 1% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and

WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$7,650,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996, or earlier, if mutually agreed.

3. Assist with the defense of this Agreement and/or its implementation.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend, with the assistance of the County, this Agreement and/or its implementation against any legal challenge; and

3. Refund the \$7,650,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal. The District may refund the money on mutually agreeable terms over a period of time.

SECTION V. GENERAL TERMS

A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

This Agreement may be amended by mutual agreement of the parties.

IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

Multnomah County

Portland Public School District

By \_\_\_\_\_  
Beverly Stein  
Multnomah County Chair

By Donald D. McElroy  
Donald McElroy  
Executive Deputy Superintendent

DATED \_\_\_\_\_

DATED Oct. 10, 1996

REVIEWED:

LAURENCE KRSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy  
Sandra N. Duffy  
Chief Assisant County Counsel

00294EMK.IGA

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ]

Contract #500387

Prior-Approved Contract Boilerplate: Attached: ☒ Not Attached

Amendment #

<p><b>CLASS I</b></p> <p>[ ] Professional Services under \$25,000</p> <p>[ ] Intergovernmental Agreement under \$25,000</p>	<p><b>CLASS II</b></p> <p>[ ] Professional Services over \$25,000 (RFP, Exemption)</p> <p>[ ] PCRB Contract</p> <p>[ ] Maintenance Agreement</p> <p>[ ] Licensing Agreement</p> <p>[ ] Construction</p> <p>[ ] Grant</p> <p>[ ] Revenue</p>	<p><b>CLASS III</b></p> <p>[ ] Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p>AGENDA # <u>R-8</u> DATE <u>11/7/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;">BOARD CLERK</p>
---	---	---

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400  
 Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_  
 Description of Contract: \_\_\_\_\_

Payment to Portland Public Schools as a one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is [ ] MBE [ ] WBE [ ] ESB [ ] QRF [ ] N/A [ ] None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name Portland Public Schools Remittance Address (if Different) \_\_\_\_\_

Mailing Address P. O. Box 3107 \_\_\_\_\_

Portland, Oregon 9720/-3107

Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$7,650,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$7,650,000

**Payment Schedule** **Terms**

Lump Sum \$ 7,650,000 Due on Receipt

Monthly \$ \_\_\_\_\_ Net 30

Other \$ \_\_\_\_\_ Other \_\_\_\_\_

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager: *Beverly Stein* Encumber: Yes No ☒ Date: October 30, 1996

Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_

(Class II Contracts Only)

County Counsel: *Sandra H. Duff* Date: 10-31-96

County Chair/Sheriff: *Beverly Stein* Date: November 7, 1996

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE <u>GV5555A</u>				VENDOR NAME <u>Portland Public Schools</u>				TOTAL AMOUNT: <u>\$7,650,000</u>			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPT	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	7,650,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) PORTLAND SCHOOL DISTRICT NO. 1, known as PORTLAND PUBLIC SCHOOL DISTRICT and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 1% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and



WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$7,650,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996, or earlier, if mutually agreed.

3. Assist with the defense of this Agreement and/or its implementation.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend, with the assistance of the County, this Agreement and/or its implementation against any legal challenge; and

3. Refund the \$7,650,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal. The District may refund the money on mutually agreeable terms over a period of time.

SECTION V. GENERAL TERMS

A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

This Agreement may be amended by mutual agreement of the parties.

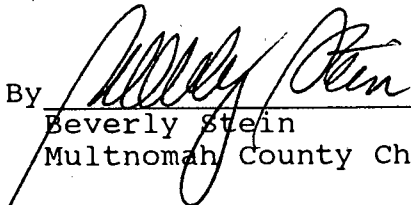
IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

Multnomah County

Portland Public School District

By

  
Beverly Stein  
Multnomah County Chair

By

  
Donald McElroy  
Executive Deputy Superintendent

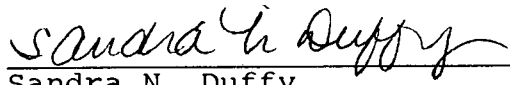
DATED November 7, 1996

DATED Oct. 10, 1996

REVIEWED:

LAURENCE KRSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By

  
Sandra N. Duffy  
Chief Assisant County Counsel

00294EMK.IGA

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-8 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

Acceptance of Funds  
Multnomah County, Oregon  
July 1, 1996 through June 30, 1997

WHEREAS, Multnomah County, Oregon, in recognizing the fiscal crisis that the school districts in the county are facing, has agreed to transfer funds during the 1996-1997 fiscal year to the various school districts within the County in a temporary measure of assistance to benefit students; therefore be it,

RESOLVED, That the Portland School District hereby gratefully accepts the transfer of \$7,650,000 for the 1996-1997 fiscal year and that the Executive Deputy Superintendent be authorized to sign the necessary documents to receive and dispense the funds.

MEETING DATE: NOV 07 1996

AGENDA #:

R-9

ESTIMATED START TIME: 9:47

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500397 with Reynolds School District

BOARD BRIEFING:

DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:

DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental

DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy

TELEPHONE #: 3822 / 3318

BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500397 with Reynolds School District implementing a \$400,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 ORIGINAL & COPIES TO DAVE WARREN

SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_

(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Reverly Stein*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 4:55  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500397 Providing Supplemental Funding to Reynolds School District

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$400,000 to Reynolds School District

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000

#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ]

Contract #500397

Prior-Approved Contract Boilerplate: Attached: ☒ Not Attached

Amendment #

<p><b>CLASS I</b></p> <p>[ ] Professional Services under \$25,000</p> <p>[ ] Intergovernmental Agreement under \$25,000</p>	<p><b>CLASS II</b></p> <p>[ ] Professional Services over \$25,000 (RFP, Exemption)</p> <p>[ ] PCRB Contract</p> <p>[ ] Maintenance Agreement</p> <p>[ ] Licensing Agreement</p> <p>[ ] Construction</p> <p>[ ] Grant</p> <p>[ ] Revenue</p>	<p><b>CLASS III</b></p> <p>[ ] Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p>AGENDA # <u>R-9</u> DATE <u>11/7/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;"><b>BOARD CLERK</b></p>
---	---	--

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_

Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400

Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_

Description of Contract: \_\_\_\_\_

Payment to Reynolds School District as a one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is [ ] MBE [ ] WBE [ ] ESB [ ] QRF [ ] N/A [ ] None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name Reynolds School District Remittance Address (if Different) \_\_\_\_\_

Mailing Address 1204 NE 201st

Portland, Oregon 97060

Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$400,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$400,000

Payment Schedule	Terms
Lump Sum \$ <u>400,000</u>	Due on Receipt
Monthly \$ _____	Net 30
Other \$ _____	Other _____

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager: *Peverly Klein* Encumber: Yes No ☒ Date: October 30, 1996

Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_

(Class II Contracts Only)

County Counsel: *Sandra Ch Duffy* Date: 10-31-96

County Chair/Sheriff: *Peverly Klein* Date: November 7, 1996

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE GV5552				VENDOR NAME Reynolds School District				TOTAL AMOUNT: \$400,000			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPT	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	400,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) MULTNOMAH COUNTY SCHOOL DISTRICT NO. 7, also known as REYNOLDS SCHOOL DISTRICT and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 1% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and



WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$400,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and
2. Disburse the entire school funding grant on December 1, 1996.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;
2. Defend this Agreement and its implementation against any legal challenge; and
3. Refund the \$400,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal.

### SECTION V. GENERAL TERMS

#### A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination

shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

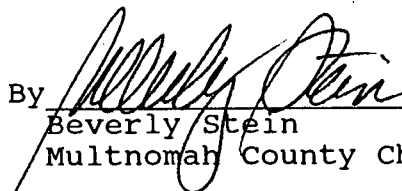
This Agreement may be amended by mutual agreement of the parties.

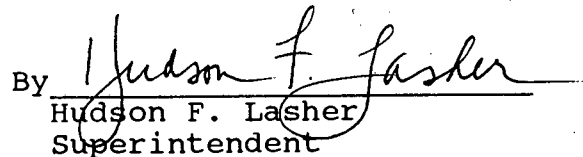
IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

Multnomah County

Reynolds School District

By   
Beverly Stein  
Multnomah County Chair

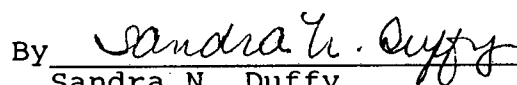
By   
Hudson F. Lasher  
Superintendent

DATED November 7, 1996

DATED 10.8.96

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra N. Duffy  
Chief Assistant County Counsel

00295EMK.IGA

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-9 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

MEETING DATE: NOV 07 1996

AGENDA #: R-10

ESTIMATED START TIME: 9:49

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement 500417 with Sauvie Island School District

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Nondepartmental DIVISION: \_\_\_\_\_

CONTACT: Dave Warren / Sandy Duffy TELEPHONE #: 3822 / 3318

BLDG/ROOM #: \_\_\_\_\_

PERSON(S) MAKING PRESENTATION: Dave Warren

### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

Intergovernmental Agreement 500417 with Sauvie Island School District implementing a \$5,000 one time only payment included in the 1996-97 Adopted Budget.

11/13/96 ORIGINAL & COPIES TO DAVE WARREN

### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

*Peverly Stein*

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 4:55  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DAN SALTZMAN  
GARY HANSEN  
TANYA COLLIER  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: October 30, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

SUBJECT: Intergovernmental Agreement 500417 Providing Supplemental Funding to Sauvie Island School District

---

## I. Recommendation / Action Requested:

Approve the intergovernmental agreement paying \$5,000 to Sauvie Island School District

## II. Background / Analysis:

Multnomah County has agreed to a one time only payment to the school districts in the county to stabilize their funding until the 1997 Legislature can review school funding. The proposed intergovernmental agreement allows for this payment.

## III. Financial Impact:

The amounts to be distributed are shown in the following table.

Centennial	575,000
Corbett	40,000
David Douglas	410,000
Gresham-Barlow	550,000
Parkrose	360,000
Portland	7,650,000
Reynolds	400,000
Riverdale	10,000
Sauvie Island	<u>5,000</u>
	10,000,000

#### IV. Legal Issues:

County Counsel has found no impediment to this agreement. It is the County position that the revenue sources permitting the payment are not derived from property taxes, which would fall under the tax rate restriction imposed by Measure 5, but primarily from current and prior year Business Income Tax and Motor Vehicle Rental Tax receipts that the Executive Budget proposed to add to the County's General Fund reserve or were above the 1996-97 Executive Budget estimates. The agreements require the school districts to repay the County if a court decides the payments do not meet legal requirements.

#### V. Controversial Issues:

No significant opposition was voiced as part of the budget process.

#### VI. Link to Current County Policies:

N/A

#### VII. Citizen Participation:

The decision to make the payments was part of the budget process and was open to citizen review at that time.

#### VIII. Other Government Participation:

Portland is providing similar one time only support to school districts in Portland.

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ]

Contract #500417

Prior-Approved Contract Boilerplate: Attached: ☒ Not Attached

Amendment #

<p><b>CLASS I</b></p> <p><input type="checkbox"/> Professional Services under \$25,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$25,000</p>	<p><b>CLASS II</b></p> <p><input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p><b>CLASS III</b></p> <p><input type="checkbox"/> Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p>AGENDA # <u>R-10</u> DATE <u>11/7/96</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;">BOARD CLERK</p>
---	--	---

Department: Nondepartmental Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Originator: Dave Warren Phone: 248-3822 Bldg/Room: 106/1400  
 Administrative Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bldg/Room: \_\_\_\_\_  
 Description of Contract: \_\_\_\_\_

Payment to Sauvie Island School District as a one time only supplement.

RFP/BID #: \_\_\_\_\_ Date of RFP/BID: \_\_\_\_\_ Exemption Expiration Date: \_\_\_\_\_

ORS/AR # \_\_\_\_\_ (Check all boxes that apply) Contractor is ☐ JMBE ☐ WBE ☐ ESB ☐ JQRF ☐ N/A ☐ None

Original Contract No. \_\_\_\_\_ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name Sauvie Island School District Remittance Address (if Different) \_\_\_\_\_

Mailing Address 14445 NW Charlton Road

Portland, Oregon 97231

Phone \_\_\_\_\_

Employer ID# or SS# \_\_\_\_\_

Effective Date November 7, 1996

Termination Date July 1, 1997

Original Contract Amount \$5,000

Total Amount of Previous Amendments \$0

Amount of Amendment \$0

Total Amount of Agreement \$5,000

Payment Schedule	Terms
Lump Sum \$ <u>5,000</u>	Due on Receipt
Monthly \$ _____	Net 30
Other \$ _____	Other _____

Requirements Contract - Requisition Required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

## REQUIRED SIGNATURES:

Department Manager: *Peverly Flein* Encumber: Yes No ☒ X  
 Date: October 30, 1996

Purchasing Manager: \_\_\_\_\_ Date: \_\_\_\_\_

(Class II Contracts Only)

County Counsel: *Sandra L. Duff* Date: 10-31-96

County Chair/Sheriff: *Peverly Flein* Date: November 7, 1996

Contract Administration: \_\_\_\_\_ Date: \_\_\_\_\_

(Class I, Class II Contracts Only)

VENDOR CODE GV2426C				VENDOR NAME Sauvie Island School District				TOTAL AMOUNT: \$5,000			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	100	050	9366			6050			County Supplement	5,000	
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

## SCHOOL FUNDING AGREEMENT

### I. PARTIES TO THE AGREEMENT

The parties to the Agreement are (A) MULTNOMAH COUNTY, OREGON, herein referred to as "the County", and (B) MULTNOMAH COUNTY SCHOOL DISTRICT NO. 19, known as the SAUVIE ISLAND SCHOOL DISTRICT and herein referred to as "the District".

### II. RECITALS

WHEREAS, school districts in the County have experienced severe revenue reductions since the passage of the 1990 property tax limitation (Measure 5); and

WHEREAS, the County school district cuts which will take place in the 1996-1997 fiscal year are of such magnitude that a crisis exists; and

WHEREAS, the public interest of the citizens of the County is served by stable, effective school systems which bolster a vital county economy, society and government by, for example, creating an attractive climate for business, reducing flight from cities and urban schools, producing an informed and involved electorate, and generally contributing to a high quality of life; and

WHEREAS, the County recognizes that the entire State of Oregon is in the midst of a school funding crisis; and

WHEREAS, the County has many other responsibilities to fulfill and insufficient resources in the long-term to solve the County schools' problems without significantly interfering with its other responsibilities; and

WHEREAS, the County is willing to offer a one-time, short-term solution to help bridge the gap until the state legislature can craft a long-term, statewide solution in 1997; and

WHEREAS, less than 10% of the students in the District reside out of the County; and

WHEREAS, it would create a costly administrative burden for the District to separate and to fund separately students who are County residents and students who are not County residents; and

WHEREAS, the primary purpose of the County's financial assistance, to benefit students who are County residents, is not defeated if students who are not County residents enjoy some incidental benefit; and

WHEREAS, students who are County residents benefit when the District as a whole benefits; and

WHEREAS, the District has provided the County with information concerning its financial shortfall, the number of layoffs that have occurred, the effect on class size and instructional services;

NOW THEREFORE, the County and the District agree as follows.

### SECTION III. PURPOSE

The purpose of this Agreement is to serve the public interests of the citizens of the County by providing temporary financial relief which will enable the District to retain teachers, maintain class size, provide quality instructional services and so to continue to bolster a vital county economy, society and government.

### SECTION IV. TERMS OF THE AGREEMENT

#### A. Effective Date

This agreement is effective upon execution by both of the parties.

#### B. The County agrees to:

1. Use revenues derived from the Business Income Tax, Motor Vehicle Rental Tax and other non ad valorem property tax sources to give a school funding grant in the amount of \$5,000 to the District for the purpose of providing stable, effective education by retaining teachers, maintaining class size and providing quality instructional services; and

2. Disburse the entire school funding grant on December 1, 1996.

#### C. The District agrees to:

1. Use the funds to provide stable, effective education by retaining teachers, maintaining class size and providing quality instructional services;

2. Defend this Agreement and its implementation against any legal challenge; and

3. Refund the \$5,000 payment to the County if a court of law determines that this Agreement and/or its implementation are illegal.

### SECTION V. GENERAL TERMS

#### A. Severability

If any section, subsection, clause or phrase of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, such determination



shall not affect the validity of the remaining Agreement, which shall continue to be in effect.

B. Termination

This Agreement shall terminate on July 1, 1997, except insofar as the District retains the responsibilities set forth in Section IV, subsections C.2. and C.3.

C. Amendments

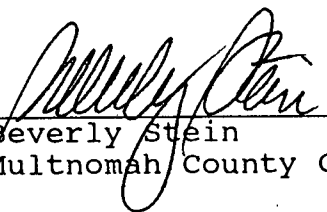
This Agreement may be amended by mutual agreement of the parties.

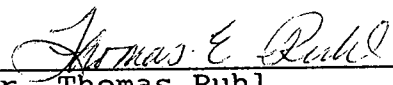
IN WITNESS WHEREOF, the authorized representatives of the District and the County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

Multnomah County

Sauvie Island School District

By   
Beverly Stein  
Multnomah County Chair


By   
Dr. Thomas Ruhl  
Superintendent

DATED November 7, 1996

DATED 10-8-96

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra N. Duffy  
Chief Assistant County Counsel

00297EMK.IGA

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-10 DATE 11/7/96  
DEB BOGSTAD  
BOARD CLERK

MEETING DATE: NOV 7 1996  
AGENDA #: R-11  
ESTIMATED START TIME: 9:51

(Above Space for Board Clerk's Use ONLY)

### AGENDA PLACEMENT FORM

SUBJECT: SB 1145 Facilities Lease and Sublease Documents

BOARD BRIEFING:

DATE REQUESTED: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:

DATE REQUESTED: November 7, 1996

AMOUNT OF TIME NEEDED: 5 - 10 minutes

DEPARTMENT: DSS

DIVISION: Finance

CONTACT: Dave Boyer

TELEPHONE #: 248-3903

BLDG/ROOM #: 106/1430

PERSON(S) MAKING PRESENTATION: Dave Boyer

#### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

#### SUGGESTED AGENDA TITLE:

SB 1145 Facilities Lease and Sublease Documents between Multnomah County and State of Oregon

#### SIGNATURES REQUIRED:

ELECTED  
OFFICIAL: \_\_\_\_\_

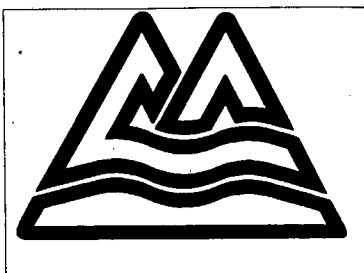
(OR)

DEPARTMENT  
MANAGER: 

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 22 PM 12:13  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



# MULTNOMAH COUNTY, OREGON

## COUNTY COMMISSIONERS

BEVERLY STEIN, CHAIR  
DAN SALTZMAN, DISTRICT #1  
GARY HANSEN, DISTRICT #2  
TANYA COLLIER, DISTRICT #3  
SHARRON KELLEY, DISTRICT #4

## FINANCE DIVISION

DIRECTORS OFFICE  
ACCOUNTS PAYABLE  
GENERAL LEDGER  
PAYROLL  
TREASURY

PORTLAND BUILDING  
1120 SW FIFTH AVENUE, SUITE 1430  
PO BOX 14700  
PORTLAND, OR 97293-0700  
PHONE (503) 248-3312  
FAX (503) 248-3292

CENTRAL STORES  
CONTRACTS  
PURCHASING

FORD BUILDING  
2505 SE 11TH 1ST FLOOR  
PORTLAND, OR 97202  
PHONE (503) 248-5111  
FAX (503) 248-3252  
TDD (503) 248-5170

## MEMORANDUM

TO: Board of County Commissioners

FROM: David Boyer, Finance Director *DB*

DATE: October 21, 1996

AGENDA DATE: November 7, 1996

SUBJECT: SB1145 Facilities Lease and Sublease with State of Oregon

### I. Recommendation / Action:

Approve SB1145 Facilities Lease and Sublease agreement between Multnomah County and the State of Oregon.

### II. Background / Analysis:

On November 21, 1995, the Board approved Resolution 95-239 requesting the State to fund the construction of facilities to house SB 1145 offenders. (Resolution 95-239 attached) The Legislature approved the SB 1145 construction budget for Multnomah County in the amount of \$42,620,000. \$31,775,000 of these funds will be used for the expansion of the Inverness Jail. The remaining \$10,845,000 is to be used for alcohol and drug beds. In addition the County will provide \$11,500,000 of Public Safety Bonds to complete the expansion of the Inverness Jail. The County is responsible for all aspects of the project and Facilities Management has hired an architect and Construction Manager/General Contractor and has begun some of the preliminary work on the site. The State has issued Certificates of Participation (COP's) to finance the construction of the Inverness Jail. The County has been working with the State in developing the various documents needed to enter into the financing arrangement and the Facilities Lease and Sublease are required to complete this transaction. The State is responsible for retiring the COP's and the County is leasing the Inverness Jail, expansion only, to the State of Oregon and the State is then Subleasing the facility back to the County to house the SB1145 offenders. The State will issue the remaining \$10,845,000 COP's in March or April 1997 to

finance the A&D beds. The County will also provide \$13,200,000 of G.O. Bond funds for the A&D Beds.

III. Financial Impact:

The State is responsible for retiring the principal and interest on the \$31,775,000 COP issue and the County is responsible for the principal and interest on the \$11,500,000 Bond issue. 1996/97 Budget contains all construction financial obligations related to this lease.

IV. Legal Issues:

County Counsel and Bond Counsel have reviewed the Lease, Sublease and other documents needed for this transaction. County Counsel has signed where necessary

V. Controversial Issues:

None that I am aware of

VI. Link to Current County Policy:

Action is in line with Resolution 95-239

VII. Citizen Participation:

None

VIII. Other Government Participation:

State, Multnomah County and other Oregon Counties drafted the Lease and Sublease agreements.

CC: Vickie Gates  
Dave Warren  
Dan Noelle

Multnomah County's Application )  
for SB1145 Construction ) RESOLUTION  
Funds and Public Safety Strategy ) 95-239

WHEREAS, the Local Public Safety Coordinating Council established under SB1145 will provide an opportunity for a continuation of effective cross-departmental and cross-jurisdictional planning efforts with citizen involvement; and

WHEREAS, the public safety strategy was developed with the following Multnomah County Urgent Benchmarks in mind:

- reduce violent crimes against people
- increase success of diversion programs
- reduce recidivism of felons
- increase drug treatment services
- increase mental health services
- reduce domestic abuse
- increase percentage of drug free babies; and

WHEREAS, Multnomah County supports the concept of SB1145 and believes counties are in a better position to reduce the recidivism rate by changing the criminal behavior patterns of offenders sentenced under the scope of SB1145. Swift and sure jail stays, coupled with effective residential alcohol and drug intervention and/or employment programs with continuing supervision, can be more effective in reducing recidivism than jail stays alone. The effectiveness of this type of sentence is greatly enhanced by the ability to place the offender back into jail for short stays for non-compliance with the agreed upon sanctions; and

WHEREAS, additional construction and operating resources from the State will enable the County to be more effective in dealing with this population and will benefit the state programmatically and financially in future years because of Multnomah County's ability to reduce the re-offense rate.

NOW THEREFORE IT IS RESOLVED that:

1. Multnomah County approves the attached Application to the State for 1145 Construction Funds. The attached application requests funds to construct 330 jail beds at the current Inverness Jail site and 150 secure residential beds at a site or sites to be determined.
2. Multnomah County urges the Legislature to expand the construction fund during its special session to fully fund the request of Multnomah County and the other Counties in the state. In addition, the County urges the Legislature to increase the operating funds available to the Counties.
3. Multnomah County will request that the Legislature delay implementation of SB1145 in Multnomah County for at least one year until new facilities can become operational.

4. Multnomah County endorses the attached Continuum of Sanctions (Exhibit A) for offenders as the best approach for achieving the Benchmarks listed above. The continuum provides:
- An appropriate mix of jail beds and programs necessary to effectively manage the SB1145 offender.
  - An initial jail stay for the offender, followed by community sanctions and programs. While in jail, the offender must begin intensive alcohol and drug treatment when appropriate
  - An opportunity for the offender in residential treatment programs to acknowledge behavior changes which are necessary to reintegrate back into society.
  - Follow up supervision in the community
  - Enough jail beds to place the offender back in jail when s/he fails to comply with the conditions of non-jail sanctions.
5. Because funds from the State cannot and will not address the current corrections capacity and systems problems in Multnomah County, Multnomah County is committed to placing before the voters in May, 1996, a General Obligation Bond and a renewed and expanded Public Safety Serial Levy.
6. The Board will forward for public review a General Obligation Bond proposal which will include, but may not be limited to:
- a new facility on an as yet unidentified property which will expand the capacity of the system by 210 beds;
  - expand the capacity of the new Inverness facility by 75 beds and replace the current 45 bed Warehouse Annex temporary jail,
  - at least 150 beds providing supervised residential drug and alcohol, work release, and/or mental health services for offenders as they begin the transition back to the community and
  - debt financing for the newly constructed and expanded Multnomah County Juvenile Detention Facility.
7. To reduce the construction time on the new Inverness Facility, Multnomah County will advance the estimated \$900,000 costs for design and site preparation during this fiscal year. These funds will be repaid from 1145 Construction Funds and the General Obligation Bond.
8. The Board will forward for public review a Public Safety Serial Levy focusing on operational funding for the new jail, the additional beds at the new Inverness site, the residential facilities, the temporary Warehouse jail, and expanding the Multnomah County Restitution Center from 120 to 160 beds.

8. The Board will develop a plan to fund operating costs of these new facilities through SB1145 operational funding and public safety serial levies. With the completion of the two jails and the residential beds, the corrections capacity in Multnomah County will be increased by 655 jail beds and 300 residential beds. If 330 jail beds are used for SB1145 offenders and 200 jail beds are needed to eliminate the matrix release problem, Multnomah County will have 125 beds available to deal with the growth in pretrial population. Growth in the SB1145 population should be addressed in future Legislative sessions.
9. Multnomah County is committed to using funds currently devoted to retirement of debt financing of the new and expanded Juvenile Facility to provide cost effective interventions earlier in the lives of potential offenders and their families. Components include:
  - child abuse treatment for victims and offenders;
  - programs to keep at risk children in schools;
  - programs and shelter space to reduce the incidence of domestic violence;
  - developing a pilot community court to resolve neighborhood quality of life crimes;
  - residential alcohol and drug services for juvenile offenders;
  - counselors to work with families of juvenile offenders to assist them in ending the criminal patterns of their children;
  - conflict resolution services.
  - short-term residential evaluation, treatment, placement planning and family reunification services for children removed from the home for their own safety.
10. During the jail construction phase Multnomah County will use levy resources to improve the information technology systems of the public safety agencies. These improvements will provide better information collection and more efficient use of current resources and assist in tracking offenders through the system.
11. During the jail construction phase Multnomah County will also use levy resources to enhance the system's ability to evaluate the effectiveness of different corrections sanctions in meeting the benchmarks.
12. The Board of County Commissioners commits to holding a series of public meetings in conjunction with the new Local Public Safety Coordinating Council to discuss the public safety strategy and seek additional community input; and

IT IS FURTHER RESOLVED that Multnomah County is committed to continuing to work in partnership with the City of Portland to positively impact public safety. In connection with the proposed General Obligation Bond and Public Safety Levy, Multnomah County will ask the City of Portland to jointly develop proposals for joint funding in the areas of:

- alcohol and drug free housing;
- domestic violence;
- after school activities for youth;
- community courts to more effectively address quality of life crimes;
- opening a Mental Health Triage Center; and



IT IS FURTHER RESOLVED that the Board is also committed to sharing the strategy with the Multnomah County legislative delegation and seeking their support.


IT IS FURTHER RESOLVED, that following public review, the Board of County Commissioners will approve appropriate ballot title language for the Bond and the Levy in February, 1996.

APPROVED this 21st day of November, 1995.



MULTNOMAH COUNTY, OREGON

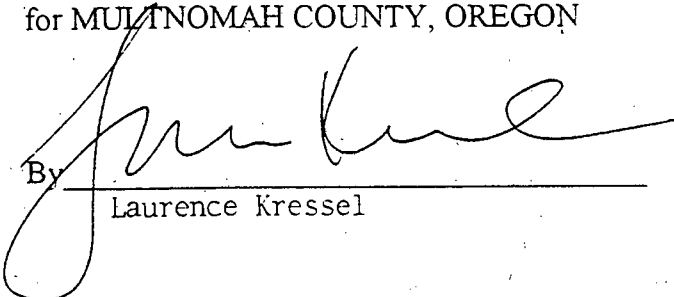
By

  
Beverly Stein, Chair

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
for MULTNOMAH COUNTY, OREGON

By

  
Laurence Kressel

DEPARTMENT OF  
ADMINISTRATIVE  
SERVICES

October 8, 1996

Dave Boyer, Finance Director  
Multnomah County  
P.O. Box 14700  
Portland, OR 97293-0700

Budget and  
Management  
Division

RE: SB 1145 Financing Title Insurance Waiver

The Multnomah County Board Chair provided to the Oregon Department of Administrative Services a certification that the property being leased to the State to secure the approved financing of the Multnomah County Corrections Project has no liens, mortgages or leases against it. In addition the County provided the Department with the title insurance policy dated April 28, 1988. Based on that certification and policy the Department of Administrative Services waives the requirement that Multnomah County purchase a standard form of title insurance policy in the amount of the State financing.

Regards,

  
Greg Jeffrey  
Finance Manager

waiver

John A. Kitzhaber  
Governor



155 Cottage Street, NE  
Salem, OR 97310  
(503) 378-3106  
FAX (503) 373-7643

DEPARTMENT OF  
ADMINISTRATIVE  
SERVICES

October 8, 1996

Dave Boyer, Finance Director  
Multnomah County  
P.O. Box 14700  
Portland, OR 97293-0700


Budget and  
Management  
Division

RE: SB 1145 Financing Documents

Enclosed are two sets of Facilities Lease and Sublease documents for execution of a large portion of the state funding of the Multnomah County SB 1145 project. Also enclosed is a waiver of the need by the County to obtain additional title insurance.

Please obtain the signature of the Chair of the Multnomah Board of Commissioners on all four of the documents. The signatures must be notarized on the marked pages. When complete please return the documents to me along with an opinion of the Multnomah County Legal Counsel in the form that was distributed to you earlier. I will obtain the state official signatures to execute the leases. State funds will be available for disbursement after the County is granted a conditional use permit by the City of Portland. Your recent letter indicates the permit should be obtained in November 1996. Please call me at 503 378-3107 if I can provide any additional information.

Regards,



Greg Jeffrey  
Finance Manager

waiver

John A. Kitzhaber  
Governor



155 Cottage Street, NE  
Salem, OR 97310  
(503) 378-3106  
FAX (503) 373-7643



# **CONTRACT APPROVAL FORM** (See Administrative Procedure #2106)

MULTNOMAH COUNTY OREGON

 Contract # 500317  
 Amendment # \_\_\_\_\_

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$25,000	<input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement

Department Support Services Division Finance Date 10-23-96  
 Contract Originator Dave Boyer Phone 3903 Bldg/Room 106/1430  
 Administrative Contact Theresa Sullivan Phone 3635 Bldg/Room 106/1430  
 Description of Contract SB1145 Facilities Lease and Sublease agreement between  
Multnomah County and State of Oregon.

RFP/BID # \_\_\_\_\_ Date of RFP/BID \_\_\_\_\_ Exemption Exp. Date \_\_\_\_\_  
 ORS/AR # \_\_\_\_\_ Contractor is ☐ MBE ☐ WBE ☐ QRF

Contractor Name State of Oregon  
 Mailing Address 155 Cottage Street NE  
Salem OR 97302  
 Phone 378-3106  
 Employer ID# or SS# \_\_\_\_\_  
 Effective Date Upon execution  
 Termination Date 20 years from execution  
 Original Contract Amount \$ 0  
 Total Amount of Previous Amendments \$ \_\_\_\_\_  
 Amount of Amendment \$ \_\_\_\_\_  
 Total Amount of Agreement \$ \_\_\_\_\_

 Remittance Address \_\_\_\_\_  
 (If Different) \_\_\_\_\_

Payment Schedule \_\_\_\_\_ Terms \_\_\_\_\_  
☐ Lump Sum \$ \_\_\_\_\_ ☐ Due on receipt  
☐ Monthly \$ \_\_\_\_\_ ☐ Net 30  
☐ Other \$ \_\_\_\_\_ ☐ Other \_\_\_\_\_  
☐ Requirements contract - Requisition required.  
 Purchase Order No. \_\_\_\_\_  
☐ Requirements Not to Exceed \$ \_\_\_\_\_

**REQUIRED SIGNATURES**

Department Manager *Dave Boyer*  
 Purchasing Director  
 (Class II Contracts Only) \_\_\_\_\_  
 County Counsel *[Signature]*  
 County Chair / Sheriff \_\_\_\_\_  
 Contract Administration  
 (Class I, Class II Contracts Only) \_\_\_\_\_

Encumber: Yes ☐ No ☒  
 Date 10/22/96  
 Date \_\_\_\_\_  
 Date \_\_\_\_\_  
 Date \_\_\_\_\_  
 Date \_\_\_\_\_

VENDOR CODE			VENDOR NAME						TOTAL AMOUNT \$		
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC/ DEC IND
01.											
02.											
03.											
* If additional space is needed, attach separate page. Write contract # on top of page.											

INSTRUCTIONS ON REVERSE SIDE

WHITE CONTRACT ADMINISTRATION CANARY INITIATION PINK FINANCE

## Legal Opinion

Oregon Department of Administrative Services

Oregon Department of Corrections

Subject: Facilities Lease and Facilities Sublease for Multnomah County, Oregon

I am the County Counsel for Multnomah County, Oregon (the "County"). In my capacity as County Counsel I have reviewed copies of a Facilities Lease and a Facilities Sublease (collectively, the "Leases") between the County and the State of Oregon, acting by and through its Department Of Administrative Services, (the "State"). The Leases are dated , 1996 and have been executed on behalf of the County by Beverly Stein ("the County Official").

I have examined the law and any other documents which I deem necessary to render this opinion.

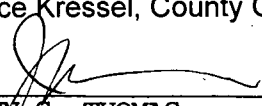
Based on my examination, I am of the opinion, under existing law, as follows:

1. The Leases have been legally authorized by the Board of County Commissioners of the County under and pursuant to the Constitution and Statutes of the State of Oregon and the charter of the County. The Leases have been duly executed on behalf of the County Official upon proper authorization and execution of the Leases by the State, the Leases will constitute valid and legally binding obligations of the County which are enforceable against the County in accordance with their terms. I note, however, that the enforcement of the Leases against the County may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and that the enforcement of the Leases against the County may also be subject to the exercise of judicial discretion in appropriate cases.
2. Execution and delivery of the Leases, and the performance of the County's obligation under the Leases, does not materially conflict with, or cause a default under, any contract or agreement to which the County is a party.
3. No litigation is pending against the County, and to the best of my knowledge after reasonable investigation, no litigation is pending or threatened against the County or any of the County's agents, which would, if decided adversely to the County, materially and adversely affect: (i) the validity or enforceability of the Leases against the County; or, (ii) the performance by the County of its obligations under the Leases.

Respectfully submitted,

Laurence Kressel, County Counsel for Multnomah County

By

  
JOHN S. THOMAS

Assistant County Counsel

## **Facilities Lease**

THIS FACILITIES LEASE is dated as of \_\_\_\_\_, 1996, and is executed by Multnomah County, as lessor, and the State of Oregon, acting by and through its Department of Administrative Services, as lessee.

### **1. Definitions**

Definitions. Capitalized terms used in this Facilities Lease shall have the meanings defined for such terms in this section, unless the context clearly requires otherwise.

"Act" means Senate Bill 1145 (1995 Regular Session of the Oregon Legislature) and House Bill 3489 (1996 Special Session of the Oregon Legislature).

"County's Project Manager" means the Facilities Manager or designee.

"County" means Multnomah County, Oregon.

"County Contribution" means the amount of \$NONE which the County is contributing to the cost of the County Corrections Project, which is described in Section 3.5 of this Facilities Lease.

"County Corrections Facilities" means the facilities described in Exhibit A to this Facilities Lease which are leased to the State under this Facilities Lease.

"County Corrections Project" means the corrections facilities to be constructed by the County which are described in Exhibit B to this Facilities Lease.

"County Executive" means the Chair, Multnomah County Board of Commissioners.

"Defeasance Amount" means an amount sufficient to fund a defeasance escrow reasonably satisfactory to the Trustee, which is sufficient to pay, or prepay, all unpaid principal, interest and redemption premiums on the portion of the State Loan which is allocable to financing the County Corrections Project, and to pay any costs necessary to effect the defeasance. The portion of the State Loan which is allocable to the County Corrections Project shall be determined as follows: The State shall calculate the "Total Net Proceeds" which is amount of net proceeds (after payment of any original issue discount, underwriter's discount and issuance costs) for the State Loan which were received on the date the State Loan was made to the State. The State shall then calculate the "Project Proceeds" which is the amount of the Total Net Proceeds (as of the date the State Loan was made) which were used to finance the County Corrections Project which is proposed to be released. The State shall then calculate the "Project Fraction" by dividing the Project Proceeds by the Total Net Proceeds. The State shall then calculate the "Project Principal" by multiplying the Project Fraction by the total principal amount of the State Loan and rounding up to the nearest \$5,000. The State shall then calculate the "Project Debt Service" by calculating the debt service on the State Loan which is allocable to the Project Principal, assuming the Project Principal and associated interest are repaid with approximately level debt service over a period of approximately twenty years from the date the State Loan was made. The unpaid debt service allocable to a County Corrections Project shall be the Project Debt Service on the 1996 Series A Certificates which has not been paid on the date the County deposits the Defeasance Obligations in irrevocable escrow with the Trustee pursuant to Section 4.5.

"Facilities Lease" means this Facilities Lease.

"Lease Term" means the term of this Facilities Lease, as specified in Section 4.2 hereof.

"Lessee" means the State, prior to foreclosure of the Mortgage, and the Replacement Lessee, after foreclosure of the Mortgage.

"Minor Encumbrances" means liens for taxes which are not delinquent, and any easements, minor defects or encumbrances which do not materially interfere with the use of the County Corrections Project.

"Mortgage" means the Trust Deed, from the State, as grantor, conveying the State's leasehold interest in the County Corrections Facilities to the Trustee, as beneficiary.

"Project Financing" means the grant of \$31,775,000 to the County for the County Corrections Project, which is made pursuant to Section 5.1 of the Sublease.

"Replacement Lessee" means the person who acquires the rights of the State under this Facilities Lease as a result of foreclosure of the Mortgage.

"State's Project Manager" means the Community Corrections Administrator of Corrections.

"State" means the State of Oregon, acting by and through its Department of Administrative Services.

"State Lenders" means the owners of certificates of participation which are issued to finance the County Corrections Project, or any other person entitled to receive the debt service payments due under the State Loan Documents.

"State Loan" means the initial loan obtained by the State to finance the County Corrections Project and any loans obtained by the State to refinance the initial loan to finance the County Corrections Project, so long as the refinancings mature on or before the final maturity date of the initial loan.

"State Loan Documents" means the loan agreement, trust agreement, certificates of participation and related documents executed by the State to obtain the State Loan.

"Sublease" means the Sublease of the County Corrections Facilities from the State, as sublessor, to the County, as sublessee.

"Trustee" means the Trustee designated in the State Loan Documents to act on behalf of the State Lenders.

"Hazardous Material" means any and all hazardous or toxic substances, wastes or materials as listed or defined by any federal, state or local statute, regulation or ordinance pertaining to the protection of human health or the environment.

## **2. Recitals**

The parties recite:

2.1 The State has agreed to provide funds pursuant to the Act for the acquisition, expansion, improvement or construction of the County Corrections Project, which will be owned by the County.

2.2 The State will borrow the funds through the State Loan Documents.

2.3 The County has leased the County Corrections Facilities to the State pursuant to this Facilities Lease. To provide additional security for the State Loan, the State will enter into the Mortgage in favor of the Trustee.

2.4 The State and the County will enter into the Sublease to give the County the right to possess the County Corrections Facilities for the term stated in the Sublease.

### **3. Representations and Warranties of the County**

3.1 The County is the owner of fee simple title to the County Corrections Facilities, free and clear of all encumbrances other than Minor Encumbrances.

3.2 The County has: purchased a standard form of title insurance policy in the amount of the Project Financing, insuring the State's leasehold interest in the County Corrections Facilities; or, has provided other evidence satisfactory to the State that the County has marketable title to the County Corrections Facilities, and has received a written waiver from the State of the requirement that the County provide the title insurance described in the first clause of this sentence.

3.3 The County has requested the State to finance the County Corrections Project pursuant to the Act.

3.4 This Facilities Lease has been duly authorized by the County, and constitutes a valid and binding agreement of the County which is enforceable against the County in accordance with its terms.

3.5 The County has made a County Contribution in the amount of \$NONE from County funds to finance earlier elements of the County Jail Project. The County attests that all actions required by law for the County to acquire and spend the County Contribution have been taken, and that the County Contribution is now available to be spent on the County Corrections Project.

3.6 The County warrants that all land use approvals and development permits required under local zoning or development ordinance, state law and federal law for the use of the land on which the County Corrections Project will be located as a correctional facility of the type and extent funded by this Facilities Lease have been obtained. "Land use approvals and development permits" includes, but is not limited to, any necessary "land use decision" or "limited land use decision" as those terms are defined by ORS 197.015(10) and (12), and does not include building permits or certificates of occupancy. The County has provided to Corrections a list of all land use approvals and development permits the County has obtained.

3.7 No litigation or claims (environmental or otherwise) are pending against the County regarding the County Corrections Project except those which have been disclosed by the County to Corrections and the Department in writing.

### **4. Lease, Term, Rent and Use of County Corrections Facilities**

4.1 The County hereby leases to the Lessee, and the Lessee hereby leases from the County, the County Corrections Facilities on the terms and conditions set forth below.

4.2 The term of this Facilities Lease shall begin on the date of this Facilities Lease and shall end at midnight on the earlier of:



- 4.2.1 the tenth anniversary of the final maturity date of the initial State Loan;
- 4.2.2 if the Mortgage has not been foreclosed, the date on which the State Loan is paid in full, or,
- 4.2.3 the date on which the County pays the Defeasance Amount to the Trustee pursuant to Section 4.5.

4.3 This Facilities Lease is not subject to renewal or extension.

4.4 The County leases the County Corrections Facilities to the Lessee for the term of this Facilities Lease in consideration of the State providing the Project Financing to pay costs of the County Corrections Project, as provided in the Sublease. The County and the State agree that the State's maximum monetary obligation with respect to the County Corrections Project shall in no event exceed \$31,775,000. In the event that the costs of the County Corrections Project exceed the Project Financing, the County shall be responsible for all additional costs, and shall have no claim against the State for any amount that exceeds \$31,775,000.

4.5 If the Mortgage has not been foreclosed, the County may terminate this Facilities Lease prior to the expiration of its term by giving the State and the Trustee not less than 30 days prior written notice, and by paying the Defeasance Amount to the Trustee.

4.6 For so long as the Sublease is in effect, the State shall sublease the County Corrections Facilities solely to the County.

4.7 If the Sublease is terminated prior to termination of this Facilities Lease and the Mortgage has not been foreclosed, the State may use the County Corrections Facilities for any lawful purpose, including renting or leasing the County Corrections Facilities to third parties. Any agreement between the State and a third party for use of the County Corrections Facilities shall terminate upon foreclosure of the Mortgage.

4.8 If the Sublease is terminated prior to termination of this Facilities Lease and the Mortgage has been foreclosed, the Replacement Lessee shall have the obligations described in Section 6.

4.9 The County covenants that the State and any Replacement Lessee shall have quiet enjoyment of the County Corrections Facilities for the term of this Facilities Lease, subject only to the rights of the County under the Sublease during the term of the Sublease.

4.10 The State shall notify the County promptly if: the Legislative Assembly fails to appropriate sufficient funds to pay the State Loan; or, the State is notified by the Trustee that an event of default has occurred under the State Loan documents or that the Trustee intends, for any reason, to foreclose the Mortgage.

## **5. Leasehold Mortgage**

5.1 The State shall have the right to place the Mortgage against the County Corrections Facilities to secure the State Loan. Placing the Mortgage against the County Corrections Facilities shall not release the State from any of its obligations under this Facilities Lease, and the State shall remain liable to perform all of its agreements and covenants hereunder.

5.2 The County will execute, acknowledge and deliver to the State and the Trustee, promptly upon request, a certificate certifying (i) that this Facilities Lease is unmodified and in full force and effect (or, if there have been modifications, that this Facilities Lease is in full force and effect as modified, and stating the modifications), (ii) the dates, if any, to which sums payable hereunder have been paid and (iii) whether or not, to the knowledge of the County, there are then existing any defaults under this Facilities Lease (and if so, specifying the same).

5.3 The County agrees to provide the Trustee with a copy of any notice of default given to the State hereunder. The copies of such notices shall be transmitted to the Trustee concurrently with and by the same manner of delivery in which the original notice is given to the State. The Trustee shall have the same right to cure or correct any default on the part of the State to the same extent that the State has to cure or correct such default, and the County shall be bound to accept such cure or correction from the mortgagee to the same extent that it would be if tendered by the State.

5.4 The County and the State agree to amend this Facilities Lease to the extent necessary to include customary leasehold mortgage provisions required by the Trustee at no cost or expense to the County so long as the requested changes do not materially adversely affect the County's rights or interest in the County Corrections Facilities.

## **6. Obligations of Replacement Lessees**

6.1 If the Trustee forecloses the Mortgage, possession of the County Corrections Facilities will pass to a Replacement Lessee for the term of this Facilities Lease. This Section 6 states the obligations of Replacement Lessees. A Replacement Lessee shall comply with the provisions of this Section 6, and all provisions of this Facilities Lease except those which apply by their terms only to the State, during the entire period that the Replacement Lessee is entitled to possession of the County Corrections Facilities.

6.2 Each Replacement Lessee shall:

6.2.1 Pay any and all real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the County Corrections Facilities, or personal property or fixtures which are part of the County Corrections Facilities during the Lease Term;

6.2.2 Keep the property free from all liens and encumbrances, except for liens for current taxes or assessments which are not delinquent.

6.2.3 Maintain the County Corrections Facilities and all improvements in first class condition and repair throughout the term of this Facilities Lease, ordinary wear and tear excepted, and in accordance with all applicable rules, regulations and ordinances of federal, state, State, municipal or other governmental agencies having or claiming jurisdiction.

6.2.4 Pay the County's reasonable costs of maintaining the insurance described in Section 7.4, or provide that insurance if the County fails to do so.

6.2.5 pay when due all charges for electricity, natural gas, water, sewage, telephone, refuse collection and all other services or utilities used on or in connection with the County Corrections Facilities, including any costs billed by the County pursuant to Section 7.3.

6.2.6 operate and use the County Corrections Facilities in a manner which is reasonably compatible with the uses of adjoining property owned by the County.

6.2.7 indemnify and hold harmless the Trustee from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims (collectively, "Claims") arising out of or relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property of any Hazardous Material (including, without limitation, any Claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "superfund" or "super lien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material), but only if the hazardous substance was introduced onto the County Corrections Facilities during the time the Replacement Sublessee was entitled to possession of the County Corrections Facilities.

6.3 A Replacement Lessee may contest in good faith the validity or amount of any tax, assessment or charge in accordance with the procedures established by statute or administrative rule for such contest so long as the County Corrections Facilities are not subjected to any lien as a result of the contest.

6.4 A Replacement Lessee shall pay all amounts required by this Facilities Lease unconditionally, and shall not be entitled to offset against payments required by this Facilities Lease any claim the Replacement Lessee may have against the Trustee, the County or the State of Oregon.

## **7. Obligations of the County Regarding Taxes, Utilities and Insurance.**

7.1 The County is exempt from taxation, is currently the owner of the County Corrections Facilities, and will be the user of the County Corrections Facilities on commencement of this Facilities Lease. Any taxes, assessments and charges on the County Corrections Facilities during the term of this Facilities Lease shall be paid by the County, to the extent they are not paid by any Replacement Lessee.

7.2 During the term of this Facilities Lease the County shall pay when due all charges for electricity, natural gas, water, sewage, telephone, refuse collection and all other services or utilities used on or in connection with the County Corrections Facilities which are not paid by the State or any Replacement Lessee.

7.3 If the Sublease is terminated prior to termination of this Facilities Lease, the County shall make available to the Lessee all electricity, natural gas, water, sewage, telephone, refuse collection and all other services, amenities or utilities which were available for the County Corrections Facilities during the term of the Sublease, or were intended to be available for the County Corrections Facilities during the term of the Sublease, including use of exercise areas, food service, and other amenities which were required or available for the County Corrections

Facilities prior to termination of the Sublease. If any such services or utilities are provided by or billed through the County, the County shall bill the Lessee for such utilities and services at the County's cost. The County shall not be obligated to provide the Lessee with administrative services in connection with processing inmates housed at the County Corrections Facilities.

7.4 The County shall maintain in full force and effect throughout the entire term of this Facilities Lease, property insurance for the perils of all risks of direct physical loss or damage including earthquake and flood covering the County Corrections Facilities in an amount at least equal to the amount of the Project Financing, plus the amount of the County Contribution. Such property insurance shall include coverage in an amount not less than the lesser of: 100% of the full replacement cost of the County Corrections Facility; or the sum of the Project Financing plus the County Contribution. The Trustee and the State of Oregon shall be named as loss payees as their interests may appear. The Trustee and the State of Oregon shall be provided written notice of any cancellation or material modification to the policy at least 30 days prior to the effective date of such cancellation or change. A properly executed certificate of insurance shall be provided to the Trustee and the Department prior to commencement of any construction, and thereafter, at least 30 days prior to the effective date of any renewal or replacement policy. The policy shall be issued by companies licensed or authorized to provide insurance in the State of Oregon. The policy shall be written by an insurance company that meets or exceeds an A VII rating of A.M. Best Company or for those qualified companies that are not rated by A.M. Best Company a rating equivalent or better than an A.M. Best A VII. The County's deductible shall not exceed \$50,000 each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more, without prior written permission of the State of Oregon.

7.5 Any proceeds of the policies described in Section 6.2.4 and Section 7.4 and any net proceeds of condemnation of the County Corrections Facilities shall be paid into a joint account of the State and the County, and shall be applied to rebuild, restore or replace the County Corrections Facilities in a manner acceptable to the State, the County and any Replacement Lessee. If the State, the County and any Replacement Lessee are unable to agree on how the County Corrections Facilities are to be rebuilt, restored or replaced, the parties shall attempt to resolve the matter through the dispute resolution procedures provided in Section 15, below. If the parties are still unable to agree, an amount of insurance proceeds equal to the Defeasance Amount (or all of the proceeds, if they are less than the defeasance amount) shall be paid to the Trustee and used to defease the State Loan, and any balance of the insurance proceeds shall be paid jointly to the County and any Replacement Lessee. Any proceeds remaining after defeasance shall be paid to the order of the County and any Replacement Lessee; and shall be divided between the County and any Replacement Lessee *pro rata*, based upon the remaining term of this Facilities Lease and the remaining useful life of the County Corrections Facilities. The County shall cooperate fully with the State and any Replacement Lessee to obtain the largest possible recovery but the County shall not be obligated to incur any expense or cost in that connection.

## **8. Ownership of the Improvements**

Regardless of who may own improvements constructed on the County Corrections Facilities during the Lease Term, all improvements located on the County Corrections Facilities at the expiration or sooner termination of this Facilities Lease shall become the property of the County, free and clear of all claims of the State or anyone claiming under the State.

## **9. Assignment; Subletting; Use by the State**

9.1 The State shall not assign or otherwise transfer the State's interest in this Facilities Lease except pursuant to the Mortgage.

9.2 The County shall have no right to possess the County Corrections Facilities during the Lease Term, except by virtue of the Sublease.

9.3 The State may use the County Corrections Facilities for any lawful purpose during the term of this Facilities Lease, if the Sublease is terminated pursuant to Section 4.3.2 or 4.3.3 of the Sublease.

9.4 To the fullest extent permitted by law, the State shall indemnify and hold harmless the Trustee from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims (collectively, "Claims") arising out of or relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the County Corrections Facilities of any Hazardous Material (including, without limitation, any Claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "superfund" or "super lien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material), but only if the hazardous substance was introduced onto the County Corrections Facilities during the time in which the State was entitled to possession of the County Corrections Facilities because the Sublease had been terminated but the Mortgage had not been foreclosed.

## **10. Condemnation**

If all or any portion of the County Corrections Facilities are condemned, the net proceeds of the condemnation shall be applied as provided in Section 7.5.

## **11. Default and Remedies**

11.1 It shall constitute a default and breach under this Facilities Lease if the State fails to perform any term, condition or covenant of this Facilities Lease within 30 days after written notice from the County specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the 30-day period, the failure shall not be a default if the State begins correction of the failure within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

11.2 Upon default and after the notice period described in 11.1 above, the County may, after having attempted in good faith to resolve any dispute related to the default as provided in Section 15, bring an action at law to recover damages for any breach, and may seek any equitable remedies which may be available; however, this Facilities Lease shall not be terminable because of any breach by the State prior to payment in full (or provision therefor) of the entire State Loan which is allocable to financing the County Corrections Project.

## **12. Indemnity**

12.1 Indemnification of State by County.

12.1.1 To the fullest extent permitted by Article XI, section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), the County shall defend, indemnify and hold harmless the State of Oregon, the Office of the State Treasurer, its Department of Administrative Services, its Department of Corrections, and the officers, employees and agents of each against any and all losses, claims, damages, liabilities and expenses: (i) arising out of the failure of the County to fulfill the County's obligations under this Facilities Lease or the County's obligations under the Sublease; (ii) arising out of any statement or information in any Preliminary Official Statement, Official Statement or other disclosure document published in connection with the issuance of certificates of participation that is based on or reflects written information provided to the State by the County that is untrue or incorrect in any material respect or which contains an omission by the County of any statement or information required to be stated therein or necessary to make the statements therein not materially misleading; and (iii) arising from any claims, actions, suits or other proceedings brought or asserted by third parties, including but not limited to tort actions, claims or actions arising out of the County's treatment of offenders, the conditions of confinement at any County administered facility, or the imposition by the County of sanctions or disciplinary measures with respect to offenders.

12.1.2 It is provided, however, that the County shall not be required to indemnify, defend or hold harmless the State of Oregon, the Office of the State Treasurer, its Department of Administrative Services, its Department of Corrections, or their officers, employees or agents against any claim or liability resulting from the wrongful acts or negligence of the State of Oregon, the Office of the State Treasurer, its Department of Administrative Services, its Department of Corrections, or their officers, employees or agents.

12.1.3 This indemnity agreement is in addition to any liability which the County otherwise may have. The contractual and quasi-contractual damages which may be claimed against the County shall not exceed those amounts permitted by the Oregon Constitution. Tort damages shall not exceed the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300 (the "Tort Claims Act"), and shall be subject to the restrictions set forth in the Tort Claims Act unless the provisions and limitations of the Tort Claims Act are preempted by federal law, including but not limited to, the federal securities laws. In case any claim that is subject to this indemnity provision shall be made or action brought against the State of Oregon, its Department of Corrections, or the officers, employees or agents of either, the entity or person for whom indemnity may be sought from the County shall promptly notify the County in writing setting forth the particulars of such claim or action and the County shall assume the defense thereof, including the retaining of counsel and the payment of all reasonable expenses. Such entity or person shall have the right to retain at its own expense, separate counsel in any such action and to participate in the defense thereof in the event that in such entity's or person's judgment the counsel retained by the County cannot for any reason adequately defend such the interests of such person or entity.

## 12.2 Indemnification of County by State.

12.2.1 To the extent permitted by Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), the State shall indemnify, defend and hold harmless the County, its officers, employees and agents, against any and all losses, claims, damages, liabilities and expenses: (i) arising out of the failure of the State to fulfill the State's obligations under this Facilities Lease or the Sublease; and (ii) arising out of any statement or information in any Preliminary Official Statement, Official Statement or other disclosure document published in connection with the issuance of the Certificates of Participation that is based on or reflects information provided or developed by the State that is untrue or incorrect in any material respect or which contains an omission by the State of any statement or information required to be stated therein or necessary to make the statements therein not materially misleading, it being specifically agreed that the State's obligations under this subparagraph (ii) shall not extend to or include any statement, information or omission which is provided or developed by any person or party other than the State, its officers, or employees.

12.2.2 Notwithstanding any other provision of this section 12.2, the State's indemnification, defense and hold harmless obligations shall in no event extend to or include any losses, claim, damages, liabilities or expenses arising from any claims, actions, suits or other proceedings brought or asserted by third parties, including but not limited to tort actions arising out of the County's confinement or treatment of offenders, the conditions of confinement at any County administered facility, the imposition by the County of sanctions or disciplinary measures with respect to offenders, or any proceedings in the nature of criminal prosecutions, appeals from convictions, parole or probation revocations or proceedings in the nature of habeas corpus or post-conviction relief. It is also provided that the State shall not be required to indemnify, defend or hold harmless the County or its officers, employees or agents against any claim or liability arising out of the wrongful acts or negligence of the County, or its officers, employees or agents.

12.2.3 The County expressly understands and agrees that the State shall have no liability whatsoever to the County, its officers, employees or agents, in any way arising out of or resulting from any failure or refusal by the Oregon Legislative Assembly to appropriate or otherwise provide sufficient funds to pay principal of and interest on any certificates of participation issued by the State under the Act.

12.2.4 This indemnity agreement is in addition to any liability which the State otherwise may have. The contractual and quasi-contractual damages which may be claimed against the State shall not exceed those amounts permitted by the Oregon Constitution. Tort damages shall not exceed the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300 (the "Tort Claims Act"), and shall be subject to the restrictions set forth in the Tort Claims Act unless the provisions and limitations of the Tort Claims Act are preempted by federal law, including but not limited to, the federal securities laws. In case any claim that is subject to this indemnity provision shall be made or action brought against the County, its officers, employees or agents,

the entity or person for whom indemnity may be sought from the State shall promptly assume the defense thereof, including the retaining of counsel and the payment of all reasonable expenses. Such entity or person shall have the right to retain, at its own expense, separate counsel in any such action and to participate in the defense thereof in the event that in such entity's or person's judgment the counsel retained by the State cannot for any reason adequately defend the interests of such person or entity.

### **13. Hazardous Substances**

County shall indemnify and hold harmless the Trustee from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims (collectively, "Claims") arising out of or relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property of any Hazardous Material (including, without limitation, any Claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "superfund" or "super lien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material). However, the County shall not be required to indemnify the Trustee for any claims for which a Replacement Lessee is required to indemnify the Trustee pursuant to Section 6.2.7, or the State is required to indemnify the Trustee pursuant to Section 9.4.

### **14. Surrender on Termination**

14.1 Upon expiration of the Lease Term, the Lessee shall surrender possession of the County Corrections Facilities to the County. All portions of the County Corrections Facilities shall become the County's property at the date of expiration of this Facilities Lease.

14.2 Failure by the Lessee to vacate the County Corrections Facilities at the time specified in this Facilities Lease shall not constitute a renewal or extension or give the Lessee any rights in or to the County Corrections Facilities or any improvements. Upon such a holdover, the Lessee shall be deemed a tenant at sufferance, and shall, to the extent permitted by Article XI, Section 7 of the Oregon Constitution, defend and indemnify the County from all liability and expense resulting from the failure or delay of the Lessee to timely surrender the County Corrections Facilities including, without limitation, claims made by any succeeding tenant founded on or resulting from the Lessee's failure to so surrender.

### **15. Dispute Resolution**

15.1 Notwithstanding any other provisions provided for in this Facilities Sublease, in the event of any dispute arising between County and the State in the performance of this Facilities Lease, the parties agree to the following resolution process:

15.1.1 Any dispute and/or disagreement between the County and the State regarding performance of this Facilities Lease shall be attempted to be resolved informally, at the earliest possible time and at the lowest level.

15.1.2 If a dispute or disagreement cannot be resolved informally, the County shall present the issue of dispute or disagreement, in writing, to the County's Project Manager and the State's Project Manager, or the State shall present the issue of dispute or disagreement, in writing, to the State's Project Manager and the County's



Project Manager. The written statement shall set forth the disputed matter and the resolution proposed by the entity presenting the statement. The County's Project Manager and the State's Project Manager shall meet to discuss the disputed matter within ten (10) business days of receipt of the written statement. Any agreement resolving the dispute shall be reduced to writing by the County and the State and signed by both the County's Project Manager and the State's Project Manager.

15.1.3. In the event the dispute is not resolved, the County, within ten (10) days of the meeting between the County's Project Manager and the State's Project Manager, shall present the dispute, in writing, to the County's Executive and the Director of Corrections, or the State, within ten (10) days of the meeting between the County's Project Manager and the State's Project Manager, shall present the dispute, in writing, to the County Executive and the State's Director of Corrections. Within ten (10) days of receipt of the written dispute, the County's Executive and the State's Director of Corrections shall meet and review the dispute. If resolution of the dispute is reached, such resolution shall be reduced to writing by the County and the State and signed by both the County's Executive and the State's Director of Corrections.

15.2 Prior to initiating any action regarding a dispute or disagreement between the County and the State, the parties shall attempt to resolve the matter as provided in this Section 15. In the event the dispute is not resolved, the dispute shall be submitted to arbitration as provided in ORS 190.710 to 190.790. However, no award resulting from such arbitration shall be binding on either party or otherwise preclude either party from seeking, after the award, such judicial remedy or resolution of the dispute as may be available to it at law or in equity.

## **16. Miscellaneous**

16.1 Waiver by either party of strict performance of any provision or term of this Facilities Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provisions.

16.2 All notices under this Facilities Lease shall be effective on the earlier of actual receipt or two days after deposit as registered or certified mail, return receipt requested, postage prepaid and addressed to the County or the State at the addresses stated below, or to such other address as either party may specify by notice to the other party:

the County: Multnomah County Counsel, 1120 SW Fifth Ave. Suite 1530, P.O. Box 849, Portland, Oregon 97207-0849.

the Lessee: Oregon Department of Administrative Services, 155 Cottage Street, Salem, Oregon 97310, Attention: Finance.

16.3 If suit or action is instituted to enforce this Facilities Lease, or in connection with any claim or controversy arising out of this Facilities Lease, the prevailing party, to the extent of legally available funds in the case the County does not prevail, shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit, proceeding or action. If arbitration is instituted in connection with any claim or controversy arising out of this Facilities Lease, attorney fees may be awarded by the arbitrators

as they may decide, and if so awarded shall be a part of the arbitrators' decision on which judgment may be rendered.

16.4 The invalidity or illegality of any provision of this Facilities Lease shall not affect the remainder of the Facilities Lease.

16.5 This Facilities Lease and the party's rights under it shall be construed and regulated by the laws of the state of Oregon.

16.6 At the request of either party the parties will execute and acknowledge a memorandum of lease in recordable form which shall include a legal description of the County Corrections Facilities and the term of the Facilities Lease, and either party may record the memorandum.

16.7 Any legal action regarding this Facilities Lease shall be filed in an Oregon court of appropriate jurisdiction in Marion County, Oregon.

Board of County Commissioners  
Multnomah County, Oregon,  
the "County"

State of Oregon, acting by and through its  
Department of Administrative Services (the  
"Lessee")

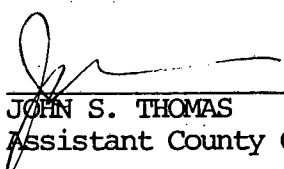
\_\_\_\_\_  
Beverly Stein, Chair

\_\_\_\_\_  
Director or Deputy, Department of  
Administrative Services

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY

By

  
\_\_\_\_\_  
JOHN S. THOMAS

Assistant County Counsel

State of Oregon       )  
                                  ) ss.  
County of Marion       )

The foregoing Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by  
\_\_\_\_\_, the Director or Deputy Director of the Department of Administrative  
Services of the State of Oregon, on behalf of the State of Oregon.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

State of Oregon       )  
                                  ) ss.  
County of Multnomah)

The foregoing Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by  
\_\_\_\_\_, the \_\_\_\_\_ of Multnomah County, Oregon,  
on behalf of the County.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

### **Exhibit A**

The County Corrections Facilities consist of: (1) the County Corrections Project described in Exhibit B, below, (2) the portion (as described in Exhibit C below), of the real property described in Exhibit D below upon which the County Corrections Facilities will be located, (3) such easements, licenses, and other real property rights to, on, across, under, and over the real property described in Exhibit D for access to, and use, maintenance, and operation of, the County Corrections Facilities including ingress and egress and utility easements, and (4) such rights, including the right of support and airspace rights, sufficient for the construction, maintenance, use, and operation of the County Corrections Facilities; it being the intention that the County Corrections Facilities consist of such rights sufficient for the State to use and enjoy the County Corrections Facilities.

The County reserved to itself such rights, including the right of support and air space rights, sufficient for the maintenance, use, and operation of any improvements on the property described in Exhibit D existing on that date of this Lease other than the County Corrections Facilities (the "Existing Improvements"); it being the intention that the County reserve to itself such rights sufficient for the County to use and enjoy the Existing Improvements.

### **Exhibit B**

The County Corrections Project will consist of the addition of 132,130 gross square feet to the existing Inverness Jail of Multnomah County. The expansion will be adjacent to the north and west sides of the existing housing units located at the northwest corner of the Jail. The expansion will consist of a new admissions area, dorm space, and medical service area. The expansion will increase the current 559 medium security bed capacity by 330 medium security beds.

### **Exhibit C**

Approximately 132,130 square feet of property adjacent to the north and west sides of the existing housing units located at the northwest corner of the existing Inverness Jail.

### **Exhibit D**

#### **PARCEL I:**

The West 401 feet of the following described tract of land, said 401 feet measured East at right angles to the West boundary line of a tract of land conveyed to the City of Portland, recorded December 24, 1985, in Book 1873, Page 1748, more particularly described as follows:

A parcel of land in Sections 14 and 15 and 22, T1N, R2E, W.M., Multnomah County, Oregon.

Beginning at a point in the Westerly right of way line of N.E. 122nd Boulevard, County Road No. 3119, said point being opposite engineer's centerline Station 20+97.31 and bears S 89° 37'09"E, 300.96 feet from the section corner common to Sections 14, 15, 22 and 23, T1N, R2E, W.M.; thence N 66° 39'25"W, 959.84 feet to a point; thence S28° 29'35"W parallel to the centerline of said NE 122nd Boulevard 699.75 feet to a point, from which the Northwest corner of the David Powell DLC bears N43° 46'54"E, 355.51 feet, and an iron pipe bears S44° 48'56"W, 96.68 feet; thence N60° 48'05"W, 246.26 feet to an iron pipe; thence N79° 49'56"W, 7.3204 feet

to a point on the West line of the John Powell DLC, from which an iron pipe bears S0 52'39"W, 141.03 feet, thence N0 57'32"E along said West line 577.57 feet to a point; thence N82 37'05"E, 567.81 feet to a point; thence along a curve to the right having a radius of 781.20 feet, the chord of which bears S82 01'10"E, 413.92 feet, a distance of 418.92 feet to a point; thence S66 39'25"E, 1322.27 feet to a point on the Westerly right of way line of said NE 122nd Boulevard; thence S28 29'35"W along said line 95.38 feet to the point of beginning.

#### PARCEL II:

The Northerly 25 feet of the following described tract of land, said 25 feet being measured South of and at right angles to the North boundary line of a tract of land conveyed to the City of Portland, recorded December 24, 1985, in Book 1873, Page 1748, more particularly described as follows:

A parcel of land in Sections 14 and 15 and 22, T1N, R2E, W.M., Multnomah County, Oregon.

Beginning at a point in the Westerly right of way line of NE 122nd Boulevard, County Road No. 3119, said point being opposite engineers's centerline station 20+97.13 and bears S89 37'09"E, 300.96 feet from the section corner common to Sections 14, 15, 22 and 23, T1N, R2E, W.M.; thence N 66 39'25"W, 959.84 feet to a point; thence S28 29'35"W parallel to the centerline of said NE 122nd Boulevard 699.75 feet to a point, from which the Northwest corner of the David Powell DLC bears N43 46'54"E, 355.51 feet, and an iron pipe bears S44 48'56"W, 96.68 feet; thence N60 48'05"W, 246.26 feet to an iron pipe; thence N79 49'56"W, 7.3204 feet to a point on the West line of the John Powell DLC, from which an iron pipe bears S0 52'39"W, 141.03 feet; thence N0 57'32"E along said West line 577.57 feet to a point; thence N82 37'05"E, 567.81 feet to a point, thence along a curve to the right having a radius of 781.20 feet, the chord of which bears S82 01'10"E, 413.92 feet, a distance of 418.92 feet to a point; thence S66 39'25"E, 1322.27 feet to a point on the Westerly right of way line of said NE 122nd Boulevard; thence S28 29'35"W along said line 95.38 feet to the point of beginning.

Excepting the West 401 feet thereof measured East at right angles to the West boundary line of a tract of land conveyed to the City of Portland, recorded December 24, 1985, in Book 1873, Page 1748.

#### PARCEL III:

All of Block 99 1/2, PARKROSE, in the City of Portland, County of Multnomah and State of Oregon.

## **Facilities Sublease**

THIS FACILITIES SUBLEASE is dated as of \_\_\_\_\_, 1996 and is executed by the State of Oregon, acting by and through its Department of Administrative Services, as State, and Multnomah County, as sublessee.

### **1. Definitions.**

Capitalized terms used in this Facilities Sublease shall have the meanings defined for such terms in this section, unless the context clearly requires otherwise.

"Act" means Senate Bill 1145 (1995 Regular Session of the Oregon Legislature) and House Bill 3489 (1996 Special Session of the Oregon Legislature).

"Code" means the Internal Revenue Code of 1986, as amended.

"Corrections" means the Department of Corrections acting as representative of the State.

"County's Project Manager" means the Facilities Manager or designee.

"County" means Multnomah County, Oregon.

"County Contribution" means the amount of \$NONE, which the County is contributing to the cost of the County Jail Project, and which is described in Section 3.5 of the Facilities Lease.

"County Corrections Facilities" means the facilities described in Exhibit A to this Sublease.

"County Corrections Project" means the corrections facilities to be constructed by the County which are described in Exhibit B to this Sublease.

"County Executive" means the Chair, Multnomah County Board of Commissioners.

"Department" means the Department of Administrative Services of the State of Oregon.

"Facilities Lease" means the Facilities Lease in which the County, as lessor, leases the County Corrections Facilities to the State, as lessee.

"Material Change" means a change that would modify the character, scope, purpose or location of the County Corrections Project recommended to and approved by the Oregon Legislature. Those would include but not be limited to changes that would increase or decrease bed capacity; project location on the leased property; function the project was approved to serve, for example, to change a minimum security capacity project to an alcohol and drug treatment facility.

"Mortgage" means a leasehold mortgage on the State's interest in the Facilities Lease, from the State, as mortgagor, to the Trustee, as mortgagee.

"Project Financing" means the grant of \$31,775,000 to the County for the County Corrections Project, which is made pursuant to Section 5.1 of this Sublease.

"State's Project Manager" means the Community Corrections Administrator of Corrections.

"State Lenders" means the owners of certificates of participation which are issued to finance the County Corrections Project, or any other person entitled to receive the debt service payments due under the State Loan Documents.

"State Loan" means the loan obtained by the State to finance the County Corrections Project and any loans obtained by the State to refinance the initial loan to finance the County Corrections Project, so long as the refinancings mature on or before the final maturity date of the initial loan.

"State Loan Documents" means the loan agreement, trust agreement, certificates of participation and related documents executed by the State to obtain the State Loan.

"Sublease" means this Facilities Sublease.

"Trustee" means the Trustee designated in the State Loan Documents to act on behalf of the State Lenders.

## **2. Recitals.**

The parties recite:

2.1 The State has agreed to provide funds pursuant to the Act for the construction of the County Corrections Project, which will be owned by the County.

2.2 The State will borrow the funds through the State Loan Documents.

2.3 The County has leased the County Corrections Facilities to the State under the Facilities Lease. To provide additional security for the State Loan, the State will execute the Mortgage on the Facilities Lease in favor of the Trustee.

2.4 The State and the County now enter into this Sublease to give the County the right to possess the County Corrections Facilities for the term of this Sublease.

## **3. Agreement to Sublease.**

The State hereby leases to the County, and the County hereby leases from the State, the County Corrections Facilities on the terms and conditions set forth below.

## **4. Term and Use of County Corrections Facilities**

4.1 The term of this Sublease shall begin on the Closing Date and shall continue to midnight on the tenth anniversary of the last scheduled principal payment on the State Loan, unless it is sooner terminated as provided in Section 4.3 of this Sublease.

4.2 This Sublease is not subject to renewal or extension.

4.3 This Sublease shall terminate on the earlier of:

4.3.1 the date on which Mortgage is foreclosed;

4.3.2 the date on which the responsibility for correctional services reverts to Corrections after the County discontinues participation in the community corrections program pursuant to Section 6 of the Act;

4.3.3 the date on which the State terminates this Sublease pursuant to Section 12.3 of this Sublease; or,

4.3.4 the date on which the Facilities Lease terminates.

4.4 The State subleases the County Corrections Facilities to the County for the term of this Sublease in consideration of the execution of the Facilities Lease and the agreement by the

County to construct the County Corrections Project in accordance with Section 5 of this Sublease.

4.5 . The County shall construct and use the County Corrections Project in accordance with Oregon law and for the purposes described in the Act.

4.6 The State covenants that the State shall not interfere with the County's quiet enjoyment of the County Corrections Facilities for the term of this Sublease, subject only to the rights of the State under Section 5 of this Sublease.

4.7 Nothing in this Sublease shall be construed to limit the regulatory or police powers of the State.

### **5. Construction of County Corrections Project.**

5.1 The State agrees to provide the County the Project Financing approved by the Legislative Assembly to pay costs of the County Corrections Project in an amount of not more than \$31,775,000. The Project Financing shall be paid to the order of the County in installments, as amounts are required by the County to pay actual costs of the County Corrections Project. Advance payments will not be permitted. If payments are for costs of County labor or other services, the State shall not provide Project Financing for such costs and expenses until the labor or services have been provided. The County and the State agree that the State's maximum monetary obligation with respect to the County Corrections Project shall in no event exceed \$31,775,000. In the event that the costs of the County Corrections Project exceed the Project Financing, the County shall be responsible for all additional costs, and shall have no claim against the State for any amount that exceeds \$31,775,000.

5.2 The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the County Corrections Project in accordance with applicable law and local contracting procedures including but not limited to: site acquisition, site development, construction, equipping and implementation of the County Corrections Project. The County shall be responsible for awarding and managing all contracts and property acquisition procedures necessary to complete the County Corrections Project in accordance with the plans and specifications for the County Corrections Project which Corrections has approved.

5.3 The County shall require the general contractor to provide, at its own expense, builder's risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the contract. Any deductible shall not exceed \$50,000 each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the State of Oregon and the Trustee, as its interests may appear.

5.4 The County agrees to have plans and specifications for the County Corrections Project prepared by a licensed architect. The County may let all contracts for work required to prepare final plans and specifications without the approval of Corrections as long as the total expected costs of those contracts does not exceed 15% of the amount of the Project Financing. After the final plans and specifications are developed, the County shall file those plans and specifications and a comprehensive budget for the County Corrections Project with Corrections, and shall obtain the written approval of Corrections for those plans and specifications and the budget



before letting any remaining contracts for project work, and commencing construction of, the County Corrections Project. Corrections shall review and approve or deny approval of plans and specifications expeditiously.

5.5 The County agrees to construct the County Corrections Project in accordance with the plans and specifications and budget which Corrections has approved. All change orders that create a Material Change in the plans and specifications or increase the budget above the amount approved by Corrections must be approved by Corrections in advance and in writing. Corrections must be advised of all other change orders and their impact on the County Corrections Project budget within 10 days of their approval by the County or County representative.

5.6 The County agrees not to approve material changes to the plans and specifications or budget changes to the County Corrections Project that increase the budget to more than the amount approved by Corrections, unless the County first obtains the written consent of Corrections. Corrections must be advised of all changes to the plans and specifications that are not material or budget changes that do not increase the budget to more than the approved project amount within 10 days of their approval by the County or County representative.

5.7 To obtain a disbursement of the Project Financing for actual costs of the County Corrections Project, the County shall submit a requisition to Corrections on a form approved by the State, with such information as the State may reasonably require, including invoices from contractors and the amount of the County Contribution which will be applied to pay the costs for which the requisition is submitted. Corrections shall verify that the requisition is consistent with this Sublease and the plans, specifications and budget for the Project, and that the requisition, together with past requisitions for the County Corrections Project, does not exceed the amount of the Project Financing. If Corrections approves the requisition, Corrections shall submit the requisition to the Department according to the manner described in the Interagency Agreement between Corrections and the Department in connection with the State Loan. The Department shall submit the requisition to the Trustee with instructions that the requisitioned amount be paid as described in the requisition form. Corrections and the Department shall process requisitions expeditiously.

5.8 Neither execution of this Sublease nor approval of plans and specifications for the County Corrections Project by Corrections shall be construed as a representation or warranty by the State that the plans and specifications for the County Corrections Project are adequate.

5.9 The County agrees to complete the County Corrections Project in accordance with the plans and specifications which Corrections has approved. The County shall pay all costs of the County Corrections Project from the Project Financing, and, if those amounts are not sufficient, from other legally available funds of the County. The State shall not be obligated to pay the County any costs of the County Corrections Project which exceed the Project Financing.

5.10 The State and its representatives shall have access to the County Corrections Project at all reasonable times throughout the term of this Sublease to inspect the construction, operation and maintenance of the County Corrections Project.

5.11 The County shall file a completion certificate, in substantially the form attached to the Sublease as Exhibit E, upon substantial completion of the County Corrections Project.

5.12 Prior to commencement of any construction, the County shall require that the general contractor procure and maintain in full force and effect throughout the entire term of the construction and for one year after completion and acceptance by the County, a performance and Payment Bond for the faithful performance and payment of all contractor's obligations for the total cost of the County Corrections Project. The County shall be named as the obligee on the Bond.

## **6. The Act**

The State has agreed to finance the County Corrections Project pursuant to the Act. The County agrees to carry out its obligations under the Act, including but not limited to:

6.1 When a county assumes responsibility under ORS 423.500 to 423.560 for correctional services previously provided by Corrections, the county and Corrections shall enter into an intergovernmental agreement that includes a local community corrections plan consisting of program descriptions, budget allocation, performance objectives and methods of evaluating each correctional service to be provided by the county.

6.2 The community corrections plans shall comply with rules adopted pursuant to ORS 423.500 to 423.560, and shall include but need not be limited to an outline of the basic structure and the supervision, services and local sanctions to be applied to offenders convicted of felonies who are:

6.2.1 On parole;

6.2.2 On probation;

6.2.3 On post-prison supervision;

6.2.4 Sentenced, on or after January 1, 1997, to 12 months or less of incarceration; and

6.2.5 Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-Prison Supervision to 12 months or less incarceration for a violation of a condition of parole, probation or post-prison supervision.

6.3 Section 6 of the Act provides for payments to the County for funding for community corrections. If the total State community corrections appropriation is less than the baseline calculated under subsection (1) of Section 6 of the Act, the County may discontinue participation by written notification to the Director of Corrections 180 days prior to implementation of the change. If a county discontinues participation, the responsibility for correctional services transferred to the county, and the portion of funding made available to the county under ORS 423.530 reverts to Corrections. In no case does responsibility for supervision and provision of correctional services to misdemeanor offenders revert to the Department. If the County discontinues participation, this Sublease shall terminate as of the date the responsibility for correctional services reverts to Corrections. The Facilities Lease, however, shall not terminate.

6.4 The County shall assign all rights under its architectural, engineering, construction and related contracts for the County Corrections Project to Corrections if this Sublease is terminated prior to completion of construction of the County Corrections Project.

#### **7. Taxes and Assessments; Utilities**

The County shall pay all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the County Corrections Facilities. If any governmental charges may lawfully be paid in installments over a period of years, the County may pay those charges in installments. The County may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner, so long as the contest does not subject any portion of the County Corrections Facilities to loss or forfeiture.

#### **8. Maintenance; Alterations; Reconstruction**

8.1 The County shall maintain the County Corrections Facilities and all improvements in first class condition and repair throughout the term of this Sublease, ordinary wear and tear excepted, and in accordance with all applicable rules, regulations and ordinances of federal, state, county, municipal or other governmental agencies having or claiming jurisdiction.

8.2 The County shall perform at its sole cost and expense all necessary maintenance and repairs of: (1) the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, fire extinguishers, sidewalks, and parking areas which are located in or serve the County Correction Facilities; (2) the heating, air conditioning, plumbing, electrical, and lighting systems in the County Corrections Facility, replacing parts of the system as necessary, obtaining required permits and inspections from local and state enforcement authorities as required; (3) carpets and other floor coverings.

8.3 The County agrees to maintain County Corrections Facilities utilizing a preventive maintenance plan which conforms to manufacturers' warranties, follows manufacturers' recommendations for maintenance and repairs, and assures that routine maintenance and repairs are scheduled and accomplished in a timely manner to protect the structures and building systems from excessive deterioration.

#### **9. Ownership of the Improvements**

The County Corrections Facilities shall be owned by the County, subject to the rights of the State under the Facilities Lease.

#### **10. Tax Covenants; Transfer of County Corrections Facilities**

10.1 The County covenants for the benefit of the State and the recipients of State Loan Payments to comply with all provisions of the Code which are required for interest on the State Loan to be excluded from gross income for federal taxation purposes. In determining what actions are required to comply, the County may rely on an opinion of the State's bond counsel. The County makes the following specific covenants with respect to the Code:

10.1.1 The County will not take any action or omit any action if it would cause the State Loan to become an "arbitrage bond" under Section 148 of the Code.

10.1.2 The County shall operate the facilities financed with the State Loan so that the State Loan does not become a "private activity bond" within the meaning of Section 141 of the Code.

10.1.3 The County shall, at the request of the State, cooperate with the State to provide information the State may need to compute any arbitrage rebate payments which may be due from the State in connection with the State Loan. The County shall, at the request of the Department, report any information on investment and expenditure of amounts which are paid to the County under this Sublease, which the State reasonably requires to comply with the arbitrage rebate requirements which apply to the State Loan.

10.2 The County represents that it has not leased or otherwise transferred to any person any interest in the County Corrections Facilities. The County agrees that it will not convey, sublet, assign or otherwise transfer the County Corrections Facilities or the County's interest in this Sublease, in whole or in part, without the prior written consent of the State. The County agrees that it will not allow any person to use the County Corrections Project in a manner which would cause interest on the State Loan to become includable in gross income under the Internal Revenue Code of 1986, as amended.

## **11. Insurance and Condemnation.**

11.1 The County has agreed in the Facilities Lease to maintain insurance on the County Corrections Facilities throughout the term of the Facilities Lease. Proceeds of that insurance shall be used as provided in the Facilities Lease.

11.2 Any proceeds of condemnation of the County Corrections Facilities shall be used as provided in the Facilities Lease.

## **12. Default and Remedies**

12.1 Except as provided in Section 13.2, it shall constitute an Event of Default under this Sublease if:

12.1.1 The Director of Corrections has suspended any portion of the funding made available to the County under ORS 423.500 to 423.560, pursuant to Section 8 of the Act; or,

12.1.2 the County fails to observe or perform any of its obligations hereunder, and the failure continues for a period of forty-five days after the State has given written notice to the County.

12.2 It shall not constitute an Event of Default if, within forty-five days after the State has given notice, the County begins efforts to effect a cure, and diligently continues those efforts until a cure is effected.

12.3 Upon the occurrence of an Event of Default the State may, after having attempted in good faith to resolve any dispute related to the Event of Default as provided in Section 14:

12.3.1 terminate this Sublease and the County's right to possess and use the County Corrections Facilities; or,

12.3.2 exercise any other remedy which may be available at law or in equity.

### **13. Surrender on Termination**

13.1 Upon expiration or prior termination of the Sublease term, the County shall surrender possession of the County Corrections Facilities to the State, including all improvements then located on the County Corrections Facilities, broom clean, all in good condition except for reasonable wear and tear since the last necessary restoration, repair or reconstruction made by the County pursuant to this Sublease. If this Sublease terminates and the Mortgage has not been foreclosed, the County shall surrender the County Corrections Facilities free of all tenants and prisoners except prisoners for whom the State is obligated to assume responsibility. If this Sublease terminates because of foreclosure of the Mortgage, the County shall surrender the County Corrections Facilities, free of all tenants and occupants.

13.2 Failure by the County to vacate the County Corrections Facilities at the time specified in this Sublease shall not constitute a renewal or extension or give the County any rights in or to the County Corrections Facilities or any improvements. Upon such a holdover, the County shall be treated as a tenant at sufferance and shall, to the extent permitted by law, defend and indemnify the State from all liability and expense resulting from the failure or delay of the County to timely surrender the County Corrections Facilities including, without limitation, claims made by any succeeding tenant founded on or resulting from the County's failure to so surrender.

13.3 If the County continues to use any portion of the County Corrections Facilities or fails to deliver possession of the same within 30 days after termination of this Sublease, the County shall, to the extent of legally available funds, be liable for the debt service that the State is required to pay under the State Loan Documents which is allocable to financing of the County Corrections Project, and any other actual (but not consequential) damages or losses suffered by the State as a consequence of such failure.

### **14. Dispute Resolution**

14.1 Notwithstanding any other provisions provided for in this Facilities Sublease, in the event of any dispute arising between County and the State in the performance of this Facilities Sublease, the parties agree to the following resolution process:

14.1.1 Any dispute and/or disagreement between the County and the State regarding performance of this Facilities Sublease shall be attempted to be resolved informally, at the earliest possible time and at the lowest level.

14.1.2 If a dispute or disagreement cannot be resolved informally, the County shall present the issue of dispute or disagreement, in writing, to the County's Project Manager and the State's Project Manager, or the State shall present the issue of dispute or disagreement, in writing, to the State's Project Manager and the County's Project Manager. The written statement shall set forth the disputed matter and the resolution proposed by the entity presenting the statement. The County's Project Manager and the State's Project Manager shall meet to discuss the disputed matter within ten (10) business days of receipt of the written statement. Any agreement resolving the dispute shall be reduced to writing by the County and the State and signed by both the County's Project Manager and the State's Project Manager.

14.1.3 In the event the dispute is not resolved, the County, within ten (10) days of the meeting between the County's Project Manager and the State's Project Manager, shall present the dispute, in writing, to the County's Executive and the Director of Corrections, or the State, within ten (10) days of the meeting between the County's Project Manager and the State's Project Manager, shall present the dispute, in writing, to the County Executive and the State's Director of Corrections. Within ten (10) days of receipt of the written dispute, the County's Executive and the State's Director of Corrections shall meet and review the dispute. If resolution of the dispute is reached, such resolution shall be reduced to writing by the County and the State and signed by both the County's Executive and the State's Director of Corrections.

14.2 Prior to initiating any action regarding a dispute or disagreement between the County and the State, the parties shall attempt to resolve the matter as provided in this Section 15. In the event the dispute is not resolved, the dispute shall be submitted to arbitration as provided in ORS 190.710 to 190.790. However, no award resulting from such arbitration shall be binding on either party or otherwise preclude either party from seeking, after the award, such judicial remedy or resolution of the dispute as may be available to it at law or in equity.

## **15. Miscellaneous.**

15.1 Prior to initiating any action regarding a dispute or disagreement between the County and the State, the parties shall attempt to resolve the matter as provided in this Section 14. In the event the dispute is not resolved, the dispute shall be submitted to arbitration as provided in ORS 190.710 to 190.790. However, no award resulting from such arbitration shall be binding on either party or otherwise preclude either party from seeking, after the award, such judicial remedy or resolution of the dispute as may be available to it at law or in equity. No written or oral statement or representation made in the course of attempted dispute resolution under Section 14 shall constitute a party admission or be admissible in any subsequent judicial proceeding which directly concerns the dispute.

15.2 Waiver by either party of strict performance of any provision or term of this Sublease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provisions.

15.3 All notices under this Sublease shall be effective on the earlier of actual receipt or two days after deposit as registered or certified mail, return receipt requested, postage prepaid and addressed to the State or the County at the addresses stated below, or to such other address as either party may specify by notice to the other party:

the County: Multnomah County Counsel, 1120 SW Fifth Ave., Suite 1530, P.O. Box 849, Portland, Oregon 97207-0849.

the Lessee: Oregon Department of Administrative Services, 155 Cottage Street, Salem, Oregon 97310, Attention: Finance.

15.4 If suit or action is instituted to collect rent, to enforce this Sublease, or in connection with any claim or controversy arising out of this Sublease, the prevailing party, to the extent of legally available funds in the case the County does not prevail, shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of

the suit, proceeding or action. If arbitration is instituted in connection with any claim or controversy arising out of this Sublease, attorney fees may be awarded by the arbitrators as they may decide, and if so awarded shall be a part of the arbitrators' decision on which judgment may be rendered.

15.5 The invalidity or illegality of any provision of this Sublease shall not affect the remainder of the Sublease.

15.6 This Sublease and the parties' rights under it shall be construed and regulated by the laws of the State of Oregon. Any legal action to enforce this lease shall be commenced in the court of the State of Oregon which has jurisdiction and is located in Marion County, Oregon.

15.7 At the request of either party the parties will execute and acknowledge a memorandum of Sublease in recordable form which shall include a legal description of the County Corrections Facilities and the term of the Sublease, and either party may record the memorandum.

15.8 Any legal action regarding this Sublease shall be filed in an Oregon court of appropriate jurisdiction in Marion County, Oregon.

Board of County Commissioners  
Multnomah County, Oregon,  
the "County"

State of Oregon, acting by and through its  
Department of Administrative Services (the  
"Lessee")

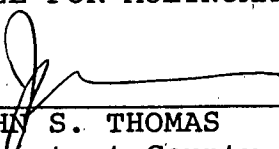
\_\_\_\_\_  
Beverly Stein, Chair

\_\_\_\_\_  
Director, Department of Administrative  
Services

REVIEWED:

LAURENCE KRESSEL, COUNTY  
COUNSEL FOR MULTNOMAH COUNTY

By

  
\_\_\_\_\_  
JOHN S. THOMAS  
Assistant County Counsel

On behalf of the Department of Corrections, I hereby agree to perform the duties assigned to the Department of Corrections in this Sublease.

State of Oregon Department of Corrections ("Corrections")

\_\_\_\_\_  
Director

State of Oregon       )  
                                  ) ss.  
County of Marion       )

The foregoing Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996,  
by \_\_\_\_\_, the Director/Deputy Director of the Department of  
Administrative Services of the State of Oregon, on behalf of the State of Oregon.

---

Notary Public for Oregon  
My commission expires:

State of Oregon       )  
                                  ) ss.  
County of Multnomah)

The foregoing Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by  
\_\_\_\_\_, the \_\_\_\_\_ of Multnomah County, Oregon, on behalf  
of the County.

---

Notary Public for Oregon  
My commission expires:



### **Exhibit A**

The County Corrections Facilities consist of: (1) the County Corrections Project described in Exhibit B, below, (2) the portion (as described in Exhibit C below), of the real property described in Exhibit D below upon which the County Corrections Facilities will be located, (3) such easements, licenses, and other real property rights to, on, across, under, and over the real property described in Exhibit D for access to, and use, maintenance, and operation of, the County Corrections Facilities including ingress and egress and utility easements, and (4) such rights, including the right of support and airspace rights, sufficient for the construction, maintenance, use, and operation of the County Corrections Facilities; it being the intention that the County Corrections Facilities consist of such rights sufficient for the State to use and enjoy the County Corrections Facilities.

The County reserved to itself such rights, including the right of support and air space rights, sufficient for the maintenance, use, and operation of any improvements on the property described in Exhibit D existing on that date of this Lease other than the County Corrections Facilities (the "Existing Improvements"); it being the intention that the County reserve to itself such rights sufficient for the County to use and enjoy the Existing Improvements.

### **Exhibit B**

The County Corrections Project will consist of the addition of 132,130 gross square feet to the existing Inverness Jail of Multnomah County. The expansion will be adjacent to the north and west sides of the existing housing units located at the northwest corner of the Jail. The expansion will consist of a new admissions area, dorm space, and medical service area. The expansion will increase the current 559 medium security bed capacity by 330 medium security beds.

### **Exhibit C**

Approximately 132,130 square feet of property adjacent to the north and west sides of the existing housing units located at the northwest corner of the existing Inverness Jail.

### **Exhibit D**

#### **PARCEL I:**

The West 401 feet of the following described tract of land, said 401 feet measured East at right angles to the West boundary line of a tract of land conveyed to the City of Portland, recorded December 24, 1985, in Book 1873, Page 1748, more particularly described as follows:

A parcel of land in Sections 14 and 15 and 22, T1N, R2E, W.M., Multnomah County, Oregon.

Beginning at a point in the Westerly right of way line of N.E. 122nd Boulevard, County Road No. 3119, said point being opposite engineer's centerline Station 20+97.31 and bears S 89° 37'09"E, 300.96 feet from the section corner common to Sections 14, 15, 22 and 23, T1N, R2E, W.M.; thence N 66° 39'25"W, 959.84 feet to a point; thence S28° 29'35"W parallel to the centerline of said NE 122nd Boulevard 699.75 feet to a point, from which the Northwest corner of the David Powell DLC bears N43° 46'54"E, 355.51 feet, and an iron pipe bears S44° 48'56"W, 96.68 feet; thence N60° 48'05"W, 246.26 feet to an iron pipe; thence N79° 49'56"W, 7.3204 feet

to a point on the West line of the John Powell DLC, from which an iron pipe bears S0 52'39"W, 141.03 feet, thence N0 57'32"E along said West line 577.57 feet to a point; thence N82 37'05"E, 567.81 feet to a point; thence along a curve to the right having a radius of 781.20 feet, the chord of which bears S82 01'10"E, 413.92 feet, a distance of 418.92 feet to a point; thence S66 39'25"E, 1322.27 feet to a point on the Westerly right of way line of said NE 122nd Boulevard; thence S28 29'35"W along said line 95.38 feet to the point of beginning.

PARCEL II:

The Northerly 25 feet of the following described tract of land, said 25 feet being measured South of and at right angles to the North boundary line of a tract of land conveyed to the City of Portland, recorded December 24, 1985, in Book 1873, Page 1748, more particularly described as follows:

A parcel of land in Sections 14 and 15 and 22, TIN, R2E, W.M., Multnomah County, Oregon.

Beginning at a point in the Westerly right of way line of NE 122nd Boulevard, County Road No. 3119, said point being opposite engineers's centerline station 20+97.13 and bears S89 37'09"E, 300.96 feet from the section corner common to Sections 14, 15, 22 and 23, TIN, R2E, W.M.; thence N 66 39'25"W, 959.84 feet to a point; thence S28 29'35"W parallel to the centerline of said NE 122nd Boulevard 699.75 feet to a point, from which the Northwest corner of the David Powell DLC bears N43 46'54"E, 355.51 feet, and an iron pipe bears S44 48'56"W, 96.68 feet; thence N60 48'05"W, 246.26 feet to an iron pipe; thence N79 49'56"W, 7.3204 feet to a point on the West line of the John Powell DLC, from which an iron pipe bears S0 52'39"W, 141.03 feet; thence N0 57'32"E along said West line 577.57 feet to a point; thence N82 37'05"E, 567.81 feet to a point, thence along a curve to the right having a radius of 781.20 feet, the chord of which bears S82 01'10"E, 413.92 feet, a distance of 418.92 feet to a point; thence S66 39'25"E, 1322.27 feet to a point on the Westerly right of way line of said NE 122nd Boulevard; thence S28 29'35"W along said line 95.38 feet to the point of beginning.

Excepting the West 401 feet thereof measured East at right angles to the West boundary line of a tract of land conveyed to the City of Portland, recorded December 24, 1985, in Book 1873, Page 1748.

PARCEL III:

All of Block 99 1/2, PARKROSE, in the City of Portland, County of Multnomah and State of Oregon.

## EXHIBIT E

### Certificate of Completion

On behalf of Multnomah County, I hereby certify in accordance with the Facilities Sublease between Multnomah County, and the State of Oregon which is dated \_\_\_\_\_, and relates to County Corrections Facilities which are being financed under Senate Bill 1145 (1995 Regular Session of the Oregon Legislature) and House Bill 3489 (1996 Special Session of the Oregon Legislature), that:

1. The County Corrections Project described in the Facilities Sublease has been completely acquired, constructed, delivered and installed in accordance with the Facilities Sublease and substantially in conformity with the specifications therefor which were approved by the Oregon Department of Corrections, and that all costs incurred by Multnomah County in connection therewith and all expenses incidental thereto have been determined and paid, or provision has been made for the payment therefor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

**Multnomah County**

---

Authorized Officer

MEETING DATE: NOV 7 1996

AGENDA NO: R-12

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Condemnation Proceeding - NE 207th Avenue Connector

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: November 7, 1996

Amount of Time Needed: 5 minutes

DEPARTMENT: Transportation DIVISION: Environmental Services

CONTACT: Bob Thomas TELEPHONE #: 248-3838

BLDG/ROOM #: 425

PERSON(S) MAKING PRESENTATION: Bob Thomas

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Resolution to consider condemnation and immediate possession of parcels of land necessary for the construction of the new NE 207th Avenue Connector, between NE Halsey Street and NE 223rd Avenue at NE Glisan Street.

11/13/96 copies to BOB THOMAS

SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: [Signature]

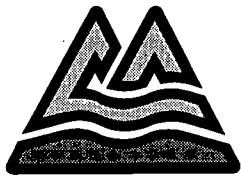
ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

AGEN.PL/RTRJ1738.RES

6/93

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 OCT 30 PM 1:25



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES  
TRANSPORTATION AND LAND USE PLANNING DIVISION  
1620 SE 190TH AVENUE  
PORTLAND, OREGON 97233  
(503) 248-5050

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

## MEMORANDUM

**TO: BOARD OF COUNTY COMMISSIONERS**

**FROM: Larry Nicholas**

**TODAY'S DATE: October 23, 1996**

**REQUESTED PLACEMENT DATE: November 7, 1996**

**RE: Approval of Resolution Considering Condemnation and Immediate Possession of  
Parcels of Land for Road Construction Purposes.**

**I. Recommendation/Action Requested:**

The Transportation and Land Use Planning Division seeks approval of a resolution requesting consideration to begin public condemnation and gain immediate possession of real property for road construction purposes.

**II. Background/Analysis:**

The Transportation and Land Use Planning Division is constructing the NE 207th Avenue Connector, between NE Halsey Street and NE Glisan Street near NE 223rd Avenue. A number of parcels have been purchased or easements obtained to permit construction. The Oregon Department of Transportation (ODOT) acts as Multnomah County's agent in the acquisition of right of way and has been actively pursuing the purchase of these properties for the last eight months.

The properties described in this resolution are vital to the construction phase of the project and must be in Multnomah County's possession at the earliest possible date. ODOT has been unable to secure the properties through binding offers. It is ODOT's opinion that we will be unable to acquire these properties in a timely manner without condemnation. The current property owners have been fully involved in negotiations throughout the process.

III. Financial Impact:

A separate account has been established in the Oregon Local Government Investment Pool (LGIP) to purchase right of way for this capital transportation project. Funds from this account will be deposited in court. In the event that additional funds are required to cover legal expenses of the condemnation proceedings, they will be deposited from current Road Fund assets.

IV. Legal Issues:

If a public entity is unable to reach agreement with the owner of property deemed necessary for construction or easement, Oregon State Law authorizes state, county and city governments to condemn property under the Eminent Domain Procedures in ORS CH 35.

V. Controversial Issues:

As in any condemnation proceeding, the property owners in these cases are hesitant to accept a binding offer for sale of the parcels. If ODOT is unable to reach a negotiated settlement for sale, condemnation proceedings will be necessary.

VI. Link to Current County Policies:

The construction of the NE 207th Avenue Connector between NE Halsey Street and NE Glisan Street near NE 223rd Avenue is a component of the Multnomah County Transportation Capital Improvement Program and Plan. The construction of this connector is vital to the opening of the NE 207th Avenue interchange of Interstate 84.

VII. Citizen Participation:

A public review process was conducted by the Transportation and Land Use Planning Division prior to final design of this project.

VIII. Other Government Participation:

During the planning phase of this project, the City of Fairview was actively involved in helping set design parameters and in facilitating community involvement.

NE 207th AVENUE  
SW Corner of Intersection at  
NE Halsey Street and  
NE 207th Avenue  
Item No. 95-83  
October 22, 1996

A tract of land situated in the Northwest One-quarter of Section 33, T1N, R3E, W.M., Multnomah County, Oregon, more particularly described as follows:

Commencing at a railroad spike being a point of tangency at the Legal Centerline Station 215+29.13 of N.E. Halsey Street, County Road No. 1212, said point also being Engineers Construction Centerline Station 334+87.31; thence along said N.E. Halsey Street Centerline N 85°39' E, a distance of 636.99 feet to a point; thence S 4°21' E, a distance of 40.00 feet to the point of beginning and the Northeast corner of that tract of land conveyed to Elven J. Clark and Myrlene Clark, husband and wife, on June 1, 1989, in Book 2208, Page 495, Multnomah County Deed Records, said point being 40.00 feet southerly when measured at right angles to Legal Centerline Station 221+66.12 (Engineers Construction Centerline Station 341+24.30), said point also being on the South right-of-way line of said N.E. Halsey Street; thence S 0°01'24" E along the East line of said Clark tract, a distance of 25.84 feet to a point, said point being 48.98 feet westerly when measured at right angles to Engineers Construction Centerline Station 123+35.03 of the proposed N.E. 207th Avenue; thence N 48°45'33" W, a distance of 36.06 feet to a point on the South right-of-way line of said N.E. Halsey Street, said point being 40.00 feet southerly when measured at right angles to the centerline thereof; thence N 85°39' E along said South right-of-way line, a distance of 27.18 feet to the point of beginning.

NE 207th AVENUE  
SW Corner of Intersection at  
NE Halsey Street and  
NE 207th Avenue  
Item No. 95-83  
October 22, 1996

Containing 350 square feet, more or less.

As shown on attached EXHIBIT "A", herein made a part of this document.

In addition to the above described dedication, a perpetual easement for the construction and maintenance of slope, sidewalk and utility facilities through, over, under, along and within the following described parcel of land:

Beginning at a point on the East line of that tract of land conveyed to Elven J. Clark and Myrlene Clark, husband and wife, on June 1, 1989, in Book 2208, Page 495, Multnomah County Deed Records, also being the Southeast corner of the above described dedication; thence S 0°01'24" E along said East line, a distance of 69.44 feet to a point, said point being 65.00 feet southwesterly when measured at right angles to Engineers Construction Centerline Station 123+97.64 of the proposed N.E. 207th Avenue; thence northwesterly along a curve, 65.00 feet distant and parallel to said proposed N.E. 207th Avenue centerline, along an arc of a 781.20 foot radius curve to the right, the chord of which bears N 12°36'34" W, 88.48 feet, an arc length of 88.53 feet, to a point on the Southwest line of the above described dedication, said point being 65.00 feet southwesterly when measured at right angles to Engineers Construction Centerline Station 123+16.48 of the proposed N.E. 207th Avenue, said point also being 47.44 feet southerly when measured at right angles to the Legal Centerline Station 221+46.22, also being Engineers Construction Centerline Station 341+04.40, of the aforementioned N.E. Halsey Street; thence S 48°45'33" E along said Southwest line, a distance of 25.65 feet to the point of beginning.

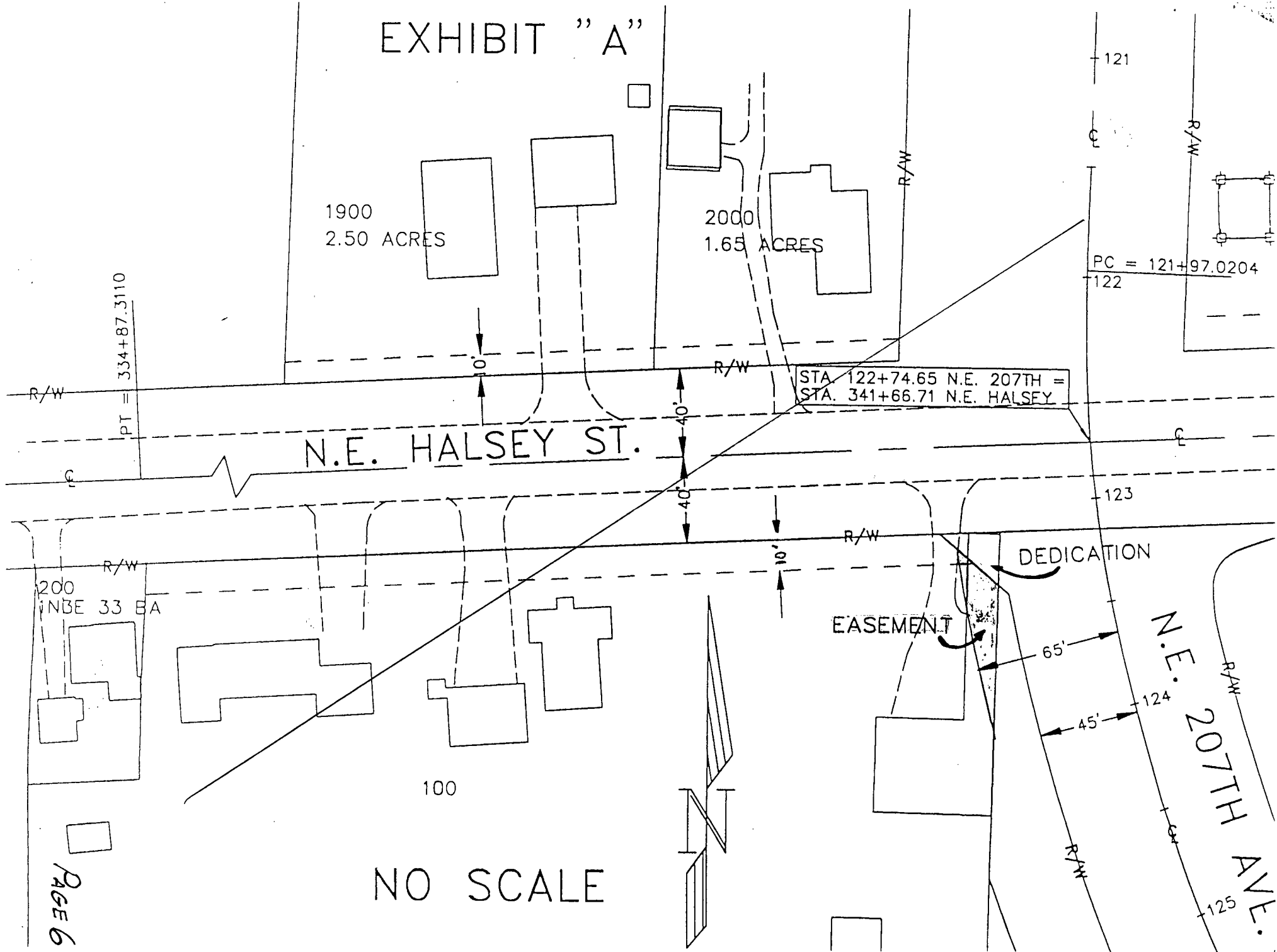
Containing 743 square feet, more or less.

As shown on attached EXHIBIT "A", herein made a part of this document.

It is understood and agreed that no buildings shall be erected upon said easement without the written consent of the Board of County Commissioners.



# EXHIBIT "A"



NE HALSEY STREET  
West of the Proposed  
NE 207th Avenue  
Item No. 95-84  
October 22, 1996

A perpetual easement for the construction and maintenance of slope, sidewalk and utility facilities through, over, under, along and within the following described parcel of land:

A tract of land situated in the Northwest One-quarter of Section 33, T1N, R3E, W.M., Multnomah County, Oregon, more particularly described as follows:

A strip of land 10.00 feet in width, being the North 15.00 feet of that tract of land conveyed to Elven J. Clark and Myrlene Clark, husband and wife, on June 1, 1989, in Book 2208, Page 495, Multnomah County Deed Records, more particularly described as follows:

"Beginning at a point on the centerline of N.E. Halsey Street S 85°39' W, 79.86 feet from the intersection of the centerline of N.E. Halsey Street and the East line of the Stephen Roberts D.L.C., and running South 1,058.10 feet to an iron pipe; thence West 435 feet to an iron pipe; thence North 1,024.91 feet to the centerline of N.E. Halsey Street; thence N 85°39' E, 436.26 feet to the place of beginning; EXCEPTING the North 100 feet of the West 50 feet and FURTHER EXCEPTING that portion included in N.E. Halsey Street".

Said strip being South of and adjacent to the South right-of-way line of N.E. Halsey Street, County Road No. 1212, also excepting therefrom that parcel dedicated for road purposes in conjunction with N.E. 207th Avenue, Multnomah County Transportation Division Item No. 95-83.

Containing 3,687 square feet, more or less.

It is understood and agreed that no buildings shall be erected upon said easement without written consent of the Board of County Commissioners.

# EXHIBIT "A"

1900  
2.50 ACRES

2000  
1.65 ACRES

PC = 121+97.0204  
122

STA. 122+74.65 N.E. 207TH =  
STA. 341+66.71 N.E. HALSEY

N.E. HALSEY ST.

10' EASEMENT

200  
IN BE 33 BA

100

NO SCALE

N.E. 207TH AVE.

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR  
MULTNOMAH COUNTY, OREGON

Authorizing Acquisition of Certain	)	
Property for Construction of the	)	RESOLUTION
NE 207th Avenue Connector, Between	)	96-199
NE Halsey Street and NE 223rd	)	
Avenue at NE Glisan Street	)	

---

The above-entitled matter is before the Board to consider the condemnation and immediate possession by Multnomah County of the real property hereinafter described for the purpose of construction of NE 207th Avenue Connector, between NE Halsey Street and NE 223rd Avenue at NE Glisan Street.

It appearing that the project has been planned and located in a manner which is most compatible with the greatest public good and the least private injury; and

It appearing that the real property hereinafter described is necessary for the improvement of NE 207th Avenue Connector, between NE Halsey Street and NE 223rd Avenue at NE Glisan Street; and

It appearing that it is necessary to acquire immediate possession of the property hereinafter described to allow construction to proceed and be completed on schedule within budgetary limitations, now, therefore,

BE IT RESOLVED that Multnomah County, by this Resolution, does hereby declare its intent to acquire said real property for the purposes hereinabove specified, and to acquire for road purposes the real property situated in the County of Multnomah, State of Oregon, and described on Exhibit 1 attached hereto; and

BE IT FURTHER RESOLVED:

1. That the Board does hereby find and declare that it is necessary to acquire the property described herein for the construction of NE 207th Avenue Connector, between NE Halsey Street and NE 223rd Avenue at NE Glisan Street; and
2. That in the event that no satisfactory agreement can be reached with the owners of the property as to the purchase price, legal counsel is hereby authorized and directed to commence and prosecute to final determination such proceedings as may be necessary to acquire the property. Such action shall be in accordance with all applicable laws, rules, and regulations governing such acquisition; and

Resolution

NE 207th Avenue Connector

between NE Halsey Street and NE 223rd Avenue at NE Glisan Street

Page 2

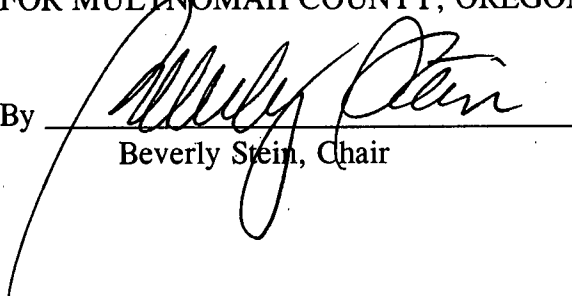
3. That upon final determination of any such proceeding, the deposit of funds and payment of judgment conveying the property to the County is hereby authorized; and
4. That the Board hereby finds that it is necessary to obtain immediate possession of such property to allow construction to proceed and be completed on schedule within budgetary limitations; and
5. Legal counsel is hereby authorized and directed to take such action in accordance with law to obtain immediate possession of the property; and
6. That there is hereby authorized the creation of a fund in the amount of the estimate of just compensation for each such property, which shall, upon obtaining possession of each such property, be deposited with the Clerk of the Court wherein the action was commenced for the use of the defendants in the action, and the Director of the Finance Division is authorized to draw a warrant on the Road Fund of the County in such sum for deposit.

Dated this 7th day of November, 1996.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

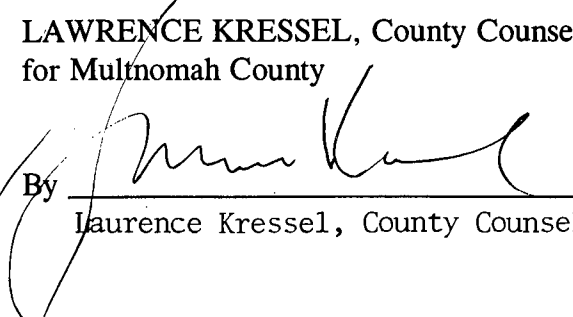
By

  
Beverly Stein, Chair

REVIEWED:

LAWRENCE KRESSEL, County Counsel  
for Multnomah County

By

  
Laurence Kressel, County Counsel

RTRJ1738.RES

File 6509 013  
NE 223rd AVENUE  
North of NE Glisan St.  
Item No. 95-113  
October 22, 1996

EXHIBIT "1"

A tract of land situated in the Northwest One-quarter of Section 34, T1N, R3E, W.M., Multnomah County, Oregon, being more particularly described as follows:

Commencing at a brass nail in a stone, being the point of intersection of the centerline of N.E. 223rd Avenue, County Road No. 667, and N.E. Glisan Street, County Road No. 2326; thence N 0°04'10" W along the centerline of N.E. 223rd Avenue, a distance of 64.27 feet to a point; thence N 89°55'50" E at right angles to the centerline of N.E. 223rd Avenue, a distance of 45.00 feet to a point on the East right-of-way line of said N.E. 223rd Avenue, also being the point of beginning of the tract to be described; thence N 0°04'10" W along said East right-of-way line, a distance of 528.83 feet; thence S 1°58'43" E, a distance of 450.25 feet; thence S 0°04'10" E parallel to and 60.00 feet distant from the centerline of said N.E. 223rd Avenue, a distance of 73.73 feet; thence S 44°32'03" E, a distance of 35.39 feet; thence S 0°31'48" W, a distance of 5.00 feet to a point on the North right-of-way line of N.E. Glisan Street, said point being 40.00 feet distant North of centerline of said N.E. Glisan Street; thence N 89°28'12" W along said North right-of-way line, a distance of 15.00 feet; thence along an arc of a 25.00 foot radius curve to the right, through the central angle of 89°24'02", the chord of which bears N 44°46'11" W, 35.17 feet, an arc length of 39.01 feet to the point of beginning.

NE 223RD AVENUE  
North of NE Glisan St.  
Item No. 95-113  
October 22, 1996

Containing 5,233 square feet, more or less.

As shown on attached EXHIBIT "A", herein made a part of this document.

In addition to the above described dedication, a perpetual easement for the construction and maintenance of slope and drainage facilities through, over, under, along and within the following described parcel of land:

A tract of land 5.00 feet in width lying East of, adjacent to, and parallel with the East line of the above described dedication.

Containing 2,620 square feet, more or less.

As shown on attached EXHIBIT "A", herein made a part of this document.

It is understood and agreed that no buildings shall be erected upon said easement without the written consent of the Board of County Commissioners.

STA: 47+50  
OFFSET: 45' Lt.

N.E. 223RD. AVE.

DEDICATION

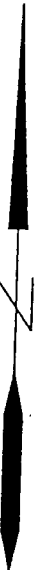
5' SLOPE AND DRAINAGE EASEMENT

EXHIBIT "A"

MULTNOMAH KENNEL CLUB

R943340230  
R943340231

NO SCALE



48  
49  
50  
51  
52  
53

52+00

STA: 52+73.73  
OFFSET: 60' Lt.

STA: 0+84.53  
OFFSET: 45'

10' SLOPE AND D

53+43.10  $\angle$  N.E. 223RD AVE. =  
346+96.0075  $\angle$  END RD. No. 1183 N.E. GLISAN ST. =  
0+00 BEGIN RD. #2326 N.E. GLISAN ST.

90°35'58"

89°16'52"

90°11'10"

N.E. GLISAN ST.

PAGE 3



MEETING DATE: NOV 7 1996  
AGENDA NO: R-13  
ESTIMATED START TIME: 10:01

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Private Sale  
BOARD BRIEFING: Date Requested: \_\_\_\_\_  
Amount of Time Needed: \_\_\_\_\_  
REGULAR MEETING: Date Requested: November 7, 1996  
Amount of Time Needed: 5 minutes  
DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation  
CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590  
BLDG/ROOM #: 166/300/Tax Title  
PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Request approval of a private sale of tax foreclosed property under ORS 275.225.

The property is assessed at less than \$5,000.00 on the most recent assessment roll and unsuitable for the construction or placement of structures under current zoning ordinances and building codes and the pending sale is to be advertised as provided by ORS 275.225.

The price at sale is \$243.94.

11/13/96 ORIGINAL SIGNED AND COPIES OF  
ALL TO KATHY SIGNATURES REQUIRED: TUNEBERG

ELECTED  
OFFICIAL: \_\_\_\_\_  
OR  
DEPARTMENT MANAGER: James M. D. [Signature]

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 29 AM 10:04  
MULTNOMAH COUNTY  
OREGON

BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM BRIEFING  
STAFF REPORT SUPPLEMENT

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Kathy Tuneberg  
Assessment & Taxation

Stephen Kelly  
Foreclosed Property Coordinator

TODAY'S DATE: October 11, 1996

REQUESTED PLACEMENT DATE: November 7, 1996

RE: Request approval to sell a Tax Foreclosed Property at a Private Sale (See Attached Exhibit A).

I. Recommendation/Action Requested:

Approval to sell a tax foreclosed property by Private Sale.

II. Background/Analysis:

This property was deeded to the County on October 3, 1994, through foreclosure for non-payment of property taxes. This property was made available to Government Agencies and Non-Profit Housing Developers of Multnomah County during fiscal year 1994-95, in accordance with Ordinance 795. There were no requests for this property. The Private Sale parcel is a landlocked property in the City of Gresham (See area map of property, page 4).

III. Financial Impact:

Private Sale will allow for recovery of delinquent taxes, interest, fees, and costs, and reinstate the property on the tax roll. (See page 3.)

IV. Legal Issues:

No legal issues are expected, and Private Sales are provided for in ORS 275.225. This parcel would be sold "as is" without guarantee of clear title.

V. Controversial Issues:

Under ORS 275.225 Private Sales are only available on property that is unsuitable for construction and is valued at less than \$5,000. Attached is a letter from Gresham Zoning and Planning stating the property is unbuildable (see letter, page 5). The 96/97 value is \$100.

VI. Link to Current County Policies:

This property has been through all the process provided for in Ordinance 795.

VII. Citizen Participation:

A notice will be placed in the Daily Journal of Commerce to advertise the Private Sale. Once the Board of County Commissioners approves the action to sell.

VIII. Other Government Participation:

Properties sold at Multnomah County Public or Private Sale are subject to Intergovernmental Agreements with the City of Portland, and City of Gresham. There are no liens recorded against this parcel at this time.

EXHIBIT A

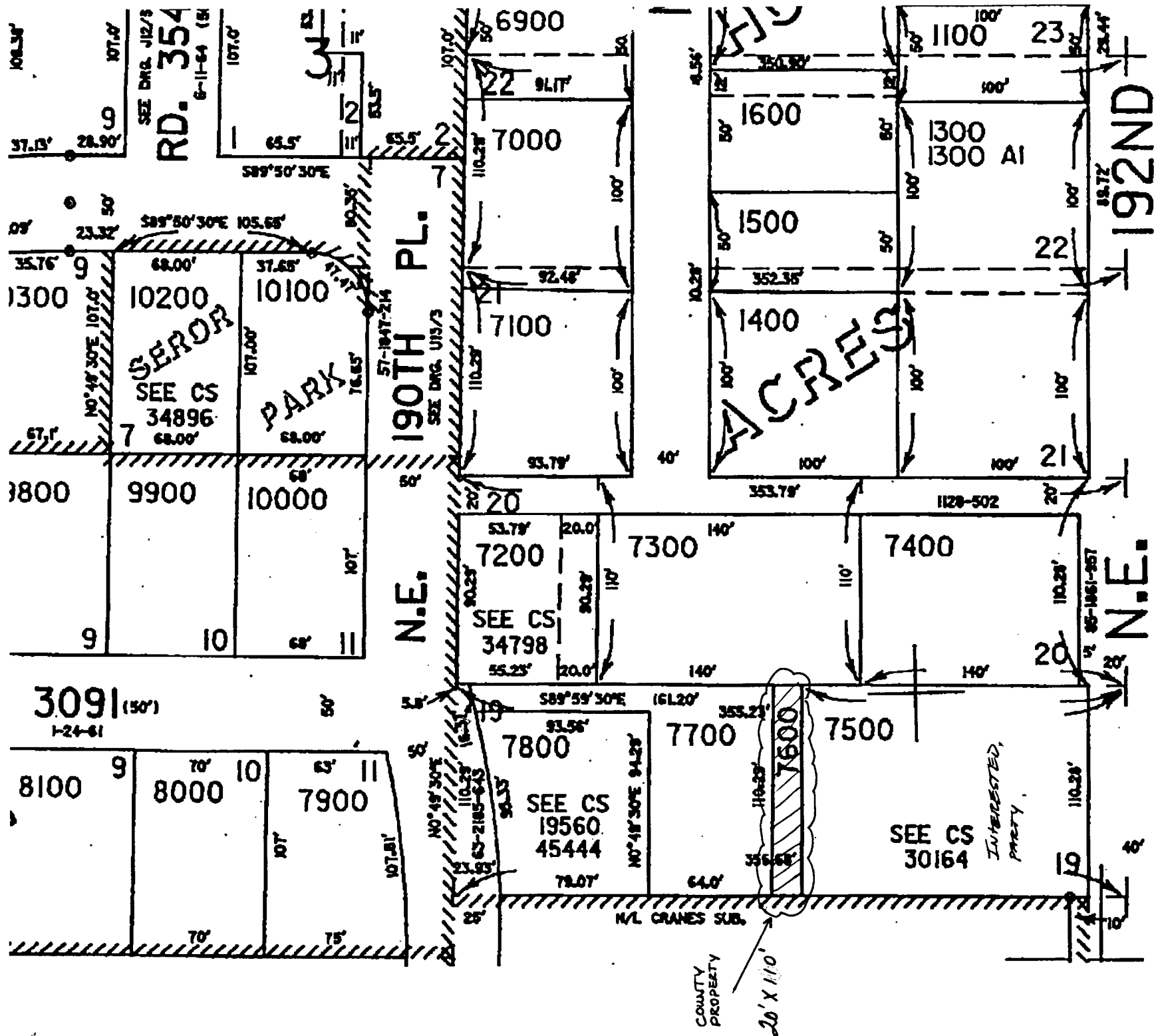
PROPOSED PROPERTY LISTED FOR PRIVATE SALE F.Y. 1996-97

LEGAL DESCRIPTION:	EXC W 167' & EXC 170', LOT 19 PEAKE BROS HOME AC.
NEAREST PROPERTY ADDRESS:	55 NE 192ND AVE.
TAX ACCOUNT NUMBER:	R-65260-0720
GREENSPACE DESIGNATION:	No Greenspace Designation was assigned to this property.
SIZE OF LANDLOCKED PARCEL:	2,200 SF (20 X 110)

ITEMIZED EXPENSES FOR TOTAL PRICE OF PRIVATE SALE:

MARKET VALUE:	\$100.00
OLD TAXES AGAINST PROPERTY:	\$ 80.94
TAX TITLE MAINT. COST:	\$ 0.00
TITLE REPORT:	\$ 0.00
ADVERTISING COST:	\$ 30.00
RECORDING DEED FEE:	\$ 33.00
<u>CITY OF GRESHAM LIENS:</u>	<u>\$ 0.00</u>
TOTAL PRICE OF PRIVATE SALE:	\$243.94

TAX ACCT. : R-65260-0720. N →  
NUMBER :





**Community Development Department**

City of Gresham

1333 N.W. Eastman Parkway

Gresham, OR 97030-3813

(503) 618-2832

5/28/96

To whom:

Tax Lot 7600; Tax Map 1N 3E 32CA  
is a narrow strip which is designated LDR-7  
and is ~~unbuildable~~ unless combined with  
adjacent ownership.

David Lloyd, Community Planner  
(618-2612)

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY

Authorizing Publication of ) ORDER  
Notice of Private Sale of ) 96-200  
Certain Tax Foreclosed Property )  
to Adjacent Property Owner )  
Aurica Manu Per ORS 275.225 )

Whereas Multnomah County acquired the real property hereinafter described through the foreclosure of liens for delinquent taxes.

Whereas Property is assessed at \$100.00 in value on the County tax roll.

Whereas said property is unsuited for the construction or placement of structures thereon, as provided under ORS 275.225(2).

Whereas AURICA MANU have agreed to pay \$243.94 an amount the Board hereby finds to be a reasonable price for the said property in conformity with ORS 275.225.

Whereas the purchaser has agreed to reimburse the County for the cost of publishing notice of sale.

Therefore it is ordered, that Tax Title Division is directed to publish notice of this sale in a newspaper of general circulation as provided under ORS 275.225(2).

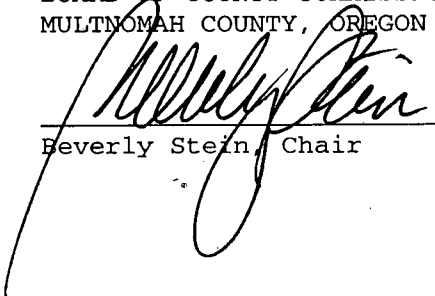
IT IS FURTHER ORDERED that not earlier than 15 days after publication of the notice and upon the receipt of the payment in the aforementioned amount to the County, the Chair of the Multnomah County Board of County Commissioners shall execute a deed conveying to the purchaser the following described real property, situated in the County of Multnomah, State of Oregon:

EXC W 167' & EXC E 170', LOT 19, PEAKE BROS HOME AC a recorded subdivision in the County of Multnomah, State of Oregon.

Dated at Portland, Oregon this 7th day of November, 1996



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

Laurence Kressel, County Counsel  
for Multnomah County, Oregon

By   
Matthew O. Ryan, Assistant County Counsel

NOTICE OF PRIVATE SALE  
PURSUANT TO ORS 275.225

Multnomah County Department of Environmental Services, Division of Assessment and Taxation, Tax Title Unit, 421 SW 6th Ave. Rm 300, Portland, Oregon 97204 will sell the following property:

EXC W 167' & EXC E 170', LOT 19, PEAKE BROS HOME AC

A parcel of non-buildable land in the proximity of NE 191ST and Couch, Portland.  
Assessed Value \$100.00

Stephen Kelly  
Foreclosed Property Coordinator  
Division of Assessment and Taxation



Deed D971348

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to AURICA MANU, Grantees, the following described real property, situated in the County of Multnomah, State of Oregon:

EXC W 167' & EXC E 170', LOT 19, , PEAKE BROS HOME AC, a recorded subdivision in the County of Multnomah, State of Oregon.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$243.94.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OF COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

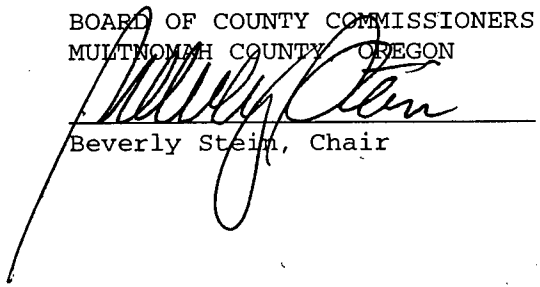
Until a change is requested, all tax statements shall be sent to the following address:

AURICA MANU, 55 NE 192ND AVE, PORTLAND, OR 97230

IN WITNESS, WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 7th day of November, 1996 by authority of an Order of said Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY OREGON

  
Beverly Stein, Chair

REVIEWED:

Laurence Kressel, County Counsel  
for Multnomah County, Oregon

By 

Matthew O. Ryan

DEED APPROVED:

Janice Druian, Director  
Assessment & Taxation

By 

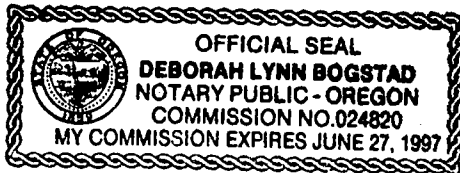
Kathy A. Tuneberg

AFTER RECORDING RETURN TO 166/300/TAX TITLE

STATE OF OREGON                    )  
  ) ss  
COUNTY OF MULTNOMAH        )

*On this 7th day of November, 1996, before me, a Notary Public in and for the County of Multnomah and State of Oregon, personally appeared Beverly Stein, Chair, Multnomah County Board of Commissioners, to me personally known, who being duly sworn did say that the attached instrument was signed and sealed on behalf of the County by authority of the Multnomah County Board of Commissioners, and that said instrument is the free act and deed of Multnomah County.*

*IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate, written.*



*Deborah Lynn Bogstad*  
Notary Public for Oregon  
My Commission expires: 6/27/97

Meeting Date: NOV 7 1996  
Agenda No: R-14  
Est. Start Time: 10:00

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Report to the Board the Hearings Officer's decision on CU 6-96 & SEC 18-96

**BOARD BRIEFING**      Date Requested:  
                                 Amt. of Time Needed:  
                                 Requested By:

**REGULAR MEETING**      Date Requested:      November 7, 1996  
                                 Amt. of Time Needed:      5 minutes

**DEPARTMENT:**      DES      **DIVISION:** Transportation & Land Use Planning  
**CONTACT:**      Philip Bourquin      **TELEPHONE:** 248-3043  
                                 **BLDG/ROOM:** 412 / 109

**PERSON(S) MAKING PRESENTATION:** Stuart Farmer

**ACTION REQUESTED**

☐ Informational Only      ☐ Policy Direction      ☒ Approval      ☐ Other

**SUGGESTED AGENDA TITLE**

Report to the Board the Hearings Officer's decision regarding an approval, subject to conditions of a Conditional Use Permit and an SEC permit for the mining of approximately 250 acres.

**SIGNATURES REQUIRED**

**Elected Official:** \_\_\_\_\_

or

**Department Manager:** KB Lou E. Wickham

BOARD OF  
COUNTY COMMISSIONERS  
96 OCT 30 PM 2:33  
MULTNOMAH COUNTY  
OREGON



MULTNOMAH COUNTY

**BOARD HEARING OF NOVEMBER 27, 1996**

**TIME 9:30am**

**CASE NAME** Angell Brothers Rock Quarry

**NUMBER**

CU 6-96, SEC 18-96

**1. Applicant Name/Address**

Angell Bros., Inc.  
P.O. Box 83449  
Portland, OR 97283-0449

**2. Action Requested by Applicant**

Approval of a Conditional Use and SEC permit for the mining of approximately 250 acres to include the area of land previously approved for mining under CU 17-90. The request included expanded hours of operation.

**3. Planning Staff Recommendation**

Approval, subject to conditions, of a Conditional Use and SEC Permit for mining of approximately 250 acres to include the area of land previously approved for mining under CU 17-90. Denial of the Applicant's request for expanded hours of operation.

**4. Hearings Officer Decision**

Approval, subject to conditions, of a Conditional Use and SEC Permit for mining of approximately 250 acres to include the area of land previously approved for mining under CU 17-90. Denial of the Applicant's request for expanded hours of operation.

**5. If recommendation and decision are different, why?**

A substantial amount of information was submitted between the date of the Staff report (recommendation) and HO Decision which resulted in additional or modified conditions being placed on approval.

**ISSUES**

*(who raised them?)*

**6. The following issues were raised**

- Code requires applicant to identify the most commonly used routes of travel from the site. Neighbors concerned with trucks on McNamee and Newberry Roads. (neighbors).
- Expansion of mining into North Angell Bros. Stream Watershed. (neighbors)
- Hours of operation. Applicant request to expand hours beyond those provided by code.

**Action Requested of Board**

- ☒ Affirm Hearings Officer Dec.
- ☐ Hearing/Rehearing
  - ☐ Scope of Review
    - ☐ On the record
    - ☐ De Novo
    - ☐ New information allowed

- Effects of blasting on quality or quantity of groundwater within wells in the vicinity. (neighbors)
- Continuous Reclamation. Neighbors argue applicants proposal does not continuously reclaim as they go.

**7. Do any of these issues have policy implications? Explain.**

No policy implications have been identified.

# MULTNOMAH COUNTY, OREGON

## DECISION OF LAND USE HEARINGS OFFICER

**Case File:** CU 6-96, SEC 18-96

**Proposed Action(s) and Use(s):** Conditional Use approval for mineral extraction in a Commercial Forest Use (CFU) district on property described below.

**Location of Proposal:** 14545 N.W. St. Helens Road

**Legal Description of Property:** Tax Lot '12', in the NW ¼ of Section 28, T2N, 1W, Willamette Meridian; and Tax Lots '2', '6', '8', and '11' in the E ½ of Section 29, T2N, R1W, Willamette Meridian.

**Plan Designation:** Commercial Forest

**Zoning Designation:** Commercial Forest Use (CFU); Significant Environmental Concern (SEC) Zone, subdistricts v (Scenic Views), h (Wildlife Habitat) and s (streams), and Protected Aggregate & Mineral (PAM) overlay.

**Applicant:** Angell Bros., Inc.  
P.O. Box 83449  
Portland, OR 97283-0449

**Property Owner:** Linnton Rock, Inc.  
PO Box 2183  
Grand Junction, CO 81502

**Applicants' Counsel:** Frank M. Parisi  
Parisi & Parisi  
1 S.W. Columbia  
Portland, OR 97258

**Hearings Officer:** Liz Fancher

**Hearings Officer's Decision:** **Approval**, subject to conditions, of a Conditional Use Permit and SEC permit for the mining of approximately 250 acres to include the area of land previously approved for mining under CU 17-90, based on the findings and conclusions, contained herein.

RECEIVED  
OCT 21 1996

Multnomah County  
Zoning Division

**Denial of the Applicant's request for expanded hours of operation.**

## **OVERVIEW**

The Hearings Officer was persuaded by the Applicant that the scope of review for its conditional use permit was narrow and confined, primarily, to the County's conditional use ordinances for mining activities and the West Hills Reconciliation Report, the section of County's comprehensive plan that addresses Goal 5 resources in the West Hills of Portland. This narrow scope, however, prevented the Hearings Officer from crafting conditions of approval to address all possible impacts of mine operations and from allowing the Applicant to use a different approach to mining than contemplated in the Report. The Hearings Officer required the Applicant to follow the reclamation approach it told the County it would implement and that is described in the Report. The Hearings Officer imposed this requirement to assure compliance with the comprehensive plan. The Hearings Officer did not impose the requirement because the Report plan is superior to the plan submitted by the Applicant.

## **BACKGROUND**

1. **Applicant's Proposal:** The Applicant requests approval for a Conditional Use Permit for mineral extraction on the Angell Bros. site. The site, as currently permitted, comprises approximately 113 acres. This Conditional Use Permit would bring the total area available for mining to approximately 250 acres. The Applicant also requested that the mine be allowed to operate 20 hours per day, from 6 AM to 2AM.
2. **Site and Vicinity Characteristics:** About 25% of the total site is used for aggregate quarrying and processing. Most of the remaining area has been used for commercial forestry. The property that Angell Brothers intends to mine was formerly owned by Crown Pacific. Slopes in the central portion of the property were clear-cut in 1991. The entire site is zoned for Commercial Forest Use. The neighboring parcels are zoned CFU. Small scale forestry uses and rural residences are common in the neighborhood.
3. **Notification and Public Participation:** Notice of the September 18, 1996 hearing and a detailed listing of the applicable criteria were sent to 53 neighboring property owners, interested parties, and affected agencies on August 28, 1996. On September 25, 1996, Multnomah County received a letter from Jody Scheer. Ms. Scheer indicated that she lives close to the quarry but did not receive notice of the September 18, 1996 hearing. Ms. Scheer requested that she be sent notices of future hearings regarding the Angell Brothers mine. Ms. Scheer did not request additional time to comment on the pending application, a request that the Hearings Officer would have granted if it had been requested. The Hearings Officer also finds that Ms. Scheer was entitled to submit written comments regarding the project, based upon the record and tape of hearing, with her September 25, 1996 letter. No such comments

were filed. The Scheer letter does not explain when Ms. Scheer obtained actual notice nor does it explain why comments regarding the pending applications were not submitted.

4. **Timing of Decision:** ORS 215.428 requires a final decision on this permit by the County, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The application was deemed complete on July 31, 1996. The September 18, 1996 Public Hearing took place on **Day 49** of the **120 day clock**.

At the September 18, 1996 hearing, the Applicant submitted new information into the record in support of its application. The Opponents requested and were given seven days to submit additional evidence into the record, until September 25, 1996 at 4:30 p.m. at the offices of the Multnomah County Transportation and Land Use Planning Division. No additional comment period was granted. Parties were given an opportunity to object to the procedure for filing post-hearing comments. No objections were raised. The Applicant did, however, submit a document entitled "Angell Bros. Rebuttal" into the record after the close of the record on October 2, 1996. ORS 197.763 (e) gives the Applicant the right to file final written arguments for a period of seven days following the close of the record of a land use hearing. New evidence may not be included with the written argument.

5. **Staff Report:** The Staff Report for this application was completed on September 10, 1996 and was made available to the public on September 11, 1996, seven days prior to the hearing.

## CONDITIONAL USE ORDINANCE CONSIDERATIONS AND FINDINGS

1. **CFU Zone & PAM-EA Subdistrict:** Multnomah County Code (MCC) Sections 11.15.2042 through 11.15.2074 relating to the CFU zone are applicable to the site and the land use applications reviewed by the Hearings Officer. Section 11.15.2050 (D)(1) identifies mining and processing of aggregate as a conditional use, "pursuant to MCC.2053, 2074, .7105 through .7120, .7125 through .7135, .7305 through .7335 and .7605 through .7640. Multnomah County Ordinance No. 804, **Exhibit C-1**, however, adopted Section 11.15.7107 which provides that mineral extraction conditional uses are exempted from the provisions of MCC .7110(C), .7110(E), .7115, .7120, .7122 and .7125. Further, Ordinance No. 804 adopted MCC 11.15.6780 which provides that processing and mining are permitted uses in a PAM-EA subdistrict "subject to a finding by the Hearings Authority that all standards adopted as part of the *Goal 5 process* and the provisions of MCC.7305 through .7335 are met." MCC 11.15.6780 also states that "[r]eview by the Hearing Authority shall be under the procedural provisions of MCC .7105, .7107, .7110(A), .7110(B), .7110(D), .7130 and .7135."

The property is a Goal 5 protected aggregate resource site with a primary zoning of Commercial Forest Use. Uses allowed in the CFU zone pursuant to Statewide Planning Goal 4 and MCC 11.15.2048 include farm use, dwellings (under limited circumstances), forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance. [MCC 11.15.2048]



## 2. Farm & Forest Use Compatibility Standards:

**MCC 11.15.2053 - Specified uses of MCC .2050 . . . (D) . . . may be allowed upon a finding that:**

**The use will:**

1. **Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;**

**FINDING:** The West Hill Reconciliation Report contains Multnomah County's determination that "there is no indication that expanded mining at this site would force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands." [p. IV-37] The Report also contains a wealth of information that, in combination with the facts in the record of this application, establish that mining at this site will not violate the above-cited approval criterion.

Item number 1 imposes requirements that are the same as the requirements found in ORS 215.296(1). The requirements of ORS 215.296(1) have been interpreted by the Land Use Board of Appeals in the cases of *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992) and *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991). The requirements of ORS 215.296(1) were recently applied to a mineral and aggregate and extraction operation in an EFU zone that was designated on the local government's Goal 5 inventory of mineral and aggregate sites in the case of *Mission Bottom Association, Inc. v. Marion County*, 29 Or LUBA \_\_\_\_ (1995).

In *Schellenberg I*, 21 Or LUBA at 440, LUBA held that to demonstrate compliance with ORS 215.296(1), findings must:

"\* \* \* (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use, (2) explain why the proposed use will not force a significant change in those practices, and (3) explain why the proposed use will not significantly increase the cost of those practices."

LUBA also found that the County's finding must identify the "surrounding lands devoted to farm and forest use" and describe the "accepted farming practices" occurring on such lands \* \* \*." *Schellenberg I*, 21 Or LUBA at 441.

The Hearings Officer makes the following findings to demonstrate compliance with the requirements of the *Schellenberg* case:

- (1) **Identification of a "study area."**

**FINDING:** The Hearings Officer finds that the appropriate study area for purposes of determining compliance with MCC 11.15.2053 is the impact area adopted by the Board of County Commissioners in Multnomah County Ordinance No. 858, **Exhibit C-3** of the record of the pending Angell Brothers application (Sectional Zoning Maps ZC 1-96). **Exhibit C-3** is based upon **Exhibit C-4**, the West Hills Reconciliation Report, which contains the County's determination that the impact area is that area that includes uses which could be affected by the Angell Brothers mineral and aggregate operation.

**(2) Identification of land within the study area devoted to farm or forest use.**

**FINDING:** The West Hills Reconciliation Report, **Exhibit C-4**, identifies all of the land within the impact area (study area) that is devoted to farm and forest use and studies all of the lots in the area to determine the uses on the lot and potential impacts. This analysis includes an identification of farm and forest lands. The majority of the land in the impact area is zoned Commercial Forest Use, CFU, land designed for forestry. A small area is zoned Multiple Use Agriculture (MUA-20). An area on the westerly edge of Sauvie Island is zoned Exclusive Farm Use, EFU but is not used for farm use as it is developed with a dam. One lot in the impact area is zoned Rural Residential (RR) and is developed with a single family residences.

**(3) Identification of timber, crops or livestock grown on those lands and the accepted farm or forest practices associated with each type of operation.**

**FINDING:** The County studied the entire impact area during the Goal 5 ESEE analysis process as well as all agricultural uses allowed or occurring in the impact area and determined that the mining operations would not conflict with the agricultural uses allowed in the impact areas. **Exhibit C-3**. The County found on page IV-17 of the Report that the conflict with forestry uses was limited to the mine site property and that the identified forest uses and practices would not conflict with or be harmed by the operation of the Angell Brothers mine.

**(4) Identification of operating characteristics of the proposed mining operation.**

**FINDING:** The County identified the operating characteristics of the proposed mining operation in the West Hills Reconciliation Report, **Exhibit C-3**. Those characteristics include, but are not limited to, the generation of dust, noise, and traffic, the blasting of rock, the operation of heavy equipment on-site and the destruction of a hillside and two stream beds.

**(5) Determination of impacts of proposed mining and aggregate operations on identified accepted farm and forest practices.**

**FINDING:** The West Hills Reconciliation Report contains a determination that there are no adverse impacts of the proposed mining upon accepted farm and forest practices in the surrounding area. No conflicting potential or actual farm uses were identified by the ESEE study of the impact area. Additionally, no conflicts were found between surrounding lands used for forestry as the report concluded that the only area of conflict with forestry occurred on the subject property.

**2. Not significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and**

**FINDING:** The Hearings Officer accepts the Applicant's argument that mining activities will decrease wildfire hazards and fire suppression costs by creating a fire break in the forest. The Hearings Officer finds that trucks and heavy equipment associated with mining operations increase risks of injury to fire personnel and are a potential source of fire hazard. The Hearings Officer finds, however, that the increase in risk is typical of all mining operations and, therefore is not significant. Additionally, Multnomah County has already determined, in its West Hill Reconciliation Report that "there is no indication that an expanded mining operation would increase fire hazard or costs and risks associated with fire suppression." [p. IV-37]

**B. A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with Forest Practices Act and Rules, and to conduct accepted farming practices.**

**FINDING:** The Applicant has stated that it will record such a statement with the Division of Records and such recording has been included as a condition of approval of this application.

**3. PAM Overlay Conditional Use Permit Standards:**

**MCC 11.15.7105 - Purposes:** Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan. Certain conditional use provisions of time limits, conditions, restrictions, and approval criteria shall not apply to Mineral Extraction conditional uses.

**MCC 11.15.7107 - Mineral Extraction Exemptions from Standards**

**Mineral Extraction conditional uses are exempted from the provisions of MCC .7110(C), .7110 (E), .7115, .7120, .7122 and .7125.**

**FINDING:** The Hearings Officer has applied these exemptions in reviewing this application, as noted below.

**MCC 11.15.7110 - General Provisions:**

- A. Application for approval of a Conditional Use shall be made in a manner provided in MCC .8205 through .8280.**

**FINDING:** The Applicant has applied for approval of this conditional use in the manner provided in MCC 11.15.8205 through .8280.

- B. The Approval Authority shall hold a public hearing on each application for a Conditional Use, modification thereof, time extension or reinstatement of a revoked permit.**

**FINDING:** The Hearings Officer held a public hearing on this conditional use permit on September 18, 1996.

- C. Except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless: . . .**

**FINDING:** MCC 11.15.7107 states that MCC 11.15.7110 (C) does not apply to mineral extraction conditional use applications like the one filed in this case.

- D. A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.**

**FINDING:** The conditional use permit issued in this case is issued for the specific use sought by the Applicant. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.

- E. The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC .7120 and in the district provisions.**

**FINDING:** MCC 11.15.7107 states that MCC 11.15.7110 (E) does not apply to mineral extraction conditional use applications.

**MCC.7115 - Conditions and Restrictions:** The approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, off-street parking, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

**FINDING:** During the hearing of this application the Hearings Officer asked the Applicant and Opponents to comment on the meaning of MCC .7115. The version of MCC .7115 discussed and included in the County's listing of applicable criteria, however, contained the following language at the beginning of the section, which was the cause of the discussion and ambiguity in the meaning of the section: "Except as provided for Mineral Extraction and Processing activities approved under MCC .7305 through .7325 and .7332 through .7335." The quoted language was, however, repealed by Multnomah County Ordinance No. 804 and the section is now unambiguous. The Hearings Officer finds, however, that the section does not apply to the pending application as MCC 11.15.7107 provides that mineral extraction conditional uses are exempted from the provisions of this code section.

**Conditional Use Approval Criteria: MCC 11.15.7120 (General):** (A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply."

(B) "... Proposals for mineral extraction and processing shall satisfy the criteria of MCC .7325."

**FINDING:** Subsection (B) of MCC .7120 was repealed by Multnomah County Ordinance No. 804. MCC .7107 also provides that no portion of MCC .7120 applies to review of mineral extraction conditional use applications.

**MCC 11.15.7315 - Purposes**

The purposes of the Mineral Extraction section are to promote the public health, safety and general welfare through the protection of mineral and aggregate resources in accordance with LCDC Statewide Planning Goal #5 and the Multnomah County Comprehensive Plan. The regulations are designed to:

- (A) Recognize mineral and aggregate resource extraction as a land use influenced largely by the location of the natural resource and the location of the market;

- (B) **Provide maximum flexibility for location of the extraction process within a variety of underlying zones, while at the same time minimizing potentially adverse effects on the public and property surrounding the extraction site;**
- (C) **Recognize mineral and aggregate resource sites which receive an ESEE designation for protection as being appropriate for extraction operations when in compliance with MCC .7325 - .7332.**
- (D) **Recognize mineral extraction as a temporary use dependent to a large degree upon market conditions and resource size and that reclamation and the potential for future use of the land for other activities must also be considered.**

**FINDING:** The Hearings Officer has reviewed this application with the purposes stated in this section in mind. The Angell Brothers site has been determined to be an appropriate site for mining activity by the County subject to compliance with the following criteria.

**Mineral Extraction (CU): MCC .7325 - Criteria for Approval: The approval authority shall find that:**

- A. **MCC 11.15.7325(A): The site is included on the inventory of protected aggregate and mineral resource sites in the Comprehensive Plan.**

**FINDING:** This criterion is satisfied because the Angell Bros. site is included on the PAM inventory in the Comprehensive Plan. The West Hills Reconciliation Report concludes the entire 397 acre Angell Brothers property is a significant Goal 5 Mineral and Aggregate site based upon location, quality and quantity [pg IV-7, Reconciliation Report].

- B. **MCC 11.15.7325 (B): There is a proposed reclamation plan which will allow the property to be utilized as provided in the Comprehensive Plan and underlying district.**

**FINDING:** The Applicant has provided a proposed Reclamation Report as Chapter IV of the Operating and Reclamation Plans for Angell Bros. Quarry: Multnomah County, Oregon (Exhibit G, Appendix). The Reclamation Plan (Applicant Exhibit G-1) requires the site to be reclaimed to a condition that will support forest uses, consistent with the CFU zone. The Reclamation Plan was approved by DOGAMI by issuance of an Operating Permit (Applicant Exhibit H) in March of 1996 with thirteen conditions. Conditions 4, 9, 10, 11 and 12 require specific measures for successful reforestation. The Conservation Easement granted to The Friends of Forest Park requires that Western Oregon old growth conditions be maintained in Scenic Buffer Areas and in the Preserves, which is consistent with the CFU zone. The West Hills Reconciliation Report, the comprehensive plan document that governs this mineral and aggregate extraction application indicates that the property should be reclaimed so that it will enhance wildlife values and support forest vegetation. The Applicant has committed to conduct a reclamation plan which DOGAMI

has determined will allow for revegetation with forest vegetation. This fact is not particularly remarkable, however, as DOGAMI representative Frank Schnitzer opined that even mines that are not reclaimed support forest vegetation. The return of forest vegetation to the site will, thereafter, enhance wildlife values. Further, the grasses and open areas that will exist on the site prior to reforestation will provide food for deer and other wildlife.

**C. MCC 11.15.7325 (C): The applicant has shown that the standards of this section, or site-specific requirements adopted as part of a comprehensive plan amendment, can or will be met by a specified date.**

**FINDING:** MCC 11.15.7325 (C) allows the Applicant to choose how to demonstrate compliance with this code section. The Applicant may establish that the standards of MCC 11.15.7325 (C) are met *or* that the site-specific requirements adopted as part of a comprehensive plan amendment can or will be met by the Applicant by a specified date.<sup>1</sup>

**Site-Specific Requirements:** The Hearings Officer finds that the Applicant has not met its burden of proving that all of the site-specific requirements adopted as part of the comprehensive plan amendment which applies to the Angell Brothers site can or will be met by the Applicant by a specified date. This conclusion is supported by the following findings of fact and conclusions of law:

The comprehensive plan amendment relevant to this review is the West Hill Reconciliation Report, Revised May 1996, Exhibit C-4 of this application. The Applicant argues that MCC 11.15.7325 (C) is satisfied because the requirements of the Program to Achieve the Goal contained under the Angell Brothers Aggregate

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<sup>1</sup>It appears to the Hearings Officer that the County may have intended to require compliance with the Report *and* the subsections of Section C because the Section C contains code provisions, such as limitations upon hours of operation, which state that they apply any time there is no provision in the Report relating to the same matter. Further, it seems unlikely to the Hearings Officer that the County intended to provide no limitation upon mining hours for the Angell Brothers mine site. The Hearings Officer does not, however, have the ability to strike the word "or" and substitute the word "and" in this section so has applied the section as written. Goosehollow Foothills League v. City of Portland, 117 Or App 211, 843 P2d 992 (1992); 1000 Friends of Oregon v. Wasco County Court, 299 Or 344, 703 P2d 207 (1985); West Hills & Island Neighbors v. Multnomah County, 68 Or App 782, 683 P2d 1032, rev. den. 298 Or 150 (1984). The provisions of this section must, however, be disregarded where they cause a violation of requirements of the comprehensive plan (Reconciliation Report), which could be the case if the zoning ordinance is allowed to authorize operations that violate Report requirements. In such instances, relevant plan policies must take precedence. Reeves v. Yamhill Co., 132 Or App 263, 888 P2d 79 (1995); Baker v. City of Milwaukie, 271 Or 500, 533 P2d 772 (1975).

heading are legally enforceable obligations. The Applicant claims that these site-specific requirements include the 200 foot setbacks, the restriction on mining in the North Angell Brother Stream watershed, and the directives to minimize impacts on scenic views, watersheds and wildlife habitat and to minimize the amount of disturbed area at any one time. The Hearings Officer agrees that the requirements listed by the Applicant are site specific requirement but finds that there are other site-specific requirements in the Reconciliation Report that were not addressed by the Applicant which further define what is meant by the vague directives cited by the Applicant from the program to meet the goal section of the Report.

The Hearings Officer did not find a definition for the term "site-specific requirements" in the County's land use regulations or in the Goal 5 regulations adopted by LCDC.<sup>2</sup> Lacking such a definition, the Hearings Officer applied a dictionary definition of the term and reviewed the Reconciliation Report to locate provisions of the Report that were stated as requirements for the mine mentioned in the report. These requirements were found in Chapters IV and VI of the Report. Chapter VI contains broad, sweeping requirements and Chapter IV contains the mine operator's commitments to operate in a manner that will achieve these broad objectives. Chapter IV also contains provisions that were written as prohibitions and directives to the mine operator. For instance, Chapter VI requires that the mine operator "best enhance wildlife values" and "minimize the area mined at any given time." If the Hearings Officer were to apply these goals without regard for the details found in Chapter IV, the Hearings Officer could impose *whatever measures* she believes best enhance wildlife values, preserve views and minimize the area mined. This is not, however, what is envisioned by the Goal 5 program nor by the Applicant.<sup>3</sup> Further, OAR 660-16-010(3) requires that the mechanisms used by the County to limit conflicting uses, as done for the Angell Brothers site, "must designate with certainty . . . what specific standards or limitations are permitted on the permitted and conditional uses and activities for each resource site." This administrative rule also requires that "[w]hatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses

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<sup>2</sup>The Hearings Officer referred to the Goal 5 rules in effect when the Angell Brothers application was approved by the County, not the current Goal 5 rules.

<sup>3</sup>At numerous times throughout the record of this matter, the Applicant has correctly claimed that the Hearings Officer must allow the Applicant to proceed with mining if the conditions of the Report are satisfied and County ordinance requirements are met by the mine plan. The Applicant has also correctly stated that the Hearings Officer may not impose more rigorous standards upon the mine operator than contemplated by the Report and mining ordinance, even where documented public problems exist. The "flip side" of this argument is, however, that the Hearings Officer also lacks the authority to excuse the Applicant from Plan and ordinance requirements.



and activities are . . . allow conditionally and under what clear and objective conditions or standards.” Based upon the foregoing findings, the Hearings Officer finds that the site-specific details relied upon by the County in Chapter IV in assessing the impacts of the mining operation upon conflicting resource uses are site-specific requirements which, if and when met by the Applicant, entitle the Applicant to mine the expansion area of the subject property.

Further, the Hearings Officer is bound by Oregon law to require that the mitigation measures described in the Report are undertaken as promised by the Applicant. Chapter IV lists commitments made by Angell Brothers with respect to mining operations in the land use approval process. These commitments were made in order to demonstrate compliance with the approval criteria for a site-specific land use application to obtain designation of the expansion area of the Angell Brothers site as a Goal 5 resource site. The Land Use Board of Appeals has determined that such applicant commitments are binding upon applicant’s once the land use approval is granted even if not specifically required by conditions of approval. Wilson Park Neighborhood Assn. v. City of Portland, 27 Or LUBA 106, remanded on other grounds, 129 Or App 33 (1994); Perry v. Yamhill County, 26 Or LUBA 73, aff’d 125 Or App 588 (1993); Friends of the Metolius v. Jefferson County, 25 Or LUBA 411 (1993). In this case, the Applicant made a commitment to mine and reclaim the site in a specific manner which would minimize impacts upon other protected resources, primarily by early reclamation of the site. Since that time, the mining plan has been changed to a plan that leaves large mined areas open and unreclaimed beyond County ordinance time frames. While the Hearings Officer understands that DOGAMI and the Applicant have determined that the prior plan was not practicable, the Hearings Officer cannot find, on this record, that the new plan complies with the site-specific requirements listed in Chapters VI and IV of the Report.

The Hearings Officer reviewed the West Hills Reconciliation Report to determine what site-specific requirements are contained in the Report. A listing of a number of the requirements found in the Report is found in **Appendix A**<sup>4</sup> of this decision and is included for possible use by the County Board in its review of this application. The Hearings Officer then reviewed the pending land use application to determine whether it complies with the Report or whether it can comply with the Report by a specified date.

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<sup>4</sup>This list is not exhaustive. It was developed to aid the Hearings Officer in reviewing the application for compliance with ordinance provisions that require compliance with site-specific requirements.

This review revealed that the following differences between the requirements of the Report and the plan proposed by the Applicant:<sup>5</sup>

- A. The application calls for the movement of the primary crusher uphill from its present location and for the continued movement of the crusher up the valley as mining progresses. [p. 19, Response to Approval Criteria] The Report, however, states that the "principal processing, weighing and loading facilities will remain at their present location and will be screened from public view by the Block 4 vegetated buffer strip." [p.IV-15]
- B. The application abandons the concept of concurrent reclamation and the reclamation of each bench as mined. This is clear from the Applicant's Response to Approval Criteria which indicates that "[a]lthough certain benches within Phase 1 will be reclaimed concurrently with mining, the majority of the benches will have to be left open to accommodate haul road and overburden stockpiles from Phase 3. As explained above, mining occurs in a similar fashion in Phase 2, to accommodate later mining in Phase 4." [p. 19, Response to Approval Criteria] The Applicant also states that "[t]otally sequential reclamation will not begin until mining commences in Phase 3." [p. 20, Response to Approval Criteria]

The goal reconciliation portion of the Reconciliation Report requires that the reclamation plan be a sequential mining plan which minimizes the amount of disturbed area at any one time and includes simultaneous reclamation [p.VI-17, 18, 25]. The site-specific analysis of the Angell Brothers mine further explains that the Applicant committed to begin reclamation upon the completion of mining on any given bench by recontouring and ripping the bench and adjacent sidewall [p.IV-13] and to provide "early visual screening" of the upper benches "immediately" following mining of the upper benches [p. IV-14]. The Applicant has not convincingly demonstrated that its plan will or can meet these standards by a specified date.

- C. The Conflict Resolution portion of the Reconciliation Report states that "[m]ining on the Angell Brothers site should not take place within the

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<sup>5</sup>The Hearings Officer viewed the statement provided by Mr. Parisi in his discussion as the reclamation plan as the final word regarding the Applicant's plans regarding the timing of reclamation and phasing. This was because the Hearings Officer found little, if any information on this point in the Reclamation Plan document that the Applicant identified as Exhibit G of its application and the December 1995 plan conflicts with Mr. Parisi's recent discussion of the plan.

North Angell Brothers Creek watershed" [p. VI-16] and that expansion "should be allowed except for . . . the North Angell Brothers creek watershed." [p. VI-17] Further, the Stream Resources section of the Report, Section III, states that the North Angell Brothers Creek could be impacted by expansion of the mine operation into the creek's watershed. The program to achieve the goal, on p. VI-22 & 23 also indicates that Preserves encompass the North Angell Brothers stream drainage and that the preserves will not be mined by the Applicant. [p. VI-23] The locations of the preserves are not detailed in the Report. The map on Page III-143 of the Report, however, delineates the boundaries of the North Angell Brothers watershed and the location of the North Angell Brothers Creek. The North Angell Brothers creek does not include the tributary of that creek which was identified by the Opponents of this application as a part of the creek. The map on Page III-143, however, shows that the North Angell Brothers watershed includes lands that will be mined by the Applicant if this application is approved as proposed on Sheets 1 -4 of the Applicant's Operating Plan. Further, the photographs submitted by Opponent Seth Tane confirm that the Applicant proposes to mine inside the watershed boundary of the North Angell Brothers Creek shown on the Report map.<sup>6</sup>

The Applicant claims that the site-specific requirements of the comprehensive plan amendment (the Report) have been "developed further" in the reclamation plan submitted with this application, DOGAMI Operating Permit and the Conservation Easement. The Applicant has not demonstrated, however, that it is permissible for it to amend a comprehensive plan in this manner and to do so would violate basic tenets of Oregon land use law. As a result, these further developments are irrelevant to determining compliance with MCC 11.15.7325 (C).<sup>7</sup> Changes authorized in approvals obtained from governmental agencies that do not have responsibility for land use planning do not amend the comprehensive plan (the Reconciliation Report)

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<sup>6</sup>The Hearings Officer notes that the program to achieve the goal for significant streams requires the County to adopt laws to create SEC overlay zones of 600 feet in width, based upon the centerline of significant streams, in order to protect the stream resource. No section of the stream resource program to achieve the goal, however, includes any limitations on mining of the Angell Brothers site. The mining program to achieve the goal, however, states that the Preserve areas will include the North Angell Brothers stream drainage. [p. VI-23]

<sup>7</sup>The Report references some of the cited documents, particularly the Conservation Easements, as a means of complying with Report requirements. To the extent these documents are incorporated into the Report, they were considered in determining compliance with the Report.

nor alter the land use review requirements of MCC 11.15.7325 (C). A comprehensive plan amendment is required to effectuate such a change. Further, the DOGAMI permit indicates states that "[i]ssuance of this permit is not a finding of compliance with state-wide planning goals or the acknowledged comprehensive plan." The permit further cautions that "[the applicant must receive land-use approval from local governments before using this permit.]"

Based upon the foregoing findings, the Hearings Officer finds that the Applicant has not met its burden, under MCC 11.15.7325(C), of showing that the mining operations plan and revised reclamation plan can or will meet the requirements of the Report. The Hearings Officer therefore, must review the subsections of MCC 11.15.7325 (C) listed and discussed below.

### **Compliance with Requirements of MCC 11.15.7325 (C)**

#### **5. Access and traffic.**

- a. **"Prior to any surface mining activity, all on-site roads used in the mining operation and all roads from the site to a public right-of-way shall be designed to accommodate the vehicles and equipment which will use them."**[MCC 11.15.7325 (C)(1)(a)]

**FINDING:** This criterion is satisfied. All new on-site roads will be cut out of basalt benches and will be at least 40 feet wide to accommodate the largest piece of equipment used on the site, a D-9 Caterpillar (see Operating and Reclamation Plan, Applicant Exhibit G-2, pp. 13 - 15). Further, the record shows establishes that the soils and rock in the area are sturdy enough to prevent significant rock and soil slides and to provide a stable surface for heavy equipment traffic.

No changes to any public right-of-way are planned as a result of this application. There are no roads between the site and Highway 30, the road that provides access to the site. The mine operator holds an easement across property owned by Ray Adams. The Applicant does not plan to develop this road for site access and has agreed that it will not use the easement for mine-related traffic is not authorized by this approval. As a result, the Hearings Officer did not review the adequacy of this easement for mining traffic use. Use of this road will be prohibited by the conditions of approval of this application to assure that this access will not be used unless and until such time as a new land use approval is obtained which reviews and authorizes the use.

- b. **All on-site and private access roads shall be paved or adequately maintained to minimize dust and mud within 100 feet of a public**

**right-of-way or 250 feet of dust sensitive land use. [MCC 11.15.7325 (C)(1)(b)]**

**FINDING:** The only access road to the site is paved for approximately 1,200 feet from the intersection of Highway 30. As shown on the water rights map in of the Operating and Reclamation Plan, no mining activity will occur within 100 feet of a public right-of-way, and there are no dust sensitive land uses within 250 feet of the site.

- c. **“No material which creates a safety or maintenance problem shall be tracked or discharged in any manner onto any public right-of-way.” [MCC 11.15.7325 (C)(1)(c)]**

**FINDING:** Opponents and the Applicant presented evidence that rocks, dirt and clay from the mine site find their way onto Highway 30. Opponents testified that the mine operator has refused to clean up mined materials dropped onto the highway or to take measures to prevent the discharge of materials onto the highway. The Opponents submitted testimony which indicates that the clay is slippery and creates hazardous driving conditions on the highway. The Applicant claims that these problems have been remedied by the construction of dry well on the property, construction of a new entrance which drains the haul road better, paving of 1,200 feet of the haul road, installation of a cattle guard at the entrance to collect rocks and mud from truck wheels and the purchase of a new water truck and mechanical sweeper truck. The Hearings Officer is not convinced that these measures will prove efficacious given the fact that none of the control measures involve containment of loads within the trucks by the truck operators. As a result, the Hearings Officer has required continued compliance with this section of the zoning ordinance throughout the life of the mine and has written a provision which authorizes the County to require the covering of loads if the County documents the existence of a problem through code or conditional use permit enforcement proceedings.

- d. **“The applicant shall submit all traffic information and traffic management plans required in any site specific Comprehensive Plan Program. The County Engineer shall review the submitted plans and shall certify, based on findings relating to the Multnomah County Rules for Street Standards, that the roads appropriately identified in the Plan:**

**FINDING:** This section does not apply to this application as the site specific comprehensive plan program for the Angell Brothers site does not require that traffic information and traffic management plans be submitted by the Applicant.

- e. **If there are no traffic management requirements in the site-specific Comprehensive Plan Program requirements, the applicant shall identify the most commonly used routes of travel from the site.**

**FINDING:** There are no traffic management requirements in the site-specific Comprehensive Plan Program requirements related to the Angell Brothers mine site. The Applicant claims that subsection (e) does not apply to the Angell Brothers site because subsection (e) applies only to situation where traffic issues exist. This argument is not supported by the text of this code section. Further, the quoted language is clear and unambiguous and requires the Applicant to identify the most commonly used routes of travel from the site. The Hearings Officer lacks the authority to interpret an unambiguous code provision to add limitations and qualifications that do not exist in the text. *Goosehollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992); *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 703 P2d 207 (1985); *West Hills & Island Neighbors v. Multnomah County*, 68 Or App 782, 683 P2d 1032, rev. den. 298 Or 150 (1984). The Applicant identified Highway 30 and no other area road as the most commonly used route.

The Applicant argues that a traffic management decision was made in the Reconciliation Report and that, therefore, the Applicant does not need to comply with the requirements of this section. This is not, however, what this section says. MCC 11.15.7325(C) allows the Applicant to avoid proving compliance with the traffic standards of this subsection if the Applicant's mine operations are conducted in compliance with the terms of the Reconciliation Report, but a similar waiver does not apply when, as here, the Applicant seeks to justify mine operations by showing that its plan complies with the subsection requirements of MCC 11.15.7325(C).

The Hearings Officer also reviewed Policy 16-B, Section M of the County's Comprehensive Plan to determine whether the policy would excuse the Applicant from complying with the requirements of the PAM district. The section states that "[t]he County shall impose conditions on surface mining when necessary to lessen conflicts identified as part of a site-specific Goal 5 analysis. Where such conditions conflict with criteria and standards in the Protected Aggregate and Mineral Resources Overlay, the conditions developed through the Goal 5 process shall control. In the case of traffic, there is no need to impose conditions on the surface mining to lessen conflicts identified in the site-specific Goal 5 analysis, so there is no conflict with this section of the PAM overlay zone.

**The County Engineer shall certify, based on findings relating to the Multnomah County Rules for Street Standards, that the applicant has identified the appropriate roads, and those roads:**

- i) **Are adequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity, or**

**FINDING:** The County Engineer has not certified that the Applicant has identified the appropriate roads. Instead, the County Engineer has indicated that he believes that the Applicant should address traffic impacts on Newberry Road as a part of this application. **Exhibit H-1.** A portion of Newberry Road is located within the impact area for the Angell Brothers mine, as shown on Map 84, Ordinance No. 858, **Exhibit C-3** of the record and, therefore, is a relevant matter for consideration in the review. Further, there is overwhelming evidence in the record, from the Applicant and the Opponents, that Newberry Road is one of the most commonly used roads for mine-related traffic. This is because the road provides a major shortcut to areas of the community that are undergoing extensive growth and development.

The Applicant has argued that approval of this application will not generate "additional traffic" because there is an existing mining operation on the site. The Hearings Officer notes, however, that the approval of this application will create additional truck and vehicle traffic directly related to the mining operation over the life of the mine when compared to the amount of traffic that would be generated over the life of a mine on the existing site. Further, evidence in the record indicates that the Applicant may already be mining in the expansion area. Of particular note is the fact that Skip Anderson pointed to the expansion area when asked to show where the principal crusher and mining operations are presently occurring. If such is the case, the traffic that is presently occurring on area roads should be attributed to the proposed extraction operation.

- ii) **If the roads are inadequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity that:**
- **The applicant has submitted a traffic management plan that is sufficient for the County Engineer to make relevant findings regarding necessary road improvements;**
  - **The applicant has committed to financial installation of the necessary improvements under the provisions of 02.200 (a) or (b) of the Multnomah County Rules for Street Standards; and**
  - **A program has been developed for the numbers and weight of trucks from the site that can safely be accommodated at specific levels of road improvement. Based upon those findings, the Hearing Authority may attach related conditions and restrictions to the conditional use approval. [MCC 11.15.7325 (C)(1)(e)]**

**FINDING:** The County Engineer's comments indicate that Newberry Road, a County road located within the impact area of the mine site, is inadequate to

safely accommodate additional traffic created by the extraction operation. This conclusion is supported by the substantial evidence (written and verbal testimony, videotapes and photographs) submitted by the Opponents which indicates that Newberry Road is of inadequate width and design to safely accommodate heavy truck traffic. Trucks must cross over the center line of the road to negotiate turns and numerous, documented grave truck accidents have occurred on the road. Applicant claims that it is not required to comply with MCC 11.15.7325(C)(1)(e) for a number of reasons, including the fact that no County roads are used for access to the site. A road does not, however, need to be a County road in order to be considered under MCC 11.15.7325(C)(1)(e). While the road must be reviewed for adequacy under County street standards, the road itself does not need to be a County road.

The Applicant has not submitted a traffic management plan to address these legitimate concerns. This must be accomplished prior to commencement of mining operations<sup>8</sup> and has been required as a condition of approval. As a determination whether the Applicant has complied with this condition of approval will require the exercise of discretion, it is a land use decision which must be handled as such by the County and Applicant, with notice and an opportunity for a hearing.<sup>9</sup>

The Applicant's September 25, 1996 submittal claims that "some condition to mitigate perceived traffic problems will be drafted in a form that will violate the "rough proportionality" standard of Dolan v. City of Tigard." The Applicant then states that "it must be obvious that an attempt to impose a condition . . . along the lines that Angell Bros.' trucks are prohibited from using one or more of the commonly used routes would create a serious Dolan problem." Quite to the contrary, however, local governmental traffic regulations are not subject to the Dolan decision's "rough proportionality" test. In order to be subject to scrutiny under Dolan, a condition of approval must impose a taking of a property interest as the Dolan case is based upon the Takings Clause of the Fifth Amendment of the US Constitution. The case of Clark v. City of Albany, 137 Or App 293, 904 P2d 185 (1995) cited by the Applicant settles the matter *against* the Applicant. In that case, the Oregon Court of Appeals held that "not all conditions of approval

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<sup>8</sup>If the Applicant has, in fact, already commenced mining operations, those operations should be halted until such time as all conditions of approval that are a precondition of mining approval in the expansion area are satisfied.

<sup>9</sup>It is hoped that if this decision is appealed, as anticipated, the Applicant may choose to comply with the requirements of the section by supplying the needed plan and information, in which case the condition of approval developed to assure compliance with this section should be deleted.



come within the ambit of the Dolan test” and that matters that are essentially traffic regulations are not exactions and are not subject to the Dolan test. Clark, 137 Or App at 300-301.

Further, the Hearings Officer has not yet imposed any conditions that require road improvements or the dedication of road right-of-way, conditions that would be subject to Dolan review. It is possible that the County’s review and the Applicant’s study will determine that no exactions are needed to assure compliance with the standards of MCC 11.15.7325 (C)(1)(e). If and when the County determines that exactions must be imposed to assure compliance with this subsection, Multnomah County will bear the burden of demonstrating that the conditions are “roughly proportional” to the impact of the mining operation’s traffic on County roads. Given the significant and documented impact of the operation on area roads, including Newberry Road, it seems likely that the County will be able to justify some road system related exactions under this section. The Hearings Officer also notes that the Applicant may choose to avoid the requirements of this section and any potential exaction for road improvements by demonstrating compliance with the Report, as the Report does not require road improvements to any area road.

**2. Screening, landscaping and visual appearance. [MCC 11.15.7325 (C)(2)]**

- a. All existing vegetation and topographic features which would provide screening and which are within 100 feet of the boundary of the proposed area of extraction shall be preserved.**

**FINDING:** The screening criteria in Subsection (a) are satisfied because all existing vegetation and topographic features within 200 feet of the extraction boundary will be preserved. This is twice the required minimum of 100 feet. There will be no logging or extraction in the Scenic Buffer Areas, in the Preserves or in any of the setbacks.

- b. If the site-specific Goal 5 analysis determines that existing vegetation and topography is insufficient to obscure the site from any key viewing areas and corridors, then measures as identified in the Goal 5 analysis to reduce or eliminate conflicts shall be implemented. Methods of screening may include landscape berms, hedges, trees, walls, fences or similar features. Any required screening shall be in place prior to commencement of the extraction activities.**

**FINDING:** The site-specific Goal 5 analysis, contained in Chapter IV of the Report,<sup>10</sup> determines that existing vegetation and topography is insufficient to obscure the site from all key viewing areas and corridors. The Goal 5 measures needed to reduce the conflict with scenic resources include contemporaneous reclamation to promote early visual screening of benches immediately following mining of the upper benches [p. IV-14]; retention of all vegetation along Highway 30 [p. IV-14]; significantly increasing the length of a lower gradient reclaimed channel and increasing in acreage the final pit floor to allow construction of riparian habitat and wetlands along the pit floor; direct haul back of reclamation materials to retain maximum viability of topsoil and establishing the third type of typical bench configuration "wherever possible." The Report also indicates that the existing land contours will be retained and that the principal processing, weighing and loading facilities will remain at their present location. [p. IV-15].

The Applicant's operating plan complies with the requirement that all vegetation along Highway 30 be retained. There is, however, evidence to indicate that the upper benches may not be reclaimed immediately upon conclusion of mining the upper benches and compliance with the other listed requirements was not addressed by the Applicant. This subsection, therefore, requires the Applicant to comply with the requirements of the Goal 5 analysis relating to Scenic Views found on page IV-14 through IV-16 of the Report, including its requirements for immediate reclamation. Such compliance has been required as a condition of approval. As determination of compliance with this standard involves the exercise of discretion, it is a land use decision which must be made in compliance with notice and hearing opportunity requirements.

The McNamee Neighbors requested that the Hearings Officer require the Applicant to provide screening for the McGrew, Wruble, Adams, Rugh, Long and McCurdy residences. The Hearing Officer lacks authority to require this screening under this section of the County's ordinance as these residences are not identified in the Reconciliation Report as key viewing areas or corridors.

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<sup>10</sup>Section IV contains the analysis required by Goal 5. This is particularly evident from the fact that the Scenic Views section referenced by the Hearings Officer is found in a section entitled "Resource Analysis." Section VI contains the County's program to meet the goal, a program required as a result of the analysis which balances and reconciles conflicting resource values. This section might also be viewed as a part of the analysis but its provisions do not contain measures to protect scenic views not listed in Section IV.

- c. **The Approval Authority shall grant exceptions to the screening requirements if :**
- i) **The proposed extraction area is not visible from any key viewing areas and corridors identified in (b) above, or**
  - ii) **Screening will be ineffective because of the topographic location the site with respect to surrounding properties, or**
  - iii) **The area is part of the completed portion of a reclamation plan.**

**FINDING:** The Applicant has demonstrated that screening of the type described in subsection (b) of MCC 11.15.7325(C)(2) (landscape berms, hedges, trees, walls, fences or similar features which may be in place prior to commencement of extraction activities) will be ineffective because of the topographic location of the site with respect to surrounding properties. The Hearings Officer is, therefore, required to grant an exception to these screening requirements. The screening measures identified in the Report, however, will not be ineffective and, therefore, must be provided as required by the Report.

3. **Signing: Signing shall be controlled by the standards of MCC .7932 (A)-(D), except that only one sign for each point of access to each differently named improved street may be allowed for any operation not in a GC, EC, LM, GM , HM, C-2, M-4, M-3, M-2, and M-1 district. [MCC 11.15.7325(C)(3)]**

**FINDING:** The Applicant has not proposed any new signing for the mineral extraction operation.

4. **If no hours and days of operation are contained in the site-specific Comprehensive Plan Program, the following shall apply:**
- a. **Operating hours shall be allowed from 7:00 am to 6:00 PM. No operations shall be allowed on Sundays or on New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, and Christmas Day.**

**FINDING:** The Applicant's operating hours in the expansion area must comply with the limitations of this section. The Applicant has requested that the Hearings Officer allow it to operate 20 hours per day but has not cited any legal authority to support its request to a blanket variance from the standards of this ordinance. In the absence of any such legal authority, the Hearings Officer must decline to approve the Applicant's request.

- b. **Blasting shall be restricted to the hours of 9:00 am to 5:00 PM. No blasting shall be allowed on Saturdays, Sundays or on New Year's**

**Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, and Christmas Day.**

**FINDING:** The Applicant must comply with the blasting hours & days restrictions contained in this section.

- c. Short-term exceptions to the hours and days of operation may be approved pursuant to the provisions of MCC .8705. [MCC 11.15.7325 (C)(4)]**

**FINDING:** The Applicant has requested a blanket exception to operating hours, not a short-term exception. If the Applicant requires a short-term exception, it may seek one by following the provisions of MCC 11.15.8705.

**5. Air, water, and noise quality.**

- a. The applicant shall obtain and comply with the standards of all applicable emission discharge permits from the Department of Environmental Quality. Copies of all required permits shall be provided to the county prior to beginning mining.**

**FINDING:** The Applicant has obtained a DEQ Air Contaminant Discharge Permit. The Applicant has provided the County with a copy of the required permit and the permit is included in the record of this matter.

The DEQ Air Contamination Discharge Permit expires May 1, 2001. Compliance with the Air and Water requirements of this section will be met as long as the necessary DEQ permits remain valid and the Applicant complies with permit requirements. Therefore, prior to commencing expansion of mining activities and prior to the expiration date of the existing or subsequent air contamination permits, the Applicant shall submit copies of approved permits for continued operation to the County to ensure the expansion area continues to be permitted and so that the County may verify that mine operations comply with applicable emission discharge permits.

- b. The applicant shall obtain and comply with the standards of all applicable waste water discharge permits from the Department of Environmental Quality. Copies of all required permits shall be provided to the county prior to beginning mining.**

**FINDING:** The Applicant has obtained a DEQ Storm Water Discharge Permit. A copy of the permit is included in the record of this

application. According to Paul Kieran of DEQ, the Applicant will need to obtain DEQ approval of an amendment to this permit to authorize mining in the expansion area. Additionally, the Stormwater Discharge Permit expires December 31, 1996. Compliance with the waste water requirements of this section will be met as long as the necessary DEQ permits remain valid and the Applicant complies with permit requirements. Therefore, prior to commencing expansion of mining activities and prior to the expiration date of the existing or subsequent waste water permits, the Applicant shall submit copies of approved waste water permits for continued operation of mining in the expansion area to the County to ensure the expansion area continues to be permitted and so that the County may verify that mine operations comply with the waste water permits.

- c. **Sound generated by an operation shall comply with the noise control standards of the Department of Environmental Quality. Compliance with the standards can be demonstrated by the report of a certified engineer. Methods to control and minimize the effects of sound generated by the operation on noise sensitive uses existing or approved (valid action or administrative decision) on the date of application may include, but not be limited to, the installation of earth berms, equipment location, limitations on the hours of operation, and relocation of access roads.**

*[MCC 11.15.7325 (C)(5)]*

**FINDING:** The noise control criteria in (c) above is satisfied by virtue of the September 25, 1992 Report of Daly Standlee & Associates (Exhibit K of the Application) and the supplemental letter dated June 10, 1994 (Exhibit L of the Application). The report measured actual sound pressure levels at each of the four residences closest to the quarry. During this test, sound from the quarry was not audible at any of the residences. However, the engineer derived projections of future sound levels that might be present during expansion using worst-case assumptions. The Report concluded that no violations would occur during Phases 1 and 2, even if no protective measures were employed. The Report also concluded that if the existing excavator proceeded to a location that was in a direct line of sight with the residences and at the closest possible location to the residences, extremely minor violations (i.e., 1 dBA above DEQ standards) would occur at residence No. 2 during Phase 3 and at residences No. 1, No. 3 and No. 4 during Phase 4 unless the excavator exhaust was muffled. Replacing the factory-installed industrial grade muffler with a residential-grade muffler would reduce the sound pressure level to meet DEQ standards. In the meantime, Angell Bros. has replaced the excavator with a new Komatsu excavator which has a factory certified sound pressure level that qualifies under DEQ standards with no equipment modifications. The Supplemental Kerrie Standlee letter report and

hearings testimony (Exhibit L) confirms that no further equipment modifications are needed.

The Opponents raised concerns that Mr. Standlee had not considered the exact, current locations of existing homes in his noise study. This is true, but the evidence indicates that the home locations were moved a short distance. Mr. Standlee considered this movement and then testified that movement of the homes would not affect the conclusion of his noise study. The Hearings Officer finds this testimony persuasive. Further, the Hearings Officer finds that Mr. Standlee's evidence in this matter appears to be objective, given the fact that he initially determined that the mining operation did not comply with DEQ noise standards. This determination caused the mine to change its operations to then comply with DEQ standards.

The Opponents also noted that the location of the present mining operation is further from noise sensitive uses in the impact area. While this is true, Mr. Standlee's testimony and evidence also studied the impact of mine noise when the mine is closest to these uses and determined that the mine noise would not violate DEQ standards. The Hearings Officer accepts this determination.

Noise control measures are not needed to control or minimize the effects of sound generated by the operation under subsection (c) as the Hearings Officer is satisfied that DEQ noise standards will be met by the Applicant. A condition of approval requiring compliance with DEQ noise standards over the life of the mining operation has been included in this decision, however, to give the County the clear ability to revoke the Applicant's conditional use permit if its mine operations exceed DEQ standards.

- (1) Fish and wildlife protection: Fish and wildlife habitat, water bodies, streams, and wetlands inventoried in the Comprehensive Plan shall be protected according to the program contained in the Comprehensive Plan. [MCC 11.15.7325 (C)(6)]**

**FINDING:** These criteria are not satisfied as the program contained in the comprehensive Plan is not met by the Applicant's mining and reclamation plan. The Resource Protection Plan for Wildlife contains four elements:

- Minimization of the area mined at any given time.
- Demonstration that reclaimed areas are capable of supporting forest vegetation.
- Simultaneous reclamation along with mining to minimize non-vegetated areas.
- Reclamation of the site so as to best enhance wildlife habitat values. Reconciliation Report, p. VI-25.

The first directive, to minimize the area mined at any given time, is not satisfied by the Operating Plan for reasons explained above in the Hearings Officer's discussion of the differences between the Operating Plan & Reclamation Plan and the reclamation plan envisioned by the West Hills Reconciliation Report. The second directive, to demonstrate that reclaimed areas are capable of supporting forest vegetation, is satisfied by the testimony of Frank Schnitzer at the land use hearing that abandoned mine sites are capable of supporting forest vegetation without reclamation and by the reclamation requirements imposed upon the Applicant by its DOGAMI Operating Permit. The third directive, to achieve a simultaneous reclamation along with mining to minimize non-vegetated areas, is not satisfied by the current Reclamation Plan which calls for leaving large areas of the mine open and exposed for long periods of time following mining.

The discussion of the mine operations found in Chapter IV of the Report indicates that prompt reclamation of the upper benches was to occur immediately after mining to facilitate screening of the operations from key viewing areas and to provide wildlife corridors on the property. While the Hearings Officer sees merit in approaching the mine plan as currently proposed, it is not the method contemplated by the Reconciliation Report. The Hearings Officer, therefore, has required the Applicant to revise its plan to comply with this requirement.<sup>11</sup> The Applicant claims that the fourth directive, to reclaim the site so as best to enhance wildlife habitat values, is satisfied by the provisions in the Conservation Easement that exclude various portions of the property from mining and logging, by the agreement in the Conservation Easement to exclude residences in perpetuity and to turn the entire site into wildlife habitat at the conclusion of mining, and by conditions 5, 9 and 12 in the Operating Permit which minimize the environmental impacts of mining as it occurs on the site. The Applicant also notes that the Reclamation Plan proposes to create two new wetlands on the quarry floor, which will add some habitat value to the site. The Hearings Officer agrees with the Applicant's assessment of this issue but adds that prompt reclamation of the site, as required in the conditions of approval, will also assure that the Applicant's mining plan furthers wildlife habitat.

With respect to habitat, water bodies and wetlands off-site, these are primarily located within Burlington Bottoms, the east bank of the Multnomah Channel and the North Angell Bros. stream. The North Angell Brothers stream has been designated as being a significant Goal 5 resource and designated "1C" and is considered a potential conflicting use. The Rafton/Burlington Bottoms and the east bank of Multnomah Channel are also considered potential conflicting uses. [pg IV-28, West Hills Reconciliation Report, Revised -- May 1996] These resources are protected by the restriction that no mining will occur in the

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<sup>11</sup>The Applicant could also seek amendment of the Reconciliation Report to authorize the new approach to mining the site. This approach will require a demonstration that the new plan provides adequate safeguards for the Goal 5 protected scenic, wildlife and water resources that are affected by mine operations.

watershed of North Angell Bros. Stream and by the condition that Angell Bros. must remain in compliance with the DEQ Storm Water Permit. The Applicant has been required to comply with these restrictions as a condition of approval of this application.

**(7) Setbacks:**

**(a) For mineral and aggregate processing activities:**

- i) 200 feet to a property line, or
- ii) 400 feet to a noise and dust sensitive land use existing or approved (valid action or administrative decision) on the date of application;

**(b) For access roads and residences located on the same parcel as the mining or processing activity, setbacks shall be as required by the underlying district; and**

**(c) For mineral extraction and all other activities:**

- i) 100 feet to a property line, or
- ii) 400 feet to a noise and sensitive land use existing or approved (valid action or administrative decision) on the date of application.

*[MCC 11.15.7325 (C)(7)]*

**Applicant:** These criteria are satisfied. As shown on Exhibit G, Sheet 1, Figure 2, the setback from extraction activity is at least 200 feet to the property line, and the setback between the new location of the primary crusher (i.e. "processing activities" in MCC) and the Wruble residence, (which is the closest residence) is at least 1800 feet, over four times the required minimum of 400 feet. There are no new access roads or temporary residences in the present application, and the Conservation Easement prohibits permanent new residences.

**FINDING:** The Hearings Officer concurs with the Applicant's response. In addition, the criteria are clear and objective. The criteria include no provisions for requiring additional setbacks. The Mine Sequence Map (Sheet 4) submitted by the Applicant (back pocket of Operating and Reclamation Plan Document) clearly identifies the mining area and processing areas in compliance with the setbacks required by this code section. The nearest residences (Wruble, McGrew and Adams) based on the Mined Sequence Map will be a minimum of 600 feet from a proposed extraction area and well over 1,700 feet from the nearest crusher. While residential lots are located within 200 feet of the mine site, the lots themselves are not noise and dust sensitive uses. The County considers residences, but not residential yards, to be noise and dust sensitive uses and the Hearings Officer will defer to that interpretation.

**1. Reclaimed Topography.**

**All final reclaimed surfaces shall be stabilized by sloping, benching, or other ground control methods. Reclaimed surfaces shall blend into the**



**natural landforms of the immediately surrounding terrain. These reclamation standards shall not apply where the Approval Authority finds that the standards conflict with the reclamation plan provided in the Comprehensive Plan or where DOGAMI finds that the standards are less restrictive than DOGAMI reclamation standards. [MCC 11.15.7325 (C)(8)]**

**Applicant:** These criteria are satisfied by the Reclamation Plan (Exhibit G-1). The schematic version of reclaimed benches is set forth on Sheet 2 for purposes of demonstrating general slope stability, volume calculations, location of setbacks, etc. The actual appearance of the reclaimed benches is set forth in Figures 13 through 15, which demonstrate how these areas can be given random shapes, complex features, talus slopes, accelerated weathering, etc., and how they will look during reforestation.

Harmony with the "natural landforms" is shown by the comparison of overall pre-mine contours with post-mine contours, set forth in Figures 16 and 17. The overall shape of the reclaimed slopes blend in with the existing landform of the Tualatin ridge.

Sloping, benching and stability is set forth in Appendix A, The Engineering Geological Investigation. Essentially, the Investigation concluded that (1) no mass stability problems were encountered at the site; (2) the maximum final cut slopes of basalt would be 1.5:1, as required by DOGAMI regulations, and that the final cut slopes would be "unloaded," thus assuring slope stability at least as great as the existing landforms.

**FINDING:** The Hearings Officer concurs with and adopts these findings in support of this decision.

## **2. Safety and security.**

**Safety and security measures, including fencing, gates, lighting, or similar features, shall be provided to prevent public trespass to identified hazardous areas such as steep slopes, water impoundments, or other similar hazard where it is found that such trespass is probable and not otherwise preventable. [MCC 11.15.7325 (C)(9)]**

**FINDING:** This criterion is satisfied by virtue of the existing fencing, gates, signage, and lighting on the northern boundary of the site, which borders Highway 30. With respect to the remainder of the site, public access is virtually impossible due to the steep terrain and the complete absence of roads connecting the site to adjacent parcels. The hiking trail recited in the Conservation Easement will not be placed on the site until mining is completed, for safety and security reasons.

### 3. Phasing program.

**All phases of an extraction operation shall be reclaimed before beginning the next, except where the Approval Authority or DOGAMI finds that the different phases cannot be operated and reclaimed separately. [MCC 11.15.7325 (C)(10)]**

**FINDING:** Testimony at the September 18, 1996 hearing from Frank Schnitzer of DOGAMI establishes that DOGAMI found that the different phases proposed by the Applicant cannot be operated and reclaimed separately. As a result, all phases of the extraction operation do not need to be reclaimed before beginning the next phase to satisfy this code section. The Hearings Officer's opinion on this matter is irrelevant as this section allows *either* DOGAMI or the Hearings Officer to relieve the Applicant of the phasing requirement imposed by this section. This section does not, however, relieve the Applicant of reclamation requirements imposed by the Reconciliation Report that are applicable to the mine operation and required to demonstrate compliance with other relevant land use criteria.

### 4. Reclamation Schedule.

**The reclamation plan shall include a timetable for continually reclaiming the land. The timetable shall provide for beginning reclamation within twelve (12) months after extraction activity ceases on any segment of the mined area and for completing reclamation within three (3) years after all mining ceases, except where Approval Authority or DOGAMI finds that these time standards cannot be met. [MCC 11.15.7325 (C)(11)]**

**FINDING:** The Applicant claimed an exception to the time standards contained in MCC 11.15.7325 (C)(11). DOGAMI supported this claim that the twelve month time standard cannot be met through their approval of the plan and evidence in the record of this case. The Applicant will, however, be required to complete reclamation within three years as the record does not establish DOGAMI determined that this time standard could not be met. Further, the Hearings Officer did not find a detailed time table in the Applicant's Reclamation Plan or Operating Plan. While the DOGAMI requires reclamation monitoring every five years, the permit allows great flexibility to the Applicant to justify areas of incomplete reclamation.

**MCC 11.15.7325 (D): The proposed operation will not result in the creation of a geologic hazard to surrounding properties, such as through slumping, sliding, or drainage modifications, and have been certified by a registered soils or mining engineer, or engineering geologist as meeting this requirement.**

**Applicant:** This criterion is satisfied for the reasons set forth [in Section 3.3.12, Applicants submittal] above (which deals with slope stability), and because any geologic hazard that might occur on the site would be contained on the Angell Bros. site itself, rather than on "surrounding properties." Also, Condition No. 10 of the DOGAMI Operating Permit requires that at the conclusion of mining in Phase 2 (which completes mining in the central core of the site and permits the greatest examination of slope stability), a slope stability investigation will have to be performed to DOGAMI's satisfaction before DOGAMI extends the Operating Permit for mining in Phases 3 and 4.

**FINDING:** The Applicant has submitted an "Engineering Geologic Investigation of the Angell Brothers Rock Quarry Multnomah County" revised in 1995 by Lidstone & Anderson (Registered Geologist and Registered Engineer) [Operating and Reclamation Plan, Appendix 'A']. The report concludes, "[a]lthough the probability of slope failure, other than rock topple and slope raveling, is very limited, the run out of any conceivable failure would be contained within the quarry itself due to cut slope orientation." Additionally, DOGAMI has required as a condition (Condition 10) of the June 11, 1996 Operating Permit, "[a] formal report and recommendations summarizing the data collected and geotechnical stability of the mine and reclamation area is required for the first three years. The report shall include a geologic map showing the location of the quarry faces at the time of the inspection and the faces with geology from previous inspections. Additional reports may be required at specific intervals during the life of mine and will be dependent on annual production and other factors such as apparent highwall stability."

The Hearings Officer finds that the Engineering Geologic Investigation certified by a registered professional engineer and geologist, along with the monitoring and condition(s) set forth under the June 11, 1996 DOGAMI Operating Permit, are adequate to conclude the proposed operation will not result in the creation of a geologic hazard to surrounding properties.

The Opponents have asked that the Hearings Officer require the Applicant to sponsor ongoing, continuous vibration monitoring by an independent, certified geophysicist. The Hearings Officer has not imposed such a requirement, however, as the record does not establish that there is a reasonably likelihood that the Applicant's mining operations will cause the geologic hazards envisioned by this section. The Applicant provided convincing evidence that the levels of dynamite used for blasting operations would be small and that the chance of such problems occurring is relatively small. Further, a monitoring program would not prevent the geological problems from occurring. Also, the County may institute a ground vibration monitoring program on adjacent lands, with the consent of landowners, if it determines that such monitoring is needed when mine operations advance toward area residences.

- E. **MCC 11.15.7325 (E):** Proposed blasting activities will not adversely affect the quality or quantity of groundwater within wells in the vicinity of the operation.

**Applicant:** This criterion is satisfied by the design of Mine Plan, which has the final quarry floor at an elevation of approximately 130 feet mean sea level, which is at least 50 feet and possibly as much as 370 feet above the confining layer of the regional aquifer. Also, conditions 7, 9 and 10 in the Operating Permit require extensive data collection during mining, thus continuously improving knowledge about the depth and location of aquifers.

**Staff:** The Lidstone and Anderson, Inc. Engineering Geologic Investigation Report [Applicant Operating Plan; Appendix A-4] identifies the location and well logs of the most proximate wells to the Angell Bros. site, identifies geographic features and proposed quarry depth, and concludes, "it is anticipated that no significant groundwater flows will be encountered during the proposed mining plan. As the mine pit advances, Angell Brothers will continuously monitor the pit floor and pit walls for ground water. In the event that groundwater is encountered, Angell Brothers will notify DOGAMI and the operational plan will be modified in accordance with DOGAMI requirements.

There is no absolute, unarguable scientific or other method to demonstrate proposed blasting activities will not adversely affect the quality or quantity of groundwater within wells in the vicinity of the operation. The intent of this section is, however, to require mine operators to present reasonable evidence identifying the potential for adverse impacts. The intent is to provide for "good planning," if negative or adverse impacts are identified, directing mining operations away from these areas would be beneficial to both the neighboring property owners wells and the Applicants liability. Thus, staff concludes the Applicant has demonstrated based on reasonable and substantial evidence, neighboring wells will not be effected.

**FINDING:** The Hearings Officer concurs with the findings proposed by the Applicant and by Staff but finds that it is necessary to include a condition of approval in the decision of this matter to assure compliance with the requirements of this code section during mining operations. That condition allows blasting in the expansion area only so long as proposed blasting activities do not adversely affect the quality or quantity of groundwater within wells in the vicinity of the operation.

- F. **MCC 11.15.7325 (F):** If the site is zoned Exclusive Farm Use . . .

**FINDING:** The site includes no land designated Exclusive Farm Use, therefore MCC 11.15.7325 (F) is not applicable to review of this application.

**G. If the site is zoned Commercial Forest Use (CFU):**

- (1) The proposed operations will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest lands;**
- (2) The proposed operation will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and**
- (3) A written statement recognizing the rights of adjacent and nearby property owners to conduct accepted forest practices has been recorded with the property deed in accordance with OAR 660-06-025 (1994).**

*[MCC 11.15.7235 (G)]*

**FINDING:** Compliance with the criteria contained in this section is satisfied by the Hearings Officer's findings regarding MCC 11.15.2053, which imposes the same requirements as found in this code section.

**D. MCC 11.15.7331 - Site Reclamation:**

- A. No mining shall begin without the operator providing the county a copy of a DOGAMI operating permit or exemption certificate.**
- B. When approving an application under this section the county shall determine the post-mining use of the property. The determination of post-mining use shall be coordinated with DOGAMI to ensure technical feasibility. The designated post-mining use shall conform to the Comprehensive Plan.**

**FINDING:** The Applicant has provided the County with a copy of its DOGAMI permit with its application. The post-mining use of the property is Commercial Forest Use, which is consistent with the plan and zone designations in the Comprehensive Plan. The Conservation Easement imposes the additional restrictions that Western Oregon old growth forest habitat be maintained, that no logging occur in certain areas at all, and that no residences be built on the site. All these restrictions are consistent with the plan and zone designations in the Comprehensive Plan. The reclamation sequence approved by DOGAMI (discussed above) and the numerous conditions imposed in the Operating Permit were designed "to ensure technical feasibility."

- E. MCC 11.15.7332 - Monitoring: The Planning Director shall periodically monitor all extraction operations. The beginning dates and frequency of monitoring shall be determined by the Approval Authority based upon any such requirement in the Comprehensive Plan Program and upon the number and type of *noise* and *dust sensitive* land uses, and other Goal 5 resources identified in the ESEE Analysis. If the Director determines that an extraction operation is not in compliance with MCC**

**.7325 or site-specific requirements of the Comprehensive Plan Program, such enforcement proceedings deemed appropriate by the Multnomah County Legal Counsel shall be instituted to require compliance.**

**FINDING:** The Applicant will be required to allow the Planning Director or her designee to periodically monitor the extraction operation. The Hearings Officer finds that site monitoring should occur within the first month of operations and should continue at least four times per year, in order to assure protection of the many conflicting Goal 5 resources that exist on the subject property. If the Report requires more frequent monitoring, the Report's requirements shall be followed by the Director.

### **Compliance with Significant Environmental Concern Requirements**

**MCC 11.15.6400 - Purposes:** The purposes of the Significant Environmental Concern subdistrict are to protect, conserve, enhance, restore, and maintain significant natural and man-made features which are of public value, including among other things, river corridors, streams, lakes and islands, domestic water supply watersheds, flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats, significant geological features, tourist attractions, archaeological features, tourist attractions, archaeological features and sites, and scenic views and vistas, and to establish criteria, standards, and procedures for the development, change of use, or alteration of such features or of the land adjacent thereto.

**Significant Scenic Views - MCC 11.15.6424 (C):** Mining of a protected aggregate and mineral resource within a PAM subdistrict shall be done in accordance with any standards for mining identified in the protection program approved during the Goal 5 process. The SEC Application for Significant Scenic Views must comply only with measures to protect scenic views identified in the Goal 5 protection program that has been designated for the site.

**FINDING:** The applicable protection program is found in the West Hills Reconciliation Report at page VI-18, VI-22 and VI-23 and as follows:

#### **Regulatory**

- Minimization of the area mined at any given time.
- Demonstration that reclaimed areas are capable of supporting forest vegetation.
- Simultaneous reclamation along with mining to minimize non-vegetated areas.

- Screening of the operating face from key viewing areas as much as practicable through techniques such as landscaping, berming, and maintenance of intervening topography.

#### Non-Regulatory

- Multnomah County accepts, encourages, and will honor to the extent allowed by law, third party agreements to protect significant scenic views through private sales, dedications, donations, easements, or other use restrictions.

The Plan submitted by the Applicant does not minimize the area mined, as discussed earlier in this decision. Neither does the Plan provide any assure of simultaneous reclamation that minimizes non-vegetated areas. Instead, the Plan leaves large areas of the mine exposed and unclaimed for many years. As stated by the Applicant's attorney in the application: "[a]lthough certain benches within Phase 1 will be reclaimed concurrently with mining, *the majority of the benches will have to be left open* to accommodate haul roads and overburden stockpiles from Phase 3." The application further states that this same approach will be used in Phase 2. Basically, the mine plan proposed by the Applicant is a plan to mine in two areas and to begin reclamation when approximately 75% of each area has been mined.

The Hearings Officer has required the Applicant to revise its reclamation plan to provide for simultaneous reclamation which minimizes non-vegetated areas and which minimizes the area mined at any given time, in the manner specified in the Reconciliation Report, as a condition of approval of this application. If this application is revised as required by other sections of this decision, the application will comply with the requirements of this code section.

**MCC 11.15.6426 (4) - Wildlife Habitat/Wildlife Conservation Plan:** For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

**FINDING:** The applicable measures to assure long-term protection of significant wildlife habitat in the West Hills are found in the West Hills Reconciliation Report at page VI-18, VI-22 and VI-23 and as follows:

#### Regulatory

- Multnomah County shall require the Angell Brothers expanded quarry site to take the following measures as part of its operation and reclamation plan:

- **Minimization of the area mined at any given time.**
- **Demonstration that reclaimed areas are capable of supporting forest vegetation.**
- **Simultaneous reclamation along with mining to minimize non-vegetated areas.**
- **Reclamation of the site so as to best enhance wildlife habitat values.**

#### **Non-Regulatory**

- **Multnomah County accepts, encourages, and will honor to the extent allowed by law, third-party agreements to protect significant wildlife habitat through private sales, dedications, donations, easements, or other use restrictions.**
- **Multnomah County will rely on state agency administration of state regulations that affect the protection of significant wildlife habitat in the West Hills, and will review and comment on state agencies' programs affecting protection of significant wildlife habitat in the West Hills.**

**FINDING:** The first three requirements listed for the protection of wildlife mirror the requirements for protecting scenic views. The findings of this decision establish that if the Applicant complies with the conditions of approval of this application, that these three requirements will be met. Further, the Hearings Officer finds that reclamation of the site, as required by this decision and the West Hills Reconciliation Report will serve to best enhance wildlife habitat values, as required by the fourth requirement of this program to meet Goal 5 for wildlife resources.

**MCC 11.15.6428 (E) - Streams: For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the Mitigation Plan must comply only with measures identified in the Goal 5 protection program that has been designated for the site.**

**FINDING:** The Hearings Officer finds that the Goal 5 protection program for the Angell Brothers site is found in the Program to Achieve the Goal section of the Angell Brothers Aggregate section of Chapter VI. The program to achieve the goal for the Angell Brothers mine calls for portions of the Angell Brothers site to be placed in areas called "Preserves" and to be protected from mining. The Report states that the Preserves encompass the North Angell Brothers "stream drainage," a term that, apparently, is not defined in the Report. The Preserves do not, however, include the entire North Angell Brothers watershed, as depicted in the Reconciliation Report. Further, the Conflict Resolution section of Chapter IV of the Report provides that "[m]ining on the Angell Brothers site should not take place within the North Angell Brothers Creek



watershed" [p. VI-16] and that expansion "should be allowed except for . . . the North Angell Brothers creek watershed." [p. VI-17] This language indicates that the term "stream drainage" found in the Program to Achieve the Goal is referring to the watershed of the creek.

The watershed of the North Angell Brothers Creek is shown on the stream map found at page III-143 of the Reconciliation Report. This watershed map, however, far exceeds the "impact area" identified under Goal 5 as meriting Goal 5 protection. It is the impact area which must be studied by the County and protected, where appropriate, during its Goal 5 analysis of resources and conflicting uses. The impact area for a stream is the riparian area of the creek. The riparian area for North Angell Brothers stream is identified on page III-16 of the Report as being from 55 to 150 feet in width for the North Angell Brothers stream. The riparian area for the entire creek covers a maximum area of 16.36 acres.<sup>12</sup> This area is much smaller than the drainage area which is inventoried as including 350 acres [see p. III-5].

The Report's Program to Achieve the Goal for streams protects a stream's impact area by providing protection to an area of 600 feet centered on the middle of the stream, thereby protecting lands beyond the impact area. For the North Angell Brothers stream, this is an area of 65.45 acres in size, including land located beyond the boundaries of the Angell Brothers site.<sup>13</sup> Mr. Parisi claims that the riparian area is the maximum area that can be protected under Goal 5 and the maximum area that should have been protected by the Program to Achieve the Goal for the Angell Brothers Aggregate site.<sup>14</sup> As a practical matter, he is wrong as the County obtained approval to protect a broader area in its Program to Achieve the Goal for streams from LCDC and that issue is now closed and applied a broader protection area in its Program to Achieve the Goal for the Angell Brothers site by protecting the stream drainage rather than the riparian area (350 acres vs. 16.36 acres).

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<sup>12</sup>This figure was calculated by using a length of .9 mile for the creek length (4752 feet) and multiplying it by 150 feet in width, the maximum width of the riparian area. This resulted in an area of 712,800 square feet or 16.36 acres.

<sup>13</sup>It is four times wider than the 150 foot wide riparian area calculated in footnote 12, so is also four times larger than the maximum riparian area.

<sup>14</sup>To the extent that Mr. Parisi's argument is a claim that the Reconciliation Report violates Goal 5, it is not relevant at this time. The recent case of Friends of Neabeack Hill v. City of Philomath, 139 Or App 39, 911 P2d 350 (1996), rev. den. 323 Or 136, 916 P2d 311 (1996) held that acknowledged comprehensive plan provisions may not be challenged for failure to comply with Statewide Goals in a land use permit application case. Naturally, goal compliance is relevant to applications that propose an amendment to a comprehensive plan.

Evidence in the record of this case indicates that the area included within the Preserves protects all Angell Brothers property found within the SEC overlay zone. The Preserves do not, however, protect the watershed of the North Angell Brothers stream depicted on the Reconciliation Report map.<sup>15</sup> The placement of land into the Preserves and the delineation of their boundaries occurred outside of the land use process. The determination of boundaries by private parties in such a setting is not a land use regulation and does not act to change the description of the North Angell Brothers Creek watershed found in the Report.

The Applicant claims that the compliance with the Goal 5 program for the mine is met by a 600-foot setback, centered on the creek. The Hearings Officer did not find any Report provision, however, that stated that the term "stream drainage" used in the mine's Program to Achieve the Goal is intended to apply to the 600-foot area. Further, the Program to Achieve the Goal for streams does not contain any requirements that apply directly to the Angell Brothers mine site. Instead, the stream section directs the County to take action to adopt a stream protection overlay zone and does not bind the mine operator in any way.

The Hearings Officer reviewed the Report many times in an attempt to harmonize the Plan's statements that no mining should be conducted in the North Angell Brothers watershed and the delineation of the Preserves agreed to by the parties to the negotiated settlement. The Hearings Officer expected that there would be some language in the Plan which would explain that it was ultimately determined that a portion of the watershed shown on the Report map should be not be included in the Preserves, but did not find such language.

The foregoing findings require the Hearings Officer to require the Applicant to remove all areas of the North Angell Brothers stream drainage from its mine operation plan, in order to comply with the Program to Achieve the Goal for the mine site as it relates to stream protection.

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<sup>15</sup>There is evidence in the record that the tributary of the North Angell Brothers Creek identified by the Opponents does not drain into the Burlington Bottoms area, as does the North Angell Brothers creek. The northern creek is protected because it drains into Burlington Bottoms. The diverted creek is located in the area that is proposed for mining and it may be that the parties to the settlement excluded it from the watershed because it no longer drains to Burlington Bottoms. The Hearings Officer is, however, unable to find sufficient evidence in the record to show that the diverted creek and its watershed is no longer a part of the North Angell Brothers watershed (to contradict the mapped area shown on page III-143 of the Report).

## CONDITIONS OF APPROVAL:

The application for conditional use approval sought in this application is approved subject to compliance with the following conditions of approval:

1. Approval is for a Conditional Use Permit and SEC Permit for mineral extraction and processing on 250 acres located at Tax lot '12', in the NW ¼ of Section 28, 2N, 1W, Willamette Meridian; and Tax Lots '2', '6', '8', and '11' in the E ½ of Section 29, T2N, R1W, Willamette Meridian as proposed and conditionally approved in this application.
2. The Applicant shall record a statement with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with Forest Practices Act and Rules, and to conduct accepted farming practices prior to the commencement of mining in the area covered by the permit.
3. This Conditional Use permit is issued for the specific use or uses specified in the application for Conditional Use approval, together with the limitations or conditions as determined by the Approval Authority in this decision. Any change of use or modification of limitations or conditions shall be subject to Approval Authority approval after a public hearing.
4. Access associated with the mining of the site (transportation of rock, heavy equipment, etc.) shall be limited to a single point of access along Highway 30 in the location shown on the Applicant's application. Further, the Applicant shall not use the easement from the mine site to McNamee Road that crosses the property at 13780 NW McNamee Road presently owned by Ray Adams.
5. No material (rocks, clay or large quantities of dirt) which creates a safety or maintenance problem shall be tracked or discharged in any manner onto any public right-of-way. The Applicant shall maintain the storm water detention dry wells, cattle guard and paved haul road described in the application in good and functional condition throughout the life of the mining operations authorized by this permit. Further, the Applicant shall take whatever other measures are necessary to prevent the discharge of hazardous materials from trucks leaving the mine site.
6. In the event that it is determined in a judicial or quasi-judicial enforcement proceeding brought by Multnomah County against the Applicant or Owner that the Applicant's mining operation is resulting in a violation of MCC 11.15.7325 (C)(1)(c) or Condition #5 of this decision, the Applicant shall thereafter require that all trucks being loaded at the mine site be covered by the driver prior to leaving the mine site and the Applicant shall take whatever corrective actions

directed by the judicial or quasi-judicial officer who has jurisdiction over the enforcement matter.

7. All mineral and aggregate operations shall occur between the hours of 7:00 AM to 6:00 PM. No operations are allowed on any Sunday, New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, and Christmas Day.
8. Blasting shall occur between the hours of 9:00 am to 5:00 PM. No blasting shall be allowed on any Saturday, Sunday, New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, and Christmas Day.
9. The Applicant shall obtain approval to expand its DEQ issued Stormwater Discharge Permit to include the proposed mine expansion. The Applicant shall also furnish to the County, prior to commencing expansion of mining activities a valid DEQ Air Contamination Discharge Permit. The permits shall clearly identify the mine operations areas approved by DEQ. The Applicant shall maintain on file with Multnomah County throughout the life of the mine, copies of valid DEQ Air Contamination Discharge and Stormwater Discharge Permits. Complaints received by the Planning Department regarding air and water contamination will promptly be forward to DEQ as part of interagency coordination.
10. The Applicant shall comply with the June 11, 1996 Operating Permit authorized by the Department of Geology and Mineral Industries (DOGAMI) and subsequent decisions. A copy of the Applicant's 5 year reclamation and progress report as required by DOGAMI shall be submitted to the County, upon acceptance or approval by DOGAMI.
11. The Applicant shall maintain compliance with DEQ noise regulations. Complaints regarding noise will be forward to DEQ as part of an ongoing interagency coordination effort. In the event DEQ determines its standards are not being met, the Applicant will be subject to enforcement action as determined appropriate by the County.
12. The Applicant shall submit and obtain approval of an amended mineral extraction area map (currently Mine Sequence Map, Sheet 4) which shall identify the location of the south boundary of the North Angell Brothers Stream watershed, as shown on the map of the watershed found on page III-143 of the Reconciliation Report. All mining activities shall be confined to the extraction area shown on the revised map. The primary crusher shall be located, and shall remain, in the location shown on Sheet 4 as the "Existing Location of Primary Crusher."

13. Upon final Land Use Approval of this application and prior to commencement of quarry expansion beyond the existing 114 acres, the Applicant shall record with Multnomah County Records the "Grant of Conservation Easement" between Linnton Rock, Angell Bros. and Friends of Forest Park as agreed to through mediation and acknowledged on August 21, 1996.
14. The Applicant shall submit a traffic management plan to the County Engineer that is sufficient for the County Engineer to make relevant findings regarding road improvements for Newberry Road or to develop a program to assure that the numbers and weights of trucks leaving the mine site can safely be accommodated on Newberry Road prior to commencement of mining in the expansion area covered by this permit. Further, the County shall review the Engineer's recommendations and issue a land use decision determining whether and what related conditions and restrictions to the conditional use approval are needed to comply with MCC 11.15.7325 (C)(1)(e). The issue of whether the Applicant must comply with MCC 11.15.7325 (C)(1)(e) has, however, been determined in this proceeding and may not be revisited during the second review.
15. The Applicant shall revise the operating and mine reclamation plan to comply with all site-specific requirements relating to Scenic Views described on pages IV-14 through IV-15 of the Report and all relevant Programs to Achieve the Goal. Particularly, the Applicant's plan must provide for contemporaneous reclamation that promotes early visual screening of benches *immediately* following mining of upper benches. Additionally, the revised plan shall contain a commitment by the Applicant to maintain the principal processing, weighing and loading facilities at their "present location" as that term is used in the Reconciliation Report. Further, upon final reclamation, all structures, equipment, and refuse will be removed from the site. Excess fill from the waste rock stockpiles will be placed on the quarry floor, graded and covered with loess coversoil. All temporary culverts will be closed and abandoned in place. The quarry floor and operational areas will be shaped, graded, and revegetated to blend with the rest of the area. This area will be left in a condition with the final beneficial use of the property as an area protected by a conservation easement.
16. If a County rendered determination of compliance with any of the above conditions involves the exercise of discretion by the County, the County shall process its determination of compliance or non-compliance as a land use matter subject to County land use procedures regarding notices and opportunities for hearings and appeals.
17. The Applicant may conduct blasting on the subject property so long as the proposed blasting activities shall not adversely affect the quality or quantity of groundwater within wells in the vicinity of the blasting operation.

18. The Planning Director or her designee shall periodically monitor the mine site. Site monitoring should occur within the first month of operation and continue at least four times per year. If the Reclamation Report requires more frequent monitoring, the Director shall comply with the requirements of the Report.
19. This approval is valid for the life of the mine and shall remain valid provided compliance with all conditions and laws is achieved and maintained.

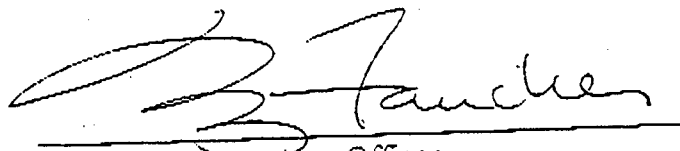
#### **Appeal to the Board of County Commissioners:**

The Hearings Officer's Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" for and a fee of \$500.00 plus a \$3.50 - per- minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043, for additional instructions.

Failure to raise an issue prior to the close of the record at the final Board Hearing, (in person or by letter) precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue. Failure to provide specificity on an issue sufficient for the Board to respond, precludes appeal to LUBA on that issue.

**SIGNATURE PAGE - ANGELL BROTHERS**

Decision dated this 17<sup>th</sup> day of October, 1996.

A handwritten signature in cursive script, appearing to read "Liz Fancher", written over a horizontal line.

Liz Fancher, Hearings Officer  
Multnomah County

## APPENDIX A

### SITE-SPECIFIC REQUIREMENTS FOR ANGELL BROTHERS MINE EXPANSION

The site-specific requirements for the Angell Brothers mine expansion found in the West Hills Reclamation Report include the following:

1. The Applicant shall relocate the "first settling pond" and re-size the pond to maintain the same water quality standards. Sediment barriers (either rock piles or gabion dams) using waste rock materials will be placed in the sediment pond outflow ditch to reduce water velocity and permit additional sediment removal before the water enters the second settling pond. [P. IV-9]
2. The Middle Drainage will be protected throughout mining and reclamation operations in accordance with the DEQ Stormwater Permit and DOGAMI requirements. At critical locations the drainage will be diverted in a culvert. At less critical locations, a berm averaging four (4) feet in height will be constructed adjacent to the open channel to ensure no commingling with disturbed area runoff. Berm height shall be designed to convey the 100-year 24- hour design event with a minimum of one (1) foot of freeboard. [p.IV-9]
3. The site shall be mined with a "directly advancing mining face." [p.IV-11]
4. The mine plan encompasses a laterally sustainable earthwork balance which allows contemporaneous reclamation of the mined out benches. This minimizes the amount of reclamation materials stored in temporary stockpiles and allows the operator to haul and replace reclamation materials directly. Direct "haul-back materials provide natural seed sources, thereby providing a diverse assemblage of native and non-native vegetation. [p. IV-11]
5. The reclamation plan will be a continuous program of mine reclamation over the life of the mine. [p. IV-11]
6. Lands will be restored to the maximum extent practical for Commercial Forest Use zone, incorporating natural drainage features to enhance wildlife habitat quality and diversity, by providing a long-term naturally stable geomorphic landform, and developing an area-wide mosaic of plant communities that will result in a variety of wildlife habitats to support birds and mammals during various phases of their lives, and by assuring that mammals entering a bench from one side will be able to travel along it and exit on the other side. [p. IV-11 & 12]
7. Final reclamation cutslopes shall be 1.5:1 and benched. [p. IV-12]



8. Prior to placement of any fill materials on mined benches, Angell Brothers will pre-rip the bench floors to provide a "shear key" and improve vertical drainage below the final fill. [p.IV-12]
9. The reclamation plan shall include a "stratified replacement of two products of the mining operation: (a) 2-1/2 inch minus waste rock for coarse material substrate and (b) loess overburden material for cover soils." [p. IV-12]
10. Three typical reclamation bench configurations shall be used. The first is a horizontal fill on the bench floor, with the final surface being manipulated to provide local depressions, roughened surface features, and thicker fills. The second configuration "will be manipulated to produce a complex slope [4:1 to 3:1 variability]. Surface drainage will slope away from the highwall to minimize the collection of water against the back of the fill. The first and second type benches will be seeded with grasses and forbs and planted with deciduous trees, spruces and firs. The third bench will be "shot" by the operator and an angle of repose talus slope will form at the toe of the slope. The talus slopes will be allowed to revegetate itself naturally. The remaining portion of the third type of benches will be revegetated as provided for the first and second type benches. [p. IV-13]
11. The number and type of final bench configurations will vary throughout the mine area. Excess overburden and waste rock will be available throughout the mined area. [p.IV-13]
11. Upon completion of mining activities on any given bench, recontouring and ripping of the bench and adjacent highwall will be performed. Following placement of the coarse material substrate and loess material cover soil, and when weather permits, the site will be revegetated. Exposed soils will be mulched for erosion control when seeding must be delayed because of unfavorable weather conditions. Tree and shrub planting will occur the first autumn after ground cover has been established. [p.IV-13]
12. Native plant species suited to open and forested areas will be selected for test plots on the basis of climactic zone, soil type, moisture requirements and availability. In addition, the following guidelines will be followed: for each vertical layer from ground to tree canopy, a mixture of species will be used to include species that exhibit both warm and cool season growth and provide a balance of habitats and cover for a broad range of birds, mammals, reptiles and amphibian animals. Seeding and planting will be done at the beginning of the first growing season following seed bed preparation, preferably just prior to winter precipitation. [p.IV-13 & 14]

13. Commencing in approximately 1998, Angell Bros. will also establish a number of vegetation test plots, as specified on page IV-14 of the Report.
14. Angell Brothers will address ODF&W concerns regarding the wildlife corridor by restricting mining near the conservation easements adjacent to McNamee Road, if necessary, until forest cover has been reestablished. [p.IV-14]
15. Maintain vegetated buffers along the entirety of the site along Highway 30. [p.IV-14]
16. The Applicant shall engage in contemporaneous reclamation that promotes early visual screening of benches *immediately* following mining of upper benches. [p.IV-14]
18. Significantly increase the length of a lower gradient reclaimed channel and increase in acreage the final pit floor to allow construction of riparian habitat and wetlands along the pit floor. [p.IV-14]
19. Direct haul back of reclamation materials to retain maximum viability of topsoil. [p.IV-14]
20. Establish the third type of bench configuration wherever possible to achieve diversity in character of the reclaimed hillslopes. [p.IV-14]
21. The mined area will consist of an irregular, geometrically diverse series of benches and steps. [p.IV-15]
22. Mining activities will be conducted so that benches follow existing contour lines. [p.IV-15]
23. The principal processing, weighing and loading facilities will remain at their present location and will be screened from the public view by the Block 4 vegetated buffer strip. [p.IV-15]
24. The Applicant shall assure "full retention" of the existing land contours and all the vegetation near Highway 30. [p.IV-15]
25. Upon final reclamation, all structures, equipment, and refuse will be removed from the site. Excess fill from the waste rock stockpiles will be placed on the quarry floor, graded and covered with loess coversoil. All temporary culverts will be closed and abandoned in place. The quarry floor and operational areas will be shaped, graded, and revegetated to blend with the rest of the area. This area will be left in a condition with the final beneficial use of the property as an area protected by a conservation easement. [p.IV-16]

26. Reclamation success shall be monitored by the mine operator, as well as by DOGAMI annual monitoring as specified on p. IV-16 of the Report. [p.IV-16]
27. Monitoring will be tied to specific revegetation and hydrologic objectives. [p.IV-16]
28. Multnomah County shall require the Angell Brothers expanded quarry site to take the following measures as part of its operations and reclamation plan:  
  
Minimization of the area mined at any given time.  
Demonstration that reclaimed areas are capable of supporting forest vegetation.  
Simultaneous reclamation along with mining to minimize non-vegetated areas.  
Reclamation of the site so as to best enhance wildlife values. [p.VI-25]
29. Multnomah County shall require mining within a Goal 5 protected site to comply with standards identified in the Goal 5 protection program to protect scenic views. [p.VI-18]
30. Multnomah County shall require the Angell Brothers expanded quarry site to take the following measures as part of its operations and reclamation plan:  
  
Minimization of the area mined at any given time.  
Demonstration that reclaimed areas are capable of supporting forest vegetation.  
Simultaneous reclamation along with mining to minimize non-vegetated areas.  
Screening of the operating face from key viewing areas as much as practicable through techniques such as landscaping, berming and maintenance of intervening topography. [p.VI-18]
31. Mining on the Angell Brothers site should not take place within the North Angell Brothers Creek watershed. [p.VI-16] Expansion of the Angell Brothers quarry site should be allowed except for a 200 meter buffer area along the south and west sides of the property, and except for the North Angell Brothers creek watershed. [p.VI-17]
32. Quarry operations and reclamation of the quarry site should minimize impacts upon scenic views and wildlife habitat, by 1) maintenance of the natural terrain and vegetation within the buffer area and the North Angell Brothers watershed, and 2) a sequential mining plan which minimizes the amount of disturbed area at any one time during the life of the quarry operation and 3) a reclamation plan which sequentially restores the site to its natural vegetation after quarrying is completed. [p.VI-17]

33. Any mining must be conducted under appropriate DEQ and DOGAMI operating permits that insure acceptable levels of air and water quality and provide for bank stabilization, erosion control and reclamation. [p. VI-11]
34. Compliance by Angell Brothers and Linnton Rock Corporation with the requirements of the settlement agreement reached with the Friends of Forest Park. This agreement prohibits mining in a 73-acre scenic buffer area at the north end of the property, to provide conservation easements in areas designated as preserves. The preserves include an area of about 90 acres on the north of the property, a 625-foot strip on the south of the site, and an area on the west of the site that encompasses the North Angell Brothers stream drainage. No residences may be constructed on the site and the entire property will be burdened by a conservation easement at the conclusion of mining of the property. A Hiking Trail easement is also required. [p.VI-23]



DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT  
2115 SE MORRISON STREET  
PORTLAND, OREGON 97214 (503) 248-3043

RECEIVED  
OCT 31 1996

Multnomah County  
Permits Section

## NOTICE OF REVIEW

1. Name: ANGELL BROS.
2. Address: P. O. BOX 83449, PORTLAND, OR 97283
3. Telephone: ( 503 ) 286 - 4201

4. If serving as a representative of other persons, list their names and addresses:

Frank M. Parisi, Esq. - Attorney for Angell Bros.

Parisi & Parisi

Benj. Franklin Plaza, Suite 680

One S.W. Columbia

Portland, OR 97258

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?

Hearings Officer Decision in the matter of CU 6-96 and SEC 18-96.

6. The decision was announced by the Planning Commission on October 22, 1996

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
Applicant

96 OCT 31 PM 4:27  
MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS

8. Grounds for Reversal of Decision (use additional sheets if necessary):

See attached

9. Scope of Review (Check One):

(a) ☐ On the Record

(b) ☐ On the Record plus Additional Testimony and Evidence

(c) ☒ De Novo (i.e., Full Rehearing)

10. If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.

This does not apply pursuant to Resolution 95-55 dated March 16, 1995

Signed: Frank M. Parisi Date: 10/31/96  
FRANK M. PARISI for F.H. "Skip" Anderson

For Staff Use Only

Fee:

Notice of Review = \$500.00

Transcription Fee:

Length of Hearing x \$3.50/minute = \$

Total Fee = \$

Received by:

Date:

Case No.

PARISI

&

PARISI

DPDPDP

A Limited Liability  
Partnership

October 31, 1996

96 OCT 31 PM 4:27

Via Telecopy and Hand Delivery

Mr. Phillip Bourquin  
Multnomah County Planner  
Transportation & Land Use Planning  
2115 S.E. Morrison  
Portland, OR 97214

RECEIVED

1996

Multnomah County  
Permits Section

Re: Angell Bros. Quarry  
Our File No. 110.01

Dear Mr. Bourquin:

Enclosed is Angell Bros. Notice of Review, together with a check in the amount of \$500.00, which represents the filing fee. You will see that I have signed the application, pursuant to a Power of Attorney given to me from Skip Anderson. Please call me if you have any questions.

Very truly yours,



Frank M. Parisi

Enclosure

cc (via telecopy): Steve Oulman, DLCD  
Dick Angstrom, OCAPA  
Skip Anderson

Suite 680  
Benj. Franklin Plaza  
1 S.W. Columbia  
Portland, OR 97258

Telephone:  
(503) 417-1144  
Facsimile:  
(503) 721-2300  
Email:  
parisi@pacifier.com

EXHIBIT

L1



DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT  
2115 SE MORRISON STREET  
PORTLAND, OREGON 97214 (503) 248-3043

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OCT 31 1996

Multnomah County  
Permits Section

## NOTICE OF REVIEW

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2. Address: P. O. BOX 83449, PORTLAND, OR 97283
3. Telephone: ( 503 ) 286 - 4201

4. If serving as a representative of other persons, list their names and addresses:  
Frank M. Parisi, Esq. - Attorney for Angell Bros.

Parisi & Parisi

Benj. Franklin Plaza, Suite 680

One S.W. Columbia

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5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?

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7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
Applicant

96 OCT 31 PM 4:27

EXHIBIT

L2



8. Grounds for Reversal of Decision (use additional sheets if necessary):

See attached

9. Scope of Review (Check One):

(a) ☐ On the Record

(b) ☐ On the Record plus Additional Testimony and Evidence

(c) ☒ De Novo (i.e., Full Rehearing)

10. If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.

This does not apply pursuant to Resolution 95-55 dated March 16, 1995

Signed:

*Frank M. Parisi*

Date:

*10/31/96*

FRANK M. PARISI for F.H. "Skip" Anderson

For Staff Use Only

Fee:

Notice of Review = \$500.00

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Total Fee = \$

Received by:

Date:

Case No.

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OCT 31 1996

multnomah County  
Permits Section

10. **GROUNDS FOR REVERSAL OF HEARINGS OFFICER** PM 4: 28  
**DECISION IN THE MATTER OF CU 6-96 AND SEC 18-96**

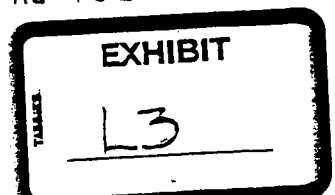
1. The Hearings Officer misinterpreted the amendments to the Multnomah County Comprehensive Plan, Zoning Ordinance and Sectional Zoning Maps that were completed during Periodic Review.

The amendments include, among other things, the May 1996 West Hills Reconciliation Report (the "Reconciliation Report"), which incorporates the August 19, 1995 Grant of Conservation Easement (the "Conservation Easement"), and the December 12, 1995 Angell Bros. Operating and Reclamation Plan (the "Operating and Reclamation Plan"). The Hearings Officer apparently believed that the Reconciliation Report merely outlined certain policy directives which Angell Bros. has now attempted to meet by way of the Operating and Reclamation Plan and the Conservation Easement. This is incorrect. Page I-4, Reconciliation Report states:

*\* \* \* Multnomah County agreed to enter a mediation process with the Department of Land Conservation and Development. The results of that mediation process are presented as revisions to the Reconciliation Report in the attached document. [emphasis added]*

In case this is not clear, the following history should be kept in mind: The Reconciliation Report was first completed by the Multnomah County Division of Planning on May 23, 1994, and was submitted as a part of its Periodic Review Order. The Reconciliation Report was rejected by DLCD. Innumerable discussions were had about revising it. The Reconciliation Report was not put in final form and approved by LCDC until after the mediation session occurred in July, 1995. The mediation session caused various additional documents to be drafted in August and September, 1995 to embody the settlement. During the mediation session, changes were negotiated to an early draft of the Operating and Reclamation Plan. The Conservation Easement was also negotiated. This occurred with the input of all the then interested parties, including the representative environmental groups and all affected state agencies. Formal agreements were drawn up, reviewed and signed. The Reconciliation Report was then amended (in August and September, 1995) to incorporate the Conservation Easement and the Operating and Reclamation Plan, which contain the "site specific requirements." The Reconciliation Report specifically adopts a

96 OCT 31 PM 4: 28



Program to Achieve the Goal on Page VI-22 - 23, which is quoted in the footnote<sup>1</sup>. The Program to Achieve the Goal incorporates the Conservation Easement. The Conservation Easement, in turn, incorporates the Operating and Reclamation Plan. The Reconciliation Report, together with the Conservation Easement and the Operating and Reclamation Plan are the County's "Program to Achieve the Goal" within the meaning of Goal 5. This is the operative "site specific program," not the various discussion items that the Hearings Officer focused on.

[Remainder of page intentionally left blank]

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<sup>1</sup> e. Program to Achieve the Goal

*Principal parties to the dispute surrounding development of the Angell Brothers quarry elected to pursue a structured mediation, which resulted in settlement terms being embodied in a Conservation Easement between Angell Brothers (the mining operator), Linnton Rock Corporation (the land owner of the Angell Brothers site), and Friends of Forest Park (the lead environmental group). Under the terms of the Conservation Easement, Angell Brothers agreed to mine only in particular areas, to give Conservation Easements in perpetuity to the Friends of Forest Park in areas called Preserves, and not to mine in a scenic buffer area of approximately 73 acres on the northern end of the site bordering Highway 30. At the conclusion of mining and reclamation, Angell Brothers will place the entire 397 acre site in a conservation easement. The Preserves include a large area of approximately 90 acres on the north of the site, a 625-foot strip on the south of the site, and an area on the west of the site that encompasses the North Angell Brothers stream drainage. Angell Brothers has also amended its agency permit applications, in accordance with the terms of the Easement. Angell Brothers has also agreed to convey a Hiking Trail Easement across the site upon the conclusion of mining, and has further agreed to promote and maintain Western Oregon old growth conditions on all of the Preserves and all of the scenic buffer area in perpetuity. Angell Brothers has also agreed not to allow any residences to be constructed on any portion of the property. The easements will be signed by all parties and deposited in an escrow with instructions to record the easements, if and when all agency permits in connection with the Angell Brothers mining are granted, periodic review at both the County and LCDC level is concluded on the site, and mining commences. The Angell Brothers Conservation Easement is the largest single conservation easement conveyed to the Friends of Forest Park. It is anticipated that Friends of Forest Park will assign the easement to METRO as part of the Greenspaces program. (Page VI-22 - 23, Reconciliation Report)*

Accordingly, Condition No. 15, which requires Angell Bros. to revise its Operating and Reclamation Plan, should be eliminated, along with Appendix A, which purports to contain some of the "site specific requirements." A variety of comments by the Hearings Officer to the same effect on the following pages of her Decision should also be eliminated:

Page Number	Text
2	Comments in the first paragraph regarding the reclamation approach the Applicant told the County it would implement and the "different" approach now being used.
9	Comments in the paragraph labeled "Finding" to the effect that "the Angell Bros. site has been determined to be an appropriate site for mining activity by the County <u>subject to compliance with the following criteria.</u> " [emphasis added]
10-15	Comments which purport to explain that the Applicant has not met its "commitments" or "promises" or burden of proving that all of the site specific requirements have been met or that the Mine Plan has been "changed" <sup>2</sup> or that concurrent reclamation has been "abandoned," or that the "Preserves" have not been specifically located, and other points (essentially all the text on these pages).
21	Comments in the second paragraph of the section labeled "Finding" to the effect that various requirements were not addressed by the Applicant.
25-27	Comments regarding the failure to meet the four directives for protection of fish and wildlife habitat
29	Comments in Section 3, "Phasing Program," in the paragraph labeled "Finding" to the effect that the Applicant is not relieved of requirements demonstrating compliance with relevant land use criteria.

<sup>2</sup> It is a mystery how such an enormous degree of confusion could have occurred. Seth Tane, for instance, submitted as an exhibit a drawing produced by David Evans & Associates (Exhibit I-8) that represents a conceptual mine plan that is at least five years out of date, and was completed before any surveys were done and before even the Esther Lev Wildlife Study was completed.

Page Number	Text
34	Comments under the section labeled "Nonregulatory" to the effect that the Applicant has not shown that it will "minimize the area mined" and that the Applicant has not satisfied the conditions of the Reconciliation Report.
35	Comments under the section labeled "Nonregulatory" in the paragraph labeled "Finding" to the effect that Applicant has not met the reclamation requirement.
37	Comments to the effect that the delineation of boundaries of the Preserves was done in a private setting rather than in a land use regulation setting, and that the North Angell Bros. Stream drainage is actually different from the pertinent area described in the Preserves.

**2. The Hearings Officer misinterpreted the amendments to the Zoning Code in Multnomah County Ordinance Numbers 804, 827 and 858.**

The mediated agreement that was incorporated into the Reconciliation Report and adopted by the County and approved by LCDC to settle the Periodic Review disputes approved a site specific Program to Achieve the Goal, as stated above. The parties to the mediation understood that these documents would govern mining on the Angell Bros. site. These documents were not intended to be later re-evaluated under terms of the Zoning Ordinance<sup>3</sup>. In addition, as stated in numerous places throughout the Zoning Code, as well as in the Policy section of the Multnomah County Comprehensive Framework Plan, if any ambiguity arises as to which standard should govern -- the Comprehensive Plan Amendments or the Zoning Code -- the Comprehensive Plan Amendments dealing with site specific issues must control. See e.g. MCC 11.15.7325(C), (C)(1)(d); (C)(1)(e); (2)(b); (4); (6); and (8). Comprehensive Framework Plan Policy 16-B, Strategy M provides as follows:

<sup>3</sup> The only issues that presumably could be re-evaluated in the Conditional Use process would be changes to the Operating and Reclamation Plan or the Conservation Easement, but even in this situation, the standard of review for the County would be first, whether the changes were consistent with the Program to Achieve the Goal, and only secondarily whether they were consistent with the Zoning Code.

- M. *The county shall impose conditions on surface mining when necessary to lessen conflicts identified as part of a site-specific Goal 5 analysis. Where such conditions conflict with criteria and standards in the Protected Aggregate and Mineral Resources Overlay, the conditions developed through the Goal 5 process shall control. [Emphasis added]*

The statements in the sections of The Zoning Code listed above and in Policy 16-B are also the rule of law. Baker v. City of Milwaukie, 271 Or 500, 511-512 (1975).

**3. The Hearings Officer misinterpreted Section 11.15.7325(C)(1) of the Zoning Code, which deals with access and traffic.**

The Hearings Officer believed that this section required Angell Bros. to submit various information regarding traffic for evaluation by the County Engineer, who could then determine whether mining would be allowed, based upon his evaluation of traffic issues.

The Hearings Officer's interpretation may appear to be correct, looking at the literal language of the Code (which requires the applicant to, at the very least, identify the most commonly used haul routes), but the conclusion that the Traffic Engineer can then deny the right to mine, is incorrect, for three principal reasons. First, the Reconciliation Report specifically addressed traffic as a "potential conflicting use," and rejected the claim on Page IV-19, as quoted in the footnote<sup>4</sup>, by stating that Highway

---

<sup>4</sup> Impact Area

\* \* \* \*

*Increased mine truck traffic on US Highway 30 has been identified as a concern relative to any expanded activity at this site (Linnton Letter).*

*The structural cross section of US Highway 30 is designed to accommodate truck traffic. This includes the type of traffic that is generated by the quarry. Therefore, the estimated maximum of 250 truck trips per day (estimated by applicant's submittal in PR 7-92) will not adversely effect the normal life cycle of the structural cross section of the roadway.*

*The "1992 Oregon Department of Transportation Traffic Volume Tables" indicate the section of Highway 30 north of the Sauvie Island Bridge has an average daily trip (ADT) count of 16,000, and the portion south of the bridge 20,000 ADT. Using those 1992 tables, ODOT staff computed the peak hour peak direction traffic volume at 1,200 vehicles. Given the four travel lanes with center left configuration, ODOT staff estimates the 1992 Level of Service to be "B". Consequently, Highway 30 has sufficient capacity to accommodate increased truck volume in the vicinity of the Sauvie Island Bridge.*

*Since ODOT indicates that US Highway 30 has sufficient capacity and structural capability to safely handle the traffic generated by the quarry operation, traffic on Highway 30 will not be considered a conflicting use. (Page IV-19, Reconciliation Report)*

30 has adequate capacity and structural capability and therefore no traffic issues are presented by operations at the Angell Bros. site. In other words, the Reconciliation Report adopted a "site specific" resolution of potential traffic issues as part of the "Comprehensive Plan Amendment." A reading of the Zoning Code that allows traffic issues to once again become an impediment to mining must be read to harmonize with the site specific resolution in the Comprehensive Plan, which stated that traffic was not an issue, given the proximity, capacity and condition of Highway 30. Thus, while the applicant may have to supply a list of haul routes, the County Engineer should not be able to deny the applicant's right to mine.

Second, the MCC sections regarding access and traffic were specifically intended to apply only to sites, like the Howard Canyon site, where the site is served directly by a local collector road where traffic near the site entrance presents a genuine issue of capacity, safety, and structural capability. The Angell Bros. site is served only by State Highway 30, for at least 1.9 miles in each direction, so that only destination traffic is an issue.

Third, strategy M of the Multnomah County Comprehensive Framework Plan Summary (quoted above) provides that while conditions may be imposed "when necessary to lessen conflicts identified as part of a site specific Goal 5 analysis [none of which were identified here] \* \* \* where such conditions conflict with criteria and standards in the protective Aggregate and Mineral Resources Overlay the conditions developed through the Goal 5 process shall control."

Accordingly, Condition No. 14, together with associated comments in the Hearings Officer's Decision on pages 17 through 20, should be deleted.

4. The Hearings Officer's decision on traffic has been superseded since the date of her decision by the County Engineer's issuance of a rule, effective October 31, 1996, which restricts "through truck traffic" on Newberry Road. A similar rule is expected for McNamee Road.

The restriction by the County Engineer applies to Angell Bros. as a police power regulation, regardless of any opinion by the Hearings Officer, the public, or Angell Bros. This regulation solves the Newberry Road traffic problems, which were the basis for the Hearings Officer's imposition of traffic conditions. There is thus no opportunity to make a land use decision about traffic management on Newberry Road. Accordingly, Condition No. 14, together with comments in the Hearings Officer's Decision on pages 17 - 20, should be deleted and a statement inserted to refer to the fact that the County Engineer's regulation has mooted the issue.

5. The Hearings Officer misinterpreted the Program to Achieve the Goal, which was based upon the assumption that the existing hours of operation at the Angell Bros. site (6:00 a.m. through 10:00 p.m., Monday through Saturday) would continue for the life of the mine.

The Program to Achieve the Goal contained as a fundamental assumption in the Conservation Easement and in the industrial noise analysis by Daley-Standlee and Associates that mining would occur as rapidly as possible with the existing processing equipment and the existing Operating and Reclamation Plan, and that this should be encouraged so that reclamation could commence as rapidly as possible, and so that the post mining use (old growth habitat without logging) could be achieved as quickly as possible.

The Conservation Easement was negotiated with this in mind. The Conservation Easement is subject to termination under paragraph 8.5 if the "Minimum Tonnage" is not achievable. The "Minimum Tonnage" is defined as 107% of the prior years' production, commencing with 1,700,000 tons in 1995. This level of production cannot be achieved with a 31% cutback in operating hours. Accordingly, the first sentence of Condition No. 7 should be revised to state that the existing hours of operation may be continued.

6. The Hearings Officer misinterpreted the Multnomah County Comprehensive Framework Plan Summary, Policy 16-B, Mineral and Aggregate Resources, including Strategies G, M, O and P, which recognize DOGAMI's jurisdiction to evaluate mining methods, and which describe a land use process that is supposed to protect significant sites like the Angell Bros. site from after-the-fact conditions and restrictions.

The Strategies read as follows:

G. *Mining and the associated processing of aggregate and mineral materials, in excess of the limited exemptions in Subsection H below, may only be allowed at sites included on the "protected sites" inventory. Approval of operation mining at a "protected site" shall be reviewed as a conditional use. The general conditional use provisions regarding time limits, conditions, restrictions, and approval criteria. [sic] (MCC 7110(C), 7110(E), 7115, 7120, 7122, and 7125, October, 1994), shall not apply. [Emphasis added]*

\* \* \*

M. *The county shall impose conditions on surface mining when necessary to lessen conflicts identified as part of a site-specific*



Goal 5 analysis. Where such conditions conflict with criteria and standards in the Protected Aggregate and Mineral Resources Overlay, the conditions developed through the Goal 5 process shall control. [Emphasis added]

- O. The county recognizes the jurisdiction of the Department of Geology and Mineral Industries (DOGAMI) over mined land reclamation pursuant to ORS 517.750 to 517.900 (1994) and the rules adopted thereunder. [Emphasis added]
- P. Unless specifically determined on a case by case basis, it shall be the policy of the county, that DOGAMI delay its final decision on approval of a reclamation plan and issuance of an operating permit until the county decides all comprehensive plan amendments and/or conditional use approvals. It is also the policy of Multnomah County to participate in and cooperate with DOGAMI in their review of a permit application to that agency. [Emphasis added]

\* \* \* \*

The Hearings Officer's decision turns the Goal 5 Program on its head and allows the site specific program in the Comprehensive Plan to become subject to the terms of the Zoning Ordinance. The effect of this is to regulate mining activity as a nuisance, rather than protect the mining site from encroachment by uses, such as residences, which attempt to impose their sensitivity to industrial activities on mining operations.

Accordingly, each of the items mentioned in Paragraph No. 1 of this Grounds for reversal should be deleted.

**7. The Hearings Officer misinterpreted the Program to Achieve the Goal with respect to the level of protection afforded to North Angell Bros. Stream.**

The Hearings Officer heard testimony from a neighborhood group (See Record item E-3, page 11) that the USGS map appeared to show a "tributary" of North Angell Bros. stream located within the Preserves, and that if this were true, the "watershed" of North Angell Bros. stream was not being protected, as apparently called for in the Reconciliation Report. The Hearings Officer concluded that the Program to Achieve the Goal was intended to protect a theoretical maximum watershed of approximately 350 acres surrounding North Angell Bros. Stream.

Both the "tributary" argument offered by the neighbors, and the Hearings Officer's interpretation of the Program to Achieve the Goal are incorrect.

Chapter 3, Stream Resources, of the Reconciliation Report described the results of an elaborate County study of streams that started with a list of theoretical maximum watersheds and a variety of theoretical values that could be placed on stream resources. Data was then collected, "impact areas" were established, and streams were ranked according to the values observed in the field. Only the main channel of North Angell Bros. Stream was listed, and it was given value only to the extent of preserving (a) its identified riparian area, and (b) its flows into Burlington Bottoms. See Significance Matrix on page III-50 and Stream Profile on pages III-106 to 108. The Stream is depicted on a Map at page III-143 as a single stem. The riparian area is described in the Reconciliation Report as being between 55 feet to 150 feet in width with a median width of 78 feet (page III-16). The length on North Angell Bros. Creek is stated to be .9 miles on pages III-5 and III-12 of the Reconciliation Report. These boundaries (i.e. a stream length of .9 miles and riparian area of 55 to 150 feet wide) are the only areas ultimately protected by the Program to Achieve the Goal. On page VI-19, the Reconciliation Report states "the impact area for the stream study conducted by SRI-Shapiro for Multnomah County is defined by the existence of the riparian area." On page VI-25 the Summary states "the scenic area, stream riparian area, aggregate resource, and wildlife habitat areas should be designated 3-C" [Emphasis added]. There is nothing in the Program to Achieve the Goal about protecting a "watershed."

The Hearings Officer believed that the theoretical watershed (350 acres) of North Angell Bros. stream should nonetheless be used, because the stream setback that was surveyed and incorporated in the legal description of the Preserves in the Conservation Easement was referred to with the word "watershed." This is completely wrong. It ignores the actual findings of the stream studies, which listed the value of the stream as being limited to its identified riparian area and its flows into Burlington Bottoms.<sup>5</sup> It also ignores the fact that the setback limits for mining were established during mediation to protect riparian and water supply values in a walking tour of the area. The setbacks were surveyed and incorporated into the Operating and Reclamation Plan and the Conservation Easement, and ultimately into the Program to Achieve the Goal in the Reconciliation Report.

The neighbors' discussions about a "tributary" to North Angell Bros. stream is a red herring in any event. The area in question is not part of the "watershed" in the sense that it is a recharge area that contributes water to North Angell Bros. stream which in turn discharges the water to Burlington Bottoms. Protection for this area was explicitly considered during the walking tour of the area. The so called "tributary" was observed not to flow into the main stem or into Burlington Bottoms, but rather to flow through a low lying area that had been used as a settling pond, and to be without any identified riparian zone for its entire length. There was thus no reason to protect it.

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<sup>5</sup> The length alone excludes the "tributary" sought to be protected by the opponents, because this would add an additional .5 miles of length, which would make the total length of North Angell Bros. Stream 1.6 miles, not the .9 miles listed in the Reconciliation Report.

Accordingly Condition No. 12 and the Hearings Officer's associated comments on pages 35 to 37 should be deleted.

**8. The Hearings Officer erred by adding:**

(a) Gratuitous conditions in the last sentence of Condition No. 3 and in Condition No. 16 regarding changes in operation, compliance problems that may arise and possible enforcement actions that may ensue;

(b) Gratuitous language on page 19 of the Hearings Officer's Decision about whether submittal of a Traffic Management Plan by Angell Bros. would require a new "land use decision" by the County;

(c) Gratuitous language about whether Angell Bros. should "halt" certain already commenced mining operations;

(d) Gratuitous language on page 21 about whether a future finding about compliance with the scenic criteria would constitute a new land use decision by the County; and

(e) Gratuitous comments on page 33 about the frequency of Planning Director inspections of the site.

These conditions were probably intended as explanatory, but if read literally they could arguably bind Multnomah County and Angell Bros. to procedures or outcomes that properly are a matter of discretion or interpretation for County Counsel or the Planning Director in the future. These comments and conditions should be deleted.

**9. The Hearings Officer's decision on how to resolve concerns regarding tracking or discharging mined material onto public right-of-way is not supported by the evidence.**

A claim was made at the hearing by Candace Staples that during an earlier clay-mining phase (which Angell Bros. clarified had ended in 1991) clay particles were tracked onto Highway 30 beyond normal levels. This evidence was introduced for impeachment purposes to suggest that Skip Anderson was a bad guy and that the Hearings Officer couldn't believe a word he said. The Hearings Officer did not accept the testimony for that purpose, but was concerned that tracking or discharging of material on the highway should not occur. Angell Bros. clarified that the clay-mining was the subject of a separate Conditional Use Permit that has since expired, and that clay mining was done solely for the purpose of obtaining sufficient covering material to close Phase I of the St. Johns Landfill. The source of the clay discharge was from truck tires, not truck loads. This problem was solved by paving the haul road and enlarging the entrance onto Highway 30 so that trucks would not have to travel off a paved surface while being loaded on the Angell Bros. site, and by installing a cattle-guard to dislodge

particles from tires. In addition, Angell Bros. purchased a water truck which was used on weekends during this period of time so that Highway 30 was in a good condition for weekend cyclists. There is no current problem with tracking or discharge of clay material from trucks onto the highway.

In Condition No. 6, the Hearings Officer suggested that if a problem occurs in the future "all trucks being loaded at the mine site [should] be covered by the driver prior to leaving the mine site and [Angell Bros.] shall take whatever corrective actions [are] directed by the judicial or quasi-judicial officer who has jurisdiction over the enforcement matter." The problem with this solution is that covering the loads would not prevent the problem that occurred in the clay-mining phase. In addition, stating that Angell Bros. must "take any actions required during enforcement," if understood literally, eliminates Angell Bros.' potential appeal rights. Accordingly, Condition No. 6 should be eliminated. The effect of this is to leave in place the condition that there be no off-site discharge of material on to any public right-of-way and that any violation of this is subject to the normal enforcement proceeding.

Associated comments in the "Findings" paragraph on page 16 of the Decision should also be deleted.

**10. The Hearings Officer misinterpreted the Conservation Easement by concluding in Condition No. 13 that Angell Bros. should record the Conservation Easement "upon final land use approval of this application and prior to commencement of quarry expansion \* \* \* \*."**

The actual terms that control the date of recording the Conservation Easement are in Section 16 of the Conservation Easement. Essentially they require Angell Bros. to record the easement when it has obtained all mining permits, and resolved any appeals in its favor. Condition No. 13 should be revised to state that the Applicant shall record the Conservation Easement in accordance with Paragraph 16.

**11. The Hearings Officer misinterpreted the terms of DEQ Air Contaminant Discharge Permit in Condition No. 9 by requiring the DEQ Air Contaminant Discharge Permit to "clearly identify the mine operation areas approved by DEQ."**

There is no such requirement in Air Contaminant Discharge forms or in DEQ Regulations beyond the requirement that the Applicant must list the location of the equipment subject to the Air Contaminant Discharge Permit. Accordingly, the sentence quoted above should be deleted from Condition No. 9.

**12. The Hearings Officer misunderstood and mischaracterized terminology about the locations of the "primary crusher," the "principal crusher" and "principal processing equipment" in her comments on pages 13, 18 and 21.**

The Mine Plan calls for the primary crusher - i.e. the cone crusher that crushes large material immediately after it is extracted - to be moved to the place designated on Figures 4 and 5. The secondary crusher, which is located on the floor of the pit near the stockpiles and scales, will not be moved. The secondary crusher was confusingly referred to by Angell Bros. as the "principal crusher" or "principal processing" facility.

Since the secondary crusher will not be moved, the Hearings Officer's comments on pages 13, 18 and 21 should be deleted, along with similar comments in Conditions 12 and 15.

**13. A variety of items in the Hearings Officer's decision should be clarified, as follows:**

(a) Condition No. 17 does not state explicitly how the Applicant will assure DOGAMI, the County, and the public that its proposed blasting activities will not adversely affect the quality or quantity of groundwater within wells in the vicinity. The solution to the potential ambiguity could be cured by providing the information outlined in Appendix E-1 of the Operating and Reclamation Plan. Appendix E requires construction of an observation well along the current middle drainage stream course at a location approximately 2,000 feet west of the existing office facility near the western boundary of Block 5 at a time when a minimum elevation of 300 feet is achieved at this location. This information, together with the five-year progress and summary reports to DOGAMI, should be made available to the County. If Condition No. 17 is revised accordingly, it will not be ambiguous, and better information will be generated.

(b) A similar issue occurs with respect to potential ground vibration from blasting. Although the Hearings Officer resolved this issue against persons who claimed that such studies were needed (see page 31 of the Decision), Angell Bros. has offered to provide seismic studies when mining reaches a certain point. This will permit DOGAMI to halt mining if DOGAMI has any question that groundwater may be damaged. As explained at the hearing, Angell Bros. has conducted seismic testing in the past, but since the results were always "non detect" as to the blasting activity, the tests are now conducted on a more infrequent basis.

(c) Condition No. 4 should be clarified to state that the existing "single point of access" onto Highway 30 allows entry both North and South onto Highway 30.

(d) Condition No. 4 should be clarified to make clear that Angell Bros. will not use the Adams' easement for commercial hauling, but may use it for emergencies, fire suppression, inspections, reclamation, etc.