ANNOTATED MINUTES

Thursday, August 8, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:35 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley and Gary Hansen present, and Commissioner Tanya Collier excused.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-8) WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

C-1 RESOLUTION Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

RESOLUTION 96-134.

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-2 CU 3-96 Hearings Officer Decision APPROVING, With Conditions, Conditional Use Request to Operate a Home Occupation in the Exclusive Farm Use (EFU) Zone, on Property Located at 21844 NW GILLIHAN ROAD, PORTLAND

C-3 CU 4-96/HV 6-96/SEC 10-96 Hearings Officer Decision APPROVING, With Conditions, Conditional Use Permit, Major Variance and Significant Environmental Concern Permit to Establish a Single Family Residence on Lands Designated for Commercial Forest Use and Significant Environmental Concern, Located at Approximately 11580 NW ROCK CREEK ROAD, PORTLAND

DEPARTMENT OF HEALTH

C-4 Intergovernmental Revenue Agreement 200037 with Mt. Hood Community College to Provide a 0.5 FTE Community Health Nurse to the Mt. Hood Community College Head Start/Oregon Prekindergarten Program

C-5 Intergovernmental Revenue Agreement 200457 with Portland Public Schools to Provide Early Intervention and Early Childhood Special Education Services for Multnomah County Preschool Children with Disabilities

DEPARTMENT OF JUVENILE JUSTICE SERVICES

C-6 Intergovernmental Revenue Agreement 700466 with Clatsop County for the Utilization of One Bed Space for the Detention of Juveniles Referred to the Clatsop County Juvenile Justice System

DEPARTMENT OF COMMUNITY CORRECTIONS

C-7 Amendment 2 to Intergovernmental Revenue Agreement 900265 with the City of Portland to Fund Services for Women Leaving Prostitution

C-8 Amendment 2 to Intergovernmental Revenue Agreement 900395 with the City of Portland to Provide Partial Funding for the Domestic Violence Diversion Program

REGULAR AGENDA

PUBLIC COMMENT

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

DIANNA ROBERTS COMMENTED REGARDING PORTLAND MULTNOMAH COMMISSION ON AGING LETTER ADVISING MS. ROBERTS IS INELIGIBLE TO BE APPOINTED TO THE PMCoA ADULT FOSTER CARE HOME COMMITEE AS SHE IS A PROVIDER NOT IN GOOD STANDING WITH THE LICENSING AGENCY. MS. ROBERTS ADVISED SHE FEELS THE HEARINGS OFFICER IS

NOT INDEPENDENT BECAUSE HE IS CONTRACTED BY THE COUNTY. MS. ROBERTS COMMENTED ON STATE OF OREGON ADMINISTRATIVE RULES FOR LICENSURE OF ADULT FOSTER HOMES AND THE MULTNOMAH COUNTY ADMINISTRATIVE RULES FOR LICENSURE OF ADULT CARE HOMES.

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

R-2 ORDER Authorizing an Exemption to Specify the Notifier Brand Name for Purchase of Fire Alarm Equipment and Components

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-2. LARRY SALTZMAN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. ORDER 96-135 UNANIMOUSLY APPROVED.

(Adjourn as the Public Contract Review Board and reconvene as the Board of County Commissioners)

DEPARTMENT OF SUPPORT SERVICES

R-3 RESOLUTION Repealing Resolutions 90-57 and 93-338 and Directing the Proceeds from the Sale of Unrestricted County Property to the Capital Improvement Fund and the Capital Acquisition Fund

UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, R-3 WAS UNANIMOUSLY SET OVER TO THURSDAY, AUGUST 15, 1996.

R-4 Consideration of ORDER Approving Recommendation to Award Contract for Mental Health Crisis Response System to Providence Health System

CHAIR STEIN EXPLAINED PROCESS. JEFF BAER PRESENTED STAFF RECOMMENDATIONS AND

RESPONDED TO BOARD QUESTIONS. MENTAL HEALTH SERVICES WEST BOARD PRESIDENT TOM MARKGRAF AND ATTORNEY PAUL NORR PRESENTED AND SUBMITTED WRITTEN TESTIMONY IN SUPPORT OF BOARD RECONSIDERATION AND AWARDING OF CONTRACT TO MENTAL HEALTH SERVICES WEST. KRISTIN ANGELL TESTIFIED IN SUPPORT OF BOARD RECONSIDERATION AND AWARDING OF CONTRACT TO MENTAL HEALTH SERVICES WEST. MAGNUS LAKOVICS OF PROVIDENCE TESTIMONY IN SUPPORT OF PROPOSAL AND RESPONSE TO BOARD QUESTION. DOLORES MORGAN, ANN UHLER AND RICHARD HARRIS TESTIMONY. COUNSEL JOHN THOMAS DISCUSSED ZONING ISSUES AND RESPONDED TO BOARD QUESTIONS. CITY PLANNER SUSAN FELDMAN RESPONSE TO BOARD QUESTIONS AND DISCUSSION. MR. NORR RESPONSE TO BOARD QUESTIONS AND DISCUSSION. PETER FRY COMMENTS REGARDING PROCESS. JEFF BAER RESPONSE TO BOARD QUESTIONS. COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF ORDER AWARDING CONTRACT TO PROVIDENCE HEALTH SYSTEM. BOARD COMMENTS. ORDER 96-136 AWARDING CONTRACT TO PROVIDENCE HEALTH SYSTEM UNANIMOUSLY APPROVED.

There being no further business, the meeting was adjourned at 11:10 a.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON

Deborah C 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	• 248-522O
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

AUGUST 5, 1996 - AUGUST 9, 1996

Thursday, August 8, 1996 - 9:30 AM - Regular Meeting.....Page 2

*Thursday Meetings of the Multnomah County Board of Commissioners are *cablecast* 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, August 8, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

C-1 *RESOLUTION Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody*

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-2 *CU 3-96 Hearings Officer Decision APPROVING, With Conditions, Conditional Use Request to Operate a Home Occupation in the Exclusive Farm Use (EFU) Zone, on Property Located at 21844 NW GILLIHAN ROAD, PORTLAND*

C-3 *CU 4-96/HV 6-96/SEC 10-96 Hearings Officer Decision APPROVING, With Conditions, Conditional Use Permit, Major Variance and Significant Environmental Concern Permit to Establish a Single Family Residence on Lands Designated for Commercial Forest Use and Significant Environmental Concern, Located at Approximately 11580 NW ROCK CREEK ROAD, PORTLAND*

DEPARTMENT OF HEALTH

C-4 *Intergovernmental Revenue Agreement 200037 with Mt. Hood Community College to Provide a 0.5 FTE Community Health Nurse to the Mt. Hood Community College Head Start/Oregon Prekindergarten Program*

C-5 *Intergovernmental Revenue Agreement 200457 with Portland Public Schools to Provide Early Intervention and Early Childhood Special Education Services for Multnomah County Preschool Children with Disabilities*

DEPARTMENT OF JUVENILE JUSTICE SERVICES

C-6 *Intergovernmental Revenue Agreement 700466 with Clatsop County for the Utilization of One Bed Space for the Detention of Juveniles Referred to the Clatsop County Juvenile Justice System*

DEPARTMENT OF COMMUNITY CORRECTIONS

C-7 *Amendment 2 to Intergovernmental Revenue Agreement 900265 with the City of Portland to Fund Services for Women Leaving Prostitution*

C-8 *Amendment 2 to Intergovernmental Revenue Agreement 900395 with the City of Portland to Provide Partial Funding for the Domestic Violence Diversion Program*

REGULAR AGENDA

PUBLIC COMMENT

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

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

R-2 *ORDER Authorizing an Exemption to Specify the Notifier Brand Name for Purchase of Fire Alarm Equipment and Components*

(Adjourn as the Public Contract Review Board and reconvene as the Board of County Commissioners)

DEPARTMENT OF SUPPORT SERVICES

R-3 *RESOLUTION Repealing Resolutions 90-57 and 93-338 and Directing the Proceeds from the Sale of Unrestricted County Property to the Capital Improvement Fund and the Capital Acquisition Fund*

R-4 *Consideration of ORDER Approving Recommendation to Award Contract for Mental Health Crisis Response System to Providence Health System*

TANYA COLLIER
Multnomah County Commissioner
District 3

1120 SW Fifth St, Suite 1500
Portland, OR 97204
(503) 248-5217

MEMORANDUM

TO: Office of the Board Clerk
Board of County Commissioners

FROM: Michele Fuchs

DATE: July 2, 1996

SUBJECT: Commissioner Collier's absence from Board meetings

Commissioner Collier will be away on vacation August 5th through August 12th and should be excused from any scheduled Board meetings during that time.

BOARD OF
COUNTY COMMISSIONERS
96 JUL -2 PM 1:25
MULTNOMAH COUNTY
OREGON

MEETING DATE: AUG 8 1996

AGENDA #: C-1

ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Director Custody Holds per ORS 426.215

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: _____

AMOUNT OF TIME NEEDED: Consent Calendar

DEPARTMENT: Community & Family Services DIVISION: Behavioral Health Program

CONTACT: Cathy Horey TELEPHONE #: 248-5464, ext 4447

BLDG/ROOM #: 166/6th Floor

PERSON(S) MAKING PRESENTATION: Consent Calendar Item

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Resolution Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to take an Allegedly Mentally Ill person into custody

8/12/96 copies to Cathy Horey

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
96 JUL 30 PM 12:07

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT MANAGER: Lolenzo Poe

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BEFORE THE BOARD OF COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

In the matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody	)))))	Resolution 96-134

WHEREAS, if authorized by a county governing body, a designee of a mental health program director may direct a peace officer to take into custody a person whom the designee has probable cause to believe is dangerous to self or others and whom the designee has probable cause to believe is in need of immediate care, custody, and treatment for mental illness; and

WHEREAS, there is a current need for specified designees of the Multnomah County Mental Health Program Director to have the authority to direct a peace officer to take an allegedly mentally ill person into custody; and

WHEREAS, all the designees listed below have been specifically recommended by the Mental Health Program Director and meet the standards established by the Mental Health Division; it is therefore

ORDERED that the individuals listed below are hereby authorized as designees of the Mental Health Program Director for Multnomah County to direct any peace officer to take into custody a person whom the designee has probable cause to believe is dangerous to self or others and whom the designee has probable cause to believe is in need of immediate care, custody or treatment for mental illness:

Added to the list of designees are:

Laurie Helen-MHSW (564-75-9741)

William Patrick-MT HOOD (216-58-3690)

DATED this 8th of August, 1996

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY,
OREGON

By _____
Beverly Stein, Chair,

REVIEWED BY
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By _____
Katie Gaetjens, Assistant Counsel

Meeting Date: AUG 8 1996
Agenda No: C-2
Est. Start Time: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Report to the Board the Hearings Officer's decision on CU 3-96.

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

REGULAR MEETING Date Requested: August 8, 1996
Amt. of Time Needed: 5 Min.

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

PERSON(S) MAKING PRESENTATION: Barry Manning

ACTION REQUESTED

[ ] Informational Only [ ] Policy Direction [x] Approval [ ] Other

SUGGESTED AGENDA TITLE

Report to the Board the Hearings Officer's decision on CU 3-96 a request to operate a home occupation in the Exclusive Farm Use zoning district.

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Lauz E. Nicholas

BOARD OF COUNTY COMMISSIONERS
96 JUL 22 AM 8:37
MULTNOMAH COUNTY OREGON

MULTNOMAH COUNTY

BOARD HEARING of August 8, 1996

CASE NAME: **CU 3-96 Conditional Use Request**

ACTION REQUESTED OF BOARD
☒ Affirm Hearings Officer Decision
☐ Hearing/Rehearing
☐ Scope of Review
☐ On the record
☐ De Novo
☐ New Information allowed

1. Applicant Name/Address:
   Bruce and Kathy Andresen
   21844 NW Gillihan Road
   Portland, OR

2. Action Requested:

   Applicant requests Conditional Use (CU) approval to operate a home occupation (wooden gift-box fabrication - wine boxes, etc.) in a proposed 35' x 55' accessory structure in the Exclusive Farm Use zoning district.

3. Planning Staff Recommendation:

   Approve, subject to conditions.

4. Hearings Officer Decision:

   Approve, subject to conditions.

5. If recommendation and decision are different, why?

   They are the same.

6. Issues:

   Neighbors concerned about operation of the business opposed the request. The Hearings Officer directed the applicant, via conditions of approval, to develop a "Good Neighbor Policy" which is to be crafted jointly with neighbors and reviewed during the subsequent Design Review process.

7. Implications related to this case:

   None known.

RECEIVED
JUL 16 1996
Multnomah County
Zoning Division

BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding an application by Bruce and Kathy Andresen regarding a Conditional Use request for a Home Occupation in the Exclusive Farm Use (EFU) zone located at 21844 N.W. Gillihan Road in unincorporated Multnomah County, Oregon.	)))))	FINAL ORDER CU 3-96 (Andresen)

I. HEARING AND RECORD

A public hearing was held concerning this matter on June 19, 1996. The hearing and written record were closed on the same date.

The following exhibits were received and made part of the record by the Hearings Officer:

A. Applicant's Initial Submittals
   1. Application Narrative (A-D)
   2. Application Form
   3. Authorization to Act as Agent
   4. Assessment & Taxation Printout

B. Maps and Aerial Photos
   1. Zoning Map
   2. Site Plan (attached)

C. Plans and Photographs
   1. Accessory Buildings on Sauvie Island

D. Notification Information
   1. Pre-Application Notice Mailed 4-16-96
   2. Notice of a Public Hearing
   3. Posting Sign Receipt

E. Agency Responses
   1. Fire
   2. Water
   3. Police
   4. Sewer
   5. School

II. FINDINGS

The Hearings Officer adopts and incorporates by reference the findings and conclusions contained within the Staff Report dated June 19, 1996 (attached), except to the extent expressly modified or supplemented below.

III. CONCLUSION

Based upon the above findings, the Hearings Officer concludes that CU 3-96 (Andresen) should be approved because it does or can meet the applicable approval criteria, subject to the conditions of approval set forth below.

IV. DECISION

CU 9-96 (Andresen) is hereby **approved** subject to the following conditions:

1. This approval shall be limited to the use of the existing accessory structure for wood box fabrication and personal use.

2. There shall be no exterior storage related to the home occupation.

3. There shall be no exterior signs related to the home occupation.

4. The applicant shall make reasonable efforts to protect the large tree on the site during construction.

5. No on-site employment, other than the residents of the property, shall be allowed in conjunction with the proposed home occupation use.

6. Noise producing activities related to the home occupation, such as pick-up and delivery of materials and the use of noise-producing equipment, shall be conducted during daylight hours. (The Good Neighbor Policy, required by condition 9 below,

shall further address this concern and should supplement and replace this condition as details of the policy are developed.)

7. The applicant shall insulate/soundproof the proposed accessory structure and operate the business in such a manner so that noise produced within the home occupation structure is minimized.

8. Prior to commencing site development or other ground disturbing activities, the applicant shall demonstrate compliance with the provisions of MCC 11.15.6700-.6735, Hillside Development and Erosion Control, as required.

9. Prior to any site development related to the proposed home occupation use, the applicant shall obtain Design Review approval, as required by MCC 11.15.7805-.7870. In conjunction with Design Review, the applicant shall work with the County and neighboring property owners to create a Good Neighbor Policy. The Good Neighbor Policy shall establish hours of operation and limit off-site impacts such as noise producing activities.

10. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial development has taken place in accordance with MCC 11.15.7110.

It is so ordered this 16 day of July, 1996.

Phillip E. Grillo
Hearings Officer
Multnomah County

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214 (503) 248-3043

STAFF REPORT

This Staff Report consists of Conditions, Findings of Fact, and Conclusions.
Prepared for a Public Hearing to be held on June 19, 1996.

Case File:	CU 3-96
Proposed Action and Use:	Applicant requests Conditional Use (CU) approval to operate a home occupation in a proposed 35' x 50' accessory building in the Exclusive Farm Use zoning district.
Location of the Proposal:	21844 NW Gillihan Road
Legal Description of Property:	Tax Lot 10; Sec 2, 2N, 1W
Site Size:	1.29 acres
Plan Designation:	Exclusive Farm Use
Zoning District:	Exclusive Farm Use
Applicant:	Bruce and Kathy Andresen 5616 SW 42nd Avenue Portland, OR 97221
Owner:	Western United Life Assurance Company 3721 North Wilton Chicago, IL 61613
Staff Contact:	Barry Manning

RECOMMENDED DECISION

Approve, subject to conditions, the request for Conditional Use based on the Findings and Conclusions contained in this report.

RECOMMENDED CONDITIONS OF APPROVAL

1. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial development has taken place in accordance with MCC 11.15.7110.

2. No employment, other than residents of the property, shall be allowed.

3. Noise producing activities of the home occupation, such as pick-up and delivery of materials and use of noise-producing equipment, shall be conducted during daylight hours.

4. Storage or use of any hazardous materials is prohibited.

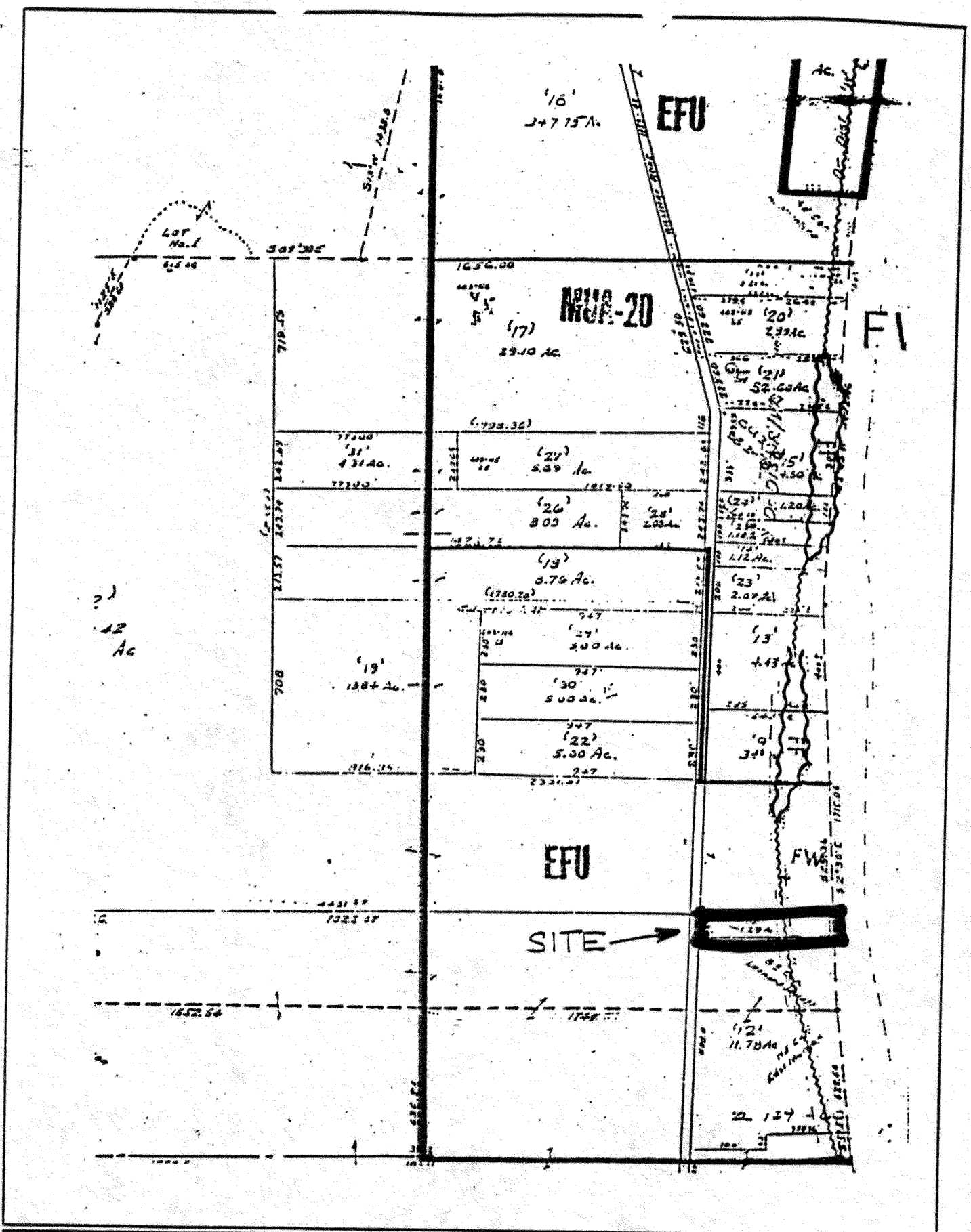
5. The applicants shall insulate/soundproof the proposed accessory structure and operate the business in such a manner so that noise is undetectable to neighboring properties.

6. Prior to any site development, the applicant shall apply for and complete Design Review, as required by MCC 11.15.7805-.7870.

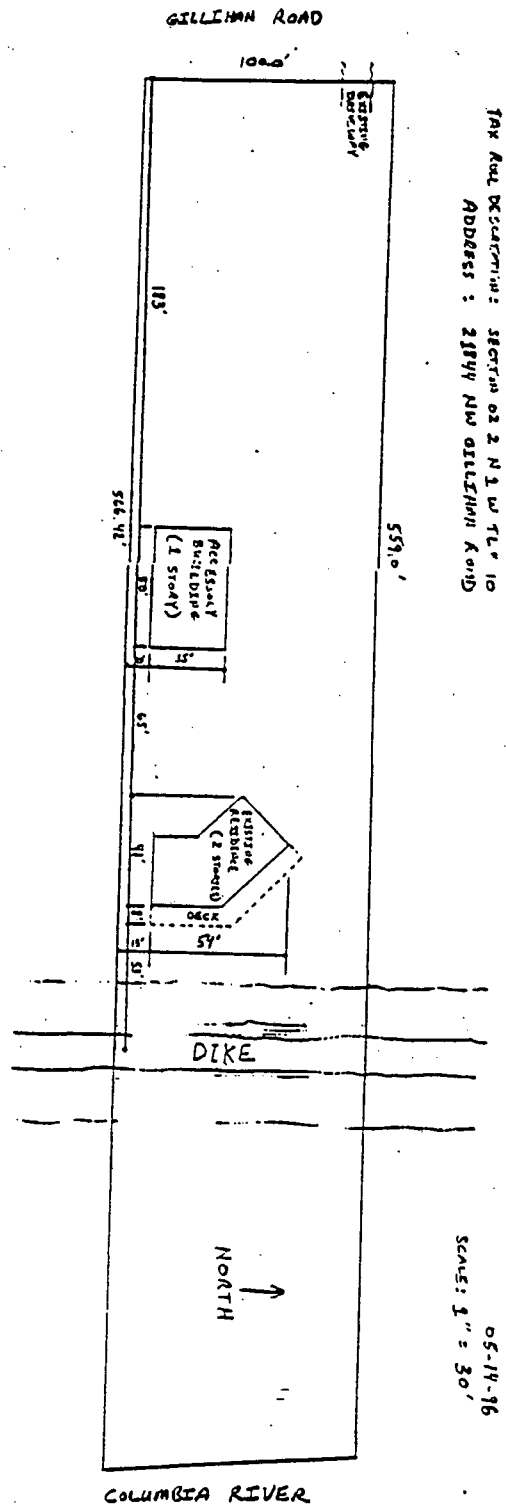
7. Prior to commencing site development or other ground disturbing activities, the applicant shall comply with the provisions of MCC 11.15.6700-.6735, Hillside Development and Erosion Control, as required.

STAFF REPORT FORMAT

This staff report addresses one requested action: a request for Conditional Use approval to operate a home occupation in a proposed accessory structure on the subject property. The Findings of Fact and Conclusions for the Conditional Use request begin immediately below. The Applicant's response to an approval criteria is indicated by the notation "Applicant's Response". Planning Staff comments and analysis follow the Applicant's responses to the criteria. Additional Planning Staff comments are added where supplemental information is needed or where staff may not concur with the applicant's statements. If no staff remarks are indicated, staff concurs with the applicant.



Vicinity Map
CU 3-96



TAX ACCOUNT NUMBER: R 77102-010.
TAX ROLL DESCRIPTION: SECTION 02 2 N 1 W TL' 10
ADDRESS: 25844 NW GILLIHAN ROAD

05-14-96
SCALE: 1" = 30'

Site Plan
CU 3-96

BACKGROUND

APPLICANT'S STATEMENT AND PROPOSAL:

We seek a conditional Use Permit that allows us to locate a home-based business on this property. We build small cedar gift boxes that are used as packaging by high-end stores and wineries. The business has no employees, and the small woodshop will have no impact on existing businesses or the surrounding environment.

Once a month, a load of raw material mill end swill be delivered. They are neatly packaged and shrink wrapped. Approximately once a week, a freight truck (such as UPS, etc.) will pick up finished gift boxes and packaged by-products (kindling and sawdust). The by-products will be packaged within the accessory building as they are generated. Customers will not be visiting the home occupations, as we plan to sell only to suppliers.

FINDINGS OF FACT

1. SITE AND VICINITY CHARACTERISTICS:

The subject property is a 1.29 acre parcel located on Sauvie Island in the rural unincorporated portion of Multnomah County. Zoning is EFU, Exclusive Farm Use. The site has frontage on Gillihan Road; the rear of the parcel fronts the Columbia River. A single family dwelling, approximately 2000 square feet in size (according to County records) currently exists on site. The site is essentially flat and vegetation is minimal, consisting of mainly grasses. A single, large tree is the most significant vegetation feature on the site.

Property in the vicinity of the site is generally zoned EFU. There are, however, a number of parcels ranging in size from one acre to 30 acres located to the north of the subject site that are zoned MUA-20, Multiple Use Agriculture. Land uses in the vicinity of the site are primarily residential and agricultural. Many properties in the vicinity of the site are developed with outbuildings and other accessory structures. These structures appear to be used for both farm and non-farm uses.

2. APPROVAL CRITERIA

The Hearings Officer must find that the proposal meets the following Multnomah County Comprehensive Plan Policy and Zoning Code approval criteria.

I ZONING ORDINANCE REQUIREMENTS:

MCC 11.15.2012, Conditional Uses

(B) The following uses may be permitted when approved by the hearings Officer pursuant to the provisions of MCC .7105 to .7140.

(H) Home occupations pursuant to the provisions of ORS 215.213(2)~~(h)~~(n).

MCC 11.15.7120, Conditional Use Approval Criteria

(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. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

(1) Is consistent with the character of the area;

Applicant: While driving through the area, we noticed many small outbuildings that do not impede the beauty of the area. Our business would fit nicely with the quiet, rural feeling of Sauvie Island.

Staff: The applicants propose to locate the home occupation in an 35' x 50' accessory structure located on the subject property. Accessory structures of the type and scale proposed by the applicant are common in rural area, and on Sauvie Island. Staff foresees no impacts due to the accessory structure itself, and would consider such a structure consistent with the character of the area. The applicants state that the home occupation will have no employment, generate no trips aside from occasional pick-up and delivery of raw materials and finished products, and will generally be unnoticeable at any property line. Given these parameters, staff finds that the home occupation use proposed will have few detectable impacts, and thus is not inconsistent with the character of the area.

(2) Will not adversely affect natural resources;

Applicant: The business will not be using or disturbing any natural resources that are on the island. Our boxes are made from cedar mill ends that are a by-product form milling operations not located on the island. A load of mill ends will be delivered to our business once a month. By-products of our business are kindling and sawdust, both of which will be packaged for resale.

Staff: The proposed use is located on a small 1.29 acre parcel which is already developed

with a dwelling. No significant vegetation or severe land forms exist on the parcel, and the area is not identified as a wildlife habitat area. According to the U.S. Department of Agriculture *Soil Survey of Multnomah County, Oregon*, the parcel is composed of Soil #45, Sauvie Silt Loam, and Soil #32, Pilchuck Sand. While it is difficult to pinpoint the exact location of the two soils types, it appears the proposed accessory structure will be located on the portion of the site composed of Pilchuck Sand soils. Pilchuck Sand is poorly suited to farming, therefore location of the accessory structure on this soil does not adversely affect high value farmland soil, a natural resource. Staff finds that there will be no affect on natural resources.

(3) Will not conflict with farm or forest uses in the area;

Applicant: The property is situated on only 1.3 acres of land. Because of its limited size, this parcel is not suited for farm or forestry use. There is no timber on the property, and it has never been in farm production. Our small business will not interfere with existing neighboring farm operations.

There are two owners of property that surround our small lot. the Anderson family home is directly north. To the west, across Gillihan Road, Don Anderson has 150 acres. He raises beef cattle and farms wheat and oats. We have explained our proposed home occupation to him, and he does not see how it could impact his operation.

To the south, the Beall family has 11 acres of pasture. There are no buildings on this acreage. At times Don Anderson leases this land for a place to segregate his bulls. We have explained our proposed home occupation to Mark Beall, and he does not feel it could cause problems with anything he would choose to do with his property. Mr. Beall indicated that he farms elsewhere on Sauvie Island, but because of the sand, this acreage is not suitable for farming, and he has no plans to develop it into farmland.

Staff: The applicant has stated that owners of adjacent properties find no potential conflicts with this proposed use and nearby agriculture. Further, no adjoining land owners have commented to the contrary. No forest uses exist in the vicinity of this site. Based on this information, staff finds that the proposed use will have no conflicts with adjacent farm uses.

(4) Will not require public services other than those existing or programmed for the area;

Applicant: Because our is a home-based operation with no employees, we will have minimal impact on existing public services: Water - no impact; Police - no impact; Fire - minimal impact (wood shop); Sewage - no impact; School - no impact.

Staff: Staff concurs with the applicant.

(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

Applicant: The property is located outside the wildlife refuge, in an area in which neighboring properties have several outbuildings.

Staff: The property is located outside the Big Game Winter Habitat Area.

(6) Will not create hazardous conditions; and

Applicant: Our business will not create any condition that is hazardous to human beings or wildlife. No chemicals are used when building the gift boxes, and all wood scraps and by-products will be contained within the insulated woodshop building.

Staff: As described by the applicant, the proposed use would appear to create no hazardous conditions. However, as this property is located adjacent to the Columbia River as well as viable agricultural land, as a Condition of Approval, storage or use of any hazardous materials will be prohibited to prevent the possibility of contamination by hazardous materials.

Natural hazards potentially exist in the form of flooding. However, the proposed building is located behind the levee and the existing dwelling, and is beyond the flood fringe area designated on Multnomah County zoning maps.

(7) Will satisfy the applicable policies of the Comprehensive Plan.

Applicant: Our home business satisfies the policies of the Comprehensive Plan. See [attached] forms for Water, Police, Fire, Sewage and School entities.

MCC 11.15.7122, EFU Conditional Use Approval Criteria

(A) In addition to the criteria of MCC .7120, an applicant for a Conditional Use listed in MCC .2012(B) must demonstrate that the use:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

Applicant: Our proposal will have no impact whatsoever on any surrounding farm, forest or wildlife area.

Staff: Location of an accessory building on the subject parcel will not force a change in farm-

ing practices. This property, at 1.29 acres, is of insufficient size for on-site agriculture. The proposed use is, according to the applicant, virtually undetectable at the property lines, and should therefore have no impact on farming practices in the area.

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Applicant: Our home business will have no impact on farming or forestry costs.

Staff: Staff concurs with the applicants. Location of an accessory structure on the property is allowed. And, the use could, theoretically, be conducted within the home. There should be no costs to farming. Further, the proposal does not permanently alter land forms or uses. The structure is not an anomaly in the area, and the use could be discontinued.

MCC 11.15.2016, Dimensional Requirements

(C) Minimum Yard Dimensions - feet:

(1) Front yards: 30 feet; (2) Side yards: 10 feet; (3) Rear yards: 30 feet.

Staff: The applicant's proposal satisfies the setback requirements of the EFU zoning district.

II OREGON ADMINISTRATIVE RULES:

OAR 660-33-130: R5, R14: Home occupations as provided in ORS 215.448.

OAR 660-33-130(5): Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

Applicant: Our proposal will have no impact on accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Staff: See preceding discussion.

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Applicant: Our proposal will have no impact on the cost of accepted farm or forest practices

on surrounding lands devoted to farm or forest use.

Staff: See preceding discussion.

OAR 660-33-130(14): Home occupations may be authorized in existing dwellings and structures accessory to an existing dwelling. Home occupations may not be authorized in structures accessory to resource use. A home occupation located on high-value farmland may employ only residents of the home.

Applicant: The existing residence is a two-story dwelling that has 2,520 square feet of living space, including the garage. It overlooks the Columbia River, and has great views of four mountains. It is, and shall remain, the dominant use and focal point of the property.

The accessory building that will house our business is similar to other accessory buildings in the area. It will always be subordinate to the residence. Ideally, the size of our accessory building would be 2,400 square feet [40' x 60'], with 12' walls. This would enable us to house the gift box business, as well as have an area in which to store and putter on our two classic cars. If the size of the accessory building is an issue, we can easily reduce the size to 1,980 square feet (36' x 55').

The location of the accessory building is another issue that is open for discussion. we are not tied to having it located close to the road if there are reasons it should be located closer to the existing house.

The property is not high-value farmland. We have been told by farming neighbors that there is a 10-foot layer of sand on the land, making it unsuitable for any kind of farming.

In summary, we believe the existing residential structure will always dominate the use of the property, and that the accessory building will fit in with the existing accessory buildings of the neighboring area.

Staff: The structure proposed by the applicant is an accessory structure similar to accessory structures allowed in much of rural Multnomah county. The applicants have not proposed an *Exempt Farm Structure*. As a Condition of Approval, the applicant must obtain building permits for the proposed accessory structure. No on-site employment is proposed.

III Oregon Revised Statutes:

215.448: Home occupations; parking; where allowed; conditions

(1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone, or mixed farm

and forest zone that allows residential uses, the following standards apply to the home occupation:

(a) It shall be operated by a resident or employee of a resident of the property on which the business is located;

Applicant: The business will be operated by residents of the property.

Staff: The applicant are the [future] property owners, and will operate this home occupation.

(b) It shall employ on the site no more than five full-time or part time persons;

Applicant: We have no plans for hiring any employees.

Staff: No employment is proposed.

(c) It shall be operated substantially in:

(A) The dwelling; or

(B) other buildings normally associated with uses permitted in the zone in which the property is located.

Applicant: It will be operated in an accessory building which is similar to existing accessory buildings on neighboring properties.

The accessory building that will house our business will be clearly subordinate to the existing dwelling. The two-story dwelling has 2,520 square feet of living space but looks much larger because it bends in the middle. It also has a partially covered deck on the top floor that extends the full length of the dwelling and is eight feet wide. The footprint of the total width and length (taken from the original drawings, and confirmed by us) is 41' wide by 54' long. the dwelling is 21' tall. We have submitted a [new] site plan that shows the exact shape of the dwelling.

The accessory building will be similar to other accessory buildings in the area. We have submitted pictures of other accessory buildings on the island. It is hard to tell what these buildings are used for. Some of them are probably used for agricultural purposes. Our accessory building will fit right in. It will be of the same style and scale, and all activity will be inside the building.

We will also be using the accessory building for storage of our personal vehicles. We have two classic cars that we like to putter on, and do not want to leave them out in the weather.

The value of the accessory building will be around 5% of the total value of the property. The dwelling will always be the focal point of the property, because of its waterfront location and dramatic views of four mountains. We plan to do extensive remodeling on the dwelling (possibly adding another story) which will make the accessory building more subordinate.

Because of conversations with Multnomah County planners, we have revised the plans for the accessory building. We have moved it closer to the existing dwelling, and reduced the size of the building. Here is a comparison of the existing dwelling and accessory building:

	Existing Dwelling	Accessory Building
Stories:	2	1
Height	21'	1'
Width	41'	35'
Length	54'	50'

Staff: As previously discussed, the use is proposed to be located in an accessory structure of a type that is no uncommon in rural areas. To qualify as an "accessory" structure, the structure must be subordinate to the primary use of the property: residential. The applicants have provided an analysis which indicates that the proposed structure will be smaller than the existing dwelling and of substantially less value. Staff finds that the structure is accessory to the dwelling, and is, as described, similar to other accessory structures located in the area.

(d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

Applicant: It shall not interfere with other uses permitted in the zone in which the property is located.

Staff: As previously discussed, the use is expected to be virtually undetectable at property lines due to the fact that: 1) it will be located in a structure typical in the landscape; 2) the building will be soundproofed/insulated; 3) the business will require few trips; and 4) no customers or employees will visit the site. Thus staff finds that the use will not interfere with other uses permitted in this zone.

(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection 10 of this section.

Applicant: We are aware that there may be additional reasonable conditions of approval for the establishment of our home occupation.

Staff: Conditions will be applied as necessary to ensure conformance with codes and standards.

(3) Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.

Applicant: The accessory building will fit in with existing accessory buildings in the neighboring area.

Staff: The type of structure proposed would typically be allowed in a rural zone.

(4) The existence of home occupations shall not be used as justification for a zone change.

Applicant: No zone changes are necessary or requested.

Staff: No zone changes have been requested.

IV COMPREHENSIVE PLAN POLICIES:

POLICY 2, OFF-SITE EFFECTS. THE COUNTY'S POLICY IS TO APPLY CONDITIONS TO ITS APPROVAL OF LAND USE ACTIONS WHERE IT IS NECESSARY TO:

A. PROTECT THE PUBLIC FROM THE POTENTIALLY DELETERIOUS EFFECTS OF THE PROPOSED USE; OR

B. FULFILL THE NEED FOR PUBLIC SERVICE DEMANDS CREATED BY THE PROPOSED USE.

Applicant: The proposal has no potential to cause harm to the general public. All activities of the business will be performed within the accessory building. No harmful or noxious substances will be generated by the business. The accessory building will be locked and secures when it is not occupied. No public service demands will be created by the proposed use.

Staff: Staff does not foresee that this use will create any deleterious effects or will create a need for public services. However, as this property is located adjacent to the Columbia River as well as viable agricultural land, as a Condition of Approval, storage or use of any hazardous materials will be prohibited to prevent the possibility of contamination by hazardous materials.

POLICY 9, Agricultural Lands: The County's policy is to designate and main-

tain as exclusive agricultural land areas which are:

A. Predominately agricultural soil capability I, II, III, and IV as defined by U.S. Soil Conservation Service;

B. Of parcel sizes suitable for commercial agriculture;

C. In predominately commercial agricultural use; and

D. Not impacted by urban services; or

E. Other areas, predominately surrounded by agricultural lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.

The County's policy is to restrict the use of these lands to exclusive agricultural and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate or incompatible development.

Applicant: The property is situated on only 1.3 acres of land. Because of its small size, the parcel is not suited for agricultural use. In addition, there is no topsoil. The entire property is covered with sand. Neighbors have told me that the sand is 10 feet deep. Our proposal will not interfere with existing agricultural uses.

Staff: Staff concurs with the applicant that this parcel is unlikely to be used for agriculture due to small size and soil conditions. The parcel is already developed for residential use.

POLICY 13, AIR, WATER AND NOISE QUALITY. MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS.

Applicant: Our small business will no affect the air, water or noise quality of the area. Sawdust will be generated, but it will be contained by a vacuum system that will trap it as it is produced. it will be packaged for resale. water will not be used at all. Some noise will occur infrequently when the main saw is used to cut 1" thick mill ends into two pieces, each 1/2" thick. Because this process generates a lot of footage in a very short amount of time, this saw will only be in operation for 3 to 4 hours per week The woodshop will be insulated so that the noise generated will be contained.

Staff: There are no agencies that monitor air, water or noise quality with respect to the type of use proposed. With respect to water quality, the site is approved for an on-site sewage disposal system. Multnomah County Code includes standards for noise to which this project must adhere. In addition to the noise standards set forth in County Code, as a Condition of Approval, the applicants shall be required to insulate/soundproof the proposed accessory structure and operate the business in such a manner so that noise is undetectable to neighbors. To further reduce noise impacts to neighbors, noise producing activities of the home occupation , such as pick-up and delivery of materials and use of noise-producing equipment, shall be limited to daylight hours.

(3) **POLICY 14, DEVELOPMENTAL LIMITATIONS.** THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

A. Slopes exceeding 20%;
B. Severe soil erosion potential;
C. Land within the 100 year flood plain;
D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
E. A fragipan less than 30 inches from the surface;
F. Land subject to slumping, earth slides or movement.

Applicant: The proposed accessory building would be located on flat land. There is no stream running through the property, so the potential for severe soil erosion is minimal. There is no evidence on the property that soil erosion has ever been a problem. There are no ruts or visual signs of running water. The property had no flooding problems during the past winter. The Columbia River had another 36" to rise before it breached the dike. We have been told that because the property is covered with sand, it has such good drainage that the water table is never visible on the surface. The property is flat. It shows no signs of slumping, earth slides or movement.

Staff: Slopes on this property do not exceed 20 percent. The land does not appear to have the potential for sever soil erosion. According to the U.S. Department of Agriculture *Soil Survey of Multnomah County, Oregon,* the parcel is composed of Soil #45, Sauvie Silt Loam, and Soil #32, Pilchuck Sand. These soils do not have a fragipan less than 30 inches from the surface, and although the *Soils Survey* notes that the Pilchuck sand has a seasonally high water table, it

does not specify a high water table duration. As noted, the land is flat with little potential for slumping or earth movement.

POLICY 19, COMMUNITY DESIGN: THE COUNTY'S POLICY IS TO MAINTAIN A COMMUNITY DESIGN PROCESS WHICH:

A. EVALUATES AND LOCATES DEVELOPMENT PROPOSALS IN TERMS OF SCALE AND RELATED COMMUNITY IMPACTS WITH THE OVERALL PURPOSE BEING A COMPLEMENTARY LAND USE PATTERN.

B. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENTS FROM A FUNCTIONAL DESIGN PERSPECTIVE, CONSIDERING SUCH FACTORS AS PRIVACY, NOISE, LIGHTS, SIGNING, ACCESS, CIRCULATION, PARKING, PROVISIONS FOR THE HANDICAPPED AND CRIME PREVENTION TECHNIQUES.

C. MAINTAINS A DESIGN REVIEW PROCESS AS AN ADMINISTRATIVE PROCEDURE WITH AN APPEAL PROCESS, AND BASED ON PUBLISHED CRITERIA AND GUIDELINES. CRITERIA AND GUIDELINES SHALL BE DEVELOPED SPECIFICALLY FOR COMMERCIAL, INDUSTRIAL AND RESIDENTIAL DEVELOPMENTS.

D. ESTABLISHES CRITERIA AND STANDARDS FOR PRE-EXISTING USES, COMMENSURATE WITH THE SCALE OF THE NEW DEVELOPMENT PROPOSED.

E. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENT ACCORDING TO DESIGN GUIDELINES IN THE APPLICABLE ADOPTED COMMUNITY PLAN.

Applicant: Our proposal fits in well with the neighboring area. Our accessory building is of the same scale and design of surrounding accessory buildings. (Please see attached pictures of accessory buildings belonging to residents of Sauvie Island). The general public will not be visiting the property. No advertising will be present. the building will have no impact on surrounding farm, forest or wildlife areas.

In general, we will be good neighbors. We will treat our neighbors in the same way that we expect to be treated: with mutual respect for one-another's well being and privacy.

Staff: As a Conditional Use, the proposed accessory structure is subject to Multnomah County Design Review as required by MCC 11.15.7820. As a Condition of Approval, prior to any site development, the applicants shall complete the Design Review process.

POLICY 22, ENERGY CONSERVATION: THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES AND TO SUPPORT GREATER UTILIZATION OF RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASIJUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;

B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;

C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;

D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.

E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES.

Applicant: Our business will use electricity to power the equipment used in the construction process of gift boxes. It will not, however, require any additional electrical capacity to be installed. Since the business has no employees, it will have no impact on the daily transportation system of Sauvie Island. Once a month, a load of mill ends will be delivered to the business. Finished gift boxes will be shipped according to customers' schedules.

Staff: To the extent this policy is applicable to this proposal, this proposal is an energy efficient land use in that it potentially minimizes commuting by residents. As the site will have no outside employment, it does not increase travel demand.

POLICY 37, UTILITIES: THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR

B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR

C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR

F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Applicant: Our home-based business has no employees, so it will have no impact on the existing well and septic system. Forms for Certification of Water Service and Certification of Private On-Site Sewage Disposal have been previously submitted.

Because the property sits on sand, storm water runoff will be handled on site, and will not adversely affect the water quality of adjacent areas.

The proposal will not require any additional electrical capacity. Phone facilities are available and adequate.

Staff: Staff concurs with the applicant that this policy has been met. Service provider forms for water and on-site septic have been submitted. As the proposed use will not increase the intensity of residential use, and the applicants have not indicated that the proposed use will require or discharge water waste, the existing residential septic system appears to be adequate to serve the development. Energy and communications facilities currently serve the site. As noted, the site is composed of two soil types: "excessively drained" Pilchuck Sand soils toward the river, and "poorly drained" Sauvie Silt Loam near the road. Given these soil conditions drainage on site should be adequate if directed properly. Final drainage plans that comply with standards established by the City of Portland Bureau of Buildings, the agency contracted by the County to provide these services, will be required prior to completion of design review.

POLICY 38, FACILITIES. THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

FIRE PROTECTION

B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS ON THE PROPOSAL.

POLICE PROTECTION

D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.

Applicant: The proposal will have no impact on the school district. The school district review form has been previously submitted. The proposal will have minimal impact on the fire district. The fire district review form has been previously submitted. The proposal can receive adequate police protection from the Multnomah County Sheriff. The police services review form has been previously submitted.

Staff: The proposed use will have no impact on school services. The Sauvie Island Fire District and Multnomah County Sheriff have both indicated that services are adequate for the proposed use.

POLICY 40, DEVELOPMENT REQUIREMENTS. THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.

B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.

C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.

Applicant: Our home business will have no impact on wildlife areas, pedestrian and bicycle paths, or recreational areas. Landscaping that we do to the property will enhance the existing beauty of the area.

Staff: This policy is not applicable to the proposal.

CONCLUSIONS

1. The proposed home occupation is a Conditional Use in an Exclusive Farm Use zone. Based on the preceding findings, staff concludes that all applicable approval criteria can be met if certain Conditions of Approval are applied.

* * *

NOTICE

This Staff Report and recommendation was available on June 12, 1996 seven days before the June 19, 1996 public hearing scheduled before a County Hearings Officer. The Hearings Officer may announce a decision on the item (1) at the close of the hearing; (2) upon continuance to a date and time certain; or (3) after the close of the record following the hearing.

A written decision is usually mailed to all parties and filed with the Clerk of the Board within ten days of the decision by the Hearings Officer.

APPEAL TO THE BOARD OF COUNTY COMMISSIONERS

The Hearings Officer 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 Office decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form 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 and Development Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043.

Failure to raise an issue by the close of the record at or following the final hearing, (in person or by letter), precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to provide specificity on an issue sufficient for the Board to respond, precludes appeal to LUBA on that issue.

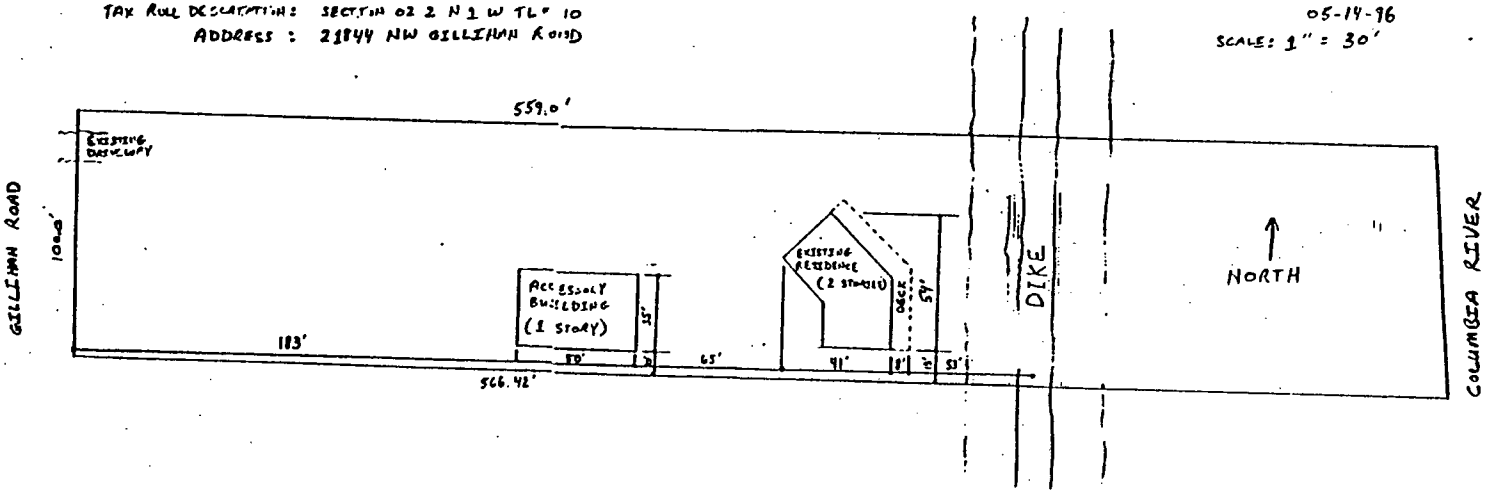
TAX ACCOUNT NUMBER: R 77102-01[illegible]

TAX ROLL DESCRIPTION: SECTION 02 2 N 1 W TL° 10

ADDRESS : 21844 NW GILLIHAN ROAD

05-14-96

SCALE: 1" = 30'



Site Plan
CU 3-96

Meeting Date: AUG 8 1996
Agenda No: C-3
Est. Start Time: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Report to the Board the Hearings Officer's decision on CU 4-96, HV 6-96 & SEC 10-96.

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

REGULAR MEETING Date Requested: August 8, 1996
Amt. of Time Needed: 5 Min.

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

PERSON(S) MAKING PRESENTATION: Barry Manning

ACTION REQUESTED

[ ] Informational Only [ ] Policy Direction [x] Approval [ ] Other

SUGGESTED AGENDA TITLE

Report to the Board the Hearings Officer's decision on CU 4-96, HV 6-96 & SEC 10-96 a request for a single-family dwelling in a Commercial Forest Use Zone; approval of a Variance to the 200 foot setback requirement, and approval of a Significant Environmental Concern permit within a Significant Wildlife Habitat area.

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Lane E. Nicholas

BOARD OF COUNTY COMMISSIONERS
96 JUL 22 AM 8:37
MULTNOMAH COUNTY OREGON

MULTNOMAH COUNTY

BOARD HEARING of August 8, 1996

ACTION REQUESTED OF BOARD
☒ Affirm Hearings Officer Decision
☐ Hearing/Rehearing
☐ Scope of Review
☐ On the record
☐ De Novo
☐ New Information allowed

CASE NAME: **CU 4-96, HV 6-96, SEC 10-96.**

1. Applicant Name/Address:
Western States Development Corp.
20285 NW Cornell Rd.
Hillsboro, OR 97124

2. Action Requested:

Conditional Use approval of a single-family dwelling in a Commercial Forest Use Zone; approval of a Variance to the 200 ft setback requirement, primary and secondary fuel free area; and approval of a Significant Environmental Concern permit for development within a Significant Wildlife Habitat area.

3. Planning Staff Recommendation:

Approve, subject to conditions.

4. Hearings Officer Decision:

Approve, subject to conditions.

5. If recommendation and decision are different, why?

They are the same.

6. Issue: **Applicability of County approval criteria to Dwellings on land zoned CFU.**

This decision is contrary to the Hearings Officer decision on a previous (separate) case. In CU 1-96 the Hearings Officer concluded that County approval criteria under the CFU zone are inapplicable to dwellings in the CFU zone, and approved a dwelling that did not meet County Code.

In this application, the Hearings Officer ORDER finds that the County approval criteria are applicable to dwellings in the CFU zone.

7. Implications related to this case:

An appeal of the Hearings Officer Order in CU 1-96 is forthcoming to the Board and is inconsistent with a subsequent decision.

RECEIVED
JUL 15 1996
Multnomah County
Zoning Division

BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding an application by Western States Development Corporation for a Conditional Use Permit, Major Variance and Significant Environmental Concern Permit to establish a single family residence on lands designated for Commercial Forest Use and Significant Environmental Concern located at approximately 11580 N.W. Rock Creek Road, T2N, R2W, Section 36, Tax Lot 26 in unincorporated Multnomah County, Oregon.	)	FINAL ORDER CU 4-96, HV 6-96, SEC 10-96 (Western States Development Corporation)

I. HEARING AND RECORD

A public hearing was held concerning this matter on June 19, 1996. The hearing and written record were closed on the same date.

The following exhibits were received and made part of the record by the Hearings Officer:

A. Applicant Initial Submittals:
   1. Applicant's Statement (packet)
   2. Supplemental Statement (packet)
   3. Aerial Photo (blue line)
   4. ODF-Clear cut permit
   5. Easement Agreement Road
   6. Large Site Plan, Grading Plan, Driveway Profile

B. Maps and Aerial Photos:
   None

C. Video:
   1. Staff: 6/18/96

D. Notification Information:
   1. Notice of Hearing 5/31/96
   2. Affidavit of Posting 6/5/96

3. Legal Notice - Paper

G. Documents Submitted at 6/19/96 Hearing:
1. Staff video of site

H. Documents Submitted Prior to Close of Record 6/21/96:
1. Land Development Consultants, 15 pgs, 6/19/96

II. FINDINGS

The Hearings Officer adopts and incorporates by reference the affirmative findings and conclusions contained within the Staff Report dated June 19, 1996 (attached), except to the extent expressly modified or supplemented below.

III. DISCUSSION

Staff has found, and the Hearings Officer agrees, that all of the applicable conditional use and significant environmental concern approval criteria have been met. Staff has found that all but one of the major variance criteria have been met. The variance criterion that staff has found not to be supported is set out and discussed below.

MCC 11.15.8505(A)(2) provides that:

"The zoning requirement would restrict use of the subject property to greater degree than it restricts other properties in the vicinity or district."

Findings:

The applicant requests a 100 foot by 100 foot area for the proposed building location and that this building area be located 20 feet from the southern property line. Staff recommended that the proposed building area should be reduced to 100 by 90 feet in order to eliminate the need for a variance.

The required setback from the building to the south property line is 30 feet. The applicant's request for a 20 foot setback, in order to provide a 100 foot by 100 foot area for the proposed building, meets criterion (2) above for the following reasons:

1) The 30 foot setback requirement will restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity because the topography, shape and size of the site restrict the location of the dwelling site to area identified by the applicant.

2) Furthermore, the neighbor's property to the south is of a size and shape that will preclude the location of a dwelling on the adjoining property. Therefore, so long as the primary and secondary firebreak distances are maintained, the need to maintain a 30 foot setback from the property line is diminished because a reduced setback on the south side will not crowd a future dwelling on the adjoining site. This is a situation that is relatively unique and results in a greater relative restriction on this property.

3) Finally, the Hearings Officer appreciates staff's view that the applicant is not entitled to a 100 by 100 foot building envelope. However, such an envelope is reasonable under the circumstances. The revised conditions of approval will encourage the owner to construct a dwelling that minimizes the need for this variance, so as to maximize the distance of the dwelling from the property line. Nonetheless, the applicant should be entitled to reduce the south setback from 30 to 20 feet because the applicable approval criteria are met.

IV. CONCLUSION

Based upon the above findings, the Hearings Officer concludes that CU 4-96, HV 6-96 and SEC 10-96 should be approved because they do or can meet the applicable approval criteria, subject to the conditions of approval set forth below.

V. DECISION

CU 4-96, HV 6-96 and SEC 10-96 are hereby **approved** subject to the following conditions:

1. The applicant's site plan (attached) is approved subject to the following revisions and clarifications which shall be submitted upon application for design review.

   (a) South: The dwelling and all accessory buildings and structures shall be sited a minimum of 20 feet from the southern property line. A primary fire safety break shall extend for a minimum 30 feet and a secondary fire safety break shall extend 100 feet beyond the primary fuel break.

   (b) North: A primary fuel break shall be extended downhill to the bottom of the drainage swale or a minimum of 30 feet, whichever is more. The secondary break shall be as indicated on the applicant's site plan (Supplemental Report).

   (c) East: A primary break shall be extended to the east property line. No secondary fuel break will be required.

(d) West: A primary break shall extend from the dwelling down hill to the edge of Rock Creek Road, as identified on the applicant site plan (Supplemental Report).

2. A well constructor's report shall be submitted prior to issuance of a building permit for the residence.

3. Fencing of the property shall not occur unless determined by Multnomah County to be in Compliance with the Significant Environment Concern Wildlife Habitat Criteria (MCC 11.15.6426).

4. The nuisance plants listed under MCC 11.15.6426 shall be removed and kept removed from cleared areas of the subject property.

5. A Hillside Development Permit will be required for all areas where site clearing is done on slopes exceeding 25%, unless exempt under forest practices rules.

6. An on site sewerage verification form shall be submitted prior to issuance of a building permit.

7. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters as per OAR 660-06-035 (4) and (6). The dwelling shall also comply with Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.

8. The applicant shall obtain and record an easement for a width of 10 feet south of the south property line of the subject parcel for the entire length (256 feet) abutting the subject parcel with Multnomah County. The easement is for primary fuel break purposes. This easement is only necessary if the 30 foot primary fire safety break cannot be achieved on-site.

9. Approval of this Conditional Use shall expire two years from the date of the final action unless substantial construction has taken place in accordance with MCC 11.15.7110(C).

10. The applicant should locate the dwelling in such a way so as to minimize the need for a variance from the south setback.

It is so ordered this 15th day of July, 1996.

Phillip E. Grillo
Hearings Officer
Multnomah County

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE Morrison Street
Portland, OR 97214 (503)248-3043

STAFF REPORT

This staff report consists of Findings of Fact, conclusions, and recommended Conditions if approved. Prepared for a Public Hearing to be held on April 17, 1996.

Case File:	CU 4-96, HV 6-96, SEC 10-96
Scheduled Before:	Phil Grillo, County Hearings Officer
Hearing Date, Time, & Place:	Wed., June 19, 1996; at 9:00 am 2115 SE Morrison Street, Room 111 Portland, OR 97214

WHAT: Conditional Use, Major Variance, and Significant Environmental Concern Permit to establish a single family residence on lands designated for Commercial Forest Use an Significant Environmental Concern.

WHERE: Approximate address: 11580 N.W. Rock Creek Road.
T2N, R2W, Section 36, Tax lot '26'
2.30 acres

WHO:

Property Owner/ Applicant: Western States Development Corp.
20285 NW Cornell Rd.
Hillsboro, OR 97124

Consultant to Applicant: Stacy Warren
Land Development Consultants
233 SE Washington Street
Hillsboro, OR 97124

Recommended Hearings Officer Decision: Approve, subject to compliance with specific conditions, a Conditional Use Permit, Variance and Significant Environmental Concern Permit to establish a single family dwelling on the above property. Staff recommendation is based on the findings and conclusions, contained herein.

CONCLUSIONS:

1. The subject parcel meets the template tests of both Multnomah County and the State as is required.
2. A major variance is justified based on the size, configuration and unique qualities inherent in the land.
3. The applicant has carried the burden of demonstrating compliance with the applicable Comprehensive Plan Policies and Significant Environmental Concern Criteria

CONDITIONS:

1. The applicants site plan (found in Applicant's Supplemental Statement) is approved subject to submittal of the following revisions and clarifications upon application for design review.

   (a) South: The dwelling and all accessory buildings and structures shall be sited a minimum of 30 feet from the southern property line. A primary fire safety break shall extend a minimum 30 feet to the property line and a secondary fire safety break shall extend 100 feet beyond the primary fuel break.

   (b) North: A primary fuel break shall be extended down hill to the bottom of the drainage swale or a minimum of 30 feet, whichever is more. The secondary break shall be as indicated on the applicants site plan (Supplemental Report).

   (c) East: A primary break shall be extended to the east property line. No secondary fuel break will be required.

   (d) West: A primary break shall extend from the dwelling down hill to the edge of Rock Creek Road, as identified on the applicant site plan (Supplemental Report).

2. A well constructor's report shall be submitted prior to issuance of a building permit for the residence.

3. Fencing of the property shall not occur unless determined by Multnomah County to be in Compliance with the Significant Environment Concern Wildlife Habit Criteria (MCC 11.15.6426).

4. The nuisance plants listed under MCC 11.15.6426 shall be removed and kept removed from cleared areas of the subject property.

5. A Hillside Development Permit will be required for all areas where site clearing is done on slopes exceeding 25%, unless exempt under forest practices rules.

6. An on site sewerage verification form shall be submitted prior to issuance of a building permit.

7. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters as per OAR 660-06-035 (4) and (6). The dwelling shall also comply with Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.

8. Approval of this Conditional Use shall expire two years from the date of the final action unless substantial construction has taken place in accordance with MCC 11.15.7110 (C).

FINDINGS:

1. **Background/Introduction:** The Zoning Code Provisions for forest lands in Multnomah County were first acknowledged by the Land Conservation and Development Commission (LCDC) to be in conformance with Statewide Planning Goal 4, Forest Lands in July, 1980. Since that date LCDC has adopted Oregon Administrative Rules (OARs) and the Legislature has adopted laws into the Oregon Revised Statutes (ORS) to carry out the purposes of Goal 4 and address specific development issues on forest lands. A short history of recent state and county regulatory actions can be summarized as follows:

   - LCDC adopted OAR 660, Division 6 on January 25, 1990.
   - LCDC amended OAR 660, Division 6 on March 1, 1990.
   - LCDC amended OAR 660, Division 6 on December 3, 1992.
   - Multnomah County amends Commercial Forest Use (CFU) Zone on December 6, 1992 (effective 1/7/93) and is fully in compliance with all state standards.
   - Legislature passes HB 3661, signed by Governor, effective date in November, 1993.
   - At this point the Multnomah County Planning Director initiates the policy of applying both the CFU and Statute (and later amended OAR) provisions based upon the concept that the county code is still in effect except as may be in direct conflict with state requirements by being less restrictive.

2. **CONDITIONAL USE ORDINANCE CONSIDERATIONS AND FINDINGS:**
   NOTE: The applicant's response to an approval criteria will be indicated by the beginning notation "Applicant:" (Planning Staff comments may be added where supplemental information is needed or where Staff may not concur with the applicant's statement.)

   A. MCC 11.15.7120, Conditional Use Approval Criteria (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.**

   Staff: It is the position of staff that the approval criteria listed in the Multnomah County Code, under the CFU zone are applicable to dwellings allowed as conditional uses in the Multnomah County CFU Zone. The County Zoning Ordinance is an expression of local public policy and addresses public health, safety and welfare issues of the County. Therefore, the County may provide provisions for establishing dwellings in the CFU zone that include more restrictive provisions than those of the state (see Dillworth vs Clackamas County, LUBA, March 96') as long as the provisions are not explicitly in conflict with the intent of the state statutes, rules, and planning goals. By applying directly both the State

and County criteria, staff is of the belief forest lands are being protected consistent with the primary intent of Statewide Planning Goal 4.

If the County CFU zone is determined to be invalid, staff is of the belief there are no provisions or process under County Code for allowing any dwellings in the CFU zone, and thus this application may not be approved. ORS 215.416 provides, " (1) **When authorized by the ordinances, rules and regulations of a County,** an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. ... (4) **The application shall not be approved if** the proposed use of land is found to be **in conflict with the comprehensive plan of the county** and other applicable land use regulation or ordinance provision. ... (8) **Approval or denial** of a permit **application shall be based on standards and criteria** which shall be **set forth in the zoning ordinance or other appropriate ordinance or regulation of the county** and **which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county has a whole.**

B. MCC 11.15.2052 (A): A dwelling not related to forest management may be allowed subject to the following:

(1) **MCC 11.15.2052 (A)(1): The lot shall meet the lot of record standards of MCC .2062 (A) and (B) and have been lawfully created prior to January 25, 1990.**

Finding: MCC .2062 (A)(2) requires (a) a deed prior to 1990, (b) that the parcel satisfied the applicable laws when created, (c) that the parcel does not meet the minimum lot size (80 acres), and (d) that the parcel is not contiguous to other substandard lots under the same ownership. MCC .2062(B) offers definitions applicable to other substandard lots under the same ownership. MCC .2062 (B) offers definitions applicable to MCC .2062 (A). The Multnomah County Tax Roll (Applicant Exhibit 3) indicates that the subject parcel was created on June 11, 1947 by a deed recorded in Book 1178, Page 495. The subject parcel satisfied all applicable laws when it was created. The parcel is 2.30 acres in size, which is less than the 80 acre minimum lot size of the CFU District. The applicant does not own any contiguous property. These findings demonstrate that the subject parcel satisfies the lot of record standards of MCC .2062 (A) and (B), and was lawfully created prior to January 25, 1990.

(2) **MCC 11.15.2052 (A)(2): The lot shall be of sufficient size to accommodate siting the dwelling in accordance with MCC.2074 with minimum yards of 60 feet to the centerline of any adjacent County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;**

Finding: The subject property is adjacent to Rock Creek Road. The attached site plan (Applicant Exhibit 1) indicates that the proposed dwelling will be sited more than 60 feet from the centerline of Rock Creek Road. Due to the small size of the property, a 200 foot setback to all other property lines can not be satisfied. The attached site plan indicates a minimum 240 foot setback from the north property line, an 80 foot setback from the east property line, and a minimum 20 foot setback from the south property line. The applicant is requesting a variance to the required setbacks from both the east and south property lines. The standards of MCC .8505 are addressed within this report, below.

(3) **MCC 11.15.2052 (A)(3): The lot shall meet the following standards:**
   (c) **The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**
      (i) **The lot and at least all or part of 11 other lots [that existed on January 1, 1993, OAR 660-06-027 (1)(d)(C)(I)] exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines; and**
      (ii) **Five dwellings [Three that existed on January 1, 1993, OAR 660-06-027 (1)(d)(C)(ii)] exist within the 160 acre square.**

(4) **MCC 11.15.2052 (A)(3)(d): Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.**

(5) **MCC 11.15.2052 (A)(3)(e): The lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species recognized by the Forest Practices Rules.**

Finding: According to the Multnomah County SCS Soil Survey (See Applicant Exhibit 6), the soils on the subject property are Saum silt loams (soil types 43C and 43E). These soils both have a Site Index of 135, which translates into a yield of 120 to 164 cubic feet per acre per year. This exceeds 85 cubic feet per acre per year in conformance with the above standard. The SCS survey states that the soils on the site are suited to Douglas Fir. When the yield is multiplied by the 2.30 acres on the site, the annual growth is calculated to be between 276 to 377.2 cubic feet of wood fiber per year. Therefore, this parcel is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species in compliance with the above standard.

Applicant: Based on review of Multnomah County and Washington County Assessment and Taxation records (applicant Exhibit 8), 14 other parcels existed on January 1, 1993 within a 160-acre square centered on the subject tract.

These 11 parcels are listed below and are indicated on the attached map (Exhibit 7).

Parcels Existing on January 1, 1993 within 160-Acre Square

Tax Map	Tax Lot	County
1N2-1	1300	Washington
1N2-1	1400	Washington
1N2-1	2400	Washington
1N2-1	Parcel1 (3500)	Washington
1N2-1	Parcel2 (3500)	Washington
1N2-1	Parcel 3 (3500)	Washington
2N2W-36	(4)	Multnomah
2N2W-36	(9)	Multnomah
2N2W-36	(11)	Multnomah
2N2W-12	(12)	Multnomah
2N2W-36	(13)	Multnomah
2N2W-36	(15)	Multnomah
2N2W-36	(20)	Multnomah
2N2W-36	(25)	Multnomah

Review of Multnomah County and Washington County records (Exhibit 8) also indicates that 8 dwellings on other parcels existed on January 1, 1993 within the 160-acre square. These 8 parcels are listed below and are indicated on the attached map (Exhibit 7).

Parcels with dwellings on January 1, 1993 within 160-Acre Square

Tax Map	Tax Lot	County
1N2-1	2400*	Washington
2N2W-36	(4)	Multnomah
2N2W-36	(11)	Multnomah
2N2W-12	(12)	Multnomah
2N2W-36	(13)	Multnomah
2N2W-36	(15)	Multnomah
2N2W-36	(20)	Multnomah

*Tax Lot 2400 has two dwellings that existed on January 1, 1993.

The subject tract is not located near an urban growth boundary, so parcels or lots within an urban growth boundary are not used to satisfy the above eligibility requirements.

Staff: The following were verified by staff as sufficient to qualify both the template tests of the County and State:

Eleven Parcels Existing on January 1, 1993 within 160-Acre Square

Tax Map	Tax Lot	County
1N2-1	1300	Washington
1N2-1	1400	Washington
1N2-1	3500	Washington
2N2W-36	(4)	Multnomah
2N2W-36	(9)	Multnomah
2N2W-36	(11)	Multnomah
2N2W-12	(12)	Multnomah
2N2W-36	(13)	Multnomah
2N2W-36	(15)	Multnomah
2N2W-36	(20)	Multnomah
2N2W-36	(25)	Multnomah

Five Parcels with dwellings (3 existing on January 1, 1993) within 160-Acre Square

Tax Map	Tax Lot	County
2N2W-36	(11)	Multnomah
2N2W-12	(12)	Multnomah
2N2W-36	(13)	Multnomah
2N2W-36	(15)	Multnomah
2N2W-36	(20)	Multnomah

All of these (5) parcels include dwellings that existed on January 1, 1993.

(5) MCC 11.15.2052 (A)(4): **The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands.**

Applicant: In order to determine potential impacts between the proposed dwelling and farm/forest activities on nearby or adjacent lands, an area of analysis was selected based on the types of uses occurring in the area. Activities associated with the proposed dwelling are reviewed. Properties in the selected area are inventoried to determine farm/forest uses and practices occurring on those lands. The following analysis identifies and discusses potential conflicts, if any between the proposed dwelling and accepted farm and forest practices on nearby lands. The proposed dwelling location is on a 2.30 acre parcel. Adjacent properties contain larger acreage's and are forested. Due to the location of the subject site and the characteristics of adjacent properties, the analysis area is limited to the adjacent properties because impacts to farm/forest uses beyond this area would be considerably less than impacts, if any, to farm/forest uses adjacent to the site.

Property owners in the study area were surveyed by mail questionnaire. None of the adjacent property owners returned their questionnaire. The following information has been gathered from Multnomah County and Washington County Assessment and Taxation Records, review of an aerial photograph (Exhibit 2), and visual observation of the surrounding area.

The subject property is bordered on all sides by properties with forestry uses. Since specific management information for these activities is not available, documentation of typical forest management practices from the Oregon State University Extension Service has been reviewed. The following is an abstraction of this information.

Activities Associated with Forest Uses: Forest practices include road building prior to harvest; timber harvest stock piling and burning of slash subsequent to harvest; replanting; spraying of herbicides and pesticides and periodic thinning and trimming as the timber grows. Road building, harvesting, slash burning and thinning require the use of heavy equipment such as bulldozers, skidders, yarders (on steep slopes) loaders and trucks. Chain saws are also used in harvesting and thinning operations. Replanting is accomplished using hand labor, as is trimming and some early thinning of the stand. Spraying in areas with moderate residential density on nearby lands is normally accomplished from the ground. However, spraying may also be accomplished from the air using low-flying fixed wing aircraft or helicopters in order to limit drift of stray material to nearby properties. Effects from these activities include noise from heavy equipment and chain saws during harvest and thinning operations, smoke from slash fires, limited spray drift from herbicide and pesticide applications subsequent to harvest and replanting and periodic appearances by persons involved in the ongoing stand management. All adjacent tax lots are involved in forestry uses, either managed or unmanaged.

Potential Impacts to Adjacent and Nearby Farm/Forest Uses: Impacts to ongoing farm and forest uses from the dwelling site are mitigated by several factors in addition to the presence of existing dwellings in the area. These factors include intervening distances and vegetation. The closest farm/forest operation to the north, is located over 240 feet from the proposed homesite. Farm/forest operations are located over 80 feet to the east of the homesite. The homesite is separated from farm/forest use to the south by a distance of over 100 feet, across Rock Creek Road. Farm/forest operations to the west are located over 100 feet from the proposed homesite, across Rock Creek Road. The northern portion of the subject site is forested. Properties in all directions around the site are moderately to heavily forested. These factors combine to insulate the dwelling site from farm and forest activities occurring on properties surrounding the site.

(6) MCC 11.15.2052 (A)(5): **The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive plan in 1980, will be acceptable.**

Finding: According to the Multnomah County Comprehensive Plan Wildlife Habitat Map (Applicant Exhibit 4), the subject site is located outside of designated sensitive big game wintering habitat areas.

(9) MCC 11.15.2052 (A)(6): **The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection.**

Finding: The parcel is within the jurisdiction of Tualatin Valley Fire & Rescue.

(10) MCC 11.15.2052 (A)(7): **Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of forestry, the Bureau of Land Management or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance.**

Applicant: The site will be accessed by a private easement from Rock Creek Road across the property to the south. A copy of the recorded easement will be provided to Multnomah County as soon as possible.

Staff: On June 4, 1996 the applicant submitted a copy of an Agreement for Easement for non-exclusive Right of Access, utilities, maintenance and management (Document #96042265).

(11) MCC 11.15.2052 (A)(8): **The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest deferral.**

Applicant: Multnomah County Assessment records indicate that the parcel is not receiving farm or forest deferral.

Staff: Staff finds that the disqualification of farm or forest deferral is directly in conflict with the OAR and this criteria is not applicable. The following OAR requirement supersedes the above requirement to disqualify the property from farm or forest deferral. Under the OAR, if the property is planted to Department of Forestry standards then the property can be retained or added onto tax deferral programs.

[OAR 660-06-029(5) and Senate Bill 245 (1995 session): Approval of a dwelling shall be subject to the following requirements:

(a) Approval of a dwelling on a lot, parcel, or tract 10 acres or more shall require the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.

(c) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall inform the Department of Forestry in cases where

the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.

(c) Upon notification by the assessor the Department of Forestry shall determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.]

(12) MCC 11.15.2052 (A)(9): **The dwelling meets the applicable development standards of MCC.2074; (See below)**

(13) MCC 11.15.2052 (A)(10): **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 the Forest Practices Act and Rules, and to conduct accepted farming practices;**

Finding: A copy of the recorded deed restriction has been submitted by the applicant and included in the applicants Supplemental Statement. This criteria has been met.

(14) MCC .2074 - Development Standards for Dwellings and Structures: **Except as provided for the replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:**

(A) The dwelling or structure shall be located such that:

(1) It has the least impact on nearby or adjoining forest or agricultural lands and satifies the minimum yard and setback requirements of .2058 (C) through (G);

Applicant: As discussed under .2050 (A)(4), this development will not impact, curtail or impede farm/forest lands, operations or accepted practices due to the presence of other existing dwellings in the area and intervening vegetation and distances.

Staff: The least impact to adjoining forest uses would arguably require the dwelling be sited at precisely the center of the lot. However, the siting of the dwelling must consider site conditions.

The proposed homesite is on land containing 15% slopes, based on the applicants written testimony. The area directly west of the homesite and east of Rock Creek Road site include slopes in excess of 40%, based on site visit. Immediately to the north of the proposed homesite are slopes of 20% or more. The homesite is upslope from the parcels to the west and

south as well as the northern portion of the subject parcel. The elevational differences act to buffer agricultural or forest spraying at lower elevations.

(2) **Forest operations and accepted farming practices will not be curtailed or impeded.**

(3) **The amount of land used to site the dwelling or other structures, access roads, and service corridor is minimized.**

Applicant: The site plan, attached to this report as Exhibit 1, indicates the proposed dwelling and driveway locations. The attached site plan indicates a homesite area of 100 feet by 100 feet. The future residence and any accessory structures will be located within the designated homesite area, although their specific locations, dimensions and foot prints are undecided at present. The proposed driveway access will be through a private easement from Rock Creek Road across the adjacent property to the south. A 20 foot wide strip is shown for the driveway (this includes adequate area for a 12 foot wide travel surface and shoulder/ditch areas). The proposed driveway will extend approximately 20 feet onto the subject site (and approximately 90 feet from Rock Creek Road across the adjacent property to the south). The proposed driveway is estimated to be a total of 110 feet long. Therefore, the proposed homesite area and driveway encompass an estimated 10,000 and 2,200 square feet .

(4) **Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

(5) **The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

(a) **Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet driveway standards of MCC .2074 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;**

Applicant: No perennial water source is located on site.

(b) **Maintenance of a primary and secondary fire safety zone;**

(i) **A primary safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure ....**

(ii) **On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

Percent Slope	**Distance in Feet**

Less than 10	**Not Required**
Less than 20	**50**
Less than 30	**75**
Less than 40	**100**

(iii) **A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone... .**

(iv) **No requirement in (i), (ii) , or (iii) above may restrict or contradict a forest management plan approved by the state of Oregon Department of Forestry pursuant to the state Forest Practices Rules; and**

(c) **The building site must have a slope less than 40 percent.**

Staff: Elevational differences affect the rate at which wildfire can spread. The area between Rock Creek Road and the proposed homesite as well as the area on the north side of the proposed homesite are steep. Both areas include slopes in excess of 25% based upon site evaluations by staff and photographs. A spark or cigerrete from a passing vehicle, when combined with dry fuels, could result in a rapidly spreading fire.

The applicant is proposing a primary fuel break: 1) extending from the homesite area 100 feet to the west down to Rock Creek Road; 2) extending 80 feet uphill to the east property line; 3) 30 feet downhill to the north, and; 4) 30 feet to the south, extending into Washington County.

Staff agrees with the applicant proposed primary fuel breaks with the exception of the area to the north. As specified earlier this area includes slopes in excess of 25%. Staff believes an appropriate primary fuel break to be frome the homesite extended down hill to the bottom of the swale or a minum distance of 30 feet, whichever is more. This will result in a fire break that runs at an angle to the homesite, but protects the spread of fire uphill from a natural swale.

The applicant has requested through the variance criteria addressed in this report, to reduce the secondary fire break below the standards above.

(B) **The dwelling shall:**

(1) **Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

(2) **Be attached to a foundation for which a building permit has been obtained; and**

(3) **Have a minimum floor area of 600 square feet.**

Finding: Upon approval of this application, the proposed dwelling would be required to be designed and constructed in compliance with the standards of the Uniform Building Code. The dwelling would be required to be attached to a foundation, for which a building permit will have been obtained. The dwelling would be required to have more than 600 square feet of floor area.

(C) **The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from a public source, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

Applicant: The domestic water supply for the proposed dwelling will be from an on-site well. Pursuant to ORS 537.545, use of groundwater for a single-family dwelling "not exceeding 15,000 gallons per day" and "watering of lawn or noncommercial garden not exceeding one half acre in area", are exempt from the requirements of a water use permit. In compliance with the above standard, the applicant will submit the well constructor's report to Multnomah County upon completion of the subject well.

Staff: The applicant has submitted copies of three State of Oregon water well reports within the general area. Additionally, there are at least five dwellings in the immediate area currently utilizing wells at rural densities. Staff finds, based on the data in the record that a well could reasonably be placed on site to meet the needs of one single family residence. Therefore compliance with this criteria could be assured through a condition requiring the applicant to submit an approved well constructor's report prior to approval of a building permit.

(D) **A private road (including all easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

(1) **Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**

(2) **Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**

(3) **Provide minimum curve radii of 48 feet or greater;**

(4) **Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**

(5) **Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;**
   (a) **Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
   (b) **The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**

(6) **Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**

(7) **Provide for the safe and convenient passage of vehicles by the placement of:**
   (a) **Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
   (b) **Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.**

Finding: The applicant submitted site plan, grading plan and driveway profile designed and certified by an Oregon registered professional engineer demonstrate compliance with this criteria. Additionally, compliance can be assured by requiring the applicant submit written approval of the access as being "serviceable" by emergency vehicle of the Tualatin Valley Fire & Rescue.

(10) **MCC 11.15.2052 (A)(10): A statement has been recorded with the Division of Records that the owner and the successor 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 submitted a copy of a recorded document (#96 27553) which satisfies this criteria. See Exhibit G of applicant supplemental report.

(C) MCC 11.15.8505: Variance Approval Criteria: **A major variance shall be granted only when the following criteria are met.**

(1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.

Finding: The applicant is requesting a variance to the 200 foot setback requirement to allow the homesite to be located a minimum of 80 feet west of the east property line and a minimum of 20 feet north of the south property line. The subject lot is irregularly shaped with the south property line being 256 feet long and the east property line being 400 feet long (See applicant

revised site plan in Supplemental Statement, Exhibit A7. The shape and topography of this parcel is unique in the vicinity of the site and in the CFU District. The size and shape of the parcel necessitate the location of a homesite within at least two of the required yard setbacks, if a homesite is to be located on the subject parcel

(2) **The zoning requirement would restrict the use of the subject property to greater degree than it restricts other properties in the vicinity or district. Staff:**

Applicant: ... Strict interpretation of the setback requirements would make it impossible to locate a structure on the subject property in compliance with all setbacks. At most, a structure could be located in compliance with only two of the required setbacks on the site. Due to the physical characteristics of the subject site (size, shape, drainage channels and slopes), the setback requirement restricts the use of the property to a greater degree than it restricts other properties in the same vicinity or district.

Staff: Staff agrees that without a variance the dwelling would not be allowed. However, meeting this criteria is not a blanket variance. The proposed homesite is 100' x 100'. Staff interprets the intent of the Multnomah County variance criteria is to apply necessary flexibility to standards that would otherwise deny an allowed or permitted use. Based upon staff interpretation, the variance should be the minimum necessary. Staff finds that the applicant could without difficulty site a dwelling and accessory buildings a minimum of 30 feet from the south property line thus maintaining a primary fuel break on site without restricting the use. Staff concludes the 100' x 100' homesite should be reduced to a 100' x 90' building area while maintaining a 30 foot setback and primary fuel break from the southern property line.

(3) **The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.**

Findings: Properties surrounding the subject site are developed in a mixture of forest and rural residential uses. Findings under Sections .2052 (A)(4) and .2074(A)(1) through (3), above, evaluate the impact of the dwelling, in the proposed location, on adjoining properties. Given the characteristics of the site and surrounding properties, these findings demonstrate that authorization of a variance, will not be materially detrimental to public welfare, or injurious to property in the vicinty or district.

The applicant proposes a variance to permit an 80-foot primary fire break to the east, all the way to the property line. The expanded primary break would substitute for a secondary break. The proposed firebreak was recommended by the Department of Forestry for this property. The Tualatin Valley Fire and Rescue fire marshall concurs with the DOF opinion.

(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

Finding: The realization of the Comprehensive Plan is ensured through a thorough review of the proposal against the applicable criteria, as this report is intended to do.

D. MCC 11.15.6426: Criteria for approval of SEC-h Permit Wildlife Habitat:

(A) In addition to the information required by MCC .6408 (C), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas; For the purposes of this section, a forested area is defined as an area that has at least 75% crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practices Rules of the Oregon Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

(2) Location of existing and proposed structures;

(3) Location and width of existing and proposed public roads, private access road, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;

(4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties entirely or partially within 200 feet of the subject property.

(B) Development Standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Finding: The proposed location for siting of the home is a non-forested area of approximately 0.8 acres in size.

(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Finding: The proposed home site is located 110 feet from NW Rock Creek Road at its furthest point..

(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Finding: The proposed access road/driveway is approximately 115 feet in length.

(4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.

Finding: Access road as proposed will be located within 100 feet of the property boundary at its furthest point.

(5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.
Finding: The proposed home will be located within 100 feet from the west property boundary, 210 feet from the north property boundary, 80 feet from the east property boundary and 30 feet (subject to revision) from the southern property boundary.

(6) Fencing within a required setback from a public road shall meet the following criteria:
- **(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
- **(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
- **(c) Cyclone, woven wire, and chain link fences are prohibited.**
- **(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**
- **(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**

Finding: No fencing is proposed.

(7) The nuisance plants listed shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

Applicant: Landscaping will not include any plants from the nuisance plant list. Nuisance plants that currently occur on the property (Himalayan blackberry, scotch broom, English ivy) shall be removed and kept clear from a one acre area surrounding the homesite.

(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having less detrimental impact on forested wildlife habitat than the standards in Section B.

(3) The wildlife conservation plan must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing areas used for agricultural purposes.

(d) That revegetation and enhancement of disturbed stream riparian areas occurs along drainage's and streams located on the property occurs.

Applicant: The proposed home and access road meet all the requirements of Section (B). Therefore no wildlife conservation plan is required.

(4) For Protected Aggregate and Mineral (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.

3. <u>MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES:</u>

A. Policies in the Comprehensive Plan which require findings in this Quasi-judicial Decision are addressed as follows:

(1) **Policy No. 13, Air, Water and Noise Quality: Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise levels. ... Furthermore, it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels.**

Finding: The subject dwelling will generally have no impact on air quality. A well and on-site disposal system will be established on the site to serve the proposed dwelling, in compliance with all applicable standards. The dwelling location is not within a known noise impact area and the dwelling is not a noise generator.

(2) **Policy No. 14, Development Limitations. The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

A. **Slopes exceeding 20%;**
B. **Severe soil erosion potential;**
C. **Land within the 100 year flood plain;**
D. **A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;**
E. **A fragipan less than 30 inches from the surface; and**
F. **Lands subject to slumping, earth slides or movement.**

Applicant: The proposed homesite and driveway locations do not contain any of the characteristics outlined in (a) through (f), above (See Exhibit 1). The Multnomah County Slope Hazard Area Map (Exhibit 5) does not designate the subject parcel as containing slope hazard areas.

Staff: The area to the north of the proposed homesite has been cleared and trees removed within the past 6 months. Evidence of this is found in staffs photos and the SEC report prepared by A.G. Crook Company for the applicant which states, "A steep draw crosses the site in a east to west direction. The draw approximately divides the property into northern and southern portions. The entire southern half of the site has been clear cut logged within the last one to two months" (report dated March 5, 1996). The applicant has submitted a permit from ODF for the clearing into the record.

Since an application for a dwelling in a CFU District requires a primary and secondary fuel break, and where the primary break requires, "Site Clearing", specifically between Rock Creek Road and the homesite on lands with slopes exceeding 25%, a Hillside Development Permit will be required prior to issuance of a building permit.

(3) **Policy No. 37, Utilities: The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:**

WATER DISPOSAL SYSTEM:

A. **The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or**
B. **The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
C. **There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
D. **There is an adequate private water system, and a public sewer with adequate capacity.**

DRAINAGE:

E. **There is adequate capacity in the storm water system to handle the increased run-off; or**
F. **The water run-off can be handled on the site or adequate provisions can be made; and**
G. **The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.**

ENERGY AND COMMUNICATIONS:

H. **There is an adequate energy supply to handle levels projected by the plan; and**
I. **Communications facilities are available.**

Applicant: The applicant plans to serve the proposed dwelling with an on-site well and an on-site disposal system. An on-site sewerage verification form will be submitted as soon as possible. Service providers are listed on the attached application form.

(5) **Policy No. 38, Facilities: The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:**

A. **The appropriate School District has had an opportunity to review and comment on the proposal.**
B. **There is adequate water pressure and flow for fire fighting purposes; and**

C. **The appropriate fire district has had an opportunity to review and comment on the proposal.**

D. **The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.**

Applicant: Service provider forms for school and police services are attached as Exhibit 9. The service provider form for fire services will be submitted to Multnomah County as soon as possible.

4. **Oregon Administrative Rules:** Revisions to OAR 660-06, revised in 1995, have not to date been adopted by the county. Consequently, any requirements of the OAR that are not included in the county code, as well as any OAR requirements that are more restrictive than county code criteria, must also be applied to this proposal. The following OAR requirements are applicable:

OAR 660-06-027 (1)(d): **In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are: (C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if: (i.) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and (ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels.**

Finding: As demonstrated through MCC 11.25.2025 (A)(3) [pg 4 of this report], the parcel meets the requirements of OAR 660-06-027 (1)(d)].

OAR 660-06-027 (4): **A proposed dwelling under this rule is not allowed :**

(a) **If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law;**

Finding: Findings contained within this report demonstrate that the proposed dwelling will be in compliance with the Multnomah County Comprehensive Plan and Zoning Ordinance, as well with applicable Oregon Administrative Rules. The Multnomah County Comprehensive Plan is an acknowledge plan.

(b) **Unless it complies with the requirements of OAR 660-06-029 and 660-06-035;** (addressed below)

(c) **Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (6) of this rule for other lots or parcels that make up the tract are met;**

Finding: The subject tract consists of one 2.30 acre tax lot. The applicant is proposing to establish one dwelling on the subject tax lot.

(d) If the tract on which the dwelling will be sited includes a dwelling.

Finding: There are no dwellings currently on the parcel.

OAR 660-06-029: The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. A governing body shall consider the criteria in this rule together with the requirements OAR 660-06-035 to identify the building site:

(1) Dwellings and structures shall be sited on the parcel so that:
(a) They have the least impact on nearby or adjoining forest and agricultural lands;
(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
(c) The amount of forest lands used to site the access roads, service corridors, the dwelling and structures is minimized; and
(d) The risks associated with wildfire are minimized.

Finding: The findings contained under MCC 11.15.704 (A)(1) through (5) of this report, demonstrate compliance with OAR 660-06-029 (1).

(2) Siting criteria satisfying section (1) of this rule may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

Finding: As demonstrated through this report, the homesite will be in compliance with the Multnomah County Code which utilizes consistent criteria and standards for determining and evaluating siting of a dwelling.

(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR Chapter 629). For purposes of this section, evidence of a domestic water supply means:
(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
(b) A water use permit issued by the Water Resources Department for the use described in the application; or
(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed

water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Finding: The applicant is proposing to utilize a private well. As demonstrated through MCC 11.15.2074 (C), page 12 of this report, the applicant has demonstrated compliance can reasonably be met through conditions of approval.

(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to accept responsibility for road maintenance.

Finding: The site will be accessed by a private easement from Rock Creek Road across the property to the south. A copy of the recorded easement has been entered into the record.

OAR 660-06-035: **Fire Siting Standards for Dwellings and Structures: The following fire siting standards or their equivalent shall apply to new dwelling or structures in a forest or agriculture/forest zone:**

(1) The dwelling shall be located upon a parcel within a rural fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards.

Finding: The site is located within the jurisdiction of Tualatin Rural Fire & Rescue. Risks associated with wildfire are minimized as discussed under Section .2074(A)(5), above.

(2) Road access to the dwelling shall meet road design standards described in OAR 660-06-040.

Finding: OAR 660-06-040 is addressed below.

(3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area in accordance with the provisions in "Recommended Fire Siting Standards and Fire Safety Design Standards for Road" dated March 1, 1991 and published by the Oregon Department of Forestry.

Finding: Primary and secondary fuel breaks will be established as described through this report.

(4) The dwelling shall have a fire retardent roof.

Finding: As a condition of approval, a dwelling would be required to have a fire retardant roof.

(5) The dwelling shall not be sited on a slope of greater than 40 percent.

Finding: The proposed dwelling site will be away from the steeper areas surrounding it and will not be sited on slopes in excess of 40% as demonstrated through this report.

(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

Finding: A condition of approval could require that, if the dwelling includes a chimney or chimney, each chimney shall have a spark arrester.

660-06-040: **Fire Safety Design Standards for Roads: The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.**

Finding: Multnomah County has established road design standards, which are contained under MCC 11.15.2074(D) [pg. 13 of this report].

This Staff Report and recommendation was available on June 12, 1996 seven days before the June 19, 1996 public hearing scheduled before a County Hearings Officer. The Hearings Officer may announce a decision on this application (1) at the close of the hearing; (2) upon continuance of a date and time certain; or (3) after the close of the record following the hearing.

A written decision is usually mailed to all parties and filed with the Clerk of the Board within ten days of the decision by the Hearings Officer.

Appeal to the Board of County Commissioners:
The Hearings Officer 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.

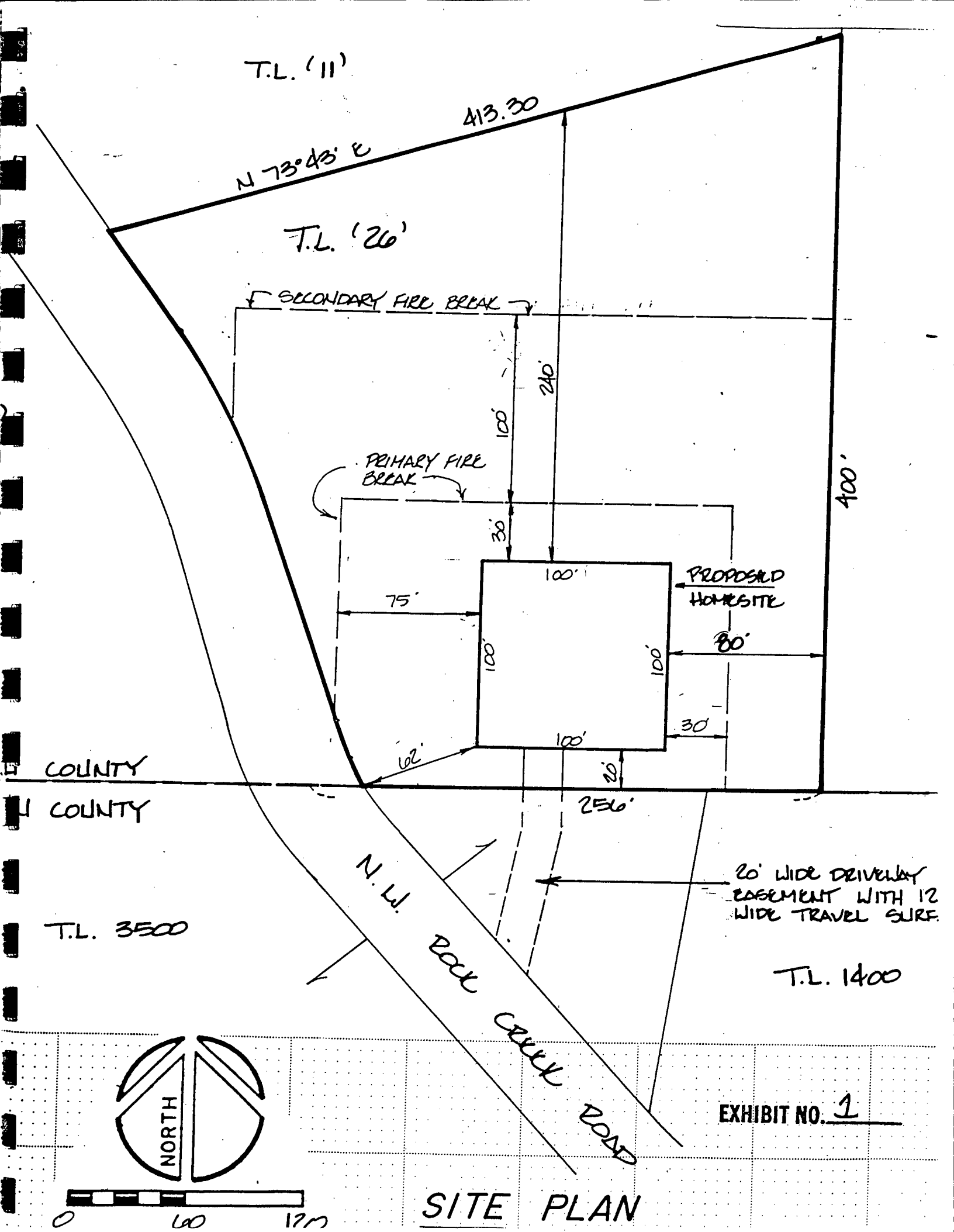


EXHIBIT NO. 1

SITE PLAN

AUG 8 1996

MEETING DATE: _____

AGENDA NO.: C-4

ESTIMATED START TIME: 9:30am

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement with Mt. Hood Community College Head Start

BOARD BRIEFING Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING Date Requested: _____

Amount of Time Needed: 5 minutes or less

DEPARTMENT: Health DIVISION: _____

CONTACT: Carol Cole* TELEPHONE #: x2480

BLDG/ROOM #: 403

PERSON(S) MAKING PRESENTATION: Tom Fronk

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Ratification of Intergovernmental Revenue Agreement 200037 with Mt. Hood Community College Head Start to provide a 0.5 FTE Community Health Nurse to the Mt. Hood Community College Head Start/Oregon Prekindergarten Program.

8/9/96 ORIGINALS to KAREN GARBER

BOARD OF COUNTY COMMISSIONERS
96
AUG -1 PM 2:10
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Or

DEPARTMENT MANAGER: Bill Odegaard

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

12/95 *Please return originals to Karen Garber 160/7

MULTNOMAH COUNTY OREGON

HEALTH DEPARTMENT
426 S.W. STARK STREET, 8TH FLOOR
PORTLAND, OREGON 97204-2394
(503) 248-3674
FAX (503) 248-3676
TDD (503) 248-3816

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

Date: July 29, 1996
To: Board of County Commissioners
From: Bill Odegaard, Director, Health Department
Subject: Contract #200037 with Mt. Hood Community College Head Start

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I. Recommendation/Action Requested: The Health Department recommends Board ratification of Contract #200037 with Mt. Hood Community College Head Start for the period August 15, 1996, through June 30, 1997.

II. Background/Analysis: This agreement has been renewed annually since 1992. The Health Department will provide a 0.5 FTE Community Health Nurse who will participate as a member of the Mt. Hood Community College Head Start staff. Services will include client assessments and health screenings, case management, training and education for staff and parents, and program planning.

III. Financial Impact: Mt. Hood Community College Head Start will reimburse the County $30,264 for services provided.

IV. Legal Issues: None

V. Controversial Issues: None

VI. Link to Current County Policies: Continuing to cooperate with other government agencies in the provision of health care.

VII. Citizen Participation: The Mt. Hood Head Start program has a citizen advisory board which consists of parents of students, and a health advisory committee which consists of health care providers from the community.

VIII. Other Government Participation: The Multnomah County Department of Community and Family Services contributes two mental health providers to the Head Start staff. The Health Department is also working collaboratively with the Head Start program to provide WIC certification, lead screening and developmental assessments as part of the East County and Mid County Caring Community Efforts.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [X] Contract # 200037

Previously Approved Contract Boilerplate: [ ]Attached [ ]Not Attached Amendment #

CLASS I	CLASS II	CLASS III
[ ] Professional Services under $25,000	[ ] Professional Services over $25,000 (RFP, Exemption)	[X] Intergovernmental Agreement over $25,000
[ ] Intergovernmental Agreement under $25,000	[ ] PCRB Contract	[ ] Expenditure
[ ] Expenditure	[ ] Maintenance Agreement	[X] Revenue
[ ] Revenue	[ ] Licensing Agreement	
	[ ] Construction	
	[ ] Grant	
	[ ] Revenue	

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-4 DATE 8/8/96
DEB BOGSTAD
BOARD CLERK

Department: Health Division: Date: 7/29/96

Contract Originator: Carol Cole Phone: x2480 Bldg/Room: 403

Administrative Contact: Karen Garber Phone: x6207 Bldg/Room: 160/7

Description of Contract:
County will provide a 0.5 FTE Community Health Nurse to the Mt. Hood Community College Head Start/Oregon Prekindergarten Program.

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

ORS/AR # Contractor is [ ]MBE [ ]WBE [ ]QRF [X]N/A [ ]None

Original Contract No. 200743* (FOR RENEWALS ONLY) *Then 201054, 200485, 200476 and now 200037.

Contractor Name: Mt. Hood Community College
Mailing Address: Head Start
10100 NE Prescott Street
Portland, OR 97220
Phone: 256-3436 (Fax 255-8494)
Employer ID# or SS#: n/a
Effective Date: August 15, 1996
Termination Date: June 30, 1997
Original Contract Amount: $ 30,264
Total Amt of Previous Amendments: $
Amount of Amendment: $
Total Amount of Agreement: $

Susan Brady, Head Start Director
Remittance Address (if different)

Payment Schedule
[ ]Lump Sum $
[ ]Monthly $
[X]Other $ Quarterly

Terms
[ ]Due on Receipt
[ ]Net 30
[ ]Other

[ ]Requirements contract - Requisition Required
Purchase Order No.
[ ]Requirements Not to Exceed $
Encumber: Yes[ ] No[ ]

REQUIRED SIGNATURES:

Department Manager: Bill Odegaard Date: 7/30/96

Purchasing Director: Date:
(Class II Contracts Only)

County Counsel: Katie Daggett Date: 8/1/96

County Chair/Sheriff: Date: August 8, 1996

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
01	156	015	0480			4040		0361	MHCC Head Start CHN		
02											
03											

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

DISTRIBUTION: Contract Administration, Finance, HD Contracts Unit, HD Payables/Receivables, HD Program Manager

INTERGOVERNMENTAL AGREEMENT
FOR COMMUNITY HEALTH NURSING SERVICES

THIS INTERGOVERNMENTAL AGREEMENT is between MULTNOMAH COUNTY, acting by and through its Health Department, (hereinafter referred to as "COUNTY"), and MT. HOOD COMMUNITY COLLEGE HEAD START (hereinafter referred to as "MHCCHS").

WITNESSETH:

WHEREAS, MHCCHS requires health care services which COUNTY's Health Department is capable of providing, under the terms and conditions hereinafter described; and

WHEREAS, COUNTY's Health Department is able and prepared to provide such services as MHCCHS does hereinafter require, under those terms and conditions set forth; now therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. TERM
This Agreement shall become effective August 15, 1996, and shall expire June 30, 1997, unless sooner terminated under the provisions hereof.

2. SERVICES
COUNTY's services under this Agreement shall consist of the following:

A. COUNTY will provide, supervise and evaluate a 0.5 FTE Community Health Nurse with advisement from MHCCHS.

B. The Community Health Nurse will be out-stationed at MHCCHS's offices.

C. The Community Health Nurse will participate as a member of MHCCHS's staff by providing services as follows:

1) Assessment
   a) Review clients' health history and evaluate potential impact on development and learning ability.
   b) Provide/assist with health screenings as needed.
   c) Provide in-home assessments of family health needs and the home environment.
   d) Observe that health procedures are being followed.
   e) Provide telephone triage of adult and pediatric health problems.

2) Planning
   a) Develop a nursing plan with identified families to meet their health needs.
   b) Participate in multi-disciplinary team staffings.
   c) Establish a schedule to meet with staff at each center to discuss health concerns.

3) Education
   a) Provide health training to MHCCHS's staff as requested.
   b) Provide parent workshops as requested.
   c) Contribute to newsletter about health issues.
   d) Participate in Head Start-related training.

4) Case Management
   a) Provide medical/health case management to identified at-risk families.
   b) Coordinate delivery of service in the home with family visitors.

5) Liaison to COUNTY's Health Department
   a) Maintain an ongoing relationship with and participate in appropriate in-service trainings and staff meetings within the Field Services Division of COUNTY's Health Department.
   b) Act as a liaison to the Communicable Disease Division of COUNTY's Health Department as needed.
   c) Provide, coordinate and/or refer families to special services provided by COUNTY.

3. COMPENSATION

A. MHCCHS agrees to pay COUNTY a maximum of $30,264 for the performance of those services provided hereunder, which payment shall be based upon the following terms:

1) MHCCHS shall reimburse COUNTY quarterly upon receipt of COUNTY's billing invoice.

2) Payment terms are net 30 days.

3) Invoices shall be sent to:
   Mt. Hood Community College Head Start
   Attention: Bookkeeper
   10100 NE Prescott Street
   Portland, OR 97220

B. MHCCHS certifies that sufficient funds are available and authorized to finance the costs of this Agreement. In the event that funds cease to be available to MHCCHS in the amounts anticipated, either MHCCHS or COUNTY may terminate the Agreement or the parties by mutual agreement may reduce Agreement funding accordingly. MHCCHS will notify COUNTY as soon as it receives notification from funding source. Reduction or termination will not affect payment for accountable expenses prior to the effective date of such action.

INTERGOVERNMENTAL AGREEMENT
STANDARD CONDITIONS

1. INDEPENDENT CONTRACTOR STATUS
COUNTY is an independent contractor and is solely responsible for the conduct of its programs. COUNTY, its employees and agents shall not be deemed employees or agents of MHCCHS.

2. INDEMNIFICATION
   A. COUNTY shall defend, hold and save harmless MHCCHS, its officers, agents, and employees from damages arising out of the tortious acts of COUNTY, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this Agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and any applicable provisions of the Oregon Constitution.
   B. MHCCHS shall defend, hold and save harmless COUNTY, its officers, agents, and employees from damages arising out of the tortious acts of MHCCHS, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this Agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and any applicable provisions of the Oregon Constitution.

3. WORKERS COMPENSATION INSURANCE
COUNTY shall maintain workers' compensation insurance coverage for all non-exempt workers, employees, and subcontractors either as a carrier-insured employer or a self-insured employer as provided in Chapter 656 of Oregon Revised Statutes.

4. TAXPAYER IDENTIFICATION NUMBER
COUNTY shall furnish to MHCCHS its federal employer identification number, as designated by the Internal Revenue Service.

5. SUBCONTRACTS AND ASSIGNMENT
COUNTY shall neither subcontract with others for any of the work prescribed herein, nor assign any of COUNTY's rights acquired hereunder without obtaining prior written approval from MHCCHS.

6. RECORD CONFIDENTIALITY
COUNTY and MHCCHS agree to keep all client records confidential in accordance with state and federal statutes and rules governing confidentiality.

7. ACCESS TO RECORDS
MHCCHS's authorized representatives shall have access, upon reasonable request and during regular office hours, to the books, documents, papers and records of COUNTY which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

8. ADHERENCE TO LAW

In connection with their activities under this Agreement, COUNTY and MHCCHS agree to adhere to all applicable federal, state and local laws, including but not limited to laws, rules, regulations and policies concerning equal employment opportunity, affirmative action, workers' compensation, minimum and prevailing wage requirements, and nondiscrimination in service delivery.

9. MODIFICATION

Any amendments to the provisions of this Agreement, whether initiated by COUNTY or MHCCHS, shall be reduced to writing and signed by both parties.

10. WAIVER OF DEFAULT

Waiver of a default shall not be deemed to be a waiver of any subsequent default. Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the provisions of this Agreement

11. EARLY TERMINATION

A. This Agreement may be terminated prior to the expiration of the agreed-upon term:
   1) Immediately by mutual written consent of the parties or at such time as the parties agree; or
   2) By either party upon 30 days written notice to the other, delivered by certified mail or in person
B. Payment to COUNTY will include all services provided through the day of termination and shall be in full satisfaction of all claims by COUNTY against MHCCHS under this Agreement.
C. Termination under any provision of this section shall not affect any right, obligation or liability of COUNTY or MHCCHS which accrued prior to such termination.

12. LITIGATION

A. MHCCHS shall give COUNTY immediate notice in writing of any action or suit filed or any claim made against MHCCHS or any subcontractor of which MHCCHS may be aware which may result in litigation related in any way to this Agreement.
B. COUNTY shall give MHCCHS immediate notice in writing of any action or suit filed or any claim made against COUNTY or any subcontractor of which COUNTY may be aware which may result in litigation related in any way to this Agreement.

13. OREGON LAW AND FORUM

This Agreement shall be construed and governed according to the laws of the State of Oregon.

14. INTEGRATION

This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements.

IN WITNESS WHEREOF, the parties have caused this Agreement, including the Standard Conditions and any attachments incorporated herein, to be executed by their duly authorized officers.

MT. HOOD COMMUNITY COLLEGE
HEAD START

By_____

Title_____

Date_____

MULTNOMAH COUNTY, OREGON

By_____
Beverly Stein, Multnomah County Chair
Date August 8, 1996

HEALTH DEPARTMENT

By_____
Billi Odegaard, Director
Date 7/30/96

By_____
Carol Cole, Program Manager
Date 7/30/96

REVIEWED:
Laurence B. Kressel, County Counsel for
Multnomah County, Oregon

By_____
Katie Gaetjens, Assistant Counsel
Date 8/1/96

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-4 DATE 8/8/96
DEB BOGSTAD
BOARD CLERK

MEETING DATE: AUG 8 1996

AGENDA NO.: C-5

ESTIMATED START TIME: 9:30am

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Renewal of Intergovernmental Revenue Agenda with Portland Public Schools

BOARD BRIEFING Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING Date Requested: _____

Amount of Time Needed: 5 minutes or less

DEPARTMENT: Health DIVISION: _____

CONTACT: Jan Wallinder* TELEPHONE #: x6332

BLDG/ROOM #: 160/9

PERSON(S) MAKING PRESENTATION: Tom Fronk

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Renewal of Intergovernmental Revenue Agreement 200457 with Portland Public Schools for the provision of Early Intervention and Early Childhood Special Education services for Multnomah County preschool children with disabilities.

8/9/96 ORIGINALS to KAREN GARBER

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Or

DEPARTMENT MANAGER: Bill Odegaard

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

12/95 *Please return originals to Karen Garber 160/7

BOARD OF COUNTY COMMISSIONERS
96 JUL 29 PM 1:55
MULTNOMAH COUNTY OREGON

MULTNOMAH COUNTY OREGON

HEALTH DEPARTMENT
426 S.W. STARK STREET, 8TH FLOOR
PORTLAND, OREGON 97204-2394
(503) 248-3674
FAX (503) 248-3676
TDD (503) 248-3816

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

Date: July 19, 1996
To: Board of County Commissioners
From: Billi Odegaard, Director, Health Department
Subject: Intergovernmental revenue agreement with Portland Public Schools for Early Intervention and Early Childhood Special Education (EI/ECSE) services

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I. Recommendation/Action Requested: The Health Department recommends Board ratification of Contract #200457 with Portland Public Schools for the period July 1, 1996, through June 30, 1997.

II. Background/Analysis: Portland Public Schools serves as the regional contractor for Early Intervention services under an agreement with the Oregon Department of Education. The Health Department will receive federal and state pass-through funds to provide Early Intervention and Early Childhood Special Education services to preschool children with disabilities. Services will be provided from birth to age of eligibility for entry into kindergarten This agreement has been renewed annually since FY 92-93. Prior to 1992-93, the funding came from the State Mental Health Division. The agreement is retroactive to July 1, 1996, due to late processing by Portland Public Schools. It was received by the Health Department on July 19, 1996.

III. Financial Impact: The County will be paid $77,000 for the provision of services.

IV. Legal Issues: None

V. Controversial Issues: None

VI. Link to Current County Policies: Continuing to cooperate with other agencies in the provision of health care.

VII. Citizen Participation: The EI/ECSE Local Advisory Council provides input and advice regarding services, service providers, intake, client satisfaction, etc.

VIII. Other Government Participation: Other agencies providing services include Portland Public Schools, Multnomah Education Service District and OHSU's Child Development and Rehabilitation Center.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [X] Contract # 200457

Previously Approved Contract Boilerplate: [ ]Attached [ ]Not Attached Amendment #

CLASS I	CLASS II	CLASS III
[ ] Professional Services under $25,000	[ ] Professional Services over $25,000 (RFP, Exemption)	[ ] Intergovernmental Agreement over $25,000
[ ] Intergovernmental Agreement under $25,000	[ ] PCRB Contract	[ ] Expenditure
[ ] Expenditure	[ ] Maintenance Agreement	[X] Revenue
[ ] Revenue	[ ] Licensing Agreement	APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS
	[ ] Construction	AGENDA # C-5 DATE 8/8/96
	[ ] Grant	DEB BOGSTAD
	[ ] Revenue	BOARD CLERK

Department: Health Division: Date: 7/19/96

Contract Originator: Jan Wallinder Phone: x6332 Bldg/Room: 160/9

Administrative Contact: Karen Garber Phone: x6207 Bldg/Room: 160/8

Description of Contract:
Early Intervention and Early Childhood Special Education (EI/ECSE) services for Multnomah County preschool children with disabilities.

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

ORS/AR # Contractor is [ ]MBE [ ]WBE [ ]QRF [X]N/A [ ]None

Original Contract No. 201033* (FOR RENEWALS ONLY) *Then 201064, 200595, 200776 and now 200457.

Contractor Name: Portland Public Schools

Mailing Address: EI/ECSE Program
531 SE 14th Avenue
Portland, OR 97214

Phone: 280-5840 (Fax 280-6468)

Employer ID# or SS#: n/a

Effective Date: July 1, 1996

Termination Date: June 30, 1997

Original Contract Amount: $ 77,000

Total Amt of Previous Amendments: $

Amount of Amendment: $

Total Amount of Agreement: $

Susan Saling

Remittance Address (if different) *Payment: 20% upon execution; 10% each month thereafter; final 5% based on actual expenditures

Payment Schedule

[ ]Lump Sum $

[ ]Monthly $

[X]Other $ See above*

Terms

[ ]Due on Receipt

[ ]Net 30

[ ]Other

[ ]Requirements contract - Requisition Required

Purchase Order No.

[ ]Requirements Not to Exceed $

Encumber: Yes[ ] No[ ]

REQUIRED SIGNATURES:

Department Manager: Bill Odegaard Date: 7/23/96

Purchasing Director: Date:

(Class II Contracts Only)

County Counsel: Katie Gaetjen Date: 7/25/96

County Chair/Sheriff: Beverly Stein Date: August 8, 1996

Contract Administration: Date:

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: $			
LINE NO.	FUND	AGENCY	ORGANI-ZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	156	015	0472			2766		0318	Early Intervention		
02											
03											

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

DISTRIBUTION: Contract Administration, Finance, HD Contracts Unit, HD Payables/Receivables, HD Program Manager

Region VI Administrative Office
Early Intervention
Early Childhood Special Education Program
531 SE 14th Ave. Portland, Oregon 97214
Phone 280-5840 or Fax 280-6468

Serving:
Clackamas
Hood River
Multnomah
& Wasco Counties

AGREEMENT

Portland Public Schools (Contractor) serving as the regional contractor under an agreement with the Oregon Department of Education dated July 1, 1996 retains the services of Multnomah County Health Department (Agency) under the following terms and conditions:

1. ***Services.***

Agency shall provide Early Intervention and Early Childhood Special Education (EI/ECSE) services in Multnomah County as defined in ORS 343.035 and applicable Oregon Administrative Rules which by this reference is incorporated, to eligible preschool children with disabilities from birth to age of eligibility for entry into kindergarten. All subcontractors subcontracting agreements to provide services hereunder, must be first approved by the service area contractor.

Agency shall provide these services in compliance with applicable federal and state regulations pertaining to EI/ECSE including the Individuals with Disabilities Act (IDEA), ORS 343.465 to 343.534, applicable Oregon Administrative Rules and related rules adopted by the State Board of Education, and Contractor policies and regulations.

All evaluations and eligibility determinations shall be conducted in compliance with applicable federal and state regulations and guidelines.

Agency shall provide the services required herein beginning July 1, 1996, and continuing through June 30, 1997. This contract will not be amended after the expiration date.

2. ***Contact Person.***

Agency shall appoint a primary contact person to serve as the liaison with the Contractor. The contact person will be fully knowledgeable regarding all aspects of the Agency performance hereunder, have full access thereto, and be authorized to make day-to-day decisions regarding the agreement.

3. ***Mobilization.***

Agency shall employ sufficient staff with appropriate experience, expertise, certification, licensing or classification; office space; meeting space; office supplies; equipment; and transportation to efficiently fulfill the requirements of this agreement.

4. ***Reporting.***

Agency shall provide reports as requested by the Contractor, including those hereafter described, documenting that the services required hereunder are available and provided throughout the agreement year in strict compliance with state and federal law and that the Agency has complied with the requirements of this agreement.

Agency shall submit the following documentation to the Contractor at the times specified:

(a) Documents required on or before September 15, 1996:

- A comprehensive line item budget for all expenditures hereunder.
- Mobilization Report
- Service Area Plan Information

(b) Documents required on or before November 15, 1996:

- First Quarter Expenditure Report (July 1- September 30)

(c) Documents required on or before January 1, 1997:

- December 1, 1996 IDEA census for both Part B and Part H, or Chapter 1, as required and other reports required by IDEA.

(d) Documents required on or before February 15, 1997:

- Second Quarter Expenditure Report (October 1 - December 31)

(e) Documents required on or before May 15, 1997:

- Third Quarter Expenditure Report (January 1 - March 30)

(f) Documents required on or before July 31, 1997:

- Fourth Quarter Expenditure Report (April 1 - June 30)
- Final Expenditure Report

Contractor may additionally require Agency to provide information and other reports as reasonably requested for the purpose of developing the annual agreement and biennial legislative budget.

5. ***EI/ECSE Service Area Plan.***

Agency shall provide information needed by Contractor for development of an annual service area plan which Contractor must submit by November 1, 1996 to the Oregon

Department of Education. For the plan, Agency will provide to Contractor on or before October 1, 1996.

(a) Written assurances that it is providing services to eligible EI/ECSE children in Agency in compliance with applicable state and federal regulations including IDEA, ORS 343.365 to 343.534, and related Oregon Administrative Rules.

(b) A written description of the organizational structure for service delivery in Agency.

(c) A written description of the services provided by Agency.

(d) A written description of any contractor approved subcontracts or interagency agreements.

(e) Written description of the method to be used by Agency for monitoring subcontractors to assure compliance with subcontract requirements, and appropriate expenditure of subcontract funds.

(f) EI/ECSE Inservices held from July 1 to present and planned inservice dates for the current school year.

6. ***Regional Coordination.***

Agency shall participate in scheduled regional meetings with Contractor, Agencies and agency subcontractors. The purpose of these meetings will be to exchange information, problem solve, and network.

Agency shall participate in and support the activities of the Local Advisory Council.

7. ***Equipment.***

"Equipment" means nonconsumable items purchased hereunder at a cost of $500 or more. Agency must obtain prior Contractor approval for the purchase of equipment. The Agency shall maintain an inventory of capital equipment purchased with agreement funds. This equipment is considered the property of the State of Oregon.

8. ***Subcontracts.***

Agency may subcontract for student services required hereunder.

All subcontractors and subcontracts for services hereunder must be first approved by the Contractor prior to the execution of the subcontract.

Before a subcontractor can be identified, the Contractor with Agency assistance will seek the advice and assistance of the EI/ECSE Local Advisory Council and consider the

Council's recommendations. The procedures for seeking the Local Advisory Council's input are those prescribed by the Oregon Department of Education.

The form of agreement used by Agency to obtain subcontract services hereunder shall incorporate the provisions of this agreement and require the subcontractor to do those things necessary to accomplish the tasks prescribed herein as well as comply faithfully with the requirements hereof. Subcontractor's services shall comply with all applicable requirements for EI/ECSE services including, but not limited to, student service delivery, reporting, fiscal accountability, budgeting, approval of expenditures for direct and indirect services and expenses, and program evaluation.

No contractual relationship shall exist between Contractor and any Agency subcontractor. For the purposes of administration of this agreement, Agency subcontractors shall be deemed Agency employees and Agency shall have total responsibility to Contractor for Agency subcontractor's means to achieve work product and the work product.

9. ***Payment for Services.***

The Oregon Department of Education by agreement with the Contractor has assured Contractor that sufficient State funds are available to finance the cost of this agreement within its current budget. The Oregon Department of Education and Contractor do not assure Agency and its subcontractors that federal funding necessary for these services will continue to be available.

This funding includes the following:

Type of Service	Amount
Early Intervention/Early Childhood Special Education	$77,000

Funds must be expended according to the budget provided for at part 4, "Reporting." Agency may transfer within the Early Intervention budget or the Early Childhood Special Education budget; however, the total transfers may not vary any one of the line items more than 10 percent from its original amount without prior written approval by the Contractor.

If transfers do vary one of the line items more than 10 percent without prior written Contractor approval, Agency shall pay that dollar amount to Contractor from Agency moneys or Contractor will withhold a similar amount from moneys due and owing Agency for services rendered.

Agency shall provide the services, reports and all other things required hereunder within the total agreement price specified above. The total agreement price is the maximum compensation and any costs incurred beyond that shall be borne by the Agency. No costs incurred prior to the effective date or after the expiration date of this agreement, shall be assigned as costs under this agreement unless specifically approved by the Oregon Department of Education. This agreement will not be amended after June 30 of the

agreement year. Any funds not expended by June 30, 1997, for the 1996-97 contract year must be refunded to the Contractor for return to the Department of Education.

For the 1996-97 contract year, payments will be made as follows:

(a) Contractor will pay to Agency 20 percent of the total contract amount upon signing the contract, and 10% each month thereafter; the final 5% payment will be based on actual expenditures to date not to exceed total amount in contract.

(b) By July 31, 1997 Agency and Contractor shall make a financial adjustment according to Agency's actual eligible expenditures hereunder for this agreement.

(c) By August 1, 1997, final amount based on actual expenditure through June 30, 1997, not to exceed contract total.

Each of the foregoing payments and the final adjustment shall be subject to adjustment based on later determination by the State or Federal Government regarding eligibility of expenditures or contractual compliance.

10. ***Program Capacity.***

This agreement presumes the Agency will service the number of children specified in part 9, "Payment for Service." The Department of Education may, from time to time, direct the Contractor to reduce and the Contractor will reduce proportionately the amount of this agreement if enrollments of eligible children are below 90 percent of that estimated number of children. Contractor will provide Agency 7 days written notice of any proposed reduction based on under enrollments. Notice will be delivered by certified mail or in person. If the number of children served exceeds 125 percent of the estimated number of children, Agency may submit a written request and payment for services will be renegotiated.

11. ***Eligible Costs.***

Agency direct costs of performance of this agreement, which are properly documented, are eligible costs under the agreement. The typical direct costs are: (a) Compensation of employees for time devoted to and identified specifically to the performance of the agreement; (b) Costs of materials identified as acquired, consumed or expended specifically for the purpose of the agreement; (c) Equipment and other approved capital outlays authorized as specified in Part 7; (d) Similar eligible costs of subcontractors; (e) Travel expenses specifically incurred in the performance of the agreement. Mileage shall be paid at Agency's standard employee mileage reimbursement rate.

Agency indirect costs of performance of this agreement are eligible costs under the agreement. These costs may be claimed for reimbursement at the rate approved by the Contractor based upon the information reported on Form 3118 or 8 percent whichever is lesser. Indirect costs may only be charged to direct costs and may not include the purchase

of consumable and nonconsumable items, subcontracts, fines and penalties, debt service or contingencies.

12. ***Program Monitoring/Evaluation.***

Agency will be evaluated by Contractor using procedures prescribed by the Oregon Department of Education. The evaluation results are reported to the Oregon Department of Education.

Agency will assist Contractor in fulfilling Contractor's obligation to the Oregon Department of Education to monitor and evaluate Agency and the performance of Agency subcontractors hereunder including, but not limited to, the progress and records of children served by the Agency to assure:

(a) That all enrolled children meet eligibility requirements for the services for which they are enrolled.

(b) That the number of enrolled children is at least 90 percent of the estimated number of children reflected in this agreement. (See part 10, "Program Capacity.")

(c) That the services provided and the records maintained documenting those services meet all federal and state requirements for the programs.

13. ***Due Process / Mediation / Costs.***

In those cases where due process hearings are requested to resolve disputes regarding an eligible child, the Oregon Department of Education has accepted responsibility for the attorney fees and similar costs related to those procedures. When mediation is requested the ODE has accepted responsibility for the cost of the mediator. The indemnity obligation set forth in part 14, "General," does not apply to and is not impaired by this part.

14. ***General.***

Confidentiality

Each employee assigned under this contract by agency shall be carefully instructed and supervised regarding:

1. The confidentiality of information learned about students and their families and all records regarding students and their families.
2. Maintaining a professional relationship with students and their families and avoiding any behavior which tends to undermine the professional character of that relationship.

Audits. The Agency shall facilitate the Oregon Department of Education's and Contractor's on-site or other audits of financial, statistical and program relating to financial, student records, and programs relating to Agency and its subcontractor's performance under this agreement.

Liability/Indemnification. Agency shall defend, save and hold harmless the State of Oregon, the Oregon Department of Education, and the Portland Public Schools, their officers and employees, from all claims, lawsuits or actions of whatsoever nature resulting from or arising out of the activities of the Agency its agents, employees and subcontractor under this agreement.

Limitation on Use of Funds. Funds received by the Agency and its subcontractors hereunder shall not supplant resources otherwise available in the County for services but shall be used to establish services in addition to those provided through the other resources.

Termination. This agreement may be terminated by either party, upon 7 days written notice and delivered by certified mail or in person. Prior to the actual termination of services provided for under this agreement, the parties shall plan a system for continuation of services to eligible children.

MULTNOMAH COUNTY
HEALTH DEPARTMENT
426 SW Stark
Portland, OR 97204

By _____
Beverly Stein
Title Multnomah County Chair

Date August 8, 1996

By _____
Billi Odegaard, Director
Title Multnomah County Health Dept

Date 7/23/96

By _____
Jan Wallinder
Title Program Manager

Date July 19, 1996

REVIEWED:

_____
Multnomah County Counsel

PORTLAND PUBLIC SCHOOLS

By _____

Title _____

Date _____

By _____

Title _____

Date _____

By _____

Title _____

Date _____

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-5 DATE 8/8/96
DEB BOGSTAD
BOARD CLERK

MEETING DATE: AUG 8 1996

AGENDA NO: C-6

(Above Space for Board Clerk's Use Only)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Revenue Agreement between Clatsop County and DJJS

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: 3 minutes

DEPARTMENT: Juvenile Justice Services DIVISION: _____

CONTACT: Alandria Taylor TELEPHONE#: 248-3968

PERSON(S) MAKING PRESENTATION: Elyse Clawson / Joanne Fuller

ACTION REQUESTED:

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

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

Ratification of an Intergovernmental Revenue Agreement between Clatsop County and Multnomah County Department of Juvenile Justice Services for utilization of one (1) bed space for the detention of Juveniles referred to the Clatsop County Juvenile Justice System.

8/12/96 ORIGINALS TO ALANDRIA TAYLOR

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: _____

BOARD OF COUNTY COMMISSIONERS
96 JUL 29 PM 1:05
MULTNOMAH COUNTY OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

G:\DATA\CONTRACT\BAPF.DOC

MULTNOMAH COUNTY OREGON

DEPARTMENT OF JUVENILE JUSTICE SERVICES
1401 N.E. 68TH
PORTLAND, OREGON 97213
(503) 248-3460
TDD 248-3561

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: Elyse Clawson, Director
Department of Juvenile Justice Services

DATE: June 28, 1996

SUBJECT: Approval of an Intergovernmental Revenue Agreement Regulating Delivery of Detention Services Between Clatsop County and Multnomah County Department of Juvenile Justice Services

---

I. RECOMMENDATION/ACTION REQUESTED:

The Department of Juvenile Justice Services (DJJS) recommends the Board's approval of an Intergovernmental Agreement between Clatsop County for the utilization of one (1) bed space in the Juvenile Justice Complex for the detention of juveniles referred to the Clatsop County Juvenile Justice System.

II. BACKGROUND/ANALYSIS:

Multnomah County operates and maintains a juvenile detention facility known as the Donald E. Long Detention Complex, designed and operated as a temporary secure custody facility for juveniles pending disposition of cases referred to the juvenile justice system. Space presently exist in the Juvenile Justice Complex rendering it satisfactory for use by counties other than and in addition to Multnomah without a negative effect on any county or the juvenile detainee.

This Agreement stipulates payment by Clatsop of $56,410 to be paid to Multnomah County for the exclusive use of one (1) bed space to house youth from Clatsop County.

III. FINANCIAL IMPACT:

This revenue supports the operation of one (1) detention bed space.

IV. LEGAL ISSUES:

N/A

V. CONTROVERSIAL ISSUES:

N/A

VI. LINK TO CURRENT COUNTY POLICIES:

This Agreement supports the Departments of Juvenile Justice Services philosophy of offering detention services for counties which do not have a detention facility.

VII. CITIZEN PARTICIPATION:

N/A

VIII. OTHER GOVERNMENT PARTICIPATION:

N/A

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [ ] Contract # 700466

Prior-Approved Contract Boilerplate: X Attached: _____ Not Attached Amendment # _____

CLASS I	CLASS II	CLASS III
[ ] Professional Services under $25,000 [ ] Intergovernmental Agreement under $25,000	[ ] Professional Services over $25,000 (RFP, Exemption) [ ] PCRB Contract [ ] Maintenance Agreement [ ] Licensing Agreement [ ] Construction [ ] Grant [X]Revenue	[X] Intergovernmental Agreement over $25,000 APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-6 DATE 8/8/96 DEB BOGSTAD BOARD CLERK

Department: Juvenile Justice Services Division: _____ Date: June 28, 1996

Contract Originator: Joanne Fuller Phone: 248-3460 Bldg/Room: 311/DJJS

Administrative Contact: Alandria Taylor Phone: 248-3968 Bldg/Room: 311/DJJS

Description of Contract: **This Intergovernmental Revenue Agreement allows Clatsop County the exclusive use of one (1) bed space in the Juvenile Justice Complex for the detention of youth referred to the Clatsop County Juvenile Justice System.**

RFP/BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____

ORS/AR #: _____ (Check all boxes that apply) Contractor is [ ] MBE [ ] WBE [ ] QRF [X] N/A [ ] None

Original Contract No. _____ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name: Clatsop County

Mailing Address: P.O. Box 302

Astoria, OR 97103

Phone: 325-8601

Employer ID# or SS#: _____

Effective Date: July 1, 1996

Termination Date: June 30, 1997

Original Contract Amount: $ 56,410

Total Amt of Previous Amendments: $ _____

Amount of Amendment: $ _____

Total Amount of Agreement: $ 56,410

Remittance Address (if different) _____

Payment Schedule

[ ] Lump Sum $ _____

[ ] Monthly $ _____

[X] Other $ 18,803

Terms

[ ] Due on Receipt

[ ] Net 30

[X] Other (3 equal payments)

[ ] Requirements contract - Requisition Required

Purchase Order No. _____

[ ] Requirements Not to Exceed $ _____

Encumber: Yes [ ] No [ ]

REQUIRED SIGNATURES:

Department Manager: _____ Date: 7-19-96

Purchasing Manager: _____ Date: _____

(Class II Contracts Only)

County Counsel: _____ Date: 7/25-196

County Chair/Sheriff: _____ Date: August 8, 1996

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: $			
LINE NO.	FUND	AGENCY	ORGANI-ZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01											
02											
03											

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

CONTRACT #700466

JUVENILE DETENTION INTERGOVERNMENTAL COOPERATION AGREEMENT REGULATING DELIVERY OF DETENTION SERVICES

THIS AGREEMENT, made and entered into by and between the County of Clatsop, hereinafter referred to as Clatsop, and Multnomah County, a home-rule subdivision of the State of Oregon, hereinafter referred to as Multnomah, deals with the delivery of detention services by Multnomah to Clatsop as described below. The following provisions shall comprise this Agreement:

I RECITATIONS

A. Multnomah operates and maintains a juvenile detention facility known as the Donald E. Long Detention Center designed and operated as a temporary secure custody facility for juveniles pending disposition of cases referred to the juvenile justice system. Space presently exist in the Juvenile Justice Complex rendering it satisfactory for use by counties other than and in addition to Multnomah without a negative effect on any county or the juvenile detainee.

B. As used in this agreement "Premises", "Space", and like terms refer to the detention areas of the Multnomah County Juvenile Justice Complex.

C. Clatsop wishes to utilize the Premises in the Juvenile Justice Complex for the detention of Juveniles referred to the juvenile justice system and in need of secure custody.

D. The combining of the referred Clatsop County population with the Multnomah County Juvenile population in the Juvenile Justice Complex is in the best interests of Clatsop and Multnomah, both fiscally and programmatically.

E. ORS Chapter 190 provides for intergovernmental cooperation agreements for the performance of functions and activities of either party by the other in the interest of further economy and efficiency in local government and to that end declares that the provision of ORS 190.003 to 190.100 shall be liberally construed.

II. SERVICES TO BE PROVIDED

A. Multnomah County shall perform as follows:

1. Admission Services

a. Any child subject to the Jurisdiction of the Clatsop County court shall be admitted by Multnomah to the Juvenile Justice Complex only upon authorization for secure custody communicated by an appropriate agent of the Clatsop County Juvenile Court as

defined in this Agreement or upon order of any Clatsop County Court of competent jurisdiction to require detention of such juvenile, all subject to the conditions hereinafter provided.

b. Acting through its on-duty intake supervisor, Multnomah shall have discretion to refuse acceptance of any juvenile referred pursuant to this Agreement in those circumstances where Multnomah reasonably believes the referral does not comply with lawful requirements of the facility regulations pertaining to the Juvenile Justice Complex, where Multnomah lacks adequate bed space in excess of those reserved spaces provided herein, or when it appears that the physical condition of the referred juvenile requires immediate medical attention.

c. One (1) Bed Space shall be available for the exclusive use of Clatsop on a continuous 24-hour a day basis through from July 1, 1996 to June 30, 1997.

d. Any additional requirement of Clatsop for bed space(s) shall be furnished by Multnomah on a space available basis and at a rate of compensation defined in this agreement.

e. In the event a juvenile resident of Clatsop is taken into custody by law enforcement in Multnomah other than as a consequence of an order of a Clatsop County Court of competent jurisdiction and that juvenile resident of Clatsop is delivered to the Juvenile Justice Complex admission shall be as in the case of any local Multnomah referral, and no charge or cost shall accrue against Clatsop pursuant to this Agreement until and unless an appropriate referral for ongoing custody is made in accordance with this Agreement.

f. Multnomah County shall not be required to provide notice to parents or guardians of juveniles referred upon admission or otherwise pursuant to this Agreement.

g. Multnomah shall provide Clatsop a daily roster indicating all juveniles held by Multnomah pursuant to this Agreement. Multnomah shall include with that roster a listing of those juveniles accepted by Multnomah who are subject to the juvenile court jurisdiction of Clatsop County but who are not admitted pursuant to the terms of the Agreement.

2. Supervision Services

a. An admitted Clatsop juvenile shall be placed in a detention unit deemed by Multnomah appropriate to the sex, age, and circumstance of the juvenile, consistent with the existing facility population and the best interests of the total facility population and operation.

b. Clatsop juveniles admitted pursuant to this Agreement shall receive the same type of care and supervision by Multnomah as is furnished to the rest of the detention population, regardless of the county of residence.

c. Each referred Clatsop juvenile shall be assigned a Multnomah staff worker to act in a liaison capacity with Clatsop for the purpose of tracking progress of referred juveniles and for implementing agreed arrangements incident to the expeditious release or coordinated planning for disposition, provided that no such Multnomah worker shall be required to provide those counseling services customarily furnished to referred juveniles preparatory to an adjudicative or dispositive process.

d. The terms of the Agreement do not contemplate the provision of emergency services by Multnomah within the agreed per diem cost. In the event it is determined that a Clatsop detainee is in need of emergency services, whether as a result of a unilateral decision by Multnomah or as a result of consultation between Multnomah and Clatsop, Multnomah is authorized to take appropriate action to secure such services, including transportation, as required. Clatsop shall reimburse Multnomah for any expense connected therewith including security costs inside and outside the complex. Multnomah shall provide Clatsop with immediate notice of those services provided unilaterally.

3. Release Services

a. Multnomah shall release Clatsop juveniles referred pursuant to this Agreement only upon receipt of notification by an authorized agent of the Clatsop County Juvenile Court.

That notice may be by telephone, in person, or in writing, but any nonwritten communication will be confirmed in due course by a written authorization for release. Multnomah shall release Clatsop juveniles to such individuals or agencies as included in notification.

b. Upon notification to Clatsop, Multnomah may act to require release of any juvenile it reasonably believes is being detained in excess of statutory authority.

c. No provision of this Agreement is intended to relieve Clatsop of the duty to monitor the number, identity, and appropriate periods of detention for those Clatsop juveniles detained in Multnomah pursuant to this Agreement. It shall be the responsibility of Clatsop to defend and hold Multnomah harmless from any claim of detention in excess of lawful limits brought by or in behalf of any juvenile referred as provided herein except for actions attributable to Multnomah County negligence.

d. It shall be the responsibility of Multnomah County to defend and hold Clatsop harmless from any claim of detention in excess of lawful limits brought by or in behalf of any juvenile referred by the Multnomah Courts.

B. Clatsop shall perform as follows:

1. Clatsop shall provide Multnomah current information identifying those Clatsop Juvenile Court agents authorized to refer juveniles to Multnomah as provided herein.

2. Clatsop shall provide or arrange all non-emergency transportation of Clatsop residents once the juvenile has been delivered by law enforcement officers.

3. Clatsop shall provide Multnomah written evidence of authorization to detain or release any juvenile referred pursuant to this Agreement, but actual receipt of written evidence is not a condition precedent to any specific detention or release.

4. Except as provided in Section III-B of this Agreement, Clatsop shall reimburse Multnomah for all expenses reasonably incurred by Multnomah in providing emergency medical, dental, or

psychological services, including transportation therefore, on behalf of any referred juvenile pursuant to this Agreement.

5. Clatsop shall reimburse Multnomah for any unusual expenses reasonably incurred in the care and supervision of a referred juvenile which would exceed the level of care and supervision customarily furnished to detained youngsters, including but not limited to specially tailored clothing or custom footwear, prosthesis, remedial tutoring, eyeglasses, denture, hearing aids and similar devices. Except in circumstances constituting a medical emergency, Multnomah County may not incur these expenses without prior authorization from Clatsop.

6. Clatsop shall be responsible for providing any of the usual counseling services required for Clatsop juveniles placed with Multnomah pursuant to this Agreement.

7. Clatsop shall provide Multnomah timely, actual, and in due course, written notice of all judicial orders, visitation restrictions, and specialized programming which affect detention care and supervision for referred Clatsop juveniles.

C. Compensation Rates and Mode of Payments

1. For the duration of this Agreement, Clatsop shall pay to Multnomah $56,410 for services, normal care and maintenance of those Clatsop juveniles in residence. This rate represents $154.55 per bed per day for the prevision of one bed program services and care. The above sum shall be paid by Clatsop to Multnomah in three equal installments of $18,803 payable on October 1, 1996, February 1, 1997 and June 1, 1997.

2. On those occasions when Clatsop requires bed space in excess of the guaranteed one (1) hereinabove described, the rate for each such additional space shall be $154.55 per day.

3. In computing daily populations, the day of admission shall be considered a full day, and the day of release shall not be counted, each irrespective of the time of day on which the event occurs.

4. Those expenses for excess bed space or emergency services which may be incurred shall be billed to Clatsop by Multnomah on a monthly basis and shall be paid by Clatsop to Multnomah on a monthly basis.

III CONSTRAINTS

A. It is understood and agreed that any and all employees of the Juvenile Justice Complex are not employees, agents, or representatives of Clatsop for any purpose.

B. Clatsop and Multnomah, each as to the other, shall indemnify, save harmless, and defend the other county, its officers agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof , arising out of or passed upon damage or injuries to persons or property caused by errors, omissions, fault, or negligence of the indemnifying county or that county's employees. More specifically, and only by way of example and not as an exclusive listing, Multnomah shall hold Clatsop harmless for responsibility or any liability arising from operation of the Juvenile Justice Complex and shall indemnify Clatsop for any loss proximately and legally caused by the conduct of Multnomah's officers, agents, and employees; Clatsop shall hold Multnomah harmless and shall be responsible for any liability arising from illegal detention caused by the failure of Clatsop to properly monitor the detention periods for juveniles referred herein and held beyond a legal period not as a consequence of a failure or absence of duty by Multnomah.

C. This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

IV. AGREEMENT TERM AND TERMINATION

A. This agreement shall apply from July 1, 1996 through June 30, 1997 and is subject to renewal annually.

B. This contract may be terminated by either party by thirty (30) days written notice to the other party.

C. It is assumed the rates of compensation defined in this Agreement will be modified in subsequent fiscal years. Rates of compensation shall be based on actual costs of operation and shall be communicated to Clatsop County by March 1, 1997 for the following fiscal year.

D. Actual costs shall include, but not be limited to, the pro rata share of Personnel, Juvenile Groupworkers, Groupworker Supervision, Lead Groupworker, Mental Health Worker, temporary on-call workers, overtime for these workers and associated fringe benefits, printing supplies, education, telephone, meals, laundry, Corrections Health, facility space and related maintenance and other costs.

VI MISCELLANEOUS PROVISION

A. This Agreement and any amendments to this Agreement will not be effective until approved by the Boards of County Commissioners of Clatsop and Multnomah.

B. This Agreement supersedes and cancels all and any prior agreements or contracts between Multnomah and Clatsop for similar services.

IN WITNESS THEREOF, the parties have hereto caused this agreement to be executed on this 11 day of July, 1996, by their duly-authorized officers as of the day and year first hereinabove written.

Board of County Commissioners
MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

August 11, 1996
Date

Reviewed By:

Katie Gaetjens, Assistant Counsel

LAURENCE KRESSEL,
County Counsel for
Multnomah County, Oregon

7/15/96
Date

Elyse Clawson, Department Director

Jim Anderson, Detention Superintendent

7/18/96
Date

Board of County Commissioners
CLATSOP COUNTY, OREGON

Chair

7-11-96
Date

~~Commissioner~~

Date

~~Commissioner~~

Date

Clatsop County Counsel

7-2-96
Date

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-6 DATE 8/8/96
DEB BOGSTAD
BOARD CLERK

MEETING DATE: AUG 8 1996

AGENDA #: C-7

ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: RENEWAL IGA CITY OF PORTLAND - REVENUE CONTRACT

BOARD BRIEFING: DATE REQUESTED: 7/25/96

REQUESTED BY: Sherine Murphy

AMOUNT OF TIME NEEDED: 5 minutes

REGULAR MEETING: DATE REQUESTED:

AMOUNT OF TIME NEEDED:

DEPARTMENT: COMMUNITY CORRECTIONS DIVISION:

CONTACT: SHERINE MURPHY TELEPHONE #: x6624

BLDG/ROOM #:

PERSON(S) MAKING PRESENTATION:

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

This is a revenue from the City of Portland to fund services for women with history of prostitution.

This is an renewal IGA

8/12/96 ORIGINALS to SHERINE MURPHY

BOARD OF COUNTY COMMISSIONERS
96 AUG -1 PM 2:10
MULTNOMAH COUNTY OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

(OR)

DEPARTMENT MANAGER: M Tamara Holden/pp

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

Contract # 900265

Prior-Approved Contract Boilerplate: ___Attached: ___Not Attached:

Amendment # 2

CLASS I	CLASS II	CLASS III
☐ Professional Services under $25,000 ☐ Intergovernmental Agreement under $25,000	☐ Professional Services over $25,000 (RFP, Exemption) ☐ PCRB Contract ☐ Maintenance Agreement ☐ Licensing Agreement ☐ Construction ☐ Grant ☑ Revenue	☐ Intergovernmental Agreement over $25,000 APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-7 DATE 8/8/96 DEB BOGSTAD BOARD CLERK

Department: DCC Division: Date: 7/9/96

Contract Originator: Business Services Unit Phone: Bldg/Room: 161/600

Administrative Contact: Sherine Murphy Phone: x6624 Bldg/Room: 161/600

Description of Contract: RENEWAL

This is a revenue contract from the City of Portland to fund services for women with history of prostitution.

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

ORS/AR #: Contractor is ☐MBE ☐WBE ☐QRF

Contractor Name: City of Portland

Mailing Address: 808 S.W. 3rd, #600
Portland, OR 97204

Phone:

Employer ID# or SS#:

Effective Date: July 1, 1996

Termination Date: June 30, 1996

Original Contract Amount: $ 104,032.00

Total Amt of Previous Amendments: $ 107,152.00

Amount of Amendment: $ 107,152.00

Total Amount of Agreement: $ 318,336.00

Remittance Address (if different):

Payment Schedule

☐Lump Sum $

☐Monthly $

☐Other $ quarterly as requested

☐Requirements contract - Requisition Required

Purchase Order No.

☐Requirements Not to Exceed $

Encumber: Yes☐ No☐

Terms

☐Due on Receipt

☐Net 30

☐Other

REQUIRED SIGNATURES:

Department Manager: M Tamara Holden/BB Date: 7-15-96

Purchasing Manager: Date:
(Class II Contracts Only)

County Counsel: Date: 7/31/96

County Chair/Sheriff: Date: August 8, 1996

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

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: $			
LINE NO.	FUND	AGENCY	ORGANI-ZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB ORG	REPT CATEG	LGFS DESCRIP	AMOUNT	IN CE EC
01	156	021	2308			2773				107,152	
02											
03											

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

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance — DCC-Fiscal

AGREEMENT NO.

An agreement between the City of Portland (City) and Multnomah County (County) to provide services for women leaving prostitution.

RECITALS:

1. There is a need to provide services to women leaving prostitution.

2. The City and County have been working together to provide these services to this population.

3. Multnomah County has been designated as the public agency to provide community correction services in the Portland area.

4. The County will conduct a competitive bidding process to select the provider for services to women leaving prostitution and will contract with the agency selected.

5. While the bidding process is being conducted the County will prepare a contract with Council for Prostitution Alternatives to provide services for a period of three to six months.

6. The City has committed in the FY 96-97 approved General Fund budget $107,152 in the Bureau of Housing and Community Development for these services.

7. The City and the County now desire to enter into a formal agreement to provide these services.

AGREED:

1. Scope of Services

The County will provide the services described for women leaving prostitution.

A. The County will conduct a competitive process to select a provider for services for women leaving prostitution. This process will be coordinated with the Bureau of Housing and Community Development. Upon completion of the competitive process the County will contract with the agency selected to provide services. The County and City Project Manager will agree upon the final scope of services incorporated in the contract.

b. While the bidding process is being conducted the County will enter into an agreement with the Council for Prostitution Alternatives to provide services for a period of three to six months for women leaving prostitution. The County will develop the scope and terms of this agreement. At a minimum this contract will include:

1. Drop In Services
2. Case Management
3. Child Care
4. Support for clients who are substance abusers

C. The County will be responsible for implementing the contract and for coordinating contract management.

II. Compensation and Method of Payment

The County will be compensated for the above described services by the City through the General Fund. Payments to the County will be made quarterly upon submission of a request for payment.

The City's funds can be used for staffing costs, rent, supplies, client services and any other costs directly related to providing the units of service described above. Total compensation under this agreement shall not exceed ONE HUNDRED SEVEN THOUSAND AND ONE HUNDRED FIFTY TWO DOLLARS ($107,152).

III. City Project Manager

A. The City Project Manager shall be Barbara Madigan or such other person as shall be designated in writing by the Director of the Bureau of Housing & Community Development.

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

IV. Reporting Requirements

The County will submit the following reports to the Project Manager.

A. Copies of the monthly contract status report submitted to the County by the Council for Prostitution Alternatives.

B. A quarterly report summarizing the contract status for the quarter including statistical information on the client population and a brief narrative on the services which have been provided including the status of the performance measurements. Statistical information should be cumulative from July 1, 1995. Quarterly reports are due 30 days after completion of the quarter.

C. The fourth quarter report will be a final annual report including cumulative statistics for the client population for the year, a narrative on the program and the results of the program.

V. Schedule and Performance Measurements

The County will require that the Council for Prostitution Alternatives will track and report on the number of women who are participating in drop in services and case management. In addition, the County will include a performance measure that CPA refer 100% of case management participants who are active substance abusers or risk relapsing to substance abuse treatment.

Upon completion of the competitive process the County will include specific performance measures and outcome measures in the contract with the agency selected to provide the services. The measures will be developed in collaboration with the City Project Manager.

VI. General Contract Provisions

A. TERMINATION FOR CAUSE. If, through any cause, the County shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the County shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall have the right to terminate this Contract by giving written notice to the County 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 County under this Contract shall, at the option of the City, become the property of the City and the County shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

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

B. TERMINATION FOR CONVENIENCE. The City and County may terminate this Contract at any time by mutual written agreement. If the Contract is terminated by the City as provided herein, the County 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 County covered by this Contract less payments of compensation previously made.

The City, on thirty (30) days written notice to the County, may terminate this Agreement for any reason deemed appropriate at its sole discretion.

C. REMEDIES. In the event of termination under Section A hereof by the City due to a breach by the County, then the City 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 County hereunder plus the remaining unpaid balance of the compensation provided herein, then the County shall pay to the City the amount of excess.

The remedies provided to the City and County under sections A and C hereof for a breach shall not be exclusive. The City and County also shall be entitled to any other equitable and legal remedies that are available.

In the event of termination under Section A, the City shall provide the County an opportunity for an administrative appeal.

D. CHANGES. The City or County may request changes in the scope of the services or terms and conditions hereunder. Such changes, including any increase or decrease in the amount of the County's compensation, shall be incorporated in written amendments to this Contract executed by the City and County. Any change that increases the amount of compensation payable to the County must be approved by ordinance of the City Council. Other changes may be approved by the Director of the Bureau of Housing & Community Development.

E. NON-DISCRIMINATION. In carrying out activities under this contact, the County shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status or national origin. The County shall take affirmative actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The County shall post in conspicuous places, available to employees and applicants for employment, notices provided by the City setting for the provisions of this nondiscrimination clause. The County shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The County shall incorporate the foregoing requirements of this paragraph in all of its contracts for work funded under this contract, except contracts governed by Section 104 of Executive Order 11246.

F. ACCESS TO RECORDS. The City, or their duly authorized representatives, shall have access to any books, general organizational and administrative information, documents, papers, and records of the County which are directly pertinent to this contract, for the purpose of making audit examination, excerpts, and transcriptions. All required records must be maintained by the County for three years after the City makes final payment and all other pending matters are closed.

G. MAINTENANCE OF RECORDS. The County shall maintain records on a current basis to support its billings to the City. The City 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 County regarding its billings or its work hereunder. The County shall retain these records for inspection, audit, and copying for 3 years from the date of completion or termination of this contract.

H. AUDIT OF PAYMENTS. The City, either directly or through a designated representative, may audit the records of the County at any time during the 3 year period established by Section G above.

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

I. INDEMNIFICATION. To the extent permitted by the Oregon Tort Claim Act and the Oregon Constitution, Multnomah County shall hold harmless, defend, and indemnify the City and the City'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 County's work or any subcontractor's work under this contract.

J. WORKERS' COMPENSATION INSURANCE.

1. Multnomah County, its subcontractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Exhibit A, if applicable, and shall be incorporated herein and made a term and part of this Agreement. The County further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement. If a current certificate is on file with the City in compliance with previous a contract, a duplicate is not necessary. In compliance with this paragraph, the County is self-insured for Workers' Compensation.

2. In the event the County's workers' compensation insurance coverage is due to expire during the term of this Agreement, the County 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 County agrees to provide the City of Portland such further certification of workers' compensation insurance a renewals of said insurance occur.

3. The County agrees to accurately complete the City of Portland's Questionnaire for Workers' Compensation Insurance and Qualification as an Independent Contractor prior to commencing work under this Agreement. Questionnaire is attached to this Agreement as Exhibit B and shall remain attached to this Agreement and become a part thereof as if fully copied herein. Any misrepresentation of information on the Questionnaire by the County shall constitute a breach pursuant to this subsection, City may terminate this Agreement immediately and the notice requirement contained in the subsection entitled, TERMINATION FOR CAUSE, hereof shall not apply.

K. LIABILITY INSURANCE. Multnomah County is self-insured as provided by Oregon law.

L. SUBCONTRACTING AND ASSIGNMENT. The County shall not subcontract its work under this contact, in whole or in part, without the written approval of the City. The County shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contract as specified in this contract. Notwithstanding City approval of a subcontractor, the County shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the County hereunder. The County agrees that if subcontractors are employed in the performance of this contract, the County and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. The County shall not assign this contract in whole or in part or any right or obligation hereunder, without prior written approval of the City. Subcontractors shall be responsible for adhering to all regulations cited within this contract.

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

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

N. REPORTING REQUIREMENTS. The County shall report on its activities in a format and by such times as prescribed by the City.

O. CONFLICTS OF INTEREST. No City officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contact or the proceeds thereof.

No City officer or employees who participated in the award of this contract shall be employed by Multnomah County during the period of the contract.

P. OREGON LAW AND FORUM. This contract shall be construed according to the law of the State of Oregon.

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

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

In the event that the County provides goods or services to the City in the aggregate in excess of $2,500.00 per fiscal year, the County agrees it has certified with the City's Equal Employment Opportunity certification process.

R. MONITORING. The City, through the Bureau of Housing & Community Development shall monitor at least once each year that portion of the County's project funded with the City's General Funds. Such monitoring shall ensure that the operation of the project conforms to the provisions of this contract.

VII. Period of Agreement

The terms of this Agreement shall be effective as of July 1, 1996 and shall remain in effect during any period the Contractor has control over City funds, including program income. The Agreement shall terminate as of June 30, 1997.

Dated this _____ day of _____, 1996.

CITY OF PORTLAND

_____
Gretchen Miller Kafoury
Commissioner of Public Affairs

APPROVED AS TO FORM:

_____
Jeffrey L. Rogers,
City Attorney

MULTNOMAH COUNTY

_____
Beverly Stein, Chair

_____
Tamara Holden, Director Community Corrections

Reviewed:

_____
Laurence Kressel,
County Counsel

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-7 DATE 8/8/96
DEB BOGSTAD
BOARD CLERK

MEETING DATE: AUG 8 1996

AGENDA #: C-8

ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: IGA RENEWAL FOR DOMESTIC VIOLENCE DIVERSION PROGRAM

BOARD BRIEFING: DATE REQUESTED: ~~8/1/96~~ 8/8/96

REQUESTED BY: Sherine Murphy

AMOUNT OF TIME NEEDED: 5 minutes

REGULAR MEETING: DATE REQUESTED: _____

AMOUNT OF TIME NEEDED: _____

DEPARTMENT: Community Correction DIVISION: _____

CONTACT: Sherine Murphy TELEPHONE #: x6624

BLDG/ROOM #: _____

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

IGA RENEWAL CITY OF PORTLAND TO PROVIDE PARTIAL FUNDING FOR THE DOMESTIC VIOLENCE DIVERSION PROGRAM.

8/12/96 ORIGINALS to Sherine Murphy

BOARD OF COUNTY COMMISSIONERS
96 AUG -1 PM 2:10
MULTNOMAH COUNTY OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT MANAGER: M. Tamara Holden

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

Contract # 900395

Prior-Approved Contract Boilerplate: ___Attached: ___Not Attached:

Amendment # 2

CLASS I	CLASS II	CLASS III
☐ Professional Services under $25,000	☐ Professional Services over $25,000 (RFP, Exemption)	☒ Intergovernmental Agreement over $25,000
☐ Intergovernmental Agreement under $25,000	☐ PCRB Contract	APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS
	☐ Maintenance Agreement	AGENDA # C-8 DATE 8/8/96
	☐ Licensing Agreement	DEB BOGSTAD
	☐ Construction	BOARD CLERK
	☐ Grant	
	☒ Revenue	

Department: Community Corrections Division: Date:

Contract Originator: M. Haines Phone: 3456 Bldg/Room: 161/600

Administrative Contact: Sherine Murphy Phone: 6624 Bldg/Room: 161/600

Description of Contract:

Provides partial funding for the Domestic Violence Diversion Program

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

ORS/AR #: Contractor is ☐MBE ☐WBE ☐QRF

Contractor Name: City of Portland

Mailing Address: ~~808 S.W. Third, Suite 600~~ Portland, OR 97204

Phone:

Employer ID# or SS#:

Effective Date: 7/1/96

Termination Date: 6/30/97

Original Contract Amount: $ 35,418

Total Amt of Previous Amendments: $ 35,418

Amount of Amendment: $ 35,418

Total Amount of Agreement: $ 106,254.00

Remittance Address (if different):

Payment Schedule

☐Lump Sum $

☐Monthly $

☐Other $

Terms

☐Due on Receipt

☐Net 30

☐Other

☐Requirements contract - Requisition Required

Purchase Order No.

☐Requirements Not to Exceed $

Encumber: Yes☐ No☐

REQUIRED SIGNATURES:

Department Manager: M Tamara Holden/BJ Date: 7-18-96

Purchasing Manager: Date:

(Class II Contracts Only)

County Counsel: Date: 7/31/96

County Chair/Sheriff: Date: August 8, 1996

Contract Administration: Date:

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: $			
LINE NO.	FUND	AGENCY	ORGANI-ZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB ORG	REPT CATEG	LGFS DESCRIP	AMOUNT	IN CE EC
01	156	021	2807			2773				35,418	
02											
03											

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

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance — DCC-Fiscal

AGREEMENT NO.

An agreement between the City of Portland (City) and Multnomah County (County) to provide specialized probation supervision for domestic violence offenders.

RECITALS:

1. The City has received funding from the U.S. Department of Justice, Drug Control and System Improvement Formula Grant Program through the State of Oregon Criminal Justice Services Division.

2. The purpose of the grant is to reduce crimes of domestic violence by providing an integrated response.

3. A component of the grant is specialized probation supervision for offenders through Multnomah County Corrections.

4. The grant budget includes funding in the amount of $35,418 to provide this service.

5. The County has agreed to provide match in the amount of $67,704 to support this grant.

6. The City and Multnomah County now desire to enter into a formal agreement in the amount of $35,418 to provide these services for FY 96-97 based upon a budget attached hereto as Attachment A.

AGREED:

1. Scope of Services

   The county will provide the following services described for domestic violence specialized supervision:

   A. The County will employ a full-time Probation Officer to provide specialized supervision to domestic violence offenders.
   B. Specialized supervision of offenders shall include:
      1. monthly contact at a minimum
      2. reeducation, alcohol and drug assessment and referral for appropriate treatment
      3. Monitoring of treatment.
   C. The County will provide outreach to victims of the domestic violence offenders under supervision.
   D. Track program participants for successful completion and recurrence of domestic violence crimes or other criminal behavior.
   E. Track required match for grant funds as provided for in II.B.

II. Compensation and Method of Payment

A. The County will be compensated for the above described services by the City through the General Fund, Bureau of Housing & Community Development.

B. The County will provide up to $67,704 in cash match for this grant and will track and report on the match in the requests for reimbursement.

C. Payments to the County will be made monthly upon submission of a statement of expenditures. The County will keep vendor receipts for materials and services and evidence of payment of personnel costs. Statements for the final month of each quarter are due at the City 15 days after the end of the month. It is agreed that total compensation under this agreement shall not exceed THIRTY FIVE THOUSAND FOUR HUNDRED EIGHTEEN DOLLARS ($35,418).

III. City Project Manager

A. The City Project Manager shall be Barbara Madigan or such other person as shall be designated in writing by the Director of the Bureau of Housing & Community Development.

B. 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 City actions referred to herein.

IV. Reporting Requirements

The County will prepare and submit the following quarterly report to the Bureau of Housing & Community Development.

A. A quarterly report including progress made on the objective "reduce recidivism in domestic violence crimes by batterers who qualify for deferred sentencing." Submit data and a narrative showing the progress on meeting the objective and report on the project activities linked to this objective.

B. The information submitted by the County will be transmitted to the State in a combined quarterly report on the grant. In order to meet the State's deadlines, the County's quarterly report is due in the office of the Bureau of Housing and Community Development fifteen (15) days after the end of the quarter.

C. All reports are to be cumulative for the grant year.

V. Schedule and Performance Goals

A. Provide services to approximately 250 batterers (80 slots)
B. Successful program completion - 50%

C. An estimated 50% of those who successfully complete the program will not reoffend within one year of completing program.

VI. General Contract Provisions

A. TERMINATION FOR CAUSE. If, through any cause, the County shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the County shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall have the right to terminate this Contract by giving written notice to the County 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 County under this Contract shall, at the option of the City, become the property of the City and the County shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

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

B. TERMINATION FOR CONVENIENCE. The City and County may terminate this Contract at any time by mutual written agreement. If the Contract is terminated by the City as provided herein, the County 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 County covered by this Contract less payments of compensation previously made.

The City, on thirty (30) days written notice to the County, may terminate this Agreement for any reason deemed appropriate at its sole discretion.

C. REMEDIES. In the event of termination under Section A hereof by the City due to a breach by the County, then the City 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 County hereunder plus the remaining unpaid balance of the compensation provided herein, then the County shall pay to the City the amount of excess.

The remedies provided to the City and County under sections A and C hereof for a breach shall not be exclusive. The City and County also shall be entitled to any other equitable and legal remedies that are available.

In the event of termination under Section A, the City shall provide the County an opportunity for an administrative appeal.

D. CHANGES. The City or County may request changes in the scope of the services or terms and conditions hereunder. Such changes, including any increase or decrease in the amount of the County's compensation, shall be incorporated in written amendments to this Contract executed by the City and County. Any change that increases the amount of compensation payable to the County must be approved by ordinance of the City Council. Other changes may be approved by the Director of the Bureau of Housing & Community Development.

E. NON-DISCRIMINATION. In carrying out activities under this contact, the County shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status or national origin. The County shall take affirmative actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The County shall post in conspicuous places, available to employees and applicants for employment, notices provided by the City setting for the provisions of this nondiscrimination clause. The County shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The County shall incorporate the foregoing requirements of this paragraph in all of its contracts for work funded under
this contract, except contracts governed by Section 104 of Executive Order 11246.

F. ACCESS TO RECORDS. The City, or their duly authorized representatives, shall have access to any books, general organizational and administrative information, documents, papers, and records of the County which are directly pertinent to this contract, for the purpose of making audit examination, excerpts, and transcriptions. All required records must be maintained by the County for three years after the City makes final payment and all other pending matters are closed.

G. MAINTENANCE OF RECORDS. The County shall maintain records on a current basis to support its billings to the City. The City 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 County regarding its billings or its work hereunder. The County shall retain these records for inspection, audit, and copying for 3 years from the date of completion or termination of this contract.

H. AUDIT OF PAYMENTS. The City, either directly or through a designated representative, may audit the records of the County at any time during the 3 year period established by Section G above.

If an audit discloses that payments to the County were in excess of the amount to which the County was entitled, then the County shall repay the amount of the

excess to the City.

I. INDEMNIFICATION. To the extent permitted by the Oregon Tort Claim Act and the Oregon Constitution, Multnomah County shall hold harmless, defend, and indemnify the City and the City'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 County's work or any subcontractor's work under this contract.

J. WORKERS' COMPENSATION INSURANCE.

1. Multnomah County, its subcontractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Exhibit A, if applicable, and shall be incorporated herein and made a term and part of this Agreement. The County further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement. If a current certificate is on file with the City in compliance with previous a contract, a duplicate is not necessary. In compliance with this paragraph, the County is self-insured for Workers' Compensation.

2. In the event the County's workers' compensation insurance coverage is due to expire during the term of this Agreement, the County 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 County agrees to provide the City of Portland such further certification of workers' compensation insurance a renewals of said insurance occur.

3. The County agrees to accurately complete the City of Portland's Questionnaire for Workers' Compensation Insurance and Qualification as an Independent Contractor prior to commencing work under this Agreement. Questionnaire is attached to this Agreement as Exhibit B and shall remain attached to this Agreement and become a part thereof as if fully copied herein. Any misrepresentation of information on the Questionnaire by the County shall constitute a breach pursuant to this subsection, City may terminate this Agreement immediately and the notice requirement contained in the subsection entitled, TERMINATION FOR CAUSE, hereof shall not apply.

K. LIABILITY INSURANCE. Multnomah County is self-insured as provided by Oregon law.

L. SUBCONTRACTING AND ASSIGNMENT. The County shall not subcontract its work under this contact, in whole or in part, without the written approval of the City. The County shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contract as specified in this contract. Notwithstanding City approval of a subcontractor, the County shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the County hereunder. The County agrees that if subcontractors are employed in the performance of this contract, the County and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. The County shall not assign this contract in whole or in part or any right or obligation hereunder, without prior written approval of the City. Subcontractors shall be responsible for adhering to all regulations cited within this contract.

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

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

N. REPORTING REQUIREMENTS. The County shall report on its activities in a format and by such times as prescribed by the City.

O. CONFLICTS OF INTEREST. No City officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contact or the proceeds thereof.

No City officer or employees who participated in the award of this contract shall be employed by Multnomah County during the period of the contract.

P. OREGON LAW AND FORUM. This contract shall be construed according to the law of the State of Oregon.

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

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

In the event that the County provides goods or services to the City in the

aggregate in excess of $2,500.00 per fiscal year, the County agrees it has certified with the City's Equal Employment Opportunity certification process.

R. MONITORING. The City, through the Bureau of Housing & Community Development shall monitor at least once each year that portion of the County's project funded with the City's General Funds. Such monitoring shall ensure that the operation of the project conforms to the provisions of this contract.

VIII. Period of Agreement

The terms of this Agreement shall be effective as of July 1, 1996 and shall remain in effect during any period the County has control over City funds, including program income. The Agreement shall terminate as of June 30, 1997.

Dated this _____ day of _____, 1996.

CITY OF PORTLAND

_____
Comm Gretchen Miller Kafoury

APPROVED AS TO FORM:

_____
Jeffrey L. Rogers
City Attorney

MULTNOMAH COUNTY

_____
Beverly Stein, Chair
Board of Commissioners

_____
Tamara Holden, Director of Community Correctio

REVIEWED:

_____
Laurence Kressel
County Counsel

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-8 DATE 8/8/96
DEB BOGSTAD
BOARD CLERK

ATTACHMENT A

MULTNOMAH COUNTY
FY 1996-97 BUDGET
DOMESTIC VIOLENCE INTENSIVE SUPERVISION

Personal Services	
Salaries	$76,484
Benefits/Taxes	26,638
Total	$103,122

Personal Services Detail
1 FTE Probation Officer

Resources:

Grant Funding	$35,418
Cash Match	67,704
Total	$103,122

INTERAGENCY STATEMENT OF COOPERATION
FAMILY VIOLENCE INTERVENTION STEERING COMMITTEE
OF MULTNOMAH COUNTY

DOMESTIC VIOLENCE DATA COLLECTION PROJECT

This cooperative agreement is made this 23 day of AUGUST, 1995 between the Family Violence Intervention Steering Committee and the MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY CORRECTIONS

WHEREAS, the parties hereto are vested with the authority to promote effective intervention in domestic violence situations.

WHEREAS, the parties agree they are mutually served by the development of effective policies and protocols on domestic violence intervention in the criminal justice system and that accurate, timely and consistent data are essential for the development of such policies and protocols.

WHEREAS, the goal of this project is to assist the public, policy-makers, administrators and funders to establish and evaluate policies and protocols on domestic violence intervention in the criminal justice system.

WHEREAS, the objectives of this project are agreed to be:

1) Each cooperating agency's data collection system will identify domestic violence cases/incidents based on:
   a) Consistent definition of domestic violence across all agencies;
   b) Protocols for agency staff to flag/identify and appropriately code cases.
2) Produce and provide established monthly or quarterly reports on aggregate data relating to domestic violence incidents for Family Violence Intervention Steering Committee and cooperating agencies, as requested.
3) Establish a system to track individual incidents and their outcome through the multiple layers of the criminal justice system (BOEC, police, jail, district attorney, courts, probation/parole).
4) Develop and communicate the results of a model project that could be applied to other types of criminal justice intervention in Multnomah County.

WHEREAS, both parties agree that agencies necessary to provide accurate data about the intervention of the criminal justice system in domestic violence incidents in Multnomah County include:

Bureau of Emergency Communications,
Portland, Gresham, Troutdale, and Fairview Police Departments,
Multnomah County District Attorney's Office,
Circuit and District Courts,
Multnomah County Sheriff's Office,
Multnomah County Department of Community Corrections, and
Data Collection Sub-Committee of Family Violence Intervention Steering Committee.

NOW, THEREFORE, it is hereby agreed to participate fully in the Data Collection Project as outlined in the attached Project Description. Execution of this Agreement of Cooperation indicates an agency's willingness to assign a lead staff person to act as liaison to the Data Collection Sub-Committee of the Family Violence Intervention Steering Committee and to direct appropriate additional staff to participate in meetings and assist in whatever ways are feasible. It is understood by both parties that safeguards will be implemented to protect the confidentiality requirements of each agency.

M. Tamara Holden
Signature of Agency Representative

8-23-95
Date

Chiquita Rollins
Signature of Steering Committee Representative

8/16/95
Date

FAMILY VIOLENCE INTERVENTION STEERING COMMITTEE FOR MULTNOMAH COUNTY

ASAP Treatment Services, Bradley-Angle House, Children's Services Division, Community Advocates, Men's Resource Center, Metro Crisis Intervention Service, Metropolitan Public Defenders, Multnomah County Community Corrections, Multnomah County Courts, Multnomah County District Attorney, Multnomah County Health Department, Multnomah County Legal Aid, Multnomah County Sheriff's Office, Office of City of Portland Commissioner Gretchen Kafoury, Oregon Coalition Against Domestic and Sexual Violence, Oregon Department of Corrections, Community Services, Oregon Health Sciences University Hospital, Oregon Legal Services, Oregon Medical Association, Portland, Police Bureau, Portland Women's Crisis Line, Raphael House of Portland, United Way of the Columbia-Willamette, Volunteer Lawyers

August 10, 1995

RECEIVED
AUG 21 1995
MULT CO CORR
S.W. BRANCH

Tamara Holden, Director
Department of Community Corrections
421 SW 5th, 6th Floor
Portland, Oregon 97204

Dear Tamara

The Family Violence Intervention Steering Committee believes that the development of accurate, appropriate information about the incidence of domestic violence in Multnomah County is essential for effective intervention in these cases. The Steering Committee's Data Collection Sub-committee has initiated a project to facilitate the development of these data. The Portland Police Bureau, in conjunction with this Sub-Committee, has obtained funding for a part-time staff to assist in this project.

The goal of the project is to assist the public, policy-makers, administrators and funders in establishing effective policies and protocols on domestic violence intervention in the criminal justice system. The specific objectives of the project are:

1) Each cooperating agency's data collection system will identify domestic violence cases/incidents based on:
   a) Consistent definition of domestic violence across all agencies;
   b) Protocols for agency staff to flag/identify and appropriately code cases.
2) Produce and provide established monthly or quarterly reports on aggregate data relating to domestic violence incidents for Family Violence Intervention Steering Committee and cooperating agencies, as requested.
3) Establish a system to track individual incidents and their outcome through the multiple layers of the criminal justice system (BOEC, police, jail, district attorney, courts, probation/parole).
4) Develop and communicate the results of a model project that could be applied to other types of criminal justice intervention in Multnomah County.

Department of Community and Family Services
421 SW 6th, Suite 700
Portland, OR 97204
(503)248-3691 Ext. 7806

The following agencies have been identified as critical parts of the criminal justice system in intervention in domestic violence cases:

Bureau of Emergency Communications
Portland, Gresham, Troutdale and Fairview Police Departments
Multnomah County District Attorney's Office
Multnomah County Sheriff's Office
Circuit and District Courts
Multnomah County Department of Community Corrections
Family Violence Intervention Steering Committee

We believe that this is a particularly important time to proceed with this project because there is a statewide movement towards improved data collection, and because the District Attorney's Office and Corrections have begun a movement toward the integration of data between those two agencies. The Data Collection Sub-Committee has met for the past six months, and developed a preliminary description of existing data collection systems, reporting ability, and barriers to accurate, integrated data on domestic violence.

We are asking that each agency sign the enclosed inter-agency statement of cooperation, indicating support and participation in this project. In addition, we are asking that you designate a lead staff who will act as liaison tot he Data Collection Sub-Committee,a nd direct appropriate additional staff to participate in meetings and implement in whatever ways are feasible. Issues of confidentiality of information will be discussed and respected during this project development.

For additional information about the project, see the enclosed project description. The Sub-Committee would appreciate a reply by August 31, 1995. Please send the signed inter-agency statement of cooperation to Chiquita Rollins, Domestic Violence Coordinator, Interoffice mail 166/7 or 421 SW 6th, Suite 700, Portland, OR 97204. If you have any questions, please contact Chiquita at 248-3691, Ext. 7806.

Sincerely,

Chiquita Rollins
Family Violence Intervention Steering Committee

Dave Butzer
Captain Dave Butzer
Family Services Division,
Portland Police Bureau

Sherrill Whittemore
Bureau of Emergency Communications

Bill Wood
Multnomah County Sheriff's Office

Terry Anderson
Terry Anderson
Office City Commissioner Gretchen Kafoury

Annette Jolin
Portland State University,
School of Urban and Public Affairs

Jo'ey Gardelius
Jo'ey Gardelius
Multnomah County District Attorney's Office

Joe Olexa
Civil Division Manager

Kathy Harris
Kathy Harris
Portland/Multnomah Progress Board

c: Chair Bev Stein
City Commissioner Gretchen Kafoury
City Commissioner Mike Lindberg
County Commissioner Tanya Collier
County Commissioner Gary Hansen
Mayor Gussie McRobert
Mayor Paul Thalhofer
Mayor Vera Katz
City Commissioner Charles Hales
City Commissioner Earl Blumenauer
County Commissioner Sharron Kelley
County Commissioner Dan Saltzman
Mayor Roger Vonderharr

PLEASE PRINT LEGIBLY!

MEETING DATE 8-8-96

NAME Dianna Roberts

ADDRESS 19390 NE Mt. Ct.

STREET

PLN 97230

CITY ***ZIP***

I WISH TO SPEAK ON AGENDA ITEM NO. R1

SUPPORT _____ ***OPPOSE*** _____

SUBMIT TO BOARD CLERK

PORTLAND/MULTNOMAH
COMMISSION ON AGING
1120 S.W. 5TH, 5TH FLR
PORTLAND, OR 97204-1978

FIRST-CLASS

Diana Roberts
19390 NE Multnomah Ct.
Portland, OR 97230

The
Portland/Multnomah Commission on Aging
cordially invites you
to attend our annual luncheon
in the outdoor atrium
on
Wednesday
July 19, 1995
12:00 noon to 2:15 pm
Two World Trade Center
121 Southwest Salmon Street
Portland, Oregon

This celebration is graciously sponsored by
Portland General Electric

RSVP by July 12, 1995
(503) 823-5269

270

Portland Multnomah Commission On Aging

August 29, 1995

Dianna Roberts
Rosewood Foster Care
19390 NE Multnomah Ct.
Portland, Oregon 97230

Dear Dianna:

We received a letter from the Independent Adult Care Providers Association appointing you as their representative on the Portland/Multnomah Commission on Aging's Adult Foster Care Home Committee. Since receiving that letter, we have been notified by the Adult Care Home Program that your home has been placed on restriction allowing no new resident admissions at this time. The Adult Care Home Program is currently investigating five complaints and protective services reports against your home.

The provider representative on the Adult Foster Care Home Committee must be a provider in good standing with the licensing agency. Because your home has been sanctioned and you are not in good standing at this time, we are unable to accept your appointment to the committee and will be asking the provider associations to nominate a new representative.

If you have any questions, please contact Estill, Thelma, or Chris Larson at the PMCoA office - 823-5269.

Sincerely,

Estill Deitz

Estill Deitz, Chair
Portland/Multnomah Commission
on Aging

Thelma Skelton

Thelma Skelton, Chair
Adult Foster Care Home Committee
Portland/Multnomah Commission
on Aging

cc: Doreene Bryant
Jim McConnell

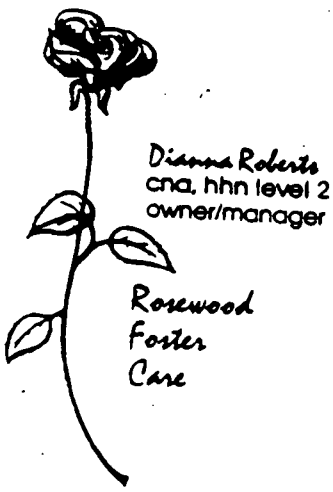
271

Myrna Harrison
5750 SW Inwood RD
Lake Oswego, Or 9703

MultNomah commission on aging
1120 S.W. 5th
Portland, Or

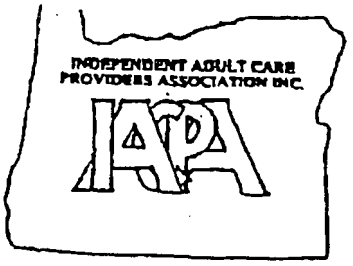
Dear Madam Chair & Members of the committee
Please except my resignation as a
Member of the board. It regret that do to
my schedule time does not allow me to
give this position the devoted time it need.
I request that you please consider
Dianna Roberts to represent I.H.C.P.A to
fill this position.
Thank you in advance.

Sincerely
Myrna Harrison RN



19390 ne multnomah ct
portland, oregon 97230
(503) 666-9121

276



INDEPENDENT ADULT CARE PROVIDERS ASSOCIATION, INC.

8-1-1995

Portland/Mult Commission on ageing:

Please be advised that Diana Raberts will replace Myrna Harris on the Commission on ageing Panel.

Thank you
Doreene Bryant
President I.A.C.P.A.

272

FAX DATE
9-7-95

15575 SW HWY 224
Clackamas, OR 97015

Jean DeMaster, Manager
Adult Foster Care Home Program, Manager
Multnomah County Oregon
421 SW 5th, 4th Floor
Portland, OR 97204-2221

Dear Ms. DeMaster:

Re: Rules Re-write Committee

It has recently come to my attention that Multnomah County is in the process of re-writing its administration rules. Also, that on this committee you have members from the Columbia Foster Care Association and the Oregon Registered Providers Association.

We feel a member from the Independent Adult Care Providers Association, Inc. Should be included on this committee. Dianna Roberts has volunteered to represent our association. Please advise her of the date for the upcoming meetings and provide her with all pertinent data previously provided to committee members.

Regards,

INDEPENDENT ADULT CARE PROVIDERS ASSOCIATION, INC.

Doreene Bryant

Doreene Bryant
President

cc: Dianna Roberts
Grover Simmons

278 A

Jean never acknowledged this letter in any manner.

KSM1100 STR/THQ05 BILLED USAGE PORTLAND 10/18/95 11:43
CMD ==>

ACCOUNT: 50952704 C NAME: DIANNA J ROBERTS CTL: 14PR
INVOICE MONTH: JUN PHONE: 503 970 6090 CALL DATE: TO

CALLED LOCATION	CALLED NUMBER	DATE	TIME	BILL DUR	AIR	TAX/ LAND	TOTAL	C I	ROAMER SYSTEM
PHONE: 503/970-6090		ESN: A521A45C		RATE PLAN: 1					
INCOMING		06/08	8:3859A	1.0	0.35	0.00	0.35		PR16BLO
INCOMING		06/08	8:5815A	1.0	0.35	0.00	0.35		PR66ANO
PORTLAND	OR 503/248-3000	06/08	9:0417A	3.0	1.05	0.00	1.05		PR57BNI
INCOMING		06/08	10:2525A	1.0	0.35	0.00	0.35		SA11CNO
INCOMING		06/08	11:4758A	1.0	0.35	0.00	0.35		SA02ANO
INCOMING		06/08	11:4804A	0.0	0.00	0.00	0.00		PD1S7LI
INCOMING		06/08	11:5055A	0.0	0.00	0.00	0.00		PD1S7LI
INCOMING		06/08	12:4503P	0.0	0.00	0.00	0.00		PD1S7LI
INCOMING		06/08	1:1150P	1.0	0.35	0.00	0.35		SA02ANO
INCOMING		06/08	1:2711P	0.0	0.00	0.00	0.00		PD1S7LI
INCOMING		06/08	1:5148P	1.0	0.35	0.00	0.35		SA02ANO

TOTAL CREDIT AMOUNT ISSUED = $ .00

MESSAGE C-1 PORTLAND

I was not hanging up on anyone.
Cell phone - out of range (Salem)
disconnecting as soon as I answered!
D Roberts

Monthly Board Meeting of I.A.C.P.A.
Chebas Restaurant
Salem

320

3. Compensation

(a) The County shall pay to the City the sum of Seventy-Five Dollars ($75) per hour for the services provided by the Code Hearings Officer. These services include time spent in preparing, conducting and writing the determination.

7. Indemnification *

(a) The City will hold harmless, defend and indemnify the County and its officers, agents and employees against all claims, demands, actions and suits (including attorneys' fees and costs) brought against any of them arising from the City's performance under this Agreement.

Department of Human Resources

Senior and Disabled Services Division

Administrative Rules for Licensure of Adult Foster Homes

Effective April 1, 1996

SDS 511 (Rev.4/96)

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411-50-400 Definitions

For the purpose of these rules, authorized under ORS 443.705 to 443.825, the following definitions apply:

(1) "AAA" means a Type B Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of Division programs. For the purpose of this rule, AAAs contract with the Division to perform specific activities in relation to licensing AFHs including processing applications, conducting inspections and investigations, issuing licenses, establishing conditions on licenses, and making recommendations to the Senior and Disabled Services Division, regarding AFH license denial, revocation, suspension, non-renewal and civil penalties.

(2) "Abuse" means any act or absence of action inconsistent with prescribed resident care. This includes but is not limited to:

(a) Physical assault such as hitting, kicking, scratching, pinching, choking or pushing;

(b) Neglect of care, including improper administration of medication(s), failure to seek appropriate medical care, inadequate changing of beds or clothes and failure to help with personal grooming;

(c) Denying meals, clothes, or aids to physical functioning;

(d) Use of derogatory or inappropriate names, phrases, or profanity; ridicule; harassment; coercion; threats; cursing; intimidation or inappropriate sexual comments;

(e) Sexual exploitation of residents including inappropriate physical contact between staff and residents, or failure of staff to discourage sexual advances of residents toward staff or other residents;

(f) Violating the rights guaranteed to the resident by the Bill of Rights in OAR 411-50-447;

(g) Using psychoactive medications or physical restraints, without a written order or contrary to a written order from a physician, Nurse Practitioner, or Christian Science practitioner; or to discipline or punish a resident; or for the convenience of the adult foster home;

(h) Financial exploitation which includes, but is not limited to, unreasonable rate

increases; borrowing from or loaning money to a resident; witnessing wills in which a provider, caregiver, or any member of their families is a beneficiary; adding a provider's name to a resident's bank account or other property; inappropriately expending a resident's personal funds; commingling a resident's funds with a provider's, a caregiver's or another resident's funds; perfecting or foreclosing a lien in violation of ORS Chapter 87 or acting as a resident's guardian, conservator, trustee or attorney-in-fact (under a power of attorney). See OAR 411-50-447;

(i) Abandonment, including desertion or willful forsaking of a resident.

(3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well-being including eating/nutrition, dressing, personal hygiene, mobility, toileting and behavior management.

(a) "Independent" means the resident can perform the ADL without help;

(b) "Assistance" means the resident is able to help with an ADL, but cannot do it entirely alone;

(c) "Dependent" means the resident is unable to do any part of an ADL; it must be done entirely by someone else.

(4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer elderly or physically disabled adults who are not related to the provider by blood or marriage. For the purpose of this rule, adult foster home does not include any house, institution, hotel or other similar living situation that supplies room and board only, or room only, or board only, if no resident thereof requires any element of care.

(5) "Advance Directive" means the legal document signed by the resident giving instructions for health care should she/he no longer be able to give directions regarding her/his wishes. The directive gives the resident the means to continue to control her/his own health care in any circumstance.

(6) "Applicant" means any person who completes an application for a license who is also the owner of the business.

(7) "Behavioral Interventions" means those interventions which will modify the resident's behavior or the resident's environment.

(8) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the Statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR Chapter 851, Division 45.

(9) "Care" means the provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules. Care also means services that encourage maximum resident independence and enhance quality of life.

(10) "Caregiver" means any person responsible for providing care and services to residents, including the provider; the resident manager; and any temporary, substitute or supplemental staff or other person designated to provide care and services to residents.

(11) "Care Plan" means the provider's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services will be provided. The care plan is developed at the time of admission and is reviewed and updated at least semi-annually and when the condition of the resident changes.

(12) "Classification" means a designation of license assigned to a provider based on the provider's and resident manager's qualifications if a resident manager is employed in the home.

(13) "Client" means a resident in an adult foster home for whom the Division pays for care or for whom case management services are provided.

(14) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a provider in exchange for room and board, care and services. Compensation does not include the voluntary sharing of expenses between or among roommates.

(15) "Complaint" means an allegation that a provider has violated these rules or an expression of dissatisfaction relating to the condition of the adult foster home or the resident(s).

(16) "Condition" means a provision attached to a new or existing license which limits or restricts the scope of the license or imposes additional requirements on the licensee.

(17) "Day Care" means care, assistance, and supervision of a person who does not stay overnight.

(18) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.

(19) "Department" means the State of Oregon Department of Human Resources.

(20) "Director" means the Director of the Department of Human Resources or that person's designee.

(21) "Disabled" means a person with a physical, cognitive, or emotional impairment which, for

the individual, constitutes or results in a functional limitation in one or more activities of daily living.

(22) "Division" means the Senior and Disabled Services Division (SDSD) of the Department of Human Resources. Division also includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.

(23) "Elderly" or "Aged" means any person age 65 or older who is in need of care.

(24) "Exception" means a variance from a regulation or provision of these rules, granted in writing by the Division, upon written application by the provider.

(25) "Exempt Area" means a county where there is a county agency which provides similar programs for licensing and inspection of adult foster homes which the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and which the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules must be submitted to the Director for review and approval prior to implementation.

(26) "Family Member", for the purposes of these rules, means husband or wife, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(27) "Home" means the physical structure in which residents live, synonymous with adult foster home.

(28) "Home-like" means an environment which promotes the dignity, security and comfort of residents through the provision of personalized care and services to encourage independence, choice, and decision-making by the residents.

(29) "House Rules" mean written and posted rules governing house activities in an AFH which are developed by the provider and approved by the Division.

(30) "Legal Representative" means a person who has the legal authority to act for the resident. On matters involving care, this is a legal guardian, a health care representative under an Advance Directive, or Power of Attorney for Health Care. On financial matters, this is a legal conservator, an agent under a power of attorney, or a representative payee.

(31) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.

(32) "Licensee" means the person(s) who applied for, was issued a license, and whose name(s) is on the license.

(33) "Limited License" means a license issued to provide care to a specific individual. A provider with a limited license shall meet, at a minimum, the standards of a relative adult foster home and any additional training deemed necessary by the Division to meet the health, safety, and welfare needs of the individual.

(34) "Liquid Resource" means cash or those assets that can readily be converted to cash, i.e., a life insurance policy that has a cash value or stock certificates.

(35) "Neglect" (whether intentional, careless, or due to inadequate experience, training, or skill) means failure to provide care necessary to ensure the health, safety, and well-being of a resident; failure to follow the care plan; failure to make a reasonable effort to discover what care is necessary for the well-being of a resident; or failure to provide a safe and sanitary environment (see abuse definition).

(36) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, which is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(37) "Occupant" means anyone residing in or using the facilities of the adult foster home including residents, providers, resident managers, friends or family members, day care persons, and boarders.

(38) "Ombudsman" means the State Long-Term Care Ombudsman or an individual designee appointed by the Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the AFH residents.

(39) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident cannot easily remove and restricts freedom of movement or normal access to his/her body. Physical restraints include, but are not limited to, leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, any chair that prevents rising, and gerichairs. Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. When a resident requests a side rail (e.g. for the purpose of assisting with turning), the side rail is not considered a restraint.

(40) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments which have been ordered by a qualified practitioner to be given as needed.

(41) "Provider" means the person licensed to operate an adult foster home. The provider is responsible for the provision of room, board, care and services in the daily operation of the home. Applicant, provider, licensee, and operator are all synonymous terms. "Provider" does not include the owner or lessor of the building in which the adult foster

home is situated unless the owner or lessor is also the operator of the adult foster home.

(42) "Provisional License" means a 60-day license issued to a qualified person in an unforeseen emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. A person must meet the standards of OAR 411-50-440 and OAR 411-50-443 except for completing the training and testing requirements.

(43) "Psychoactive Medications" means various medications used to alter mood, anxiety, behavior or cognitive processes. For the purpose of these rules, they include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.

(44) "Relative" means those persons specified in Section (26) of this rule.

(45) "Relative Foster Home" means a home which provides care and services to only elderly or disabled adult family members aged 18 years or older of the provider who are eligible for Medicaid assistance from the Division.

(46) "Reside" means for a person to make the home their residence on a frequent or continuous basis.

(47) "Resident" means any person who is receiving room, board, care, and services for compensation in an adult foster home on a 24-hour basis.

(48) "Residential Care" means the provision of care on a 24-hour basis.

(49) "Resident Manager" means an employee of the provider who lives in the home and is directly responsible for the care of residents on a 24 hour per day basis.

(50) "Resident Rights" or "Rights" means civil, legal or human rights, including but not limited to those rights listed in the AFH Bill of Rights (see ORS 443.739).

(51) "Respite Resident" means a person who receives residential care for a period of 14 days or less or who only stays overnight.

(52) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping for compensation to persons who do not need activities of daily living care services. Provisions for two or more persons require registration with the Division under OAR Chapter 411, Division 68.

(53) "Self-Administration of Medication" means the act of a resident placing a medication in or on his/her own body. This means the resident manages and takes his or her own medications, in that the resident identifies the medication and the times and manners of administration, and places the medication internally or externally on his/her own body without assistance.

(54) "Self-Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and be able to reach a point of safety on their own.

(55) "Services" means activities which help the residents develop skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living or individual social activities.

(56) "Shift Caregivers" means caregivers who, only by written exception of the Division, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours, in homes where there is no provider or resident manager living in the home.

(57) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Senior and Disabled Services Division other than the provider or resident manager.

411-50-401 Purpose

The purpose of these rules is to establish standards and procedures for adult foster homes that provide care for elderly and disabled persons in a home-like environment that is safe and secure. The goal of adult foster care is to provide necessary care while emphasizing the resident's independence. This goal is reached through a cooperative relationship between the care provider and the resident (or legal guardian) in a setting that protects and encourages resident dignity, choice, and decision-making. Resident needs will be addressed in a manner that supports and enables the individuals to maximize abilities to function at the highest level of independence possible.

411-50-405 License Required

(1) Any facility which meets the definition of an adult foster home as defined in OAR 411-50-400 must apply for and obtain a license from the Division or an exempt area county. An unlicensed adult foster home shall not admit a person needing care or services.

(2) No person or entity shall represent themselves as operating an adult foster home or accept placement of a person without first being licensed.

(3) (a) No person may be a provider, resident manager, shift caregiver, substitute caregiver or otherwise be employed by the provider or reside in or on the property of an adult foster home who has been:

(A) Convicted of one or more disqualifying crimes or has a disqualifying arrest pending disposition as defined in OAR Chapter 411, Division 09, which the Division determines are substantially related to the qualifications, functions, or duties of a caregiver or may otherwise endanger the health,

safety or rights of a resident; or

(B) Found responsible for a disqualifying type of abuse. See OAR 411-50-415;

(b) This provision does not apply to residents of the adult foster home or to persons who live or work on the property but do not access the home for meals or use of the appliances or facilities.

(4) Any facility which meets the definition of a Relative Foster Home or requests a limited license status must have a limited license from the Division if receiving compensation from the Division. In order to qualify for a limited license and for compensation from the Division, the applicant/provider must submit a completed application and physician's statement, obtain a criminal record clearance, demonstrate a clear understanding of the resident's care needs, meet minimal fire safety compliance including the installation of smoke detectors and fire extinguishers, and obtain any relevant training deemed necessary by the Division to provide adequate care up to the full training requirements of the Division. A spouse is not eligible for compensation as an adult foster care provider. If services are provided to a relative without compensation from the Division, the home is not required to be licensed.

411-50-408 Capacity

(1) Residents shall be limited to five persons unrelated to the provider by blood or marriage and who require care.

(2) Respite residents are included in the licensed limit of the home.

(3) The number of residents permitted to reside in an AFH will be determined by the ability of the staff to meet the care needs of the residents, the fire safety standards for evacuation, and compliance with the physical structure standards of these rules. Determination of maximum capacity must include consideration of total household composition including children and relatives requiring care and supervision. In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents.

(4) When there are relatives requiring care, day care residents, or room and board occupants, the allowable number of unrelated residents may continue to be the maximum capacity of five if the following criteria are met:

(a) The provider can demonstrate the ability to evacuate all occupants within three minutes;

(b) The provider has adequate staff and has demonstrated the ability to provide appropriate care for all residents;

(c) There is an additional 40 square feet of common living space for each person above the five residents;

(d) Bedrooms and bathrooms meet the requirements of these rules;

(e) The care needs of the additional persons are within the classification of the license and any conditions imposed on the license;

(f) The well-being of the household including any children or other family members will not be jeopardized; and

(g) If day care persons are in the home, they must have arrangements for sleeping in areas other than a resident's bed or a resident's private room or space designated as common use.

411-50-410 License Application and Fees

(1) The application shall be completed and submitted by the person responsible for the operation of the home (business) and shall be in writing on Form SDS 448, Part I, provided by the Division. The application is not complete until all of the required application information is submitted to the Division. Incomplete applications are void after 60 days from the date the application form and fee are received by the licensing office. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) An application for a home which has a resident manager shall include information about that person on a separate Form SDS 448, Part II.

(4) The application shall include:

(a) The maximum resident capacity requested, relatives needing care, respite residents, board and room occupants, and day care persons. The application shall also include the number of any other occupants;

(b) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Division;

(c) A physician's statement regarding ability to provide care (Form SDS 903);

(d) A completed financial information sheet, Form SDS 448A;

(A) The applicant shall submit a budget for operating the home including payroll expenses; and

(B) If the home is leased or rented, the name of the owner and landlord and verification that the rent is a flat rate must be included. The financial information shall not become part of the public file;

(e) A signed criminal record authorization (Form SDS 303) for each person who will have regular contact with the residents, including the provider(s), the resident manager, caregivers, and other occupants over the age of 16 (excluding residents). Providers shall obtain information regarding criminal history and out-of-state residency through their employee applications;

(f) A floor plan of the house showing location and size of rooms, exits, wheelchair ramps if applicable, smoke detectors and extinguishers;

(g) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;

(h) A $20 per bed non-refundable fee for each non-relative resident;

(i) Application references must be three non-relatives that have current knowledge of the applicant's character and capabilities;

(j) If the provider uses a resident manager, a written plan on coverage for resident manager absences must be submitted;

(k) Use of shift caregivers may be used in lieu of a resident manager if granted a written exception by the Division. Use of shift caregivers detract from the intent of a home-like environment, but will be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs such as those with Alzheimer's Disease, AIDS, or head injuries. If shift caregivers are used, they must meet the standards of a resident manager and the classification of the home; and

(l) Written information describing the planned operation of the adult foster home, including the use of substitute caregivers and other staff.

(5) After receipt of the completed application materials and fee, the Division shall investigate the information submitted, inspect the home, and conduct a personal interview with the applicant to determine compliance with these rules. Applicants must attend a local orientation program prior to being licensed as offered by the local licensing authority.

(6) If cited deficiencies from the inspection are not corrected within the time frames specified by the Division, the application shall be denied.

(7) The applicant may withdraw his/her application at any time during the application process by notifying the Division.

(8) An applicant whose license has been revoked, voluntarily surrendered during a revocation/non-renewal process, or whose application has been denied shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial is final, or for a longer period if specified in the order revoking or denying the license.

411-50-415 Issuance

(1) The Division shall issue a license within 60 days after the completed application materials have been received if the home and provider are in compliance with these rules. The license shall state the name of the resident manager, the names of all providers who own the adult foster home (business), the address of the premises to which the license applies, the classification for which the applicant is qualified, the maximum number of residents and the expiration date. The license shall be posted in the home and be available for inspection at all times.

(2) The provider will be given a copy of the inspection reports (Forms SDS 517 and 517A), identifying any areas of non-compliance and specifying a time frame for correction, but no later than 60 days from date of inspection. The provider shall post the most recent inspection reports available in the entry or equally prominent place and shall, upon request, provide a copy of the information to each resident of, or person applying for admission to the home, or the legal representative, guardian or conservator of the resident or applicant.

(3) The Division may attach conditions to the license which limit, restrict or specify other criteria for operation of the home. The conditions must be posted with the license (see OAR 411-50-483).

(4) A limited license may be issued to a provider for the care of a specific person(s). No other admissions will be made by a provider with this limitation. A provider with a limited license must meet, at a minimum, the requirements of licensure for a relative adult foster home and may be subject to the requirements for the Standards and Practices for Care and Services (OAR 411-50-447).

(5) The Division shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the Division;

(b) The Division has completed an inspection of the adult foster home;

(c) The Division has completed a criminal records check on the applicant and any occupant, other than a resident, 16 years of age or older who will be residing in or employed by the adult foster home. See section (15) of this rule;

(d) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and

(e) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the adult foster home.

(6) If a resident manager (or shift caregiver) changes during the period the license covers, the provider must notify the Division immediately and identify who will be providing care. The provider must submit a request for a change of resident manager to the Division along with a completed resident manager application (Form SDS 448, Part II); a criminal record authorization (Form SDS 303); and payment of a $10 fee. Upon a determination the applicant meets the requirements of a resident manager and the applicant has received the Division's required training and passed the test, a revised license will be issued with the name of the new resident manager. The classification of the home will be reevaluated based on the qualifications of the new resident manager and changed accordingly (see OAR 411-50-440).

(7) If the Division determines an unexpected and urgent staffing situation exists, the Division may permit, in writing, a person who has not completed the training or passed the test to act as a resident manager until training and testing are completed or for 60 days, whichever is shorter. The provider must notify the Division of the situation and provide a satisfactory explanation of the inability to find a qualified resident manager, that the person is 21 years of age and meets the requirements for a substitute caregiver for the adult foster home, and that the provider will provide adequate supervision.

(8) A license to operate an adult foster home is not transferable and does not apply to any location or person(s) other than the location and the person(s) indicated on the license application obtained from the Division.

(9) The provider shall inform real estate agents, prospective buyers, lessees, and transferees in all written communication including advertising and disclosure statements that the license to operate an adult foster home is not transferable and shall refer them to the Division for information about licensing.

(10) When a home is to be sold or otherwise transferred to another provider (owner), the new provider must apply for and obtain a license prior to the transfer of operation of the home.

(11) A license is valid for one year unless sooner revoked or suspended.

(12) In seeking an initial license, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the Division.

(13) The Division shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing home or homes and has the ability to provide care to the residents of those homes that is substantially free from abuse and neglect.

(14) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home. A person would be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.

(15) Criminal Record Clearance

(a) Persons who have been convicted of one or more crimes that, as determined by rules of the Division, are substantially related to the qualifications, functions or duties of a provider, resident manager, substitute caregiver or other household member of an adult foster home shall be prohibited from operating, working in, or residing in an adult foster home. The provider may not hire, retain in employment, or allow to be an occupant of an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse. The provider shall include questions regarding criminal history and out of state residency on their employee applications;

(b) The criminal records check under these rules shall consist of:

(A) A check for a criminal record in the State of Oregon; and

(B) A national criminal records check if:

(i) The applicant or other person has resided in another state within the previous five years;

(ii) The applicant or other person has disclosed the existence of a criminal conviction; or

(iii) A criminal records check in Oregon discloses the existence of a criminal record in another jurisdiction;

(c) The Division shall provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

411-50-420 Renewal

(1) At least 60 days prior to the expiration of a license, a reminder notice and application for renewal will be sent by the Division to the currently licensed provider. Submittal of a renewal application prior to the expiration date will keep the license in effect until the Division takes action. If the renewal application and fee are not submitted prior to the expiration date, the home will be treated as an unlicensed facility subject to Civil Penalties (OAR 411-50-487).

(2) Information similar to that required for a new application (OAR 411-50-410), including a physician's statement each third year (sooner if there appears to be health concerns) and criminal record clearance. The financial information sheet is not required if this information has not changed. Verification of current CPR certification for the provider and resident manager is also required.

(3) The Division may investigate any information in the renewal application and shall conduct an unannounced inspection of the adult foster home prior to the license renewal.

(4) The provider will be given a copy of the inspection reports (Forms SDS 517 and 517A) citing any deficiencies and a time frame for correction, which shall be no longer than 60 days from the date of inspection.

(5) The Division will require the home to correct deficiencies relating to the health, safety, and welfare of residents prior to issuing the renewal license. If cited deficiencies are not corrected within the time frame specified by the Division, the renewal application shall be denied.

(6) The Division shall not renew a license unless:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the Division;

(b) The Division has completed an inspection of the adult foster home;

(c) The Division has completed a criminal records check on the applicant and any occupant, other than a resident, 16 years of age or older who will be residing in or employed by the adult foster home provider (see OAR 411-50-415);

(d) The provider/resident manager may continue to work in the home pending the national criminal records check providing that the Oregon criminal record check

was clear and no convictions were self disclosed; and

(e) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678.

(7) In seeking a renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the Division.

(8) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the Division to establish noncompliance with ORS 443.705 to 443.825 and the rules of the Division.

411-50-430 Exceptions

(1) A provider or applicant must apply in writing to the Division for an exception from a provision of these rules. The provider must prove to the Division by clear and convincing evidence that such an exception does not jeopardize the care, health, welfare or safety of the residents. Evidence will indicate that all residents' needs can be met and all occupants can be evacuated within three minutes.

(2) Notwithstanding section (1) of this rule, no exception shall be granted from a regulation or provision of these rules pertaining to the standards and practices, inspections of the facility, resident rights, and inspection of the public files. Exceptions related to fire and life safety shall not be granted by the Division without prior consultation with the State Fire Marshal or its designee.

(3) An exception, if approved, will be granted in writing. Each exception will be reviewed at each renewal period.

(4) Residents whose care needs exceed the licensed classification of the home shall not be admitted without prior approval of the Division.

411-50-435 Rates and Contracts

(1) Providers who care for Division clients must enter into a contract with the Division and follow Division rules and contract terms. The Division cannot make a service payment to a licensed provider without a valid contract in place. In addition:

(a) The rate of compensation established by the Division is considered payment in full;

(b) Division service payments for the current month will be issued at the beginning

of the following month;.

(c) The Division will not make payment for the date of discharge or for any time period thereafter;

(d) If the provider is a Medicaid contract holder for that home, private pay residents who become eligible for Medicaid cannot be asked to leave for that reason; and

(e) Medicaid contracts may be terminated with a 30-day written notice by either party.

(2) Providers who care for private paying residents must enter into a signed contract/admission agreement with the resident or person paying for care. A copy of this agreement is subject to review prior to licensure by the Division. This contract/admission agreement shall include, but not be limited to:

(a) Services to be provided;

(b) Schedule of rates for services and conditions under which the rates can be changed;

(c) The home's policy on refunds at the time of hospitalization, death, discharge, transfer to a nursing facility or other care facility, or voluntary move and any charges for storage of a resident's belongings after leaving the home. Discharge and refund policy shall be in compliance with OAR 411-50-437; and

(d) The provider shall not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.

(3) The provider shall not include any illegal or unenforceable provision in a contract with a resident and shall not ask or require a resident to waive any of the resident's rights or provider's liability for negligence.

(4) Prior to admitting a private paying individual to an adult foster home, the facility shall advise the individual seeking admission of the availability of Long Term Care Assessment services provided through the Division or Certified Assessment Program.

(5) The facility shall certify on Form SDS 913 provided by the Division that the individual has been advised of their right to receive a long term care assessment. The facility shall maintain a copy of the form in the individual's client record and make a copy available to the Division upon request.

(6) Thirty days prior to any general increases, additions, or other modifications of the rates, the provider shall give written notice of the proposed changes to private residents and their family or other representatives unless the change is due to the resident's increased

care or service needs and the rate schedule in the resident's contract/admission agreement has specified charges for changes in resident impairment levels and/or services.

(7) Residents shall not be liable for damages considered normal wear and tear.

411-50-437 Refunds

(1) If a resident dies or leaves an adult foster home for medical reasons and the resident or their representative indicates in writing the intent to not return, the provider shall not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the resident has left the adult foster home.

(2) The provider has an obligation to act in good faith to reduce the charge by seeking a new resident to fill the vacancy.

(3) The provider shall refund any advance payments to the resident/representative within 30 days after the resident dies or leaves the home.

(4) If the home closes, the provider waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

(5) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Division investigator or due to conditions of imminent danger of life, health or safety, the provider shall not charge the resident beyond the resident's last day in the home. Upon receipt of a complaint of abuse or neglect the Division shall commence an investigation.

(6) The provider may charge a reasonable fee for storage of the resident's belongings beyond the 15 days if the contract/admission agreement includes fees for storage.

(7) Refund policies shall also apply to the moves, transfers and discharges section of OAR 411-50-447.

411-50-440 Qualifications for Providers, Resident Managers and Other Caregivers

(1) An adult foster home provider shall meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the home which is to be licensed, unless a resident manager lives in the home;

(c) Provide evidence satisfactory to the Division regarding education, experience, and training to meet requirements of the requested classification levels (see OAR

411-50-443);

(d) Possess physical health, mental health, good judgment and good personal character determined necessary by the Division to provide 24-hour care for adults who are physically disabled or elderly. Applicants must have a statement from a physician or other qualified practitioner indicating they are physically, cognitively, and emotionally capable of providing care to residents. Applicants with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment/rehabilitation or references regarding current condition;

(e) Must pass a criminal record clearance under OAR Chapter 411, Division 09 and are required to sign a criminal record authorization, Form SDS 303;

(f) Be literate and demonstrate the understanding of written and oral orders and communicating in English with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times; and

(g) The applicant must have the financial ability and shall provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential resident income. The applicant shall provide the Division with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The Division may require or permit the applicant to provide a current credit report to satisfy this requirement. The Division shall not issue an initial license to an applicant who has been adjudged bankrupt more than once. If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens or unpaid taxes, the Division shall require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims. If the applicant is unable to demonstrate the financial ability and resources required by this subsection, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(2) The resident manager or shift caregiver shall meet the provider qualifications listed in subsections (1)(a) through (f) of this rule. A resident manager applicant may work in the home pending outcome of the national criminal record check, if the Oregon criminal record check was clear and no convictions were self disclosed on the criminal record authorization (Form SDS 303).

(3) Substitute Caregivers, other than the provider or resident manager, or any other person left in charge of residents for any period of time shall meet the following qualifications:

(a) Be at least 18 years of age;

(b) The caregiver must pass a criminal record clearance under OAR Chapter 411, Division 09 and is required to sign a criminal record authorization (Form SDS 303). See OAR 411-50-415;

(c) The substitute caregiver may work in the home pending the national criminal records check providing the Oregon criminal records check was clear and no convictions were self disclosed;

(d) Be literate and demonstrate the understanding of written and oral orders and communicating in English with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times;

(e) Have a clear understanding of job responsibilities, have knowledge of residents' care plans and be able to provide the care specified for each resident's needs including appropriate delegation or consultation by a registered nurse;

(f) Not be a resident; and

(g) Possess physical health, mental health, good judgment, and good personal character necessary to provide care for adults who are elderly or disabled, as determined by reference checks and other sources of information.

411-50-441 Training Requirements for Providers and Resident Managers

(1) In addition to prior education and experience, all providers and resident managers must complete the following training requirements:

(a) The Division's Basic Training Course shall be completed by both the provider and resident manager, which includes taking and passing an examination on course work and necessary skills. Required course work and necessary skills will include but are not limited to demonstrations and practice in physical caregiving, screening for care and service needs, appropriate behavior towards residents with physical, cognitive and emotional disabilities and issues related to architectural accessibility. The examination shall evaluate the ability to understand and respond appropriately to emergency situations, changes in medical conditions, physician's orders, medication management and professional instructions, nutritional needs, resident's preferences and conflicts. Failure to obtain a passing score on the Basic Training Examination may result in denial or non-renewal of a license pursuant to OAR 411-50-480;

(A) Currently licensed providers and resident managers who have completed

the Basic Training Course but have not previously passed the Basic Training Examination shall do so at or before the time of license renewal. Providers and resident managers failing to obtain a passing score on the Basic Training Examination shall be given one more opportunity to take the examination within 60 days of the first test;

(i) If a provider fails the examination a second time, a license condition restricting admission will be imposed. The provider will be referred to SDSD Central Office for license revocation/non-renewal. If a provider demonstrates special circumstances (e.g. language barrier or test anxiety), SDSD Central Office may develop an alternate means of testing that individual. If the provider fails to demonstrate special circumstances or fails to pass an alternate test, as developed by the Division, the provider's license shall be revoked;

(ii) If a resident manager fails the examination a second time, his/her status as a resident manager shall terminate. A condition on the license restricting admissions shall be imposed until a qualified resident manager is hired and working in the home. The current resident manager may continue working as a resident manager for a period not to exceed 30 days to ease the transition. The current resident manager may continue working after that 30-day period only if he/she met the qualifications of a substitute caregiver. If the resident manager demonstrates special circumstances (e.g. language barrier or test anxiety), that person may be referred to SDSD Central Office where an alternate means of testing that individual may be developed. If the resident manager fails to demonstrate special circumstances or fails to pass an alternate test as developed by SDSD Central Office, the local office will terminate his/her resident manager status and put the above procedure into effect;

(B) All provider and resident manager applicants shall complete the Division's Basic Training Course and pass the Examination prior to becoming a licensed provider or a qualified resident manager. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application will be denied;

(b) (A) A resident manager applicant who has not completed the Basic Training Course must complete the Caregiver Preparatory Training Course approved by the Division before providing care to any resident. The Caregiver Preparatory Training Course will include emergency procedures, medication management, personal care procedures, food preparation, home environment and safety procedures, and residents' rights;

(B) If the Division determines an unexpected and urgent staffing situation exists, the Division may, in writing, permit a person who has not completed the Basic Training or passed the test to act as a resident manager until training and testing are completed or for 60 days, whichever is shorter. The provider must notify the Division of the unforeseen situation and demonstrate that he/she is unable to find a qualified resident manager, that the person is 21 years of age and meets the requirements for a substitute caregiver for the adult foster home and the provider will provide adequate supervision;

(c) Each subsequent year following the Basic Training Course, providers and resident managers are required to take at least ten hours of Division approved ongoing training related to care of elderly and disabled persons. Registered nurse delegation or consultation does not count towards the ten hours; and

(d) Within the first year after obtaining an initial license the provider and resident manager must complete a Basic First Aid course, CPR (cardiopulmonary resuscitation) course, and attend an annual Fire and Life Safety training as available and coordinated by the Division and Office of the State Fire Marshal.

(2) If a provider is not in compliance with one or more of these rules or the class for which they are licensed, the Division may require by condition additional training in the deficient area, whether or not the other training requirements have been met.

(3) Documentation of training shall be kept in the facility's records including the date of training, subject matter, name of agency or organization providing training and number of classroom hours.

411-50-442 Training Requirements for Substitute Caregivers

(1) A substitute caregiver left in charge of the home in the provider's or resident manager's absence for any length of time must complete the Caregiver Preparatory Training Course (Study Guide and Workbook) approved by the Division prior to giving care. The training shall include a review of the Study Guide by the caregiver as part of the orientation to the home and residents. The Workbook shall then be completed by the caregiver without the help of any other person.

(2) In addition, substitute caregivers left in charge of a home for multiple 24-hour periods during a month or for any period that exceeds 48 hours, may be required to meet the education, experience and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home.

(3) Substitute caregivers working in the home while providers or resident managers are

present must receive instruction in specific care responsibilities from the provider/resident manager prior to giving care, and in addition must complete the Caregiver Preparatory Training Course as a part of their on-the-job instruction.

(4) The Division may grant an exception to the training requirements in section (1) of this rule for a substitute caregiver who holds a current Oregon license or certificate as a health care professional such as a physician, registered nurse, licensed practical nurse or certified nursing assistant (CNA); or who demonstrates the ability to provide adequate care to residents based on similar training or at least one year of experience providing direct care to elderly, disabled or dependent adults. The substitute caregiver must still pass an examination as applicable.

(5) The provider must orient any substitute caregiver to the home and to the residents, including location of fire extinguisher; demonstration of evacuation procedures; location of residents' records; location of telephone numbers for the residents' physicians, the provider and other emergency contacts; location of medications and key for medication cabinet; introduction to residents; instructions for caring for each resident; and delegation by a registered nurse for nursing tasks if applicable.

(6) The provider/resident manager shall keep documentation of the training and orientation of substitute caregivers.

411-50-443 Classification of Adult Foster Homes

(1) A Class I, Class II, or Class III license will be issued by the Division based upon the qualifications of the provider and the resident manager if there is one, and compliance with the requirements of OAR Chapter 411, Division 50.

(a) A Class I license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-50-441;

(b) A Class II license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-50-441 and each has the equivalent of two years' full time experience in providing direct care to elderly or disabled persons;

(c) A Class III license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-50-441; and

(A) Is a health care professional such as a registered nurse, licensed practical nurse (LPN), pharmacist, doctor, occupational therapist, or physical therapist; or

(B) Each has the equivalent of three years' full time experience in providing

direct care to elderly or disabled persons who are dependent in four or more ADLs; and

(C) Each can provide current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experience as a caregiver.

(2) A provider with a Class I license may only admit residents who need assistance in up to four activities of daily living (ADLs). A Class I provider may administer routine oral medications. All residents must be in stable medical conditions.

(3) A provider with a Class II license may provide care for residents who require assistance in all activities of daily living, but are not dependent in more than three activities of daily living. A Class II provider may request an exception to provide care to a Level III resident.

(4) A provider with a Class III license may provide care for residents who are dependent in four or more activities of daily living, except that no more than one bed-care or totally dependent person may be in residence at one time.

(5) Providers may only admit or continue to care for residents whose impairment levels are within the classification level of the home. A provider may request in writing an exception to care for a more impaired resident, or request a reclassification of the license if:

(a) A new resident wishes to be admitted whose impairment level exceeds the license classification level; or

(b) A current resident becomes more impaired, exceeding the license classification level; or

(c) There is more than one totally dependent or bed care resident in the home.

(6) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home if the provider proves the following criteria are met by clear and convincing evidence:

(a) It is the choice of the resident to reside in the home; and

(b) The provider is able to provide appropriate care of the resident in addition to the care of the other residents; or

(c) Additional staff is hired to meet the additional care requirements of all residents in the home; or

(d) Outside resources are available and obtained to meet the resident's care needs; and

(e) The exception will not jeopardize the care, health, safety or welfare of the residents; and

(f) The three-minute fire evacuation standard for all occupants can be met.

(7) A licensee may request a change in license classification during the year. The request must be in writing. A response will be made within 60 days.

(8) A provider may not employ a resident manager who does not meet or exceed the experience and training classification standard for the adult foster home.

411-50-445 Facility Standards

In order to qualify for or maintain a license, an adult foster home shall comply with the following provisions:

(1) General Conditions

(a) Each adult foster home shall meet all applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations for a single family residence;

(b) The building and furnishings shall be clean and in good repair. Grounds shall be well maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting. There shall be no accumulation of garbage, debris, rubbish or offensive odors;

(c) Interior and exterior stairways shall be provided with handrails. Adequate lighting, based on the needs of the individual, shall be provided in each room, stairway, and exitway; incandescent light bulbs shall be protected with appropriate covers. Yard, approved exits and exterior steps shall be accessible and appropriate to the condition of the residents;

(d) The heating system shall be in working order. Areas of the home used by residents shall be maintained at a comfortable temperature. Recommended minimum temperatures are no less than 68 degrees during the day and 60 degrees during sleeping hours. Frail elderly may require warmer temperatures or additional clothing or bedding to be comfortable. During times of extreme summer heat, the provider will make reasonable effort to make the residents comfortable using available ventilation or fans;

(e) There shall be at least 150 square feet of common living space and sufficient

furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space shall not be located in an unfinished basement or garage(s) unless such space was constructed for that purpose or has otherwise been legalized under permit. There shall be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space will be required for each day care person, board and room occupant, or relative receiving care for remuneration who exceeds the limit of five;

(f) Interior doorways used by residents must be wide enough to accommodate wheelchairs/walkers if used by residents;

(g) Providers must be able to provide or arrange for appropriate resident transportation;

(h) Providers shall not permit residents to use swimming or other pools, hot tubs, saunas, or spas on the premises without supervision and physician orders. Swimming pools, hot tubs, spas, or saunas shall not be accessible to residents in care without supervision. They shall also be equipped with safety barriers and devices designed to prevent accidental injury;

(i) There shall be current readily available basic first-aid supplies and a first-aid manual; and

(j) Providers must own, rent or lease the home to be licensed. Exceptions may be granted by the local licensing authority to churches, hospitals, non-profit associations or similar organizations. If a licensed provider rents or leases the premises where the adult foster home is located, the provider shall not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located shall not allow the owner to interfere with the admission, discharge or transfer of any resident in the adult foster home unless the owner is a provider or co-provider on the license.

(2) Sanitation

(a) A public water supply shall be utilized if available. If a non-municipal water source is used, a sample shall be collected by the licensor or sanitarian and tested at the provider's expense for coliform bacteria yearly and records shall be retained for three years; corrective action shall be taken to ensure potability;

(b) Septic tanks or other non-municipal sewage disposal system shall be in good working order. Commodes shall be emptied frequently and incontinence garments will be disposed of in closed containers;

(c) Garbage and refuse shall be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal;

(d) Prior to laundering, soiled linens and clothing shall be stored in closed containers in an area separate from food storage, kitchen and dining areas. Special pre-wash attention shall be given to soiled and wet bed linens;

(e) Sanitation for household pets and other domestic animals shall be adequate to prevent health hazards. Proof of rabies or other vaccinations required by a licensed veterinarian shall be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to residents or guests;

(f) There will be adequate control of insects and rodents including screens on doors and windows that are used for ventilation;

(g) Universal precautions for infection control should be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids; and

(h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal shall be according to local regulations and resources (ORS 459.386 through 459.405).

(3) Bathrooms

Bathrooms shall:

(a) Provide individual privacy and have a finished interior, with a door which opens to a hall or common use room; a mirror; an openable window or other means of ventilation; and a window covering. No person shall walk through another person's bedroom to get to a bathroom;

(b) Be clean and free of objectionable odors (including the commodes used in resident rooms);

(c) Have tubs or showers, toilets and sinks in good repair. A sink shall be located near each toilet, and a toilet and sink provided on each floor with resident rooms. There shall be at least one toilet, one sink, and one tub or shower for each six household occupants (including residents, day care persons, board and room occupants, provider and provider's family excluding children under two years old);

(d) Have hot and cold water at each tub, shower, and sink in sufficient supply to meet the needs of the residents. Hot water temperature in bathing areas shall be supervised for persons unable to regulate water temperature;

(e) Have nonporous surfaces for shower enclosures; glass shower doors shall be tempered safety glass. Shower curtains shall be clean and in good condition. Non-slip floor surfaces shall be provided in tubs and showers;

(f) Have grab bars for toilets, tubs, and/or showers for resident's safety and have barrier-free access to toilet and bathing facilities; and

(g) Have adequate supplies of toilet paper and soap for each bathroom provided by the operator. Residents shall be provided with individual towels and wash cloths which are laundered in hot water at least weekly or more often if necessary. Residents shall have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in dispenser shall be provided for residents' use.

(4) Bedrooms

(a) Bedrooms for all household occupants shall have been constructed as a bedroom when the home was built, or remodeled under permit; be finished with walls or partitions of standard construction which go from floor to ceiling; have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom; be adequately ventilated, heated and lighted with at least one openable window which meets fire regulations (see subsection (7)(d) of this rule); be at least 70 square feet of usable floor space for each resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and have no more than two persons per room;

(b) Providers, resident managers or family members shall not sleep in areas designated as living areas, nor share bedrooms with residents;

(c) There shall be an individual bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed shall have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases shall be laundered at least weekly, and more often if soiled. Waterproof mattress covers will be used for incontinent residents. Day care persons may use a cot or rollaway bed if bedroom space is available which meets the requirements of subsection (4)(a) of this rule. Resident beds may not be used by day care persons;

(d) Each bedroom shall have sufficient separate, private dresser and closet space for each resident's clothing and personal effects including hygiene and grooming supplies. Residents shall be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space. Drapes or shades for windows shall be in good condition and allow privacy for residents;

(e) Bedrooms shall be on ground level for residents who are non-ambulatory, have impaired mobility, or are cognitively impaired. Residents on the second floor or in the basement must demonstrate their self-preservation capability to self exit or barricade, i.e., close the door or stop smoke from coming under the door; and

(f) Resident bedrooms shall be in close enough proximity to the provider to alert the provider to night time needs or emergencies, or shall be equipped with a call bell or intercom. Intercoms shall not violate the resident's right to privacy and must have the capability of being turned off by or at the resident's request. Use of interior video monitors detracts from a home-like environment and providers shall not use them in resident bedrooms, bathrooms or living areas, unless requested by the resident.

(5) Meals

(a) Three nutritious meals will be served daily at times consistent with those in the community. Each daily menu will include food from the five basic food groups and fresh fruit and vegetables in season. There shall be no more than a 14-hour span between the evening meal and breakfast. Nutritious snacks and liquids shall be offered to fulfill each resident's nutritional requirements. Consideration shall be given to residents' cultural and ethnic background in food preparation. Special consideration must be given to residents with chewing difficulties and other eating limitations. Food shall not be used as an inducement to control the behavior of a resident;

(b) Menus for the coming week shall be prepared and posted weekly in a location accessible to residents and families. Meal substitutions in compliance with subsection 5(a) of this rule and with resident approval are acceptable;

(c) Home-canned foods must be processed according to the latest guidelines of the Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized;

(d) Special diets are to be followed as prescribed in writing by the resident's physician/nurse practitioner;

(e) Adequate storage shall be available to maintain food at a proper temperature, including a properly working refrigerator;

(f) Utensils, dishes, glassware and food stuffs shall not be stored in bedrooms, bathrooms, or living areas;

(g) Meals shall be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the provider (restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing by choice are the responsibility of the resident;

(h) Utensils, dishes and glassware shall be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sanicycle is recommended; and

(i) Food preparation areas and equipment (utensils and appliances) shall be clean, free of offensive odors and in good repair.

(6) Telephone

(a) A telephone available and accessible for residents' use in a reasonable accommodation for privacy for incoming and outgoing calls shall be provided in the home where residents live. Residents with hearing impairments (to the extent that they cannot hear over a normal phone) shall be provided with a telephone that is amplified with a volume control or is hearing aid compatible. The telephone number must be a listed number;

(b) Emergency telephone numbers shall be posted by the telephone including an emergency number to reach a provider who does not live in the home. Telephone numbers for making complaints to the Ombudsman and the local Division office must also be posted; and

(c) Restrictions and limitations on the use of the telephone by residents are to be specified in the written house rules and shall not violate residents' rights. Individual restrictions must be specified in the care plan.

(7) Safety

(a) Buildings shall meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home shall be inspected for fire safety by the State Fire Marshal's Office at the request of the licensing authority or Division staff using the standards in this rule;

(b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, shall be installed in accordance with all applicable fire and life safety codes. Such equipment shall be used and maintained properly and be in good repair. Providers who do not have a permit verifying proper installation

of an existing woodstove shall need to have the woodstove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around woodstoves to prevent residents with ambulation or confusion problems from coming in contact with the stove. Unvented portable oil, gas or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction;

(c) Extension cord wiring shall not be used in place of permanent wiring;

(d) Hardware for all exit doors and interior doors shall have simple hardware which cannot be locked against exit and shall have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more residents who have impaired judgment and are known to wander away from their place of residence must have an activated alarm system to alert a caregiver of an unsupervised exit by a resident;

(e) Bedrooms shall have at least one window or exterior door readily openable from the inside without special tools and which provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height shall not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress which can be used by residents. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee. Smoking is not permitted in any bedroom including that of a resident, provider, resident manager, caregiver, boarder, or family member;

(f) Construction:

(A) Buildings will be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials shall not exceed Class III (76-200) and smoke density shall not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exitway is composed of readily combustible such as acoustical tile or wood paneling, such material must be treated with an approved intumescent surface coating. Exception: Buildings supplied with an approved automatic sprinkler system;

(B) Mobile home units must have been built since 1976 and designed for use as a home rather than a travel trailer. The units shall have a manufacturer's label permanently affixed on the unit itself which states it meets the requirements of the Department of Housing and Urban Development (HUD). The required label shall read as follows:

"As evidence by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(C) If such a label is not evident and the provider believes the unit meets the required specifications, he/she must take the necessary steps to secure and provide verification of compliance from the manufacturer; and

(D) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated any further;

(g) At least one fire extinguisher classed as 2A-l0BC shall be in a visible and readily accessible location on each floor, including basements, and shall be checked at least once a year by a qualified workman who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose;

(h) Smoke detectors shall be installed in accordance with the manufacturer's listing and be installed in each bedroom, in hallways or access areas that adjoin bedrooms, family room or main living area where residents congregate, any interior designated smoking area, and in basements. In addition, in two-story houses, smoke detectors must be installed at the top of the stairway to the second floor. Ceiling placement of smoke detectors is recommended. Detectors shall be equipped with a device that warns of low battery when battery operated or with a battery back-up if hard wired. All smoke detectors are to be maintained in functional condition. Bedrooms used by hearing impaired occupants who cannot hear a regular smoke alarm must be equipped with a visual/audio or vibration alerting smoke alarm as appropriate;

(i) All smoke detectors shall contain a sounding device or interconnected to other detectors to provide, when actuated, an alarm which is audible in all sleeping rooms;

(j) The provider shall maintain exits, detectors and extinguishers in functional condition. If there are more than two violations in maintaining battery operated

detectors in working condition, hard-wiring of the detectors into the electrical system may be required;

(k) Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals. Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not readily accessible to clients;

(l) Cleaning supplies, medical sharps containers, poisons and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food preparation and storage areas, dining areas, and medications;

(m) An emergency evacuation plan shall be developed, posted and rehearsed with occupants. All caregivers shall be required to demonstrate the ability to evacuate all residents from the facility within three minutes to the closest point of safety which is exterior to, and away from the structure. A record shall be maintained of evacuation drills. Drills will be held at least once every 90 days, with at least one drill practice per year occurring during sleeping hours. Records of drills shall be maintained for three years and include date, time for full evacuation, and names of residents requiring assistance for evacuation;

(n) Within 24 hours of arrival, any new resident or caregiver shall be shown how to respond to a fire alarm, shown how to participate in an evacuation drill from the home in an emergency, and receive an orientation to basic fire safety. New caregivers will also be oriented in how to conduct a fire drill;

(o) Providers and all caregivers shall demonstrate the ability to evacuate all occupants from the dwelling within three minutes. If there are problems in demonstrating this evacuation time, conditions may be applied to the license which include, but are not limited to, reduction of residents under care, additional staffing, or increased fire protection. Continued problems will be grounds for revocation or non-renewal of the license;

(p) The provider shall provide, keep updated and post a floor plan containing room sizes, location of each resident's bedroom, fire exits, resident manager or provider's sleeping room, smoke detectors and fire extinguishers. A copy of this drawing shall be submitted with the application and updated to reflect any change;

(q) Providers shall not place residents who are unable to walk without assistance or not capable of self-preservation in a basement, split-level, second story or other area that does not have an exit at ground level. Such residents shall be given first floor rooms. Stairs shall have a riser height of between 6-8 inches and tread width of between 8 - 10 ½ inches. Stories above the second floor shall not be used for

sleeping purposes. Lifts or elevators are not an acceptable substitute for resident's capability to ambulate stairs;

(r) All common use areas of the house and exitways must be barrier free and corridors and hallways shall be a minimum of 32 inches wide or as approved by the authority having jurisdiction. Any bedroom window identified as an exit shall be free of any obstacles, at least the width of the window, that would interfere with it being an exit. There shall be a wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. Wheelchair ramps shall have non-skid surfaces, handrails, and have a maximum slope of 1 inch rise in each 12 inches of distance. The maximum rise for any run shall be 30 inches. Wheelchair ramps approved prior to April 1, 1996 are accepted. Providers may need to bring existing ramps into revised compliance if necessary to meet the needs of new residents or current residents with increased care needs;

(s) There must be a second safe means of egress. Providers whose sleeping rooms are above the first floor may be required to demonstrate a fire exit drill from that room, using the secondary egress, at the time of licensure, renewal, or inspection;

(t) Adult foster homes located more than five miles distance from the nearest fire station or those of unusual construction characteristics may be required to have a complete fire alarm system meeting the requirements of the NFPA 72A and 72E and with approved automatic reporting to the local jurisdiction providing fire protection;

(u) There shall be at least one plug-in rechargeable flashlight available on each floor for emergency lighting;

(v) Smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping rooms, rooms where oxygen is used, or in garages where flammable materials are stored. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted;

(w) Providers whose homes are located in areas where there is a danger of natural disasters which require rapid evacuation such as forest fires, flash floods, or tsunami waves must be aware of community resources for evacuation assistance.

411-50-447 Standards and Practices for Care and Services

(1) Screening

(a) Prior to admission of a resident, the provider shall conduct and document a screening to determine that the prospective resident's care needs do not exceed the license classification. The screening shall evaluate the ability of the prospective

resident to evacuate the home within three minutes along with all occupants of the home. The screening shall also determine if the provider and caregivers can meet the prospective resident's needs in addition to meeting the needs of the other residents of the home. The screening shall include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information as needed to assure the person's care needs can be met; and

(b) The screening interview process shall include interviews with the prospective resident, her/his family, prior care providers, and case manager as appropriate. The interview should also include as necessary, any physician, nurse practitioner, registered nurse, pharmacist, therapist or other health/mental health professional involved in the care of the resident. A copy of the screening document shall be given to the prospective resident or her/his representative. Should the prospective resident become a resident in the home, a copy of the screening document shall be placed in the resident record.

(2) Admission

(a) Upon admission to the home, the provider shall obtain and document general information regarding the resident. The information shall include names, addresses, and telephone numbers of relatives, significant persons, case managers, and medical/mental health providers. The record shall also include the date of admission and, if available, the resident's Social Security and medical insurance numbers, birth date, prior living facility and mortuary;

(b) By the time of admission, the provider shall have made every effort to obtain physician/nurse practitioner orders for medications, treatments, therapies and special diets. Any telephone orders must be followed with written signed orders. A physician, nurse practitioner, or pharmacist review of the resident's preferences for over-the-counter medications and home remedies shall also be obtained at that time. The provider shall also obtain and place in the record any medical information available including history of accidents, illnesses, impairments or mental status that may be pertinent to the resident's care;

(c) At the time of admission, the provider shall ask for copies of the following documents if the resident has them: Advance Directive, letters of guardianship, or letters of conservatorship. The copies shall be placed in a prominent place in the resident record and sent with the resident when transferred for medical care; and

(d) At the time of admission, the provider shall discuss with the resident and/or her/his representative the Adult Foster Home Resident Bill of Rights, if the home

is a Medicaid provider, and written house rules. The discussion shall be documented by having the resident sign the house rules and the Residents' Bill of Rights (Form SDS 305A) and filed in the resident's record.

(3) Assessment and Care Plan

(a) During the initial 14 days following the resident's admission to the home, the provider shall continue the assessment process which includes documenting the resident's preferences and care needs. The assessment shall include observations of the resident and the review of information obtained from the screening assessment process;

(b) Based on the assessment, the initial care plan shall be completed by the provider and documented within the initial 14 day period. The care plan shall describe the resident's needs and preferences, the resident's capabilities and what assistance the resident requires for various tasks. The care plan shall also include by whom, when and how often care and services will be provided. Specific information shall include:

(A) Ability to perform activities of daily living (ADLs);

(B) Special equipment used by the resident;

(C) Communication needs: hearing, vision, sign language, non-English speaking, and speech along with any aids used;

(D) Night Needs;

(E) Medical or physical health problems relevant to care and services;

(F) Cognitive, emotional, or physical disabilities or impairments relevant to care and services;

(G) Treatments, procedures or therapies;

(H) Registered nurse consultation;

(I) Behavioral interventions;

(J) Social/spiritual/emotional needs including lifestyle preferences, activities, and significant others involved;

(K) Emergency exit ability including assistance and equipment needed;

(L) Any use of physical restraints or psychoactive medications; and

(M) Dietary needs and preferences;

(c) The care plan shall be reviewed and updated every six months and as the resident's condition changes. A review note with the date and reviewer's signature shall be documented in the record at the time of the review. If the care plan contains many changes and becomes less legible, a new care plan shall be written.

(4) Standards for Medications, Treatments and Therapies

(a) The provider and caregivers shall demonstrate an understanding of each resident's medication administration regimen. The reason the medication is used, medication actions, any specific instructions and common side effects should be referenced by medication resource material available at the facility;

(b) The provider shall obtain and place a written signed order in the resident's record for any medications, dietary supplements, treatments, and/or therapies which have been prescribed by the physician/nurse practitioner. Orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. Changes may not be made without a physician/nurse practitioner's order and the physician/nurse practitioner must be notified if a resident refuses to consent to an order. Order changes obtained by telephone must be followed-up with written signed orders. Attempts to obtain the written changes must be documented in the resident's record. Over-the-counter medications or home remedies requested by the resident shall be reviewed by the resident's physician/nurse practitioner or pharmacist as part of developing the care plan and at time of care plan review;

(c) Prescription medications ordered to be given "as needed" or "p.r.n." must have additional directions which show what the medication is for and specifically when, how much and how often it may be administered. These written directions may be given by a physician, nurse practitioner, registered nurse or pharmacist;

(d) Psychoactive Medications

(A) A provider shall not request a psychoactive medication to treat a resident's behavioral symptoms without a consultation from the physician, nurse practitioner, registered nurse or mental health professional. The consultation shall include a discussion of alternative measures to medication use including behavioral interventions. These medications may be used only after documenting all other alternative considerations and only when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Psychoactive medications shall never be

given to discipline a resident or for the convenience of the adult foster home. Psychoactive medications as defined in these rules may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use;

(B) The provider and all caregivers shall know the specific reasons for the use of the psychoactive medication for an individual resident, the common side effects and when to contact the physician, nurse practitioner, or mental health professional regarding those side effects. All caregivers shall also know the behavioral interventions to be used along with the medication; and

(C) The frequency of the reassessment of the psychoactive medication use shall be determined by the individual completing the initial assessment;

(e) Each resident's medication container shall be clearly labeled with the pharmacist's label or be in the original labeled container or bubble pack and shall be kept in a locked, central location, separate from that of the provider or the provider's family. Residents shall not have access to medications of the provider or other household members. Over-the-counter medications in stock bottles (with original labels) may be used in the home. Unused, outdated or discontinued medications shall not be kept in the home and shall be disposed of according to the pharmacist's recommendations. Disposal of medications shall be documented on the medication administration record or in the resident's record;

(f) The provider may set up each resident's medications for up to seven days in advance (excluding p.r.n. medications) by using a closed container manufactured for that purpose. If used, each resident shall have her/his own container with divisions for the days and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route (if other than oral) and description of the medications. The container shall be stored in the medication locked area;

(g) A current, written medication administration record shall be kept for each resident and shall identify all of the medications administered by the caregiver to that resident, including over-the-counter medications and prescribed dietary supplements. The record shall indicate the medication name, dosage, route (if other than oral), the date and time to be given. The record shall be immediately initialed at the time of administration by the person giving the medications. Treatments and therapies must be immediately documented on the medication administration record showing times given, type of treatment or therapy, and initials of the person performing the procedure. The medication administration record shall contain a legible signature which identifies each set of initials;

(h) A discontinued or changed medication order shall be marked and dated on the medication administration record as discontinued. The new order shall be written on a new line showing the date of order. If a resident misses or refuses a medication, treatment or therapy the initials must be circled and a brief but complete explanation shall be recorded on the back of the medication record. As needed (p.r.n.) medication shall be documented with the time, dose, the reason the medication was given, and the outcome;

(i) Residents must have a physician/nurse practitioner's written order of approval to self-medicate. Persons able to handle their own medical regimen will keep medications in their own room in a small storage area that can be locked. The provider shall notify the physician/nurse practitioner should the resident show signs of no longer being able to self-medicate safely;

(j) Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident or administered by a relative of the resident, or an Oregon licensed registered nurse. A licensed practical nurse can also give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Board of Nursing rules may give subcutaneous injections. Intramuscular and intravenous injections cannot be delegated;

(k) Physical Restraints

(A) A written signed order from the physician/nurse practitioner or Christian Science practitioner shall be obtained and placed in the resident record. The order shall include specific parameters including type, circumstances and duration of the use of the restraint. There shall be no p.r.n. (as needed) orders for restraints;

(B) Physical restraints may be used only after a physician/nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist assessment, consideration and documentation of all other alternatives, and only when required to treat a resident's medical symptoms, or to maximize a resident's physical functioning. If, following the assessment and trial of other measures, it is determined that a restraint is necessary, the least restrictive restraint shall be used and as infrequently as possible. All physical restraints must allow for quick release at all times;

(C) The provider shall place the restraint assessment in the resident record. The assessment shall include procedural guidance for the correct use of the restraint, alternative less restrictive measures which shall be used in place of the restraint whenever possible, and dangers and precautions related to

the use of a restraint;

(D) The frequency for reassessment of the physical restraint use shall be determined by the prescriber based on the recommendations made in the initial assessment. The reassessment may be performed by the physician/nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupation therapist;

(E) Physical restraints may only be used with the resident's or resident legal representative's consent which will be documented in the resident's record;

(F) Physical restraints may not be used for discipline of a resident or for the convenience of the adult foster home;

(G) Residents physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, exercised or provided range of motion during this period;

(H) Physical restraint use at night is discouraged and shall be limited to unusual circumstances. If used, the restraint shall be of the design to allow freedom of movement with safety. The frequency of night monitoring for resident safety and need for assistance shall be determined in the assessment;

(I) Side rails used to keep a resident in bed are considered restraints. Side rails or half rails, which are requested by the resident, to allow the resident to easily get in and out of bed or improve functioning are not considered restraints;

(J) Physical restraint use shall be recorded on the care plan showing why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive alternative measures planned during the assessment and cautions for maintaining safety while restrained shall also be recorded on the care plan; and

(K) Use of restraints shall not impede the three minute evacuation of all household members.

(5) Registered Nurse Consultation

(a) The provider shall obtain medical professional consultation/assessment to meet the care needs of the resident as required in these rules. A registered nurse consultation shall be obtained when a skilled nursing care task (such as insulin

injections, blood sugar monitoring and new ostomy care) has been ordered by a physician or other qualified practitioner. The provider shall consider the benefit of a registered nurse consultation under the following conditions:

(A) When the resident has a medical/physical/health concern or behavioral symptoms which may benefit from a nursing assessment and provider education;

(B) Use of physical restraints when not assessed, taught and reassessed (as discussed in subsection (4)(k) of this rule) by the physician/nurse practitioner, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist;

(C) Use of psychoactive medications when not assessed, taught and reassessed (as discussed in subsection (4)(d) of this rule) by the physician/nurse practitioner or mental health practitioner; and

(D) When care procedures have been ordered, which are new for a specific resident and/or the provider;

(b) The registered nurse may determine that a nursing care task is to be taught utilizing the delegation process. The care provider shall not teach another individual the delegated task and shall not perform the task for another resident without further delegation.

(6) Resident Care

(a) Care and supervision of residents shall be in a home-like atmosphere and shall be appropriate to the needs, preferences, age and condition of the individual resident. The training of the provider or staff will be appropriate to the age, care needs and condition of the residents. Providers and resident managers will be required to meet the requirements for training according to the class for which they are licensed. Additional staff may be required if day care or respite residents are in the home;

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider shall cooperate with the plan and ensure that it is implemented as instructed;

(c) The provider is responsible for promptly informing the resident's physician/nurse practitioner, family, legal representative and case manager of changes in the health status of the resident. Changes in the resident condition shall be documented and appropriate medical assistance obtained;

(d) In the event of a serious medical emergency, the provider/staff shall call 911 or the appropriate emergency number for their community. The physician/nurse practitioner, family or resident representative and the case manager (when applicable) shall also be called. The provider shall have copies of Advance Directives, Do Not Resuscitate (DNR) orders and/or pertinent medical information available when emergency personnel arrive;

(e) Providers shall not inflict, or tolerate to be inflicted, abuse or punishment; financial exploitation; or neglect of resident(s);

(f) Providers shall exercise reasonable precautions against any conditions which could threaten the health, safety or welfare of residents;

(g) A caregiver must be present and available at the home at all times when residents are in the home. A resident shall not be left in charge in lieu of a caregiver;

(h) Providers shall make available at least six hours of activities per week which are of interest to the residents, not including television and movies. Information regarding activity resources is available from the Division. Activities shall be oriented to individual preferences as indicated in the resident's care plan. Documentation of resident activity participation shall be recorded in the resident's records;

(i) Providers or caregivers shall be directly involved with residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the provider shall demonstrate how regular positive contact will occur;

(j) If the provider manages or handles a resident's money, a separate account record shall be maintained in the resident's name. The provider shall not under any circumstances commingle, borrow from, or pledge any funds of a resident. Personal Incidental Funds (PIF) for Division clients are to be used at the discretion of the client for such things as clothing, tobacco, and snacks (not part of daily diet). Providers/caregivers shall not accept gifts from residents through undue influence or accept gifts of substantial value. Providers or caregivers shall not influence, solicit from or suggest to any resident that they or their family give the caregiver or the caregiver's family money or property for any purpose. The caregiver or the caregiver's family shall not accept gifts of substantial value or loans from the resident or the resident's family; and

(k) A provider is responsible for the supervision, training and overall conduct of resident managers and other caregivers when acting within the scope of their employment, duties, or when present in the home.

(7) Resident Records

(a) An individual resident record shall be developed, kept current, and available on the premises for each person admitted to the adult foster home. The record shall contain the following information:

(A) Initial screening assessment;

(B) General information;

(C) Documentation on Form SDS 913 that the provider has informed private pay residents of the availability of a long term care assessment;

(D) Medical information, including:

(i) Medical history, if available;

(ii) Current physician/nurse practitioner orders;

(iii) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less; and

(iv) Guardianship letters, Oregon Directive to Physicians and/or a Power of Attorney for Health Care, if applicable;

(E) Care plan;

(F) Copies of the current written house rules and current Residents' Bill of Rights, signed by the resident or his/her representative;

(G) A written report of all significant incidents relating to the health or safety of a resident including how and when the incident occurred, who was involved, what action was taken by provider/staff and the outcome to the resident;

(H) Narrative entries describing the resident's progress shall be documented at least once a week, dated and signed by the person writing them; and

(I) Non-confidential information or correspondence pertaining to the care needs of the resident;

(b) Resident records maintained by the provider shall be readily available at the adult foster home for all caregivers and to representatives of the Division conducting

inspections or investigations, as well as to residents, their authorized representative or other legally authorized persons. The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative (OAR 114-05-030);

(c) Records shall be kept for a period of three years. If a resident moves or the adult foster home closes, copies of pertinent information shall be transferred to the resident's new place of residence. Pertinent information shall include at a minimum, copies of current medication sheets, and an updated care plan; and

(d) In all other matters pertaining to confidential records and release of information, providers shall be guided by the principles and definitions described in OAR Chapter 411, Division 05. A copy of these rules will be made available by the Senior and Disabled Services Division upon request.

(8) Financial Records

Financial records shall be maintained on the premises with the facility records;

(a) Contracts with the Division, resident, relatives, or person(s) paying for care;

(b) Division financial planning sheets (Form SDS 512), if pertinent; and

(c) Resident account record (Form SDS 713) or other expenditure form if the provider manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident. Purchases of $5 or more made on behalf of a resident must be documented by receipts.

(9) Residents' Bill of Rights

Providers, their families and employees of the home shall guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Division shall be explained and a copy given to residents at admission. The Bill of Rights states each resident has the right to:

(a) Be treated as an adult with respect and dignity;

(b) Be informed of all resident rights and all house rules;

(c) Be encouraged and assisted to exercise constitutional and legal rights including the right to vote;

(d) Be informed of their medical condition and the right to consent to or refuse treatment;

(e) Receive appropriate care and services and prompt medical care as needed;

(f) Be free from mental and physical abuse;

(g) Complete privacy when receiving treatment or personal care;

(h) Associate and communicate privately with any person of choice and send and receive personal mail unopened;

(i) Have access to and participate in activities of social, religious, and community groups;

(j) Have medical and personal information kept confidential;

(k) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;

(l) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not used for discipline or convenience;

(m) Manage own financial affairs unless legally restricted;

(n) Be free from financial exploitation. The provider shall not charge or ask for application fees or non-refundable deposits or solicit, accept or receive money or property from a resident other than the amount agreed to for services;

(o) A written agreement regarding services to be provided and the rates to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home;

(p) Not to be transferred or moved out of the adult foster home without 30 days' written notice and an opportunity for a hearing. A provider may transfer a resident only for medical reasons or for the welfare of the resident or other residents, or for nonpayment;

(q) A safe and secure environment;

(r) Be free of discrimination in regard to race, color, national origin, sex, or religion; and

(s) Make suggestions or complaints without fear of retaliation.

(10) House Rules

A copy of the house rules shall be given to and discussed with residents and their families at the time of admission. House rules shall include any restrictions or limitations on use of tobacco or alcohol, use of telephones, use of intercoms, meal schedules, pets, and visitations, and must not be in conflict with the residents' Bill of Rights or the family atmosphere of the home. House rules are subject to review and approval by Division staff prior to licensure. The current house rules shall be posted and a copy submitted to the Division.

(11) Moves, Transfers and Discharges

(a) (A) A resident may not be involuntarily moved from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary stay without 30 days' written notice to the resident on the resident move, transfer or discharge notice, Form SDS 901, and the resident's legal representative, guardian, conservator and case manager (if the resident has one). The notice shall state the reasons for the move or transfer and the resident's right to object to the move or transfer, except where undue delay might jeopardize the health, safety or well-being of the resident or others. Residents may be moved or transferred for only the following reasons:

(i) Medical reasons;

(ii) Welfare of the resident or other residents;

(iii) Behavior which poses an imminent danger to self, others or caregivers;

(iv) Behavior which substantially interferes with the orderly operation of the home;

(v) Failure to make payment for care;

(vi) The home has had its license revoked, not renewed, or voluntarily surrendered; or

(vii) The resident's care needs exceed the ability (taking into account the provider's own health) or classification of the provider;

(B) (i) If the resident has a medical emergency, the provider may give less

than 30 days' advance notice, but shall give the written notice as soon as possible under the circumstances. This includes situations in which the resident is hospitalized or is temporarily out of the home and the provider refuses to allow the resident to return to the home;

(ii) "Medical emergency" means a change in medical condition that requires immediate care of a level or type that the provider is unable to provide or behavior that poses an imminent danger to the resident or to other residents or people living in the home; and

(iii) The written notice shall include the resident's name; the reason for the proposed transfer, discharge or move; the date of the proposed change; the location to which the resident is going; the right to have the Division hold an informal conference and hearing; the name, address and telephone number of the person giving the notice; and the date of the notice;

(b) A person who is to be involuntarily transferred, or refused the right of return or readmission, shall be entitled to an informal conference and hearing as provided in this rule;

(A) The Division will hold an informal conference as promptly as possible after the request is received. The Division shall send written notice of the time and place of the conference to the provider and all persons entitled to the notice. Participants may include the resident, and at the resident's request, a family member, case manager, Ombudsman, legal representative of the resident; the provider; and a representative from the provider association if the provider requests it. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, the Division will document it in writing and no formal hearing will be held. If a resolution is not reached at the end of the informal conference, the resident or resident representative may request a formal hearing;

(B) The resident shall have the right to an administrative hearing prior to an involuntary transfer or discharge. If the resident is being transferred or discharged for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the transfer or discharge. The provider shall hold a space available for the resident pending receipt of an administrative order. ORS 441.605(4) and the rules thereunder governing transfer notices and hearings for residents of long term care facilities shall apply to adult foster homes.

(12) Closing

Providers shall notify the Division prior to a voluntary closure of a home, proposed sale or transfer of ownership and give residents, families, and case managers for Division clients 30 days' written notice except in circumstances where undue delay might jeopardize the health, safety or well-being of residents, providers or staff. If a provider has more than one home, residents cannot be shifted from one house to another house without the same period of notice unless prior written approval is given and agreement obtained from residents, family members and case managers.

(13) General Practices

(a) The adult foster home license, attached conditions to the license if applicable, the Residents' Bill of Rights, floor plan that indicates the fire evacuation route, house rules, the Division's inspection form, Ombudsman Poster, and the Division's procedure for making complaints shall be conspicuously posted in the entryway or other equally prominent place where they can be seen by residents and others;

(b) The provider shall cooperate with Division personnel in inspections, complaint investigations, planning for client care, application procedures and other necessary activities. Division personnel have access to all resident and facility records and may conduct private interviews with residents. The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to resident records with written permission from the resident and facility records relevant to caregiving;

(c) Information related to resident(s) shall be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation or sanction action under these rules; and

(d) The provider shall abide by the terms of these Administrative Rules, OAR Chapter 411, Division 50.

411-50-450 Inspections

(1) The Division shall conduct an inspection of an adult foster home:

(a) Prior to issuance of a license;

(b) Prior to annual renewal of a license the Division will conduct an unannounced inspection;

(c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or

(d) Anytime the Division has probable cause to believe a home has violated a regulation or provision of these Administrative Rules or is operating without a license.

(2) The Division may conduct inspections:

(a) Any time such inspections are authorized by these Administrative Rules and any other time the Division considers it necessary to determine if a home is in compliance with these Administrative Rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of routine monitoring of the residents' care.

(3) State or local fire inspectors shall be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the Division.

(4) Division staff shall have full access and authority to examine and copy facility and resident records, including but not limited to, admission agreement, private pay resident contracts/admission agreements, and accounts. The Division staff will also have access to inspect the physical premises, including the buildings, grounds, equipment and any vehicles relating to licensing and complaint investigations in the adult foster home.

(5) Division staff shall have authority to interview the provider, resident manager, staff, and residents. Interviews shall be confidential and conducted privately. The provider shall furnish the names, addresses, and telephone numbers of the substitute caregivers employed or used by the provider to the Division upon request of the Division.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Division staff for the purpose of inspection, investigation, and other duties within the scope of Division authority.

(7) The Division has authority to conduct inspections with or without advance notice to the provider, staff, or a resident of the home. The Division shall not give advance notice of any inspection if the Division believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these Administrative Rules.

(8) If Division staff is not permitted access or inspection, a search warrant may be obtained.

(9) The inspector shall respect the private possessions of residents, providers and staff while conducting an inspection.

(10) The Division shall maintain current information on all licensed adult foster homes and

shall make the non-confidential information available to prospective residents and other interested members of the public at local Division offices or Area Agencies on Aging licensing offices throughout the state.

(a) The information shall include:

(A) The location of the adult foster home and the name and mailing address of the provider if different;

(B) A brief description of the physical characteristics of the home;

(C) The license and license classification of the home and the date the provider was first licensed to operate that home;

(D) The date of the last licensing inspection including any fire inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;

(E) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings of and actions taken by the Division and responses from the provider or complainant;

(F) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the Division involving the home; and

(G) Whether care is provided primarily by the licensed provider, a resident manager or other arrangement;

(b) Any list of adult foster homes maintained or distributed by the Division or a local licensing office shall include the number of substantiated complaint reports for each of the adult foster homes for the lesser of the preceding five years or the period beginning January 1, 1992.

411-50-455 Complaints

(1) The Division shall furnish each adult foster home with a Complaint Notice which must be posted in a conspicuous place and which states the telephone number of the Division and the Ombudsman and the procedure for making complaints.

(2) Any person who believes these Administrative Rules have been violated may file a complaint with the Division.

(3) The Division will investigate and act on complaints as quickly as possible. The primary purpose of the prompt response is to protect the residents and correct the situation.

Investigations of complaints alleging injury, abuse or neglect shall be completed as soon as possible and all investigations will be completed within 60 days unless there is a concurrent criminal investigation that requires additional time.

(4) (a) The adult foster home provider shall not retaliate against any resident after the resident or someone acting on his/her behalf has filed a complaint by increasing charges; decreasing services, rights or privileges; threatening to increase charges or decrease services, rights or privileges; by taking or threatening to take any action to coerce or compel the resident to leave the facility or by abusing or threatening to harass or abuse a resident in any manner;

(b) Any complainant, witness or employee of a facility shall not be subject to any retaliation by a provider for making a report or being interviewed about a complaint or being a witness, including restriction of access to the home or a resident or, if an employee, to dismissal or harassment; and

(c) The complainant shall have immunity from any civil or criminal liability with respect to the making or content of a complaint made in good faith. Immunity under this subsection does not protect self-reporting providers from liability for the underlying conduct that is alleged in the complaint.

(5) Standards will be followed for investigations related to abuse, neglect, or injury.

(a) The Division will cause an investigation within two hours if a complaint alleges that a resident has been injured, abused or neglected and that any resident's health or safety is in imminent danger or that the resident has died or been hospitalized due to abuse or neglect;

(b) The Division will cause an investigation to begin by the end of the next working day if circumstances exist which could result in the injury, abuse, or neglect and that the circumstances could place the resident's health or safety in imminent danger;

(c) An unannounced on-site visit will be conducted;

(d) All available witnesses identified by any sources as having personal knowledge relevant to the complaint shall be interviewed. Interviews shall be confidential and conducted in private. The investigator shall interview the provider and shall advise the provider of the nature of the complaint and give the provider an opportunity to submit relevant information to the investigator;

(e) All evidence and physical circumstances that are relevant and material to the complaint shall be observed;

(f) Immediate protection shall be provided. The provider shall correct any substantiated problem immediately;

(g) A report will be written within 60 days of receipt of a complaint which includes the investigator's personal observations, a review of documents and records, a summary of all witness statements, and a conclusion; and

(h) Reports indicating the need for a sanction by either the local licensing authority or the Division shall be referred to the appropriate office for corrective action immediately upon completion of the investigation.

(6) (a) The Division, through its local offices, will mail a copy of the investigation report to the following people within seven days of the completion of the investigation:

(A) The complainant (unless the complainant requests anonymity);

(B) The resident(s) involved and any persons designated by the resident(s) to receive the information;

(C) The provider; and

(D) The Long-Term Care Ombudsman;

(b) The report shall protect as confidential the identity of the resident, the complainant, and any witnesses; and

(c) The report shall be accompanied by a notice informing such persons of the right to give additional information about the content of the report to the Division's local office within seven days of receipt.

(7) The SDSD unit/Type B AAA shall review the responses and reopen the investigation if additional evidence of a violation is received. A copy of the entire report must be sent to the Division upon completion of the investigation report, whether or not the investigation report concludes the complaint is substantiated.

(8) The Division shall take appropriate corrective action within 60 days from completion of the investigation report.

(9) Providers who acquire substantiated complaints pertaining to the health, safety or welfare of residents may be assessed civil penalties, may have conditions placed on their licenses, and/or may have their licenses suspended, revoked or not renewed.

(10) (a) A record shall be maintained by the Division of all complaints and any action taken on the complaint, indexed by the name of the provider, and shall:

(A) Be placed into the public file. (Any information regarding the investigation of the complaint shall not be filed in the public file until the investigation has been completed.) The investigation reports, including copies of the responses (with confidential information deleted), shall be available to the public at the local Senior and Disabled Services Division office or the Type B Area Agency on Aging licensing office along with other public information regarding the adult foster home;

(B) Protect the privacy of the complainant and the resident; and

(C) Treat the names of the witnesses as confidential information.

(b) Any person may inspect and purchase a photocopy of the public complaint files maintained by the Division upon requesting an appointment to do so.

411-50-460 Procedures for Correction of Violations

(1) If, as a result of an inspection or investigation, the Division determines that abuse has occurred, the provider must be notified verbally to immediately cease the abusive act. The Division will follow-up with a written confirmation of the warning to cease the abusive act and will include notification that further sanctioning may be imposed.

(2) If an inspection or investigation indicates a violation of the rules other than abuse, the Division shall notify the provider in writing of violations of these rules.

(3) The notice of violation shall state the following:

(a) A description of each condition that constitutes a violation;

(b) Each regulation that has been violated;

(c) Except in cases of imminent danger, a specific time frame for correction, but no later than 60 days after receipt of the notice;

(d) Sanctions that may be imposed against the home for failure to correct the violations;

(e) Right to contest the violations if an administrative sanction is imposed; and

(f) The right to request an exception as provided in OAR 411-50-430.

(4) At any time after receipt of a notice of violation or an inspection report, the licensee or the Division may request a conference. The conference shall be scheduled within (10) days of a request by either party.

(5) The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of these Administrative Rules.

(6) The request by a licensee or the Division for a conference shall not extend any previously established time limit for correction.

(7) The licensee shall notify the Division of correction of violations no later than the date specified in the notice of violation.

(8) The Division may conduct a reinspection of the home after the date the Division receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(9) For violations that present an imminent danger to the health, safety or welfare of residents, the notice of violation shall order the licensee to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division shall inspect the home after the 24-hour period to determine if the violations have been corrected as specified in the notice of violation.

(10) If residents are in immediate danger, the license may be immediately suspended and arrangements made to move the residents.

(11) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division shall institute one or more administrative sanctions.

411-50-465 Administrative Sanctions

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Attachment of conditions to a license;

(b) Civil penalties;

(c) Denial, suspension, revocation, or non-renewal of license; and/or

(d) Reclassification of a license.

(2) If the Division imposes an administrative sanction, it shall serve a notice of administrative sanction upon the licensee personally, by certified mail, or by registered mail.

(3) The notice of administrative sanction shall state:

(a) Each sanction imposed;

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) Each statute or rule allegedly violated;

(d) A statement of the licensee's right to a contested case hearing;

(e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that the Division's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(g) A statement that the Division will issue a final order of default if the licensee fails to request a hearing within the specified time.

411-50-480 Denial, Revocation or Non-Renewal of License

(1) The Division shall deny, revoke, or refuse to renew a license where it finds:

(a) There has been substantial non-compliance with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of caring for residents in an adult foster home;

(b) The applicant or provider has been convicted of one or more crimes described in OAR Chapter 411, Division 09, which the Division determines are substantially related to the qualifications, functions, or duties of a caregiver;

(c) The provider employs caregivers, allows household members, or any other person (excluding the residents) to reside in the adult foster home who have been convicted of one or more crimes as described in OAR Chapter 411, Division 09, which the Division determines are related to the potential care, health, safety and/or rights of the residents; or

(d) The applicant or provider falsely represents that they have not been convicted of a crime.

(2) The Division may deny, revoke, or refuse to renew an adult foster home license if the applicant or provider:

(a) Submits incomplete or untrue information to the Division;

(b) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, termination of utility services due to failure to pay bill(s);

(c) Has a prior denial, suspension, revocation or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state/county;

(d) (A) Is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse or neglect of the residents, creating a threat to the residents or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents;

(B) For purposes of this subsection, an applicant or provider is "associated with" a person as described in paragraph (2)(d)(A) of this rule if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the foster home;

(iii) Receives financial backing from the person for the benefit of the foster home;

(iv) Receives managerial assistance from the person for the benefit of the foster home;

(v) Allows the person to have access to the foster home; or

(vi) Rents the adult foster home from the person;

(e) Has threatened the health, safety, or welfare of any resident;

(f) Has abused, neglected, or exploited any resident;

(g) Has a medical or psychiatric problem which interferes with the ability to provide foster care;

(h) Has had a prior sanction imposed due to the operation of an unlicensed adult foster home;

(i) Has reference(s) on the initial application indicating that the applicant does not possess the good judgment or character deemed necessary by the Division;

(j) Fails to correct a deficiency within the specified time frame allowed;

(k) Refuses to allow access and inspection;

(l) Fails to comply with a final order of the Division to correct a violation of the Administrative Rules for which an administrative sanction has been imposed such as a License Condition;

(m) Fails to comply with a final order of the Division imposing an administrative sanction, including the imposition of a Civil Penalty;

(n) Fails to pass the Basic Training Course Examination; or

(o) Has previously surrendered a license while under investigation or administrative sanction during the last three years.

(3) If a license is revoked or not renewed, the licensee shall be entitled to a hearing preceding the effective date of the revocation or non-renewal if the licensee requests a hearing in writing within 21 days after receipt of the notice. If no written request for a timely hearing is received, the Division will issue the final order by default. The Division may designate its file as the record for purposes of default.

(4) A license subject to revocation will remain valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.

(5) If an initial license is denied, the applicant shall be entitled to a hearing if the applicant requests a hearing in writing within 60 days of the receipt of the notice. If no written request for a hearing is timely received, the Division will issue a final order by default. The Division may designate its file as the record for purposes of default.

(6) If a license is revoked or not renewed, the Division may arrange for residents to move for their protection.

411-50-481 Suspension of License

(1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if the Division finds that the abuse, neglect or exploitation causes an immediate threat to any of the residents.

(2) The licensee may request a review of the decision to immediately suspend a license by

submitting a request, in writing, within 10 days of the notice and order of suspension. Within 10 days of receipt of the licensee's request for a review, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, including any written documentation submitted by the licensee within that time frame. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension shall be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days.

(3) If a license is suspended, the Division may arrange for residents to move for their protection.

411-50-483 Conditions

(1) Conditions may be attached to a license and take effect immediately upon receipt. The type of condition attached to a license must directly relate to a risk of harm or potential risk of harm to residents. Conditions may be attached upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of residents;

(b) There exists a threat to the health, safety, and welfare of a resident;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific person(s) only and further placements will not be made into that home.

(2) If conditions are imposed on a licensee, a copy will also be sent to SDSD Central Office. Examples of conditions which may be imposed on a licensee include:

(a) Restricting the total number of residents based upon the capacity of the provider to meet the health and safety needs of the residents;

(b) Restricting the number and impairment level of residents allowed within a licensed classification level based upon the capacity of provider and staff to meet the health and safety needs of all residents;

(c) Reclassifying the level of residents that can be served if the care needs exceed the provider's ability to meet the resident's care needs;

(d) Requiring additional staff or staff qualifications to meet the resident's care needs;

(e) Requiring additional training of provider/staff to meet specific resident care needs;

(f) Restricting admissions or the use of a resident manager due to failure to pass the Basic Training Examination as required per OAR 411-50-441;

(g) Restricting admissions when there is a threat to the current residents of the home and admitting new residents would compound that threat; and

(h) Restricting a provider from allowing persons on the premises who may be a threat to resident safety or welfare.

(3) In accordance with OAR 411-50-465, the provider must be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.550. A provider must request a hearing in writing within 21 days from the receipt of the notice. Conditions shall take effect immediately and are a final order of the Division unless later rescinded through the hearings process.

(4) In addition to, or in-lieu of, a contested case hearing, a provider may request a review by the Division of conditions imposed by the AAAs or SDSD local offices. The review does not diminish the provider's right to a hearing.

(5) Conditions may be imposed for the extent of the licensure period (one year) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on the attachment to the license. If the provider believes the situation that warranted the condition has been remedied, the provider may request the condition be removed.

411-50-485 Criminal Penalties

(1) Operating an adult foster home without a license is punishable as a Class C misdemeanor (ORS 443.991(3)).

(2) Refusing to allow access and inspection of a home by Division staff or state or local fire inspection is a Class B misdemeanor.

(3) The Division may commence an action to enjoin operation of an adult foster home:

(a) When an adult foster home is operated without a valid license; or

(b) After notice of revocation or suspension has been given and a reasonable time for

placement of individuals in other facilities has been allowed.

411-50-487 Civil Penalties

(1) Civil penalties, not to exceed $100 per violation to a maximum of $250, may be assessed for a general violation of these rules.

(2) Mandatory penalties up to $500 shall be assessed for falsifying resident or facility records or causing another to do so.

(3) A mandatory penalty of $250 shall be imposed for failure to have either the provider, qualified resident manager, or qualified substitute caregiver on duty 24 hours per day in the adult foster home.

(4) The Division shall impose a civil penalty of not less than $250 nor more than $500 on a provider who admits a resident knowing that the resident's care needs exceed the license classification of the provider if the admission places the resident or other residents at risk of harm.

(5) Civil penalties of a maximum of $1,000 per occurrence may be assessed for substantiated abuse.

(6) In addition to any other liability or penalty provided by law, the Division may impose a penalty for any of the following:

(a) Operating the home without a license;

(b) The number of residents exceeds the licensed capacity;

(c) The provider fails to achieve satisfactory compliance with the requirements of these Administrative Rules within the time specified, or fails to maintain such compliance;

(d) The home is unable to provide adequate level of care to residents;

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home;

(f) The provider fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or

(g) The provider fails to obtain a criminal record clearance prior to employing a caregiver in the home.

(7) A civil penalty may be imposed for violations other than those involving health, safety, or welfare of a resident and protection from retaliation of an employee who makes a complaint if the provider fails to correct the violation as stated in subsections (7)(a) and (7)(b) of this rule; and

(a) A reasonable time has been prescribed for elimination of the violation not to exceed 30 days after first notice of violation; or

(b) Where more than 30 days are required to correct the violation, such time is specified in a plan of correction and found acceptable by the Division;

(c) The following rules relate to health, safety or welfare of residents and protection from retaliation for making a complaint:

411-50-0440 (1)(e) and (f) and (3)(b) and (c); 411-50-443 (2) through (6) and (8); 411-50-445; 411-50-447 (1) through (11); and 411-50-455 (4).

(8) Any civil penalty imposed under this section shall become due and payable ten days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice shall be delivered in person, or sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(9) The person to whom the notice is addressed shall have 10 days from the date of receipt of the notice in which to make written application for a hearing. If a written request for a hearing is not timely received, the Division shall issue a final order by default.

(10) All hearings shall be conducted according to the applicable provisions of ORS 183.310 to 183.550.

(11) In imposing a civil penalty, the administrator shall consider the following factors:

(a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(b) Any prior violations of statutes, rules or orders pertaining to the facility;

(c) The economic and financial conditions of the person incurring the penalty;

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents;

(e) The degree of harm to resident(s).

(12) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may

be entered assessing a civil penalty.

(13) Unless the penalty is paid within 10 days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person. The Division may also initiate a Notice of Revocation for failure to comply with a final order.

(14) Civil Penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(15) All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund.

411-50-490 Zoning for Adult Foster Homes

Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.

APPENDIX A

ADULT FOSTER HOME
NOTICE OF RESIDENT MOVE, TRANSFER OR DISCHARGE

This notice is issued by:

Name of Adult Foster Home: _____

Street Address: _____

City/State/Zip: _____

Telephone: _____

to _____. Copies of this notice have also been issued to the following people (include address and relationship to resident) and agencies:

Date of proposed move/transfer/discharge: _____

Location to which resident is going: _____

This action is taken or proposed to be taken because: ☑ Check appropriate box(es)

- ☐ Medical Reasons
- ☐ Nonpayment
- ☐ Closure of Adult Foster Home
- ☐ Welfare of Resident or other Residents
- ☐ Change in Care Needs
- ☐ Revocation or Non-Renewal of Adult Foster Home License
- ☐ Other: _____

More specifically, this action is taken because:

_____ _____

Signature of Provider or Resident Manager — Date

You have the right to an informal conference and administrative hearing with Senior and Disabled Services Division if you disagree with this notice. To request a conference or hearing, please contact the local licensing office:

SDS 001 (6/92)B

NOTICE OF RIGHT TO RECEIVE A LONG TERM CARE ASSESSMENT

Oregon law requires you be notified of the availability of long term care assessments services when considering admission to an Adult Foster Home, Residential Care Facility, Assisted Living Facility, or non-Medicaid Nursing Facility. Such an assessment identifies your long term care needs and provides you information about care settings and services available to meet these needs. Recommendations you receive are not binding. You may choose any option.

Assessments are available at your own expense through private agencies certified by the State or at no charge from your local Area Agency on Aging/Senior and Disabled Services Division (AAA/SDSD) office. To arrange for an assessment or to receive information about private agencies in your area, contact your local AAA/SDSD office or call 1-800-232-3020.

I understand I have a right to request an assessment of my long term care needs.

[ ] **YES,** I do wish to receive information about my care options.

[ ] **NO,** I do not wish to receive information about my care options.

Name: (Print) _____

Signature: _____ Date: _____

Facility Name: _____

Address: _____

City: _____ State: _____ ZIP: _____

[ ] AFH; [ ] RCF; [ ] ALF; [ ] Non-Medicaid NF

MULTNOMAH COUNTY

AGING SERVICES DEPARTMENT

ADULT CARE HOME PROGRAM

ADMINISTRATIVE RULES
FOR
LICENSURE OF ADULT CARE HOMES
(Adult Foster Homes)

FILED June 28, 1996

If you have questions, please contact:

Adult Care Home Program
421 SW 5th Avenue
Room 405
Portland, Oregon 97204-2221
Telephone: 503-248-3000

INTRODUCTION

The Multnomah County Administrative Rules for Adult Care Homes govern the licensing and operation of Adult Care Homes in Multnomah County, Oregon. The Adult Care Home Program (ACHP) licenses Adult Care Homes and enforces the rules.

Multnomah County is an exempt county as determined by the State Department of Human Resources, Senior and Disabled Services Division. An exempt county provides a program for licensing and inspection of Adult Care Homes which is equal to or exceeds the requirements of ORS 443.705 to ORS 443.825. Exempt county licensing rules must be submitted to the Director of Senior and Disabled Services Division for review and approval prior to implementation. Multnomah County has been designated as such an exempt area on the basis of the Adult Care Home Licensure Ordinance and these rules.

* * * * * * * * * * * * *

891-005-100 AUTHORITY FOR AND JURISDICTION OF ADULT CARE HOME PROGRAM (ACHP) RULES

005-110 These rules are authorized by MCC 8.90.025, pursuant to the procedures set forth in MCC 8.90.160 through 8.90.260.

005-120 These rules are necessary for the administration and enforcement of the Multnomah County Adult Care Home Licensure Ordinance, found in Chapter 8.90 of Title 8 of the Multnomah County Code, Section 5.700 of Chapter 5 of the Code of the City of Gresham, Chapter 8.95 of Title 8 of the Code of the City of Portland, and Chapter 7.020 of Title 7 of the Code of the City of Troutdale.

005-130 These rules shall apply to all Adult Care Homes operating within Multnomah County.

891-010-100 PURPOSE OF THE ADULT CARE HOME RULES

010-110 These rules set forth the standards and requirements governing Adult Care Homes and are necessary to protect the health, safety and welfare of the residents of Adult Care Homes in Multnomah County. These standards and requirements shall be consistent with the homelike atmosphere required in Adult Care Homes.

010-120 Operators, Resident Managers and caregivers of Adult Care Homes shall abide by the terms of the Multnomah County Administrative Rules.

010-130 The goal of adult foster care is to provide necessary care while emphasizing the resident's independence. To reach this goal, the care provider and the resident, resident's family member or resident's legal representative shall cooperate to protect and encourage the resident's dignity, choice and decision-making. Resident needs will be addressed in a manner that supports and enables the individual to maximize abilities and function at his/her highest level of independence.

891-015-100 PURPOSE OF THE ADULT CARE HOME PROGRAM (ACHP)

The Adult Care Home Program (ACHP) has developed standards for Adult Care

Homes and the rules to be used in enforcing these standards in consultation with Operators, advocates for residents, experts in the field and others. The purpose of the Adult Care Home Program, in relation to the Multnomah County Code and these rules, is:

(a) To ensure that Adult Care Home residents are cared for in a homelike atmosphere which is friendly, safe, and secure; where the atmosphere is more like a home than a medical facility, where the resident's dignity and rights are respected, where positive interaction between members of the home is encouraged, and where the resident's independence and decision-making are protected and encouraged.

(b) To enforce the Multnomah County Administrative Rules (MCAR's) in order to protect the health, safety and welfare of residents of Adult Care Homes.

(c) To enforce the MCAR's to ensure an appropriate physical environment and at least a minimum standard of care in each home.

(d) To ensure that the public has access to the information necessary to select an appropriate Adult Care Home.

891-018-100 RESIDENTS' BILL OF RIGHTS

Each resident of an Adult Care Home in Multnomah County has a right to:

(a) be treated as an adult with respect and dignity.

(b) live in a safe, secure, homelike environment.

(c) be informed of all resident rights and house rules.

(d) be encouraged and assisted to exercise rights as a citizen, including the right to vote and to act on his or her own behalf.

(e) be given information about his or her medical condition.

(f) consent to or refuse treatment, medication or training.

(g) have all medical and personal information kept confidential.

(h) receive appropriate care and services from the Adult Care Home and access to prompt medical care as needed.

(i) be free from mental or physical abuse, neglect, abandonment, punishment, harm or sexual exploitation.

(j) be free to make suggestions or complaints without fear of retaliation.

(k) be free from financial exploitation, including charges for application fees or nonrefundable deposits and solicitation, acceptance or receipt of money or property by an Operator, Resident Manager or caregiver, other than the amount agreed to for services.

(l) be free from physical or chemical restraints except as ordered by a physician or qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not used for discipline or convenience.

(m) be free from any type of illegal discrimination.

(n) be afforded personal privacy, the opportunity to associate and communicate privately with any person the resident chooses, to send and receive mail unopened, and to use the telephone in private.

(o) participate in social, religious, and community activities.

(p) to make personal decisions about such things as friends, leisure activities, choice of physician, spending personal money, food, personal schedules, and place of residence.

(q) be allowed and encouraged to develop talents and learn new skills, relate to other residents in meaningful ways, and the choice to take part in the normal activities and upkeep of the home.

(r) keep and use a reasonable amount of personal clothing and other belongings, and have a reasonable amount of private, secure storage space.

(s) be free to manage financial affairs unless legally restricted.

(t) receive a written agreement regarding the services the home shall provide and rates charged, and receive at least thirty days written notice before the home's ownership or rates change.

(u) receive at least thirty days written notice from the Operator and an opportunity for a hearing before being involuntarily moved out of the home by an Operator, unless there is an emergency situation.

(v) be involuntarily moved out of the home by an Operator only for the following:

(1) medical reasons;
(2) the resident's welfare;
(3) the welfare of other residents;
(4) nonpayment;
(5) behavior which poses an immediate threat to self or others;
(6) behavior which substantially interferes with the orderly operation of the home;
(7) the care needs of the resident exceed the ability or classification of the Operator; or
(8) the home is no longer licensed.

(w) receive complete privacy when receiving treatment or personal care.

(x) receive visitors free from arbitrary and unreasonable restrictions.

(y) practice the religion of his/her choice.

(z) not be forced to work against his/her will and to be paid for agreed upon work.

ADMINISTRATIVE RULES FOR LICENSURE OF ADULT FOSTER HOMES

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891-020-100 GENERAL REQUIREMENTS

020-110 A license is required for all Operators of Adult Care Homes located in Multnomah County in accordance with the Multnomah County Code and Administrative Rules for Adult Care Homes. The Multnomah County Adult Care Home Program shall license three different types of adult care homes. They are:

(a) Adult Foster Homes;

(b) Adult Foster Homes with a Limited License;

(c) Room and Board Facilities.

020-120 An Adult Foster Home license is required (except as provided in MCAR 891-020-150) for any home or facility that provides residential care for compensation to five or fewer persons who are not related to the Operator by blood, adoption or marriage. Residential care is the provision of room and board and services which assist an individual in activities of daily living, such as assistance with eating/nutrition, dressing, personal hygiene, mobility, bowel and bladder control, or behavior management, including medication management and money management. The Operator, approved Resident Manager or approved substitute caregiver shall provide supervision 24 hours per day in the Adult Foster Home when one or more residents are present or are expected to be present in the home.

020-130 An Adult Foster Home Limited License is required for all homes or facilities that provide residential care for compensation to only a specific individual(s) who is not related to the Operator by blood, adoption or marriage. The Operator, approved Resident Manager or approved substitute caregiver shall provide supervision 24 hours per day in the Adult Foster Home when one or more residents are present or are expected to be present in the home. Part XV of these rules sets out the provisions for licensure of an Adult Foster Home with a limited license.

020-140 A Room and Board License is required for homes or facilities that provide only room and board for compensation to one or more adults who are elderly persons or persons with disabilities, not related to the Operator by blood, adoption or marriage and which provides no services except medication management and money management. The Operator, approved Resident Manager or approved substitute caregiver shall not be required to provide supervision 24 hours per day in the room and board facility when one or more residents are present or are expected to be present in the home. Part XVI of these rules sets out the provisions for licensure of a room and board facility.

020-150 An Adult Care Home license is not required for the following:

(a) A home or facility, including but not limited to residential care facilities, specialized care facilities, and long term care facilities licensed by the State of Oregon in accordance with ORS 443.400 to ORS 443.455 or any other governmental agency.

(b) A relative foster home licensed or registered by another agency to provide care to family members eligible for State Medicaid assistance.

(c) Any other house, institution, hotel or other similar living situation that supplies:

(A) room only; or

(B) where no elderly persons or persons with disabilities reside who are provided any element of residential care for compensation.

(d) A facility where all residents are related to the Operator by blood or marriage.

(e) A facility where all residents are under age 18.

020-160 Compensation includes any sort of payment to the Operator, including in-kind payment or services.

891-020-200 GENERAL CRITERIA FOR ADULT FOSTER HOME APPLICATION PACKETS

020-204 Adult Foster Home application packets shall be in writing on ACHP forms, completed and submitted by the person requesting to be licensed as the Operator and who is responsible for the operation of the home.

020-208 Each Co-Operator shall complete all application packet forms. The term Co-Operator is synonymous with Operator as both are equally responsible for the home. Co-Operators shall meet all qualifications and standards for an Operator.

020-212 Application packets for an Adult Care Home which has a Resident Manager shall include all required information about the Resident Manager.

020-216 A separate application packet is required for each location where an Adult Foster Home is operated.

020-218 Operators of Adult Foster Homes shall obtain any applicable business license.

020-220 The ACHP will not process license applications until a complete application packet is received by the ACHP.

020-224 After the ACHP receives a completed application packet and the required fee, the ACHP shall review the application packet, investigate criminal records, order appropriate inspections, carry out interviews with the applicant(s), check references and inspect the home to determine compliance with ACHP rules.

020-226 As part of the application process, the ACHP may request inspections of the Adult Foster Home from local fire department representatives, the County Sanitarian, City Building and Electrical inspectors, and other persons as determined necessary by the ACHP.

020-228 The ACHP shall grant or deny a license to an applicant within 60 days of the date the ACHP receives a complete application packet.

020-232 The ACHP shall issue a license if the Adult Foster Home and Operator, Resident Manager and caregivers are in compliance with these rules and have cooperated in the application process.

020-236 Application packets are void 60 days from the date any portion of the application packet and/or fee(s) are received by the ACHP if the application packet is not complete.

020-240 Failure to provide accurate and complete information may result in denial of the application.

020-244 An applicant shall state the maximum capacity requested including the number of respite residents, room and board occupants, day care persons, and relatives needing care. The application form shall also include the total number of other occupants in the Adult Foster Home.

020-248 The ACHP shall determine the maximum capacity of the Adult Foster Home during the licensure process.

020-252 An applicant shall state the classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the ACHP.

020-256 The ACHP shall determine the classification of the Adult Foster Home based on the requirements in MCAR 891-025-100.

020-264 Applicants may withdraw applications at any time during the licensure process by notifying the ACHP.

020-268 Applicants may receive a refund of application fees if the application is withdrawn before any of the ACHP required inspections are completed.

020-272 The ACHP shall not refund application fees if an application is denied after the ACHP home inspection is completed.

020-276 The ACHP shall credit fees toward the Operator's future license application if the home is licensed for fewer beds than the applicant paid for at the time of application.

020-280 An applicant whose license has been revoked, voluntarily surrendered during a revocation process, or whose application has been denied for reasons of abuse, neglect, threat to the health, safety or welfare of any resident(s), or failure to possess the physical health, mental health, ability or good personal character necessary to be an Operator, shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial is final, or for a longer period if specified in the order revoking or denying the license.

020-284 Information from a previous license or application shall be considered in processing a later application.

020-288 A license is void immediately upon issuance of a final order of revocation, a voluntary surrender by the Operator, or a change of ownership or location of the home. A void license shall be returned to the ACHP.

020-292 The ACHP shall not license an Operator who does not fully control all of the following:

(a) hiring and firing of all the personnel in the Adult Foster Home;

(b) admission, discharge and transfer of any resident;

(c) daily operation of the Adult Foster Home.

891-020-300 GENERAL CRITERIA FOR ADULT FOSTER HOME STAFF

020-310 No person may be an Operator, Resident Manager, shift caregiver, or substitute caregiver or otherwise be employed by the Operator or reside in or on the property of an Adult Foster Home, or be in the home on a frequent basis and have contact with the residents, except for the resident or their visitors, who have not met the requirements of the criminal record section of these rules or who have been found responsible for a disqualifying type of abuse.

020-320 The ACHP may prohibit any person from working or being in an Adult Foster Home if the ACHP finds that his/her presence would jeopardize the health, safety or welfare of the resident(s) in the home.

020-330 Operators shall insure that all Resident Managers and caregivers who work in the Adult Foster Home have the necessary skills and experience to meet the needs of the residents.

020-340 If Operators, Resident Managers and caregivers do not meet the standards for Operators, Resident Managers and caregivers in MCAR 891-050-100 through MCAR 891-050-975, the ACHP shall deny the application of each individual.

891-020-400 GENERAL CRITERIA FOR THE ADULT FOSTER HOME LICENSE

020-406 The ACHP shall have the authority to issue an Adult Foster Home license to an approved applicant. The ACHP shall not issue a license unless the applicant and Adult Foster Home are in compliance with Multnomah County Administrative Rules.

020-412 The person and the Adult Foster Home that is licensed shall remain in compliance with all Multnomah County Administrative Rules for the duration of the license.

020-418 An Adult Foster Home license shall be valid for one year from the date the ACHP issues the license unless the license is revoked or suspended.

020-424 The Adult Foster Home license shall state the Operator's name and the home's address, the Resident Manager's name, type of license, maximum capacity of the home, the classification of the home and the time period for which the license is valid.

020-430 Operators must ensure that either the Operator or approved Resident Manager live in the home unless there is a written exception for shift caregivers granted by the ACHP.

020-436 By applying for and accepting an Adult Foster Home license, the Operator agrees to operate the home according to these MCAR's, including allowing unannounced licensing and monitoring visits.

020-442 The Operator shall post the most recent Inspection Reports available in the entry or equally prominent place and shall, upon request, provide a copy of the information to each resident of, or person applying for admission to the Adult Foster Home, or the family or legal representative of the resident or potential resident.

020-448 If a currently licensed Operator has more than one utility shut-off notice, or one complaint of nonpayment of rent or of lack of food or equipment, the Operator

must have at least two months of financial resources reserved.

020-454 The applicant shall provide the ACHP with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The ACHP may require or permit the applicant to provide a current credit report to satisfy this requirement. The ACHP shall not issue an initial license to an applicant who has been adjudged bankrupt more than once. If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens or unpaid taxes, the ACHP shall require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims. If the applicant is unable to demonstrate the financial ability and resources required by these rules, the ACHP may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a requirement of initial licensure.

020-460 Operators must own, rent or lease the home to be licensed.

020-462 If a licensed Operator rents or leases the premises where the Adult Foster Home is located, the Operator shall not enter into a contract that requires anything other than a flat rate for the lease or rental.

020-466 If requesting a license to operate more than one home, the Operator must supply to the ACHP a plan for all homes covering:

(a) administrative responsibilities for all homes,

(b) staffing qualifications,

(c) job descriptions for Resident Managers and caregivers,

(d) staffing plans, and

(e) Registered Nurse or physician monitoring.

020-472 The ACHP shall not issue a license to operate an additional Adult Foster Home unless the Operator has the qualifications, abilities and capacity to operate the existing licensed home(s) and proposed home(s) and has demonstrated the ability to provide care to the residents of those homes that meet the standards in the MCAR's.

020-484 An exception may be granted to MCAR 891-020-460 to an organization, such as a church, hospital, non-profit association or similar organization whose purposes include provision of care and services to residents to operate an Adult Foster Home. The organization must have a Board of Directors or Board of Trustees which must designate one person who meets the qualifications and functions as the Operator of the home. This individual's responsibilities must include MCAR 891-020-292 (a), (b), and (c).

020-490 Operators shall have written approval from the ACHP and appropriate contracting agencies before admitting any foster child for compensation in the same home with elderly persons and/or persons with disabilities.

020-496 If the Operator has a Medicaid contract, the Operator cannot ask a resident to move when the resident becomes eligible for Medicaid.

891-020-500 ADDITIONAL CRITERIA FOR A NEW ADULT FOSTER HOME LICENSE

020-510 Applicants shall have attended an ACHP orientation within the last 12 months before obtaining an application packet.

020-520 Applicants shall pass a pre-qualifying test to demonstrate adequate communication skills before an application packet is issued by the ACHP.

020-530 Application packets for new Adult Foster Home Operator's licenses returned to the ACHP shall include:

(a) A completed ACHP application form.

(b) A Qualifying Test certificate.

(c) An Initial Training certificate.

(d) Criminal record check authorization forms for each person aged 16 years and over who lives or works in the home or is frequently in the home and has contact with the residents.

(e) A physician's statement regarding the applicant's physical and mental ability to provide care.

(f) A current CPR and first aid certificate for the Operator and Resident Manager.

(g) A completed financial information form, a budget for operating the home, including payroll expense totals, and evidence of the applicant's financial ability to operate the home.

(h) Evidence of the home's ownership, or a copy of the rental or lease agreement. If the home is leased or rented, the name of the owner and/or landlord must be included. In addition, there must be verification that the rent is a flat rate. Financial information about rental or lease arrangements shall not become part of the public record.

(i) Floor plans of the home showing the location and size of all rooms, doors and windows, as well as wheelchair ramps, smoke detectors and fire extinguishers.

(j) Bureau of Buildings and electrical inspection approval forms where applicable.

(k) A staffing plan covering staff qualifications and how the home shall be supervised and monitored, including the use of substitute caregivers and other staff. If the Operator uses a Resident Manager, a written plan on coverage for Resident Manager absences must be submitted. (See Staff Coverage/Supervision.) The staffing plan shall also include the name, address and telephone number of an approved caregiver who will be available to provide care in the absence of the Operator, Resident Manager, or other caregiver.

(l) If needed, completed Co-Operator and Resident Manager applications.

(m) Adult Foster Home license application fees.

(n) Three references which document applicant's hands-on care experience with elderly persons or persons with disabilities. Once submitted, these references will

be kept confidential and not released to the Operator.

(o) Copy of city business license, if applicable.

020-540 The ACHP shall not issue an initial license unless:

(a) A completed application packet is received and all fees, fines and penalties have been paid.

(b) The applicant and Adult Foster Home are in compliance with these rules.

(c) The ACHP has completed an inspection of the Adult Foster Home.

(d) The ACHP has completed a criminal record check on the applicant(s), any employee of the AFH, and any person aged 16 years and over who is in the home on a frequent basis and who will have contact with the residents , other than a resident or their visitors.

(e) The ACHP has checked the record of sanctions available from its files and State registry of nursing assistants who have been found responsible for abuse.

(f) The applicant has demonstrated to the ACHP the financial ability and resources necessary to operate the Adult Foster Home. The applicant shall have a financial reserve equal to at least the amount of two months budgeted expenses.

020-550 In seeking an initial license, the burden of proof shall be on the Operator and the Adult Foster Home to establish compliance with the Multnomah County Administrative Rules.

891-020-600 ADDITIONAL CRITERIA FOR RENEWAL OF AN ADULT FOSTER HOME LICENSE

020-608 At least 60 days prior to the expiration of the license, an expiration notice and application packet for renewal will be sent to the Operator by the ACHP.

020-616 The Operator must submit a complete ACHP renewal application packet.

020-624 Submission of a renewal application packet prior to the expiration date will keep the license in effect until the ACHP takes action.

020-632 If the Operator does not submit a complete renewal application packet before the license expiration date, the ACHP shall treat the home as an unlicensed home. (Refer to MCAR 891-025-300.)

020-640 The ACHP shall review the renewal application materials and conduct an unannounced inspection of the Adult Foster Home. Prior to renewal, the ACHP shall interview Operators, Resident Managers, caregivers and residents; review Operator, Resident Manager and caregiver training documentation; review Adult Foster Home records; assess the homelike atmosphere; and inspect postings and safety features (fire safety equipment, etc.).

020-648 The Operator will be given a copy of the renewal ACHP Inspection Report at the time of the inspection citing any deficiencies and timeframes for correction, which shall be no longer than 60 days from the date of the inspection. The Operator

shall correct all deficiencies before the renewal license is approved. If any cited deficiencies are not corrected within the timeframe specified by the ACHP, the renewal application shall be denied. The ACHP may follow up with additional Licensing Reports citing deficiencies and timeframes for corrections.

020-656 The effective date of a renewal license shall be the day following the expiration date of the previous year's license.

020-664 The ACHP shall not renew a license unless:

(a) The ACHP has received a completed renewal application packet.

(b) The ACHP has completed an inspection of the Adult Foster Home.

(c) The home, Operator, Resident Manager and caregivers are in compliance with these rules.

(d) The ACHP has completed a criminal record check on the applicant(s), any employee of the Adult Foster Home and any person aged 16 years and over who is in the home on a frequent basis who will have contact with the residents, other than a resident or their visitors.

(e) All fines, penalties and fees have been paid unless there is a hearing pending regarding the fine or penalty.

(f) The ACHP has checked the record of sanctions available from its files and State registry of nursing assistants who have been found responsible for abuse.

(g) Copy of applicable city business license.

020-668 The ACHP shall consider requests for reclassification of the Adult Foster Home only at annual renewal.

020-672 Currently licensed Operators shall be able to demonstrate financial reserves equal to at least two month's operating expenses without relying on income from residents.

020-680 After the Adult Foster Home is in operation, the Operator may use the financial reserve if needed. If the financial reserve goes below the level required for two months of operation, the reserve must be replenished to the two months level within six months.

020-688 In seeking a renewal of a license when an Adult Foster Home has been licensed for less than 24 months, the burden of proof shall be upon the Operator and the Adult Foster Home to establish compliance with the rules of the ACHP.

020-692 In proceedings for renewal of a license when an Adult Foster Home has been licensed for at least 24 continuous months, the burden of proof shall be upon the ACHP to establish noncompliance with these rules.

891-020-700 PROVISIONAL LICENSE

Notwithstanding any other provision in the MCAR's, the ACHP may issue a provisional license for up to 60 days to a qualified person if the ACHP determines that an emergency situation exists after being notified that the licensed Operator

is no longer overseeing the operation of the Adult Foster Home. A person would be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.

891-020-800 OPERATOR'S RESPONSIBILITIES REGARDING Resident ManagerS

020-810 Resident Managers for Adult Foster Homes shall attend orientation, the initial training course and pass the pre-qualifying test before being approved.

020-820 Adult Foster Home Operators which employ a Resident Manager shall submit a completed Resident Manager application packet, Resident Manager qualifying test certificate and fee to the ACHP before a Resident Manager's employment. The ACHP shall approve or deny the Resident Manager application and shall evaluate and may change the classification of the home based on the Resident Manager's qualifications.

020-830 If, during the period covered by the license, the Resident Manager leaves or ceases to act as the Resident Manager, the Operator must notify the ACHP. Before a new Resident Manager may start work, the Operator shall obtain approval from the ACHP. The Operator must request modification of the Adult Foster Home license to identify the change in Resident Manager.

020-840 If the ACHP determines that an unexpected and urgent staffing situation exists, the ACHP may permit, in writing, a person who has not attended orientation, completed the training or passed the qualifying test to act as a Resident Manager until training and testing are completed or for 60 days, whichever is shorter. The Operator shall provide a satisfactory explanation of the inability to find a qualified Resident Manager and must indicate that the person is at least 21 years of age and meets the requirements for a substitute caregiver for the Adult Foster Home, and that the Operator will provide adequate supervision.

891-020-900 CAPACITY OF ADULT FOSTER HOMES

020-910 Residents shall be limited to five persons unrelated to the Operator by blood, adoption, or marriage and who require care.

020-920 Respite residents are included in the licensed limit of the home.

020-930 The number of residents permitted to reside in an AFH will be determined by the ability of the staff to meet the care needs of the residents, the fire safety standards for evacuation, and compliance with the physical structure standards of these rules. Determination of maximum capacity must include consideration of total household composition including children and relatives requiring care and supervision. In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents.

020-940 When there are relatives requiring care or day care residents, the allowable number of unrelated residents may continue to be the maximum capacity of five if the following criteria are met:

(a) The Operator can demonstrate the ability to evacuate all occupants within three minutes;

(b) The Operator has adequate staff and has demonstrated the ability to provide appropriate care for all residents;

(c) There is an additional 40 square feet of common living space for each person above the five residents;

(d) Bedrooms and bathrooms meet the requirements of these rules;

(e) The care needs of the additional persons are within the classification of the license and any conditions imposed on the license;

(f) The well-being of the household including any children or other family members will not be jeopardized; and

(g) If day care persons are in the home, they must have arrangements for sleeping in areas other than a resident's bed or a resident's private room or space designated as common use.

020-950 The Adult Foster Home license shall state the maximum number of unrelated residents permitted to reside in the home, and the maximum number of additional persons, including relatives receiving care, day care residents and room and board residents.

020-960 The Adult Foster Home shall not exceed maximum capacity determined by the ACHP as stated on the license.

020-970 The ACHP shall review the Adult Foster Home's maximum resident capacity at each license renewal.

020-980 The ACHP shall review and may change the maximum capacity of the Adult Foster Home if there are any indications that ACHP standards of care or the health, safety or welfare of residents is at risk.

891-025-100 CLASSIFICATION OF ADULT FOSTER HOMES (LEVELS OF CARE)

025-105 The ACHP shall determine the classification of an Adult Foster Home during the licensure process. The classification level determines the level of care the Adult Foster Home may provide to residents.

025-110 A Class I, Class II or Class III license, except as noted in MCAR 891-025-115 and MCAR 891-025-120, will be issued by the ACHP based upon compliance with these rules and the qualifications of the Operator, Co-Operator and the Resident Manager. The lowest level of qualification of the Operator, Co-Operator and Resident Manager shall prevail in classification determination.

025-115 Homes that serve only Mentally Emotionally Disabled or Developmentally Disabled residents do not receive a classification.

025-120 Adult Foster Homes with a Limited License and Room and Board Facilities do not receive a classification. (See Parts XV and XVI.)

025-125 A Class I license may be issued if the applicant (and Resident Manager, if any) complete the required training and have the equivalent of at least one year verifiable fulltime experience within the last three years providing direct care to elderly persons or persons with disabilities (for example, feeding, bathing, transferring) or a current CNA certification and the equivalent of at least four months verifiable fulltime experience within the last three years.

025-130 A Class II license may be issued if the Operator (and Resident Manager, if any) complete the required training and each has the equivalent of two years of full-time verifiable experience providing direct care to elderly persons or persons with disabilities within the last five years, or a current CNA certification and the equivalent of at least 16 months fulltime verifiable experience within the last five years.

025-135 A Class III license may be issued if the Operator (and Resident Manager, if any) both complete the required training, have no substantiated complaints of abuse or neglect within the last three years and each:

(a) is a health care professional with a current license, such as a Registered Nurse, licensed practical nurse (LPN), physician, occupational therapist, or physical therapist;

or

(b) has the equivalent of three years' verifiable full time hands-on experience within the last ten years in providing direct care to elderly persons or persons with disabilities who are dependent in four or more ADL's; and

(c) can provide current satisfactory references from at least two medical professionals, such as a physician and Registered Nurse, who have direct knowledge of the applicant's ability and past experience as a caregiver; and

(d) can demonstrate to the ACHP the ability to provide appropriate care to persons dependent in four or more activities of daily living.

025-140 An Operator with a Class I license may admit only residents who need assistance in four of fewer activities of daily living (ADL's). All residents must be in stable medical condition and not need skilled or continuous nursing care.

025-145 An Operator with a Class II license may provide care for residents who require assistance in all activities of daily living, but are not dependent in more than three activities of daily living. A Class II Operator may request an exception to provide care to one Class III resident.

025-150 An Operator with a Class III license may provide care for residents who are dependent in four or more activities of daily living, except that no more than one bed-care or totally dependent person may be in residence at one time.

025-155 Operators shall care only for residents whose impairment levels are within the classification level of the home. If the Operator wishes a more impaired resident to remain in the home, the Operator shall request in writing an exception to care for a more impaired resident.

025-160 Operators of Class II and Class III homes shall not admit more than one resident requiring skilled or continuous nursing care without ACHP approval. This does not include residents who only require treatments such as insulin injections or catheter changes, as long as the task was properly delegated and the residents are not in need of other skilled or continuous nursing care.

025-165 The ACHP may grant an exception which allows a resident whose care needs exceed the classification of the home to live in the Adult Foster Home if the Operator provides clear and convincing evidence that the following criteria are

met:

(a) it is the choice of the resident to reside in the home;

(b) the exception will not jeopardize the care, health, safety or welfare of any occupant;

(c) the three minute fire evacuation standard for all occupants can be met.

(d) the Operator is able to provide appropriate care of the resident in addition to the care of the other residents.

(e) adequate staff are available to meet the care requirements of all occupants in the home; and

(f) outside resources are available and obtained, if necessary, to meet the resident's care needs.

025-170 An Operators shall not admit a resident whose impairment level exceeds the license classification level of the home without prior written approval of the ACHP. The request must be made in writing.

025-175 Operators shall ensure that a Resident Manager meets or exceeds the experience and training standards for the classification of the Adult Foster Home.

025-185 The ACHP may require an RN's assessment of a resident's care needs whenever a resident's care needs change or are in question.

891-025-200 CLOSING, MOVING OR SELLING ADULT FOSTER HOMES

025-210 The Adult Foster Home license shall apply only to the person(s) and address specified on the Adult Foster Home license. A license shall not be transferred to another person or location.

025-220 If an Operator of an Adult Foster Home no longer wishes to be licensed, any potential new Operator shall apply to the ACHP for a license and be licensed before the change. The new potential Operator shall follow all ACHP application rules. The licensed Operator of the home shall not transfer operation of the home to the new Operator until the ACHP licenses the new Operator.

025-230 Operators shall give at least 30 days written notice to the resident, the resident's family member and to the resident's legal representative, before leaving, selling, leasing or transferring the Adult Foster Home business or the real property on which the Adult Foster Home is located.

025-240 If an Operator's license expires during a change in licensed Operators and the new potential Operator has not been approved for a license, the home shall be treated as an unlicensed home.

025-250 Operators selling the Adult Foster Home business must separate that transaction from the sale of the real estate.

025-260 The Operator shall inform real estate agents, prospective buyers, lessees and transferees in all written communications, including advertising and disclosure statements, that the license to operate an Adult Foster Home is not transferable

and shall refer them to the ACHP for information about licensing.

025-270 Operators shall notify the ACHP prior to a voluntary closure of a home, proposed sale or transfer of business or property and shall give residents, families, and case managers for Medicaid clients 30 days' written notice except in circumstances where undue delay might jeopardize the health, safety or well-being of residents, Operators, Resident Managers, or staff. If an Operator has more than one home, residents cannot be shifted from one home to another home without a thirty day written notice unless prior written approval is given and agreement is obtained from residents, family members and case managers.

025-280 If an Operator proposes to move a licensed Adult Foster Home to another location, the new location must be licensed by the ACHP prior to a resident being placed in the home.

891-025-300 UNLICENSED HOMES

025-310 If an Operator's license expires and no renewal application packet has been received by the ACHP, or the ACHP becomes aware of an unlicensed home providing care, the ACHP shall conduct an unannounced visit to determine the safety of the residents in the home.

025-320 The ACHP will relocate residents immediately if there is an immediate threat to their health, safety or welfare.

025-330 The ACHP may issue a 30 day written notice to all residents stating that all residents must relocate if there is no immediate threat to their health, safety or welfare. The ACHP shall monitor the home during the notice period.

025-340 The Operator of an unlicensed Adult Foster Home who is unfamiliar with the ACHP shall be informed of the licensing process.

025-350 The ACHP may impose sanctions or initiate judicial action against an unlicensed Adult Foster Home.

025-360 No person or entity shall represent themselves as an Adult Foster Home, solicit or admit a person needing care or services, or accept placement of a person without holding a current license from the Adult Care Home Program. Failure to comply with this requirement shall be grounds for administrative sanctions, which may include imposition of a fine, denial of an application for an Adult Foster Home license, and/or the initiation of legal proceedings.

025-370 The ACHP shall identify Adult Foster Homes in Multnomah County which are operating without a valid license. The ACHP shall take appropriate action to ensure that unlicensed Adult Foster Homes either become licensed or cease to operate.

PART II - EXCEPTIONS

891-030-100 APPLICATIONS FOR EXCEPTIONS TO THE ADULT FOSTER HOME RULES

030-110 Adult Foster Home license applicants or Operators must apply in writing to the ACHP for an exception to a specific requirement of the ACHP rules. The Operator must prove to the ACHP by clear and convincing evidence that such an exception does not jeopardize the care, health, welfare or safety of the residents.

Evidence must indicate that all residents' needs can be met and that all occupants can be evacuated within three minutes.

030-120 The ACHP shall not grant exceptions to certain ACHP rules, including but not limited to the rules governing:

(a) maximum capacity requirements except as provided in MCAR 891-030-150;

(b) mandatory inspections;

(c) criminal history and criminal record checks (MCAR 891-050-400);

(d) Residents' Bill of Rights;

(e) testing requirements for Operators and Resident Managers (MCAR 891-050-600 through MCAR 891-050-850);

(f) protection from retaliation for filing complaints;

(g) inspection of public files;

(h) fire safety requirements;

(i) license application requirements; and

(j) standards set out in MCAR 891-060-100 through MCAR 891-070-770 and MCAR 891-090-100 through MCAR 891-090-150.

030-130 The ACHP shall document the reason for granting or not granting an exception to the ACHP rules. The exception shall not be effective until granted in writing by the ACHP. Exceptions shall be granted on a case by case basis considering all relevant factors.

030-140 The ACHP shall review exceptions granted to an Adult Foster Home at each license renewal period and may deny or modify exceptions previously granted if there has been a change in the situation.

030-150 The ACHP may grant an exception to the rules to increase the maximum licensed capacity of the Adult Foster Home to allow day care residents to live in the home, if the Operator can demonstrate all of the following:

(a) the ability to evacuate all occupants from the home to a point of safety within three minutes.

(b) adequate staff with demonstrated ability to provide appropriate care for all residents.

(c) an additional forty square feet of common living space for each person above the five residents.

(d) bedrooms and bathrooms that meet ACHP facility standards.

(e) the care needs of additional persons do not exceed the classification of the Adult Foster Home license and any conditions imposed on the license.

(f) day care residents have arrangements for daytime sleeping in areas other than a resident's bed or a resident's private room or space designated as common use.

(g) the safety of the home and the well-being and care needs of the residents, children or other family members will not be jeopardized if the ACHP grants the exception.

030-160 The decision of the ACHP regarding a request for an exception is final.

PART III - CONTRACTS

891-040-100 CONTRACTS FOR PRIVATE PAY RESIDENTS

040-110 Operators of Adult Foster Homes with private pay residents shall enter into a contract with the residents, dated and signed by the Operator and the resident or the resident's legal representative. The Operators's contract is subject to ACHP review prior to licensure. The ACHP may disapprove contracts or contract provisions which are in conflict with the ACHP rules or any law or ordinance.

040-120 Operators shall review the contract with the resident and the resident's legal representative when the resident is admitted to the home. Operators shall give a signed copy of the contract to the resident and the resident's legal representative.

040-130 The contract shall be reviewed by the Operator and the resident or the resident's legal representative at least once a year. The contract shall be updated and signed whenever the home's rate changes as a result of a change in resident care needs or if any contract provision changes.

040-140 The contract shall address, at a minimum:

(a) the specific care and services the home shall provide to the resident.

(b) the monthly rates for care and services.

(c) whether the resident's bedroom is private or shared.

(d) the due dates for payment and provisions for any late charges.

(e) the amount of refund and refund policy for any security deposits requested. The security deposit must be retained in an interest bearing account separate from the funds of the Operator.

(f) the circumstances under which the home's rates may change.

(g) the home's refund policy when a resident leaves the home before the required notice period.

(h) who shall be responsible for arranging and paying for any special services or equipment in the Adult Foster Home, including nursing delegations or care, and any fees for the resident's transportation.

(i) under what conditions the contract between Operator and resident may be ended, what notice is required from the Operator or resident to end the contract,

and that the notice requirement may be waived with the consent of both parties.

(j) the resident's right to a hearing before being moved from the home in a non-emergency situation.

(k) how the resident may recover personal property left in the home, and how and when an Operator may dispose of the resident's property if not recovered.

(l) an acknowledgement that house rules have been signed.

(m) how many days payment shall be required if a resident dies or leaves the home for medical reasons and indicates in writing the intent not to return.

(n) refunds of security deposits that allow for normal wear and tear.

040-150 If a resident's care needs change significantly, the Operator may renegotiate a higher rate to become effective in less than thirty days if the resident or the resident's legal representative voluntarily agrees to the increase.

040-160 Contracts between Operators and resident shall not require:

(a) any illegal or unenforceable provision, ask or require a resident to waive any of the resident's rights or the Operator's liability for wrongdoing.

(b) application fees or non-refundable deposits. Fees to hold a bed are permissible.

(c) if the home closes, charges to a resident beyond the date of closure or the date the resident moves from the home.

(d) advance payments for care and services beyond one month.(This does not apply to security deposits.)

(e) less than 30 days written notice of a change in the home's contract rates.

(f) payment if the resident moves out because of abuse and/or neglect which is later substantiated.

(g) payment of room charges during any period when the room has been re-rented to another person.

(h) waiver of their rights to a thirty day notice of rate increases, except for pre-established rate schedules for specified care needs.

(i) payment for more than 15 days after the resident has left the Adult Foster Home if a resident dies or leaves the home for medical reasons and indicates in writing the intent not to return.

(j) residents to pay for damages considered normal wear and tear.

891-040-200 OPERATORS WITH A MEDICAID CONTRACT

040-210 Operators who wish to serve Medicaid clients shall have a valid Medicaid contract in place and comply with the terms of the Medicaid agreement before accepting Medicaid paid residents.

040-220 The ACHP shall alert the contracting agency if an Adult Foster Home with residents who receive Medicaid payments is not in compliance with these rules.

PART IV
STANDARDS FOR OPERATORS, RESIDENT MANAGERS AND CAREGIVERS

891-050-100 GENERAL CRITERIA FOR OPERATORS, RESIDENT MANAGERS AND CAREGIVERS

050-110 For the purposes of these rules, Operators, Resident Managers and caregivers are defined as follows:

(a) **Operator** - The person licensed by the ACHP to operate the Adult Foster Home who has overall responsibility for the provision of residential care, who meets the standards outlined in these rules and who has been approved by the ACHP.

(b) **Co-Operator** - Synonymous with Operator as both are equally responsible for the home. All Co-Operators shall meet all qualifications and standards for an Operator.

(c) **Resident Manager** - A person employed by the Adult Foster Home Operator and approved by the ACHP who lives in the home and is directly responsible for daily operation of the home and care given to residents.

(d) **Caregiver** - Any person responsible for providing care and services to residents, including the Operator, the Resident Manager, and any temporary, substitute or supplemental staff or other person designated to provide care and services to residents.

(e) **Substitute Caregiver** - Any person other than the Operator or Resident Manager who is approved by the ACHP and is responsible for providing supervision, care and services to residents of an Adult Foster Home. In addition, substitute caregivers left in charge of a home for multiple 24-hour periods during a month or for any period that exceeds 48 hours, shall be required to meet the education requirements of a resident manager in a Class II and Class III home and may be required to meet the education, experience and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home.

050-120 Adult Foster Home Operators and Resident Managers shall be at least 21 years old.

050-130 Operators must live in the home which is to be licensed unless a Resident Manager lives in the home unless the ACHP grants a written exception to allow shift caregivers.

050-140 Caregivers, other than Operators and Resident Managers, shall be at least 18 years old. Caregivers under 21 shall not have sole responsibility for resident care or supervision for more than two hours during any twelve hour period.

050-150 Adult Foster Home Operators and Resident Managers shall provide evidence satisfactory to the ACHP regarding education, training, knowledge related to the population to be served, experience required for the classification of the home, and ability to operate an Adult Foster Home.

050-160 Operators, Resident Managers and caregivers shall have good physical health and mental health, good judgment, good personal character, including honesty, and the ability as determined necessary by the ACHP to provide 24-hour care for adults who are elderly persons or persons with disabilities.

050-170 Upon request of the ACHP, any Operator, Resident Manager or caregiver must obtain a statement from a physician or other qualified practitioner indicating they are physically, cognitively, and emotionally capable of providing care to residents.

050-180 Operators, Resident Managers and caregivers with a history of one or more substantiated episodes of substance abuse or mental illness must:

(a) provide evidence satisfactory to the ACHP of successful treatment/rehabilitation.

(b) submit references regarding current condition. References are confidential when received by the ACHP.

(c) be capable of operating, managing or providing care to elderly persons or persons with disabilities.

050-190 All Resident Managers and caregivers must meet applicable requirements for criminal record check and training.

050-195 Other persons who work, live or spend significant periods of time in the household, may be subject to the same inquiries or investigations described above. Such persons may also be required to provide satisfactory evidence, if requested, that their presence in the household does not jeopardize residents.

891-050-200 COMMUNICATION SKILLS

050-210 Operators, Resident Managers, and anyone left alone with residents shall be literate and able to demonstrate all of the following:

(a) an understanding of written and oral instructions in English, including medication instructions and doctor orders; and

(b) the ability to communicate in oral and written English with residents, health care professionals, case managers and appropriate others; and

(c) the ability to respond appropriately to emergency situations at all times.

050-215 At least one approved Operator, Resident Manager or caregiver who meets the requirements of this section shall be in the home and available to respond to residents' needs at all times.

050-220 The ACHP may grant an exception to MCAR 891-050-210 for homes where the Operators, Resident Managers and caregivers do not speak English if the Operators, other caregivers, residents and their doctors all speak the same language. The home shall have an interpreter on call 24 hours a day, and shall notify the local fire department of special rescue requirements.

891-050-300 COOPERATION

050-310 Operators, Resident Managers and caregivers shall cooperate with ACHP

personnel or other personnel providing services to the home or residents.

891-050-400 CRIMINAL HISTORY AND CRIMINAL RECORD CHECK

050-405 The criminal records check under this rule shall consist of:

(a) A check for a criminal record in the State of Oregon, and

(b) A national criminal record check if:

(1) The applicant or other person has resided in another state within the previous five years; or

(2) The applicant or other person has disclosed the existence of a criminal conviction in any state; or

(3) A criminal record check in the State of Oregon discloses the existence of a criminal record in any jurisdiction.

(c) A check of the record of sanctions available from the Senior and Disabled Services Division of the State of Oregon, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678.

050-410 It shall be the responsibility of the Operator to insure that all persons aged 16 years and over who live or work in the home and frequent visitors to the home who will have contact with the residents, excluding residents and their visitors, complete, sign and submit to the ACHP a criminal record release authorization form. This shall be completed prior to living in, working in or being in the home and on an annual basis. The form shall include name, any aliases, birthdate, social security number, gender, drivers license number, current address and address for the last five years and information about any criminal history.

050-415 Adult Foster Home Operators shall not hire a Resident Manager or caregiver whose criminal record has not been approved by the ACHP or allow family members, visitors, friends, etc. whose criminal record has not been approved to be in the home on a frequent basis and have contact with the residents.

050-420 Any Operator, Resident Manager or other caregiver may work in an Adult Foster Home pending the outcome of a national criminal record check providing that the Oregon criminal record check was clear and if he/she signs a form indicating that he/she has never had a criminal conviction.

050-425 A person with a criminal record shall provide the ACHP with all documents required to obtain a national criminal record check prior to working, residing or being in an Adult Foster Home. The person shall pay any costs necessary to obtain these documents.

050-430 The ACHP shall deny the application, revoke the license, or revoke or deny the approval of any person who falsely represents that he/she has not been arrested or convicted of a crime.

050-435 Any person who has been convicted of one or more crimes which are substantially related to the qualifications, functions or duties of an Operator, Resident Manager, or substitute caregiver of an Adult Foster Home, except as

provided in MCAR 891-050-465, not including a resident or their visitors, shall be prohibited by the ACHP from operating, working in or being in or on the premises of an Adult Foster Home.

050-440 The Operator shall inform all persons aged 16 years and over, including Resident Managers and caregivers, occupants of the home and frequent visitors to the home who will have contact with the residents, not including residents, resident's families or visitors, that they must notify the Operator if arrested, charged with or convicted of a crime. A licensed Operator shall notify the ACHP immediately upon learning that anyone living, working or being in the Adult Foster Home on a frequent basis who will have contact with the residents has been arrested, charged with or convicted of a crime.

050-445 Any person other than a resident or their visitors who has been charged with or arrested for a crime which is substantially related to the qualifications, functions or duties of an Operator, Resident Manager or substitute caregiver may be prohibited by the ACHP from operating, working in, or being in an Adult Foster Home on a frequent basis. The ACHP shall determine the actions necessary to protect the health, safety, and welfare of residents.

050-450 Crimes which are substantially related to the qualifications, functions or duties of an Operator, Resident Manager or substitute caregiver include, but are not limited to the following: elder abuse, elder neglect, child abuse, child neglect, incest, abandonment of a child or dependent person, homicide, assault, kidnapping, sexual offenses and offenses against public health and decency (prostitution, offenses involving narcotics, alcohol abuse and dangerous drugs, driving under the influence of intoxicants), and crimes against property (arson, burglary, forgery, theft, embezzlement or obtaining property under false pretenses).

050-452 Persons who have been convicted of homicide shall be permanently disqualified from operating, working in or being in an Adult Foster Home.

050-455 The ACHP shall consider persons with convictions for crimes of domestic violence or other reliable evidence that they have committed domestic violence a threat to the health, safety and welfare of residents in an Adult Foster Home. The following persons shall not be involved in the operation of allowed in an Adult Foster Home:

(a) An individual with reliable evidence of a domestic violence incident or a conviction for domestic violence during the past 5 years.

(b) An individual with reliable evidence of more than one domestic violence incident or conviction during the last ten (10) years.

(c) An individual with reliable evidence of a domestic violence incident or conviction for domestic violence in addition to any other conviction within the last ten (10) years.

050-460 A person who is found to have a criminal record may request an administrative conference if the ACHP denies an application or their ability to work or be in the home on a frequent basis based on the criminal record.

050-465 If a person was convicted of a crime other than the crimes listed in MCAR 891-050-450, or if more than ten (10) years have passed since the person was convicted of a crime, the ACHP may allow a person to operate, work, or be in a

home after considering the following:

(a) The type of crime and number of offenses.

(b) Whether the victim of the crime was elderly, handicapped or dependent, or under the age of 18.

(c) Passage of time since the crime was committed.

(d) Circumstances surrounding the commission of the crime which would demonstrate that repetition is unlikely (for example, age when crime was committed).

(e) Activities since conviction or arrest such as employment, participation in therapy or education that indicate changes in behavior.

(f) Character references.

050-470 Criminal offender information shall be used only for the purposes for which it was obtained by the ACHP, and shall not be given to unauthorized persons or agencies. Unless a person gives written authorization for the release of criminal records, the ACHP may only inform an Operator that a person has been approved, or denied or that conditions are imposed on the basis of criminal offender information.

050-475 The ACHP shall make every effort to expedite completion of a criminal record check for the State of Oregon when requested by a licensed Operator because of an immediate staffing need.

891-050-500 OPERATOR, RESIDENT MANAGER AND CAREGIVER TRAINING

050-503 Operators and Resident Managers shall successfully complete the minimum ACHP approved initial training before being licensed or approved. The minimum ACHP approved initial training hours shall include but not be limited to: demonstrations and practice in physical care giving, screening for care and service needs, appropriate behavior towards residents with disabilities, issues related to accessibility for persons with disabilities and fire safety and evacuation issues.

050-506 Each year following the Basic Training Course, Operators and Resident Managers are required to obtain at least twelve hours of ACHP approved ongoing training related to care of elderly persons and persons with disabilities. Registered Nurse delegation or consultation and CPR certification shall not count towards the required training hours.

050-509 A Resident Manager who has not completed the Basic Training Course must complete the Caregiver Preparatory Training Course approved by the ACHP before providing care to any resident or being left alone with residents. The Caregiver Preparatory Training Course will include emergency procedures, medication management, personal care procedures, food preparation, home environment and safety procedures, and residents' rights.

050-512 Operators shall orient all Resident Managers and caregivers to the physical characteristics of the home, the residents of the home and their care needs using the ACHP checklist **before** Resident Managers and caregivers are left alone with

residents. The Operator shall keep on file a copy of each Resident Manager's and caregiver's signed and completed ACHP checklist.

050-515 Operators shall train the Resident Manager and caregivers to meet the routine and emergency needs of the residents.

050-518 All Operators and Resident Managers shall have ACHP approved CPR certification before being licensed or beginning to work in the AFH. CPR certification shall be renewed on an annual basis.

050-521 All Operators and residents managers shall have current First Aid Certification before being licensed or beginning to work in the AFH.

050-524 All caregivers shall have a current ACHP approved CPR certificate and First Aid Certificate before being left alone with residents.

050-527 All caregivers other than Operators and Resident Managers shall study the ACHP Caregiver Preparatory Training Course and complete the workbook with no assistance or complete the ACHP-approved initial training, before working in the home. The caregiver training manual shall include but not be limited to the following topics: emergency procedures, medication management, personal care procedures, food preparation, home environment, safety procedures and residents' rights. Operators shall keep on file the substitute caregiver training certificate for all caregivers in the home where the caregiver works.

050-530 The ACHP may require other caregivers to complete annual training.

050-533 The ACHP may require Operators, Resident Managers and other caregivers to take part in additional training, including but not limited to training in major rule or program changes or fire and life safety standards.

050-536 Operators, Resident Managers and other caregivers shall record and keep on file ACHP training forms, certificates, attendance records and other training documentation. The Operator shall keep on file training documents for all Resident Managers and caregivers in the home where they work.

OPERATOR AND RESIDENT MANAGER TESTING

891-050-600 QUALIFYING TEST FOR NEW APPLICANTS FOR OPERATOR OR RESIDENT MANAGER

050-610 An applicant must pass the qualifying test before being licensed or becoming a Resident Manager. The examination shall evaluate the Operator's or Resident Manager's ability to understand and respond appropriately to emergency situations, changes in medical conditions, physician's orders and professional instructions, medication management, nutritional needs, resident's preferences, and conflict situations. The examination shall evaluate their basic understanding of the rules for Adult Foster Homes.

050-620 An applicant may take the qualifying test two times in a twelve month period. Failure to obtain a passing score on the qualifying test in two attempts will result in denial of the application and require the applicant to wait 12 months from the date of the last test before beginning the application process again.

050-630 If an applicant fails to obtain a passing score on the qualifying test and

demonstrates and documents special circumstances (e.g. language barrier, learning disability or test anxiety), the ACHP may develop an alternate means of testing that individual. If the applicant fails to demonstrate special circumstances or fails to obtain a passing score on an alternate test, as developed by the ACHP, the application shall be denied. Special consideration shall be granted only one time. If an applicant requests special consideration under language barrier, they must first demonstrate that they meet the communication skills under MCAR 891-050-200.

050-640 If an applicant is granted an alternate test and fails that test, he/she must wait 12 months from the date of that test before he/she may begin the application process again.

891-050-700 TESTING FOR OPERATORS

050-706 An Operator must pass the qualifying test before the license is renewed. The examination shall evaluate the Operator's ability to understand and respond appropriately to emergency situations, changes in medical conditions, physician's orders and professional instructions, medication management, nutritional needs, resident's preferences, and conflict situations. The examination shall evaluate their basic understanding of the rules for Adult Foster Homes. This qualifying test must be passed by the Operator only one time.

050-712 An Operator who fails to obtain a passing score on the qualifying test may repeat the test one time within 60 days of the first test.

050-718 If an Operator fails to obtain a passing score on the qualifying test the first time the test is taken, a condition on the license restricting admission will be imposed. If an Operator fails to obtain a passing score on the qualifying test the second time the test is taken, the ACHP shall revoke or not renew his/her license. In this event, the Operator may not begin the application process for 12 months from the date of the last test.

050-724 If an Operator fails to obtain a passing score on the qualifying test on his/her second attempt and demonstrates and documents special circumstances (e.g. language barrier, learning disability or test anxiety), the ACHP may develop an alternate means of testing that individual. The alternate test may only be taken one time. If an Operator requests special consideration under language barrier, they must first demonstrate that they meet the communication skills under MCAR 891-050-200.

050-730 If the Operator fails to demonstrate special circumstances or fails to obtain a passing score on an alternate test, as developed by the ACHP, the renewal application shall be denied or the license shall be revoked if it has not expired.

050-736 If an Operator fails to obtain a passing score on the qualifying test and the Resident Manager passes the qualifying test, the requirements of MCAR 891-050-718 shall apply.

050-742 If an Operator fails to obtain a passing score on the qualifying test and the Resident Manager has not yet obtained a passing score on the qualifying test, the requirements of MCAR 891-050-718 shall apply.

050-748 If neither the Operator or Resident Manager obtains a passing score on the qualifying test, the requirements of MCAR 891-050-718 shall apply.

891-050-800 TESTING FOR RESIDENT MANAGERS

050-810 A Resident Manager must pass the qualifying test before the license is renewed. The examination shall evaluate the Resident Manager's ability to understand and respond appropriately to emergency situations, changes in medical conditions, physician's orders and professional instructions, medication management, nutritional needs, resident's preferences, and conflict situations. The examination shall evaluate their basic understanding of the rules for Adult Foster Homes. This qualifying test must be passed by the Resident Manager only one time.

050-820 A Resident Manager who fails to obtain a passing score on the qualifying test on his/her first attempt may repeat the test one time within 60 days of the first test.

050-830 If a Resident Manager fails to obtain a passing score on the qualifying test on his/her first attempt, his/her status as a Resident Manager shall become probationary for a period not to exceed 60 days or the date the second test is taken. He/she may continue working as a Resident Manager in the home during this period. In addition, the Operator must demonstrate to the ACHP how the home will be adequately supervised.

050-840 If a Resident Manager fails the examination a second time, his/her status as a Resident Manager shall terminate. A condition on the license restricting admissions shall be imposed until a qualified Resident Manager is hired and working in the home. The current Resident Manager may continue working as a Resident Manager for a period not to exceed 30 days to ease the transition. The current Resident Manager may continue working after that 30-day period only if he/she meets the qualifications of a substitute caregiver. In this event, the Resident Manager may not begin the process to apply to be a Resident Manager for 12 months from the date of the last test.

050-850 If a Resident Manager fails to obtain a passing score on the qualifying test on his/her second attempt and demonstrates special circumstances (e.g. language barrier, learning disability or test anxiety), the ACHP may develop an alternate means of testing that individual. If the Resident Manager fails to demonstrate special circumstances or fails to pass an alternate test, as developed by the ACHP, his/her status as a Resident Manager shall immediately terminate. The alternate test may be taken only one time. If a Resident Manager requests special consideration under language barrier, they must first demonstrate that they meet the communication skills under MCAR 891-050-200.

891-050-900 STAFF COVERAGE/STAFF SUPERVISION/STAFFING CHANGES

050-905 An Operator must live in the home that is to be licensed or hire an approved Resident Manager to live in the home.

050-910 The Operator, approved Resident Manager or approved substitute caregiver shall provide supervision 24 hours per day in the Adult Foster Home when one or more residents are present or are expected to be present in the home. Supervision means protective awareness of the residents' general whereabouts and functioning, including: monitoring the activities of the residents while on the premises of the home; generally ensuring residents' health, safety and welfare; and the ability and readiness to intervene on behalf of a resident if a crisis arises.

050-912 A resident with developmental disabilities or mental or emotional disabilities who has an Individual Service Plan (ISP) approved by the appropriate County or State

Case Manager, may be left alone in the home for the length of time specified in the ISP. If there is no case manager, a resident with developmental disabilities or mental or emotional disabilities may be left alone in the home for the length of time specified in both the written doctors orders and care plan.

050-915 Operators not living in the home shall be in the Adult Foster Home at least three times a week and shall monitor the resident's health, safety and welfare; record keeping; and document these visits. Operators may appoint a currently licensed Operator or person approved by the ACHP to meet this monitoring requirement.

050-920 The Operator shall notify the ACHP of the name of the caregiver(s) who will be responsible anytime the Operator or Resident Manager will be out of the home more than 72 hours.

050-925 Operators shall give the current addresses and telephone numbers of all Resident Managers and caregivers employed by the Operator to the ACHP upon request.

050-930 A resident shall not provide supervision, care or services, or act as a Resident Manager or other caregiver.

050-935 Shift caregivers may be used in lieu of a Resident Manager only if the Operator is granted a written exception by the ACHP. Use of shift caregivers detract from the intent of a home-like environment, and may only be allowed for specific resident populations with intense care needs. The type of residents served must be a specialized population with intense care needs, such as those with Alzheimer's Disease, dementia, AIDS, or head injuries. If shift caregivers are used, they must meet the standards of a Resident Manager and the classification of the home.

050-940 If a Resident Manager (or shift caregiver) changes during the period the license covers, the Operator must notify the ACHP immediately and identify who will be providing care. The Operator must submit a request for a change of Resident Manager to the ACHP along with a completed Resident Manager application, a criminal record authorization, and payment of the required fee. Upon a determination that the applicant meets the requirements of a Resident Manager and the applicant has completed the ACHP's required training and passed the qualifying test, a revised license will be issued with the name of the new Resident Manager. The classification of the home will be reevaluated based on the qualifications of the new Resident Manager and may be changed accordingly.

050-945 If the ACHP determines an unexpected and urgent staffing situation exists, the ACHP may permit, in writing, a person who has not completed the orientation, training or passed the qualifying test to act as a Resident Manager until the orientation, training and testing are completed or for 60 days, whichever is shorter. The Operator must notify the ACHP of the situation and provide:

(a) a satisfactory explanation of the inability to find a qualified Resident Manager.

(b) evidence that the person is 21 years of age.

(c) evidence that the person meets the requirements for a substitute caregiver working in the Adult Foster Home.

(d) a plan that the Operator will provide adequate supervision.

050-950 Operators shall compensate Resident Managers and other caregivers, including respite and substitute caregivers in compliance with all applicable provisions of Federal and State wage and hour laws.

050-955 Operators shall keep adequate staff necessary to maintain a stable environment and to provide quality care in the home.

050-960 Operators shall ensure that Resident Managers and caregivers have a clear understanding of job responsibilities, have knowledge of residents' care plans, and are able to provide the care specified for each resident, including appropriate delegation or consultation by a Registered Nurse.

050-965 An Operator (whether or not present in the home) is responsible for the supervision, training and conduct of Resident Managers and caregivers. This applies to Resident Managers and caregivers when acting within the scope of their employment, duties, or when they are present in the home.

050-970 Operators shall not leave residents alone in the home with anyone who cannot communicate adequately in English and does not meet the requirements of MCAR 891-050-200.

050-975 Operators of Class II and Class III Adult Foster Homes shall insure monitoring of all residents by a Registered Nurse or physician at least every two months or more frequently, if medically indicated. At a minimum, monitoring shall include review of resident records, medication management, doctors orders and resident's care.

PART V - BASIC CARE

891-060-100 GENERAL CRITERIA

060-107 Adult Foster Home Operators, Resident Managers and caregivers shall protect resident's rights and help residents to exercise them as listed in the Residents' Bill of Rights.

060-114 Operators, Resident Managers and caregivers shall provide a resident with the care and services as agreed to in the resident's care plan and as appropriate to meet his/her needs.

060-121 Operators, Resident Managers and other caregivers shall meet the night time care needs of the residents.

060-128 Operators, Resident Managers and caregivers shall provide care and services in a homelike atmosphere, where the dignity and rights of the residents are respected, the atmosphere is more like a home than a medical facility, positive interaction between occupants, Resident Managers and caregivers of the home is encouraged, and the residents' independence and decision-making is protected and promoted. Operators, Resident Managers and caregivers may prohibit visitors from visiting a resident if the visitors threaten the health, safety or welfare of the resident or other occupants. The event must be documented in the resident's records as an incident report and the ACHP licensor shall be immediately informed.

060-135 Operators, Resident Managers and other caregivers shall provide supervision for resident use of hot tub, sauna, and swimming pool. (Hot tubs and saunas may

be used only with written doctor approval.)

060-142 Residents shall have the right to consent to or refuse all medications, treatment or care. If a resident refuses medications, treatments or care, the refusal shall be immediately documented in the resident's records and appropriate persons notified, including the doctor, family, legal representative and case manager. Other persons involved in resident care, including the Resident Manager and caregiver, shall also be informed.

060-149 Operators shall immediately inform the resident, the resident's physician or nurse, family, legal representative, case manager, and any other appropriate people of changes in the resident's condition.

060-156 Operators, Resident Managers and caregivers shall promptly seek medical help, as needed, and continue to seek help until the resident receives the appropriate care and services. This includes persistent attempts to obtain doctor ordered prescriptions.

060-163 In the event of a serious medical emergency, the Operator/staff shall call 911 or the appropriate emergency number for their community. The physician/nurse practitioner, family or legal representative and the case manager (when applicable) shall also be called. The Operator shall have copies of Advance Directives, Do Not Resuscitate (DNR) orders and/or pertinent medical information available when emergency personnel arrive. Medical emergency means a change in medical condition that requires immediate care of a level or type that the Operator is unable to provide or behavior that poses an immediate threat to the resident or to other residents or people living in the home.

060-170 Operators must be able to provide or arrange for appropriate resident transportation. This does not mean the Operator has to pay for transportation.

060-177 If the Operator manages or handles a resident's money, it shall be maintained in a separate account record in the resident's name. The Operator shall not under any circumstances commingle, borrow from, or pledge any funds of a resident. Personal Incidental Funds (PIF) for Medicaid clients are to be used at the discretion of the client for such things as clothing, tobacco, and snacks (not part of daily diet). Operators, Resident Managers or caregivers shall not influence, solicit from, or suggest to any resident that they or their family give the Operator, Resident Manager or caregiver or the Operator's, Resident Manager's or caregiver's family money or property for any purpose. The Resident Manager, Resident Manager's family, caregiver or the caregiver's family shall not accept gifts of substantial value or loans from the resident or the resident's family.

891-060-200 SCREENING OF RESIDENT CARE NEEDS PRIOR TO ADMISSION TO THE ADULT FOSTER HOME

060-208 Operators shall screen a potential resident for care needs using a screening form before admitting a resident to the Adult Foster Home. The screening shall determine whether the care needs of the resident fall within the license classification of the home and if the Operator can meet the care needs of the resident along with meeting the care needs of the current residents of the home.

060-216 The screening shall include interviews with the prospective resident in person whenever possible, and, if appropriate, the resident's family, prior caregivers, and case manager. The Operator's interview may also include any physician, nurse

or other health care professional involved in the prospective resident's care.

060-224 The Operator's screening of the resident's care needs shall include but is not limited to:

(a) assessment of activities of daily living

(b) diagnosis

(c) medications

(d) a description of the prospective resident's physical and mental condition

(e) personal care needs

(f) resident's ability to communicate

(g) nursing care needs and RN delegations

(h) nutritional needs

(i) night care needs

(j) personal preferences for activities and lifestyle

(k) the prospective resident's ability to evacuate the home within three minutes along with the other home occupants.

060-230 Upon completion, a copy of the screening form shall be given to the prospective resident or his/her representative.

060-232 If the prospective resident becomes a resident in the home, the Operator's screening of a prospective resident shall be documented, a copy given to the prospective resident and any legal representative, and a copy kept with the resident's records.

060-240 Before admitting a private paying resident, the Operator shall advise the potential resident, his/her family, or his/her legal representative of the right to receive a long term care assessment. The Operator shall certify on a form provided by the ACHP that the individual has been so advised. Upon admission, the Operator shall maintain a copy of the form in the resident records.

891-060-300 ADMISSION TO THE ADULT FOSTER HOME

060-310 Upon admission to the home, the Operator shall obtain and document in resident records general information regarding the resident. The information shall include names, addresses, and telephone numbers of relatives, significant persons, case managers, and medical/mental health providers. The record shall also include the date of admission and, if available, the resident's Social Security and medical insurance numbers, birth date, and prior living situation. At an appropriate date, the Operator shall obtain mortuary information.

060-320 Upon admission to the home, the Operator shall have made every effort to obtain physician/nurse practitioner orders for medications, treatments, therapies and special diets. Any telephone orders must be followed with written signed orders

within 72 hours or the Operator must document attempts to get them. A physician, nurse practitioner, or pharmacist review of the resident's preferences for over-the-counter medications and home remedies shall also be obtained at that time and documented in the resident records. The Operator shall also obtain and place in the record any medical information available including history of accidents, illnesses, allergies, impairments or mental status that may be pertinent to the resident's care.

060-330 At the time of admission, the Operator shall ask for copies of the following documents if the resident has them: Advance Directive, letters of guardianship, letters of conservatorship, and Do Not Resuscitate (DNR) orders. The copies shall be placed in a prominent place in the resident record and sent with the resident when transferred for medical care.

060-340 At the time of admission, the Operator shall discuss with the resident and/or her/his legal representative and resident's family, if available, whether the home has a Medicaid contract, as well as the Residents' Bill of Rights, and written house rules. The discussion shall be documented by having the resident sign the house rules and the Residents' Bill of Rights. These signed documents shall be filed in the resident's record.

060-345 At the time of admission, the Operator shall list the resident possessions brought into the home.

060-350 When Operators have contracts with more than one public social service agency, including but not limited to the State of Oregon Mental Health Division -- Mental Health or Developmental Disabilities Programs, Senior and Disabilities Services Division, or Children's Services Division, the Operator shall obtain written permission from each contracting agency with clients already in the home before admitting new residents from another agency.

891-060-400 CARE PLAN

060-410 The Adult Foster Home Operator shall develop a care plan for each resident. The care plan shall be developed together with the resident and, as appropriate, the resident's family, physician, nurse, the resident's legal representative, case manager, any other appropriate people, and shall include information from the screening assessment of the resident. The intent of the care plan is to accurately reflect the resident's care needs.

060-420 During the initial 14 days following the resident's admission to the home, the Operator shall continue the assessment process which includes documenting the resident's preferences and care needs. The assessment shall include observations of the resident and the review of information obtained from the screening assessment process.

060-430 The resident care plan shall be finalized within 14 days of admission to the home. The care plan shall be signed by those who have prepared the plan.

060-440 The care plan shall be updated whenever the resident's care needs change and at least every six months. All updates must be dated and signed by the Operator. The Operators shall review care plans with the resident and/or a legal representative once a year. This review shall be documented in the resident's records.

060-450 The care plan shall be a written description of a resident's needs, preferences and capabilities, including the type of care and services needed, when and who shall provide the care, how often care and services will be provided, and what assistance the resident requires for various tasks. Specific information in the care plan shall include information about the resident's:

(a) ability to perform activities of daily living (ADL's).

(b) need for special equipment.

(c) communication needs: hearing, vision, sign language, non-English speaking, and speech along with any aids used.

(d) night needs.

(e) medical or physical health problems relevant to care and services.

(f) cognitive, emotional, or physical disabilities or impairments relevant to care and services.

(g) treatments, procedures or therapies.

(h) need for Registered Nurse consultation and delegation.

(i) need for behavioral interventions.

(j) social/spiritual/emotional needs including lifestyle preferences.

(k) emergency exit ability including assistance and equipment needed.

(l) need for use of physical restraints or psychoactive medications.

(m) dietary needs and preferences.

(n) weekly activities or recreation schedule.

(o) preferences in how care is given.

060-460 The resident's care plan shall include goals for maintaining and, if possible, improving or restoring the resident's level of functioning.

891-060-500 ADMINISTRATION OF MEDICATIONS

060-504 Operators, Resident Managers and caregivers who administer medications shall demonstrate an understanding of the administration of each resident's medications. Operators, Resident Managers and caregivers shall know the reason the medication is used and any specific instructions and common side effects. Drug reference material shall be kept in the Adult Foster Home and shall be readily available.

060-508 The Operator shall obtain and place a written signed order in the resident's record for any medications, dietary supplements, treatments, and/or therapies which have been prescribed by the physician/nurse practitioner.

060-510 Prescription medications shall not be given without written doctor's orders.

060-512 Orders must be carried out as prescribed unless the resident or the resident's legal representative refuses consent. The physician/nurse practitioner must be notified if a resident refuses to consent to an order.

060-516 Over-the-counter medications or home remedies requested by the resident shall be reviewed by the resident's physician/nurse practitioner or pharmacist at admission and at least annually thereafter and documented in the resident records.

060-520 Changes to orders may not be made without a physician/nurse practitioner's order. Attempts to call the physician/nurse practitioner to obtain the needed changes in orders must be documented in the resident's record.

060-524 If an Operator, Resident Manager or caregiver has good reason to believe that medical orders are harmful to a resident, the Operator, Resident Manager or caregiver shall immediately notify the physician, nurse, resident's family, case manager, and any other appropriate people to protect the health and safety of the resident.

060-528 Order changes obtained by telephone shall be implemented as soon as practicable. Operators shall obtain a written physician's order within 72 hours of receiving a doctor's telephone order or verbal order for a resident's medications or the Operator must document all attempts to get the order. Operators shall make and document, in the resident's progress notes, frequent and persistent attempts to obtain the written order until it is received.

060-532 Prescription medications ordered to be given "as needed" or "P.R.N." must have additional directions which show what the medication is for and specifically when, how much and how often it may be administered. These written directions may be given by a physician, nurse practitioner, Registered Nurse or pharmacist.

060-536 An Operator shall consult with the physician, nurse practitioner, Registered Nurse or mental health professional before requesting a psychoactive medication to treat a resident's behavioral symptoms. The consultation shall include a discussion of alternative measures to medication use including behavioral interventions. These medications may be used only after documenting all other alternative considerations and only when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Psychoactive medications shall never be given to discipline a resident or for the convenience of the Adult Foster Home. Psychoactive medications as defined in these rules may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.

060-540 The Operator, Resident Manager and all caregivers shall know the specific reasons for the use of the psychoactive medication for an individual resident, the common side effects and when to contact the physician, nurse practitioner, or mental health professional regarding those side effects. Operators, Resident Managers and caregivers shall also know the behavioral interventions, if any, to be used along with the medication.

060-544 The frequency of the reassessment of the psychoactive medication use shall be determined by the physician or Registered Nurse completing the initial assessment.

060-546 All Operators may administer routine oral medications.

060-548 A resident or a relative of the resident or a Registered Nurse may administer subcutaneous, intramuscular, and intravenous injections. A licensed practical nurse can give subcutaneous and intramuscular injections. An Operator, Resident Manager or caregiver who has been delegated and trained by a Registered Nurse under provision of the Board of Nursing rules may give only subcutaneous injections. Intramuscular and intravenous injections cannot be delegated to Operators, Resident Managers and caregivers.

060-552 Each resident's medication container shall be clearly labeled with the pharmacist's label or be in the original labeled container or bubble pack and shall be kept in a locked, central location, separate from that of the Operator or the Operator's family. Residents shall not have access to any medications in the home unless they have an order to self medicate. Over-the-counter medications in stock bottles (with original labels) may be used in the home.

060-556 The Operator may set up each resident's medications for up to seven days in advance (excluding P.R.N. medications) by using a closed container manufactured for that purpose. If used, each resident shall have her/his own container with divisions for the days and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route and description of the medications. The container shall be stored in the locked medication area.

060-560 Unused, outdated or discontinued medications, except controlled substances, shall not be kept in the home and shall be disposed of according to the pharmacist's recommendations. Disposal of these medications shall be documented on the medication administration record or in the resident's record. Documentation shall include the name of the medication and the number of pills disposed or returned to the pharmacy.

060-564 All controlled substances to be disposed of shall be:

(a) counted by a Registered Nurse who witnesses and documents the disposal;

or

(b) returned to the dispensing pharmacy.

060-568 Operators, Resident Managers and caregivers shall be responsible for making certain that all medications prescribed for a resident are fully accounted for and used only by that resident.

060-572 A prescription may be given only to the person for whom the medication was prescribed.

060-576 A current, written medication administration record shall be kept for each resident and shall identify all of the medications administered by the Operator, Resident Manager or caregiver to that resident, including over-the-counter medications and prescribed dietary supplements. The record shall indicate the medication name, dosage, route, the date and time to be given. The record shall be immediately initialed at the time of administration by the person giving the medications. Treatments and therapies must be immediately documented on the medication administration record showing times given, type of treatment or therapy, and initials of the person performing the procedure. The medication administration record shall contain a legible signature which identifies each set of initials.

060-580 A discontinued or changed medication order shall be marked and dated on the medication administration record as discontinued. The new order shall be written on a new line showing the date of order. If a resident misses or refuses a medication, treatment or therapy the initials must be circled and a brief but complete explanation shall be recorded on the back of the medication record. As needed (P.R.N.) medication shall be documented with the time, dose, the reason the medication was given, and the outcome.

060-584 A resident may self medicate only with a physician's written approval which shall be kept in the resident records. Residents shall keep self administered medications in their bedrooms in a secure place which can be locked. Operators, Resident Managers and caregivers shall not be responsible for administering or documenting medications when residents self medicate, but shall notify appropriate health care professionals if a resident cannot self-medicate safely.

891-060-600 NURSING CARE TASKS

060-610 A Registered Nurse consultation shall be obtained when a skilled nursing care task (such as insulin injections, blood sugar monitoring and ostomy care) has been ordered by a physician or other qualified practitioner. The Operator shall obtain medical professional consultation/assessment to meet the skilled nursing care needs of the resident.

060-620 When the Operator does not know or understand how to perform a nursing task, the Operator shall consult with a Registered Nurse.

060-630 The Registered Nurse may determine that a nursing care task for a particular resident is to be taught to an Operator, Resident Manager or caregiver utilizing the delegation process. The Operator, Resident Manager or caregiver shall not teach another individual the delegated task and shall not perform the task for another resident without specific delegation for that resident.

891-060-700 RESTRAINTS

060-708 For the purposes of these rules, restraints are defined as any physical device or chemical substance which restricts a resident's movement, body access or functioning (for example, vest, glove/mitten, gerichairs or full siderails on beds, sleeping medications or tranquilizers).

060-716 Chemical or physical restraints may be used only after consideration of all other alternatives. The Operator shall document the consideration and trial of all other alternatives in the resident's records. Restraints shall be used only when required to treat a resident's medical symptoms, or to maximize a resident's physical functioning. If, following the assessment and trial of other measures, it is determined that a restraint is necessary, the least restrictive restraint shall be used as infrequently as possible. All physical restraints must allow for quick release at all times.

060-724 Physical restraints may be used only after an assessment by a physician/nurse practitioner, Registered Nurse, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist assessment.

060-732 A written signed order for the restraint from the physician/nurse practitioner or Christian Science practitioner shall be obtained and placed in the resident record. The order, including any P.R.N. orders, shall include specific parameters including

type, circumstances and duration of the use of the restraint.

060-740 Physical restraints may only be used with the resident's or resident legal representative's written consent which shall be filed in the resident's record. The Operator shall reassess their ability to provide care to the resident if the resident or legal representative refuses consent.

060-748 The Operator shall place the restraint assessment in the resident record. The assessment shall include procedural guidance for the correct use of the restraint, alternative less restrictive measures which shall be used in place of the restraint whenever possible, and dangers and precautions related to the use of a restraint.

060-756 Physical restraint use shall be recorded on the care plan showing why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive alternative measures planned during the assessment and cautions for maintaining safety while restrained shall also be recorded on the care plan.

060-764 Residents physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 15 minutes. During this period, they are to be repositioned, offered toileting, fluids, exercised or provided range of motion.

060-772 Physical restraint use at night is discouraged and shall be limited to unusual circumstances. If used, the restraint shall be of the design to allow freedom of movement with safety. The frequency of night monitoring for resident safety and need for assistance shall be determined in the assessment.

060-780 Physical restraints may not be used for discipline of a resident or for the convenience of the Operator, Resident Manager or caregiver.

060-788 The frequency for reassessment of the physical restraint use shall be determined by the prescriber based on the recommendations made in the initial assessment. The reassessment may be performed by the physician/nurse practitioner, Registered Nurse, Christian Science practitioner, mental health clinician, physical therapist or occupation therapist.

060-794 Fill side rails used to keep a resident in bed are considered restraints. Side rails or half rails, which are requested by the resident, to allow the resident to easily get in and out of bed or improve functioning are not considered restraints. Half side rails are not considered a restraint.

060-799 Use of restraints shall not impede the three minute evacuation of all household members.

891-060-800 MEALS

060-807 Three nutritious meals will be served daily at times consistent with those in the community. Each daily menu will include food from the basic food groups and fresh fruit and vegetables in season. There shall be no more than a 14-hour span between the evening meal and breakfast. Nutritious snacks and liquids shall be offered to fulfill each resident's nutritional requirements. Consideration shall be given to residents' preferences, cultural and ethnic background in food preparation. Special consideration must be given to residents with chewing difficulties and other eating limitations. Food shall not be used as an inducement to control the behavior of a resident.

060-814 Operators shall follow all special diets as prescribed in writing by the resident's physician/nurse practitioner or other qualified professional.

060-821 Operators shall not serve home canned foods unless prepared according to the latest guidelines of Oregon Department of Agriculture Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized. Operators shall not serve wild game unless approved by the U.S. Department of Fish and Wildlife. All meats served must be USDA inspected.

060-828 Operators shall prepare and serve resident meals in the home where the residents live. Meals shall be served so that residents eat in a family style manner unless residents choose to eat alone or in their rooms. Normal eating out (for example, restaurant meals, take outs, or picnics) is permitted. Payment for meals eaten away from home for the convenience of the Operator (restaurants, senior meal sites) is the responsibility of the Operator. Meals and snacks as part of an individual recreational outing by choice are the responsibility of the resident.

060-835 Operators shall prepare and post a planned weekly menu of the residents meals and keep menus on file for one year. The ACHP may require additional record keeping if problems with meals or nutrition arise.

060-842 Food shall be stored at appropriate temperatures to prevent spoilage and to protect food from contamination and rodent or insect infestation. The home shall include a properly working refrigerator.

060-849 Food, utensils, dishes and glassware shall not be stored in bedrooms, bathrooms or living areas.

060-856 Utensils, dishes and glassware shall be washed in hot, soapy water, rinsed, and air dried if the home does not have a dishwasher, and stored to prevent contamination.

060-864 Food storage and preparation areas shall be clean and free of offensive odors. Equipment, eating and cooking utensils shall be clean and in good repair.

891-060-900 RESIDENT ACTIVITIES

060-910 Operators, Resident Managers and caregivers shall make available at least six hours of activities to residents each week, not including television and movies. The activities shall be of interest to the residents and should be appropriate to the resident's interests and abilities. Residents may choose whether or not to participate in any activity.

060-930 Operators, Resident Managers and caregivers shall allow and encourage residents to develop talents and learn new skills, relate to other residents in meaningful ways, and to have the choice to take part in the normal activities and upkeep of the home.

060-950 Operators, Resident Managers and caregivers shall directly interact with residents on a daily basis to promote a homelike environment. If the physical characteristics of the Adult Foster Home do not encourage contact between the Operator, Resident Manager, caregivers and residents the Operator must demonstrate how regular positive contact will occur.

060-960 Operators shall insure clear documentation of each resident's weekly six hours

of activities.

PART VI - STANDARDS FOR OPERATION

891-070-100 RESIDENT RECORDS

070-110 Operators, Resident Managers and caregivers shall keep accurate and up to date resident records on file in the Adult Foster Home where the resident lives.

070-120 Resident records maintained by the Operator shall be readily available at the Adult Foster Home to all Resident Managers and caregivers and to representatives of the ACHP conducting inspections or investigations, as well as to residents and their legal representative.

070-130 In all other matters pertaining to confidential records and release of information, Operators shall be guided by the principles and definitions described in OAR Chapter 411, Division 05. A copy of these rules will be made available by the Senior and Disabled Services Division upon request.

070-140 The resident's records shall contain the following information:

(a) Initial screening form. (See MCAR 891-060-224.)

(b) General resident information form. (See MCAR 891-060-310.)

(c) Long Term Care Assessment form for private pay residents. (See MCAR 891-060-240.)

(d) Medical information, including:

(1) Medical history, including the resident's history of hospitalizations, accidents and injuries and relevant incident reports, and a description of any physical, emotional or mental health problems.

(2) Current written and signed physician/nurse practitioner orders.

(3) Any special diets or care instructions prescribed by a physician, including special therapies, treatments, and orders for the use of restraints or delegations.

(4) Guardianship letters, Oregon Directive to Physicians and/or a Power of Attorney for Health Care, if applicable.

(e) Medication administration records.

(f) The care plan.

(g) Copies of the current written house rules and current Residents' Bill of Rights, signed by the resident and/or his/her representative.

(h) A written report of all significant incidents relating to the health or safety of a resident including how and when the incident occurred, who was involved, what action was taken by Operator/staff and the outcome to the resident.

(i) Narrative entries describing the resident's progress documented in ink at least

once a week, dated and signed by the person writing them. Computerized progress notes shall be printed weekly and signed in ink by the person writing them.

(j) A signed copy of the Medicaid Payment Assessment form (Form SDS 512) for Medicaid pay residents.

(k) A signed copy of the contract for private pay residents.

(l) An up-to-date list of the resident's personal belongings kept in the home.

(m) If the Operator manages or handles a resident's money, the Operator shall keep a record of the resident's money. If the Operator has been authorized by a resident or resident's legal representative to handle a resident's money, a dated record of how the resident's money is spent and receipts retained for purchases over $5.00. Receipts shall not be required for purchases made by the resident himself/herself.

(n) Any other information or correspondence about the resident.

070-150 Operators shall keep all resident records on file in the Adult Foster Home for three years.

070-160 If a resident moves from the Adult Foster Home, and with the written consent of the resident or resident's legal representative, copies of medication sheets and an updated care plan, as well as progress notes and personal information sheet shall be transferred with the resident to be used as reference only.

070-170 The falsification or omission of information from resident records shall be a violation of ACHP rules and shall subject the Operator to sanctions.

891-070-200 HOUSE RULES

070-210 Operators shall have written house rules which are in accordance with the ACHP rules. They shall include, but are not limited to, the home's policies on daily and evening visiting hours, smoking, use of intercoms, resident telephone use, mealtimes, kitchen privileges, television, bedtimes, bathing, pets, alcohol use in the home, and other expectations of or restrictions on residents. House rules shall not be in conflict with the Residents' Bill of Rights or the family atmosphere of the home.

070-220 House rules are subject to review and approval by the ACHP.

070-230 If smoking is allowed in the home, the house rules shall designate the smoking areas and shall state that smoking is never allowed in sleeping areas.

070-240 Operators shall include in the house rules daily visiting hours of at least seven hours with at least two hours after 6:00 pm. Operators shall make reasonable accommodations to visitors upon request.

070-245 House rules may deny visitors of a resident if the visitors threaten the health, safety or welfare of the resident or other occupants in the home.

070-250 A copy of the house rules shall be given to and discussed with the resident, their family member or legal representative. It shall be signed by the resident or the

resident's legal representative upon admission to the Adult Foster Home and maintained in the resident records.

891-070-300 POSTINGS

070-310 Operators shall post copies of the following in a prominent place where they can be easily seen by residents and others:

(a) current Multnomah County Adult Foster Home License.

(b) if a conditional license, a statement of the conditions next to the license.

(c) Residents' Bill of Rights.

(d) House Rules.

(e) the home's floor plan with emergency evacuation map.

(f) Inspection Report for the most recent annual inspection.

(g) Licensing Report for the most recent inspection.

(h) range of monthly rates for private pay residents.

(i) Ombudsman poster.

(j) name and telephone numbers of at least one emergency back up caregiver.

(k) ACHP complaint process poster.

(l) weekly menus.

(m) telephone number(s) to provide 24 hour access to the Operator.

891-070-400 TELEPHONE

070-410 The home shall have a working telephone with a listed number.

070-420 The telephone shall be available and accessible in the Adult Foster Home for residents' use with reasonable accommodation for privacy for incoming and outgoing calls.

070-430 Any restrictions and limitations on the use of the telephone by residents shall be specified in the written house rules and shall not violate residents' rights.

070-440 Appropriate use of the residents' personal telephone shall not be restricted by the Operator, Resident Manager or caregiver.

070-450 Restrictions for telephone use for a specific resident shall be included in the care plan with documentation of the specific reason for the restriction, (i.e., behavior management).

070-460 Long distance service shall be available in the Adult Foster Home to residents who should pay for personal long distance telephone calls.

070-470 Residents with hearing impairments (to the extent that they cannot hear over a normal telephone) shall be provided with a telephone in the Adult Foster Home that is amplified with a volume control or is hearing aid compatible.

070-480 The Operator shall notify the ACHP, the resident's family, legal representative and any case manager of a change of the telephone number of the Adult foster Home within 24 hours of the change.

070-490 The emergency 911 number shall be posted on all telephones in the home. Emergency telephone numbers shall be posted by the telephone in the home including an emergency number to reach an Operator who does not live in the home.

891-070-500 MOVING A RESIDENT FROM THE ADULT FOSTER HOME

070-510 Operators shall not request or require a resident to move from the Adult Foster Home or move to another room in the Adult Foster Home without giving the resident, the resident's legal representative, family, case manager and any other appropriate person(s) at least 30 days written notice of the move. This excludes emergency situations where the home or resident's room no longer meets facility physical standards and situations where repairs are needed. The notice shall state the reasons for moving the resident and the resident's right to object and request a hearing.

070-520 A resident may be moved from the home or between bedrooms in a home if the move is the resident's choice or by mutual agreement of the resident and the Operator. This move requires that the resident receive 30 day written notice.

070-530 Operators shall evict residents from the home or move residents between rooms in the home for the following reasons only:

(a) resident's care needs or behavior exceed the ability or classification of the Operator.

(b) welfare of the resident or other residents.

(c) nonpayment for room or board or care or services.

(d) the home is no longer licensed or there is a voluntary surrender of a license.

(e) behavior which poses an immediate threat to self, Operator, Resident Manager, caregivers or others.

(f) behavior which substantially interferes with the orderly operation of the home.

070-540 Residents may waive an Operator's 30 day notice to move in writing.

070-550 To require a resident to give the Operator a 30 day notice prior to a move, the Operator shall include this requirement in the contract.

070-560 All written notices regarding evicting or moving a resident shall include:

(a) the resident's name.

(b) the reason for the proposed termination of residency.

(c) the date of the proposed termination of residency.

(d) the location to which the resident is going, if known.

(e) the right to a hearing and to have the ACHP hold an informal conference.

(f) the name, signature, address and telephone number of the person giving the notice.

(g) the date of the notice.

070-570 If the resident has a medical emergency, the Operator may give less than 30 days' advance notice, but shall give the written notice as soon as possible under the circumstances. This includes situations in which the resident is hospitalized for a medical emergency and the Operator refuses to allow the resident to return to the home. Medical emergency means a change in medical condition that requires immediate care of a level or type that the Operator is unable to provide or behavior that poses an immediate threat to the resident or to other residents or people living in the home.

070-580 Residents may be evicted from the home with less than the 30 day written notice from the Operator with approval of the Director of Aging Services or his/her designee in emergency circumstances. Approval requires a finding that there is immediate threat, or that a delay would jeopardize the life, health, or safety of the resident, other residents, the Operator, employees, or other household members. Findings and approval shall be documented. Residents who move from the home under these circumstances shall not be charged beyond their last day in the home.

070-590 At the request of a resident, approval may be given for the resident to move from the home with less than 30 day written notice to the Operator or as specified in the contract with the approval of the Director of Aging Services or his/her designee. Approval requires a finding by the Director of Aging Services or his/her designee that there is immediate threat, or that a delay would jeopardize the life, health, or safety of the resident, other residents, the Operator, employees or other household members. Findings and approval shall be documented. Residents who move from a home under these circumstances shall not be charged beyond their last day in the home.

891-070-600 RESIDENT HEARING RIGHTS

070-610 A resident who has been or will be evicted or refused the right to return to a home by the Operator shall be entitled to an informal conference with the ACHP and an administrative hearing except in instances when the home is no longer licensed.

070-620 The ACHP will hold an informal conference upon request and before any hearing about an eviction. The ACHP shall send written notice of the time and place of the conference to the Operator, the resident and, at the resident's request, a family member, case manager, Ombudsman, legal representative of resident, and, if the Operator requests it, a representative from a provider association. The purpose of the informal conference is to resolve the matter without a formal hearing.

070-625 The ACHP shall issue a written determination following the conference either approving or disapproving the eviction.

070-630 If the resident is being moved from the Adult Foster Home by an Operator for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the move or notice to move. If a resident is being moved from the Adult Foster Home by an Operator for any other reason, the resident has a right to a hearing within ten days of the notice to move. The Operator shall hold a space available for the resident pending the decision of the hearing.

070-640 ORS 441.605(4) regarding transfer notices and hearings of long term care facilities shall apply to Adult Foster Homes.

070-650 Factors to be considered by the ACHP in a conference and the hearing officer in a hearing in evaluating an eviction to determine whether such action should be approved, conditionally approved or disapproved shall be limited to the following:

(a) Evidence of medical reasons for the action including behavior which substantially interferes with the orderly operation of the home.

(b) Evidence concerning the safety or welfare of the resident, other residents, the Operator, employees or other members of the household.

(c) Evidence of non-payment of monies agreed upon for room, board and/or care.

(d) Evidence that the resident's care needs exceed the ability or classification of the Operator.

(e) Transfer trauma to the resident.

070-660 After reviewing the evidence submitted at the hearing, the hearings officer may sustain, modify, or overrule the ACHP's determination approving an Operator's eviction or may approve, conditionally approve, or disapprove an eviction.

891-070-700 REFUNDS/RETURN OF PERSONAL PROPERTY

070-710 The Operator shall refund any money owed to the resident, the resident's family or legal representative within 30 days of when the resident dies or permanently leaves the home.

070-720 Operators shall make a resident's personal property available within seven days after the resident leaves the home. If the resident does not claim his or her personal property within seven days of leaving the home, the Operator shall give written notice to the resident or legal representative and allow 30 days before disposing of the resident's personal property.

070-730 The Operator may charge a reasonable fee for storage of a private pay resident's belongings beyond 15 days if the contract/admission agreement includes fees for storage.

070-740 The Operator has an obligation to act in good faith to reduce the charge by seeking a new resident to fill the vacancy. The Operator shall refund to the resident who moves any rent for days after the date the room is re-rented.

070-750 If the home closes, the Operator waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

070-755 The Operator shall not charge a resident for payment for more than 15 days after the resident has left the Adult Foster Home after a resident dies or leaves the home for medical reasons and indicates in writing the intent not to return.

070-760 If a resident dies or leaves an Adult Foster Home due to substantiated neglect or abuse or due to conditions of immediate threat of life, health or safety, the Operator shall not charge the resident beyond the resident's last day in the home.

070-770 If the ACHP orders the relocation of resident(s) and/or the refund of money to a resident, Operators shall refund the money owed to the resident within 30 days.

PART VII
STANDARDS FOR ADULT FOSTER HOME FACILITIES

891-080-100 GENERAL CONDITIONS OF THE HOME

080-107 The Adult Foster Home shall meet all applicable zoning, building and housing codes, and state and local fire and safety regulations for a single family residence. It is the responsibility of the Adult Foster Home Operator to ensure that all applicable local codes have been met.

080-121 The home shall be inspected for fire safety using these rules and standards by an inspector designated by the ACHP or by the local fire department. The ACHP may require any additional standards that are recommended by the State Fire Marshall or his/her designee, for a single family residence.

080-128 The buildings of the Adult Foster Home shall be of sound construction and kept clean and in good repair. The grounds shall be kept clean and well maintained.

080-130 Manufactured homes must have been built since 1976 and designed for use as a home rather than a travel trailer. The manufactured homes shall have a manufacturer's label permanently affixed don the taillight end of the unit itself which states it meets the requirements of the Department of Housing and Urban Development. The required label shall read as follows:

> "As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacturer. See date plate."

If such a label is not evident on a mobile home unit, and the Operator believes his/her unit meets the required specifications, he/she must take the necessary steps to secure verification of compliance from the manufacturer.

Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated any further.

080-135 The interior and furnishings of the Adult Foster Home shall be kept clean and in good repair. Walls, ceilings and floors shall be finished to permit frequent washing, cleaning or painting. There shall be no accumulation of clutter, garbage, debris, rubbish or offensive odors.

080-142 All interior walls of the Adult Foster Home shall be at least equivalent to a smoke

barrier design. Buildings will be constructed with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials shall not exceed Class III (76-200) and smoke density shall not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exitway of the Adult Foster Home is composed of readily combustible materials such as acoustical tile or wood paneling, such material must be treated with an approved intumescent surface coating or removed.

080-149 Interior and exterior stairways and steps of the Adult Foster Home shall have properly installed handrails. The yard, approved exits and stairs of the Adult Foster Home shall be accessible and appropriate to the condition of the residents.

080-156 Interior hallways of the Adult Foster Home shall be at least 32" wide. They shall be wide enough to accommodate wheelchairs or walkers if used by the resident(s). Each room, stairway and exitway shall be free of barriers which impede evacuation.

080-163 Each room, stairway and exitway of the Adult Foster Home shall be equipped with working lights and kept adequately lighted, based on the resident's needs. Light bulbs shall be shatterproof or protected with appropriate covers.

080-170 There shall be at least 150 square feet of common living space and sufficient appropriate furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space shall not be located in an unfinished basement or garage(s) unless such space was constructed for that purpose or has otherwise been legalized under permit. There shall be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space will be required for each day care person or relative receiving care.

080-177 The Adult Foster Home shall be furnished to meet the needs of the residents.

080-184 Swimming pools, hot tubs, spas, or saunas shall not be accessible to residents without supervision. They shall also be equipped with safety barriers and devices designed to prevent accidental injury to the residents.

080-191 Operators shall keep first aid supplies and a first aid manual available at all times.

080-193 The address of the Adult Foster Home shall be easily visible from the street.

080-195 Smoking is not permitted in any bedroom of the Adult Foster Home including that of a resident, Operator, Resident Manager, caregiver, boarder, or family member.

080-197 Operators shall submit a copy of a revised floor plan of the Adult Foster Home to the ACHP whenever it changes or before remodeling is begun.

891-080-200 HEALTH AND SANITATION

080-210 Operators shall use a public water supply for the Adult Foster Home if available. If a non-municipal water source is used, a sample shall be collected by the licensor or sanitarian and tested at the Operator's expense for coliform bacteria yearly and records shall be retained for three years. Corrective action shall be taken to ensure potability.

080-220 Septic tanks or other non-municipal sewage disposal system shall be in good working order.

080-230 Commodes shall be emptied frequently and cleaned daily.

080-240 Garbage and refuse shall be suitably stored in readily cleanable, rodent proof, covered containers. Garbage must be removed at least once a week.

080-250 Operators shall store soiled linens and clothing in closed containers kept separate from the bedrooms and the kitchen, dining and food preparation and storage areas. Clothing and bed linens soiled by human waste shall be placed in closed containers, emptied daily and promptly laundered. Soiled paper products used for cleaning incontinent residents shall be immediately disposed of in waterproof bags or containers.

080-260 Sanitation for household pets and other domestic animals shall be adequate to prevent health hazards. Proof of rabies or other vaccinations required by a licensed veterinarian shall be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to residents or visitors.

080-270 Operators shall keep the home free of insects and rodents. Immediate action shall be taken if the home becomes infested to protect the health and safety of residents. Screens shall be installed on doors and windows used for ventilation.

080-280 Operators shall regularly clean surfaces, floors and rugs. Personal property shall be stored in a neat and orderly manner to keep the home free of clutter and obstructions.

080-290 Universal precautions for infection control shall be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

080-299 Operators, Resident Managers and caregivers shall take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Containers holding sharp objects or medical waste shall not be stored in food preparation areas. Disposal shall be according to local regulations and resources (ORS 459.386 through ORS 459.405).

891-080-300 BATHROOMS

080-310 Bathrooms shall be kept clean and free from objectionable odors.

080-320 The Adult Foster Home shall have at least one toilet, one sink, one tub or shower and one mirror for each six household occupants including residents, day care persons, room and board occupants, and the Operator and/or caregiver's family excluding children under two years old). A sink shall be located near each toilet, and a toilet and sink shall be located on each floor occupied by residents.

080-330 Bathrooms shall have grab bars for toilets, tubs, and/or showers for resident's safety and have barrier-free access to toilet and bathing facilities. Alternative arrangements for non-ambulatory residents must be appropriate to the needs of

the resident for maintaining good personal hygiene.

080-340 Bathrooms shall have a finished interior, with floors, walls, tubs/showers, toilets, sinks and mirrors in good repair.

080-350 Bathrooms shall be adequately ventilated with a window and window covering or other means of bringing in fresh air from the outside. A window must have a surface area of not less than one twentieth of the floor area of the bathroom with a minimum of three square feet and a minimum clear opening of one and 1/2 square feet.

080-360 Bathrooms shall allow for privacy and have a door which opens to a hall or common use room, unless the bathroom is used only by a resident who occupies a bedroom adjacent to that bathroom. Residents shall not have to walk through another person's bedroom to get to a bathroom.

080-370 Hot and cold water shall be available at each tub, shower, and sink in sufficient supply to meet the needs of the residents. Hot water temperature shall be supervised for persons unable to regulate water temperature.

080-380 Shower enclosures shall have nonporous surfaces. Glass shower doors shall be tempered safety glass. Tubs and shower shall have nonslip floor surfaces. Shower curtains shall be kept clean and in good condition.

080-390 The Operator shall provide adequate supplies of toilet tissue for each toilet and soap for each sink. Residents shall be provided with individual towels and wash cloths which are laundered in hot water at least weekly. Appropriate racks or hooks shall be available for drying bath linens. If individual cloth hand towels are not provided, roller dispensed hand towels or individually dispensed paper towels shall be provided for residents.

891-080-400 BEDROOMS

080-407 Bedrooms for all household occupants shall:

(a) have been constructed as a bedroom when the home was built or remodeled under permit.

(b) be finished with walls or partitions of standard construction which go from floor to ceiling.

(c) have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom.

(d) be adequately ventilated and lighted with at least one openable window which meets fire regulations.

(e) be at least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright.

(f) have ceiling heights of not less than 7 feet 6 inches covering at least one half of the area of the room.

080-414 Bedrooms shall not contain furnaces, laundry tubs, washers, dryers, freezers,

dishwashers or other common use equipment.

080-421 The Adult Foster Home shall have at least one bedroom for use by the Operator, Resident Manager or other caregivers. Operators, Resident Managers and caregivers shall not share bedrooms with residents or sleep in common living areas or rooms not approved as bedrooms. All other occupants shall be housed in bedrooms meeting the criteria described in this section.

080-428 No more than two people shall occupy a bedroom, not including children under five years old.

080-435 Resident bedrooms shall be in close enough proximity to the Operator to alert the Operator to night time needs or emergencies, or shall be equipped with a call bell or intercom. Intercoms shall not violate the resident's right to privacy and must have the capability of being turned off by or at the resident's request.

080-442 Use of interior video monitors detracts from a home-like environment and Operators shall not use them in resident bedrooms, bathrooms or living areas.

080-449 Bedrooms shall be on ground level for residents who are non-ambulatory, have impaired mobility, or are cognitively impaired. Residents on the second floor or in the basement must demonstrate their capability to self exit. Lifts or elevators are not an acceptable substitute for a resident's capability to ambulate stairs.

080-456 Sleeping rooms located on a second floor or in a basement shall have an approved emergency means of exit. Split level homes shall be evaluated according to accessibility, emergency exit and evacuation capability of residents. Bedrooms located on stories above the second floor shall not be used for sleeping purposes.

080-463 Bedrooms shall be adequately heated with a permanent source of heat.

080-470 Each bedroom shall have sufficient separate closet space, a private dresser and secure storage space for each resident's clothing and personal effects including hygiene and grooming supplies. Residents shall be allowed and encouraged to keep and use reasonable amounts of personal belongings.

080-477 Drapes or shades for windows shall be in good condition and allow privacy for residents.

080-484 There shall be an individual bed at least 36 inches wide for each resident consisting of a mattress and springs, or the equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used by residents. Each bed shall have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases shall be laundered at least weekly, and more often if soiled. Waterproof mattress covers will be used for incontinent residents. Day care persons may use a cot or rollaway bed if bedroom space is available which meets the requirements of these rules. Resident beds may not be used by day care persons.

080-491 All bedrooms in the home shall have at least one window or exterior door to permit venting and for emergency escape or rescue. This escape and rescue window or door shall:

(a) Be easily openable from the inside without the use of keys, tools, or any special knowledge or effort.

(b) Provide a clear opening of not less than 5.7 square feet (821 square inches). The minimum net clear opening height dimension shall be 24 inches (by 34 inches wide); the minimum net clear opening width dimension shall be 20 inches (by 41 inches high). Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(c) Have a finished sill height not more than 44 inches from the floor level, or not more than 48" if the sill height met applicable code requirements at the time the bedroom was constructed and if an exception is granted by the ACHP. For sill heights above 48 inches, application may be made for a building permit to install a permanently attached step(s) (minimum width 30 inches, rise of 4 to 8 inches, and run of 9 to 12 inches) or other aids to window exit which are constructed so the sill height is no more than 44 inches from the top of the step(s). Upon approval of the permit and final inspection, the ACHP may grant an exception, but only if the step(s) or aids are readily accessible and not used for storage, and only if their use is within the demonstrated evacuation capability of the residents of the room. In no case can residents who are non-ambulatory or have limited mobility use such bedrooms.

(d) Be free of any obstacles that would interfere with the window being used as an emergency exit.

891-080-500 HEATING AND COOLING SYSTEMS AND ELECTRICAL EQUIPMENT

080-510 Heating and electrical equipment, including wood stoves, shall be installed in accordance with manufacturer's specifications and all applicable fire and safety regulations. Such equipment shall be used and maintained properly and be in good repair.

080-520 Room temperatures shall be at a safe and comfortable temperature for the residents. The Operator shall have ventilation, fans or air conditioning available for use in hot weather, and keep the rooms at a comfortable and safe temperature for the residents at all times. When residents are home, minimum temperatures shall be no less than 70 degrees Fahrenheit during waking hours and 60 degrees Fahrenheit during sleeping hours.

080-530 Operators shall not use unvented portable oil, gas or kerosene heaters. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used only if approved by the State Fire Marshall's guidelines. State Fire Marshall guidelines refer to Appendix I-E of the Uniform Fire Code of the State of Oregon which are available from the ACHP.

080-540 Operators shall not use extension cords in place of permanent wiring.

080-550 Portable air conditioners shall not block the exit window and shall be UL listed and used only in accordance with manufacturer's instructions.

080-560 Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier shall be installed 36 inches around woodstoves to prevent accident or injury to residents.

080-570 Fireplaces shall not be used to burn trash. If the fireplace is used, chimneys shall be properly maintained and cleaned yearly so no accumulation of creosote or combustible residue can accumulate.

080-580 Operators who do not have a permit verifying proper installation of an existing woodstove shall have the woodstove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule.

891-080-600 DOORS AND LOCKS

080-610 Exit and interior doors of the Adult Foster Home shall have simple and easy to operate hardware that cannot be locked to prevent exit. Hasps, sliding bolts, hooks and eyes and double key deadbolts shall not be used. There shall be no more than two locks per door, including a lock in the handle. All hardware shall be mounted no more than 48 inches from the floor. All locks must be openable from the inside without the use of a key, tool, special knowledge or effort or more than one motion.

080-620 Adult Foster Homes with one or more residents who are prone to wander out of doors shall have an activated door alarm system to alert the Operator, Resident Manager and caregivers of an unsupervised exit by a resident.

080-630 Storm windows or doors, bars, grills, grates or similar devices may be installed on escape and rescue windows or doors only if such devices are equipped with approved release mechanisms which can be easily opened from the inside without the use of a key, tool, special knowledge or effort or more than one motion.

891-080-700 FIRE SAFETY

080-710 Operators shall post an up-to-date evacuation plan for the Adult Foster Home with the locations of each bedroom, all windows and doors, the location of smoke detectors, fire extinguishers, and any sprinkler shut-offs. The evacuation plan shall clearly indicate the path occupants shall use to evacuate the home in an emergency.

080-720 Smoke detectors shall be installed in accordance with the manufacturer's specifications and be installed in each bedroom, in hallways or access areas that adjoin bedrooms, family room or main living area where residents congregate, any interior designated smoking area, and in basements. Smoke detectors shall be installed at the top of each stairway. Ceiling placement of smoke detectors is recommended. Detectors shall be equipped with a device that warns of low battery when battery operated or with a battery back-up if hard wired.

080-730 All smoke detectors shall contain a sounding device or be interconnected to other detectors in order to provide an alarm which is loud enough in all sleeping rooms to wake occupants who are not hearing impaired.

080-740 Bedrooms used by hearing impaired residents must be equipped with a visual/audio or vibration alerting smoke alarm to wake the residents when they are asleep.

080-750 The Operator shall maintain exits, detectors and extinguishers in functional condition. If there are more than two violations of failure to maintain battery

operated detectors in working condition in a 12 month period of time, hard-wiring of the detectors into the electrical system shall be required.

080-760 At least one fire extinguisher classed as 2A-10BC shall be mounted in a visible and readily accessible location on each floor, including basements. Extinguishers shall be recharged every six years. Extinguishers shall be mounted with the top no higher than five (5) feet above the floor. Fire extinguishers shall be checked at least once a year by a technician qualified in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose. All fire extinguishers shall be tagged with the date of the last inspection and/or service.

080-770 Operators shall keep at least one plug in rechargeable flashlight readily accessible on each floor of the home for emergency lighting.

080-780 If an Operator allows smoking in the Adult Foster Home, smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping areas, areas where oxygen is used, or in areas where flammable materials are stored. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted.

891-080-800 EVACUATION

080-808 An evacuation plan to be used in the event of an emergency shall be developed and rehearsed with all occupants.

080-816 Operators, Resident Managers and all caregivers shall be required to demonstrate the ability to evacuate all occupants from the facility within three minutes to the closest point of safety outside the home. Drills will be held at least once every 30 days in the first year of operation and at least every 60 days thereafter, with at least one drill practice per year occurring during sleeping hours. A record shall be maintained of evacuation drills. Records of drills shall be maintained for three years and include date, time for full evacuation, names of residents requiring assistance for evacuation, and signature of person conducting the drill.

080-820 Within 24 hours of arrival, any new resident, Resident Manager or caregiver shall be shown how to respond to a fire alarm, shown how to participate in an evacuation drill from the home in an emergency, and receive an orientation to basic fire safety. New Resident Managers and caregivers will also be oriented in how to conduct a fire drill.

080-824 If there are continual problems in demonstrating this evacuation time, conditions shall be applied to the license which include, but are not limited to, reduction of the capacity of the home, adding staff, relocating one or more residents, moving residents within the home, changing the classification of the home, hard wiring smoke detectors into the home's electrical system, installing a sprinkler system, increasing the number of fire drills, installing fire barriers, increased smoke detector systems or alarms or increased fire and life safety protection.

080-832 All residents shall participate in fire drills unless the Operator believes a resident may be harmed by participation in a fire drill and a written assessment from a physician or Registered Nurse is on file stating that such participation is medically contraindicated for the resident. In the event the resident cannot participate, substitutes for such residents of similar size shall be used in conducting fire drills to determine Operator's, Resident Manager's or caregiver's evacuation capability.

080-840 Operators shall not place residents who are unable to walk without assistance or not capable of self-preservation in a basement, split-level, second story or other area of the Adult Foster Home that does not have an exit at ground level. Such residents shall be given ground level rooms.

080-848 Stairs shall have a riser height of between 6-8 inches and tread width of between 8 - 10 ½ inches.

080-856 All common use areas of the Adult Foster Home and exitways must be barrier free and corridors and hallways shall be a minimum of 32 inches wide or as approved by the authority having jurisdiction. Any bedroom window identified as an exit shall be free of any obstacles, at least the width of the window, that would interfere with it being an exit.

080-864 There must be two safe means of exit. Operators whose sleeping rooms are above or below the first floor may be required to demonstrate a fire exit drill from that room, using the secondary exit and still evacuate all the occupants in three minutes, at the time of licensure, renewal, or inspection.

080-872 There shall be a wheelchair ramp from a minimum of one exterior door if non-ambulatory persons live in the home. All wheelchair ramps shall be constructed under appropriate permit. Wheelchair ramps shall have non-skid surfaces, handrails, and have a maximum slope of 1 inch rise in each 12 inches of distance. The maximum rise for any run without a platform shall be 30 inches. Operators shall bring existing ramps into revised compliance.

080-880 An Adult Foster Home located more than five miles from the nearest fire station or those of unusual construction may be required to have a complete fire alarm system installed which meets the requirements of the NFPA 72A and 72E and with approved automatic reporting to the local jurisdiction providing fire protection.

080-888 Operators whose homes are located in areas where there is a danger of natural disasters which require rapid evacuation such as forest fires or flash floods, must be aware of community resources for evacuation assistance.

891-080-900 STORAGE OF FLAMMABLE LIQUIDS, HAZARDOUS SUBSTANCES, AND GUNS

080-910 Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals. Storage of flammable liquids is prohibited in living areas.

080-920 Cleaning supplies, poisons, insecticides, etc. shall be stored in original labeled containers, safely away from bedrooms, food preparation and storage areas, dining areas and medication storage areas. Kitchen cleaning supplies may be kept in a separate enclosed space in the kitchen.

080-930 Guns must be stored, unloaded, in a locked cabinet. The gun cabinet must be located in an area of the home that is not readily accessible to residents. Ammunition shall be stored and locked in a separate location from the gun.

891-090-100 ABUSE, NEGLECT AND EXPLOITATION OF ADULT FOSTER HOME RESIDENTS

090-110 Operators, Resident Managers and caregivers shall exercise all reasonable precautions against conditions which could threaten the health, safety or welfare of Adult Foster Home residents. Anyone who lives or works in an Adult Foster Home shall not inflict, allow to be inflicted, or expose residents to abuse, neglect or exploitation. Abuse, neglect or exploitation is a violation of ACHP rules and may subject the offender to civil and/or criminal proceedings. Operators shall be responsible for preventing abusive or neglectful treatment or exploitation of any resident by any occupant in the AFH.

090-120 Abuse of an Adult Foster Home resident means any verbal or physical action or mistreatment which causes or threatens to cause physical or mental pain, injury or discomfort to a resident which is inconsistent with resident needs or prescribed resident care.

090-130 Neglect is a kind of abuse which includes any action or inaction which causes or threatens to cause physical or mental harm to a resident which is inconsistent with resident needs and prescribed resident care. Neglect may be intentional, unintentional, careless, through reckless endangerment, inadequate monitoring of residents by an Operator, Resident Manager or caregiver, or because of ignorance, indifference, incompetence, poor health, inadequate experience, training or skill.

090-140 Abuse or neglect may result from the conduct of an Operator, Resident Manager, caregiver or other household member towards a resident of the home.

090-145 Abuse or neglect shall include but is not limited to the following:

(a) willful infliction of physical pain or injury, including physical assaults such as hitting, choking, pushing, shoving, pinching, kicking, scratching, or using any kind of unreasonable force.

(b) any physical injury caused by other than accidental means or which appears to be different from the explanation given for the injury.

(c) punishment, including but not limited to food, clothing, eyeglasses, hearing aids, walkers or wheelchairs.

(d) using psychoactive medications or physical restraints, without a written order or contrary to a written order from a physician or qualified practitioner, or to discipline or punish a resident; or for the convenience of the Adult Foster Home.

(e) abandonment, including deserting or leaving a resident without adequate care or supervision.

(f) use of derogatory or inappropriate names, phrases, or profanity, verbal abuse, unnecessary yelling, harassment, ridicule, threats, coercion, menacing behavior or intimidation, cursing or inappropriate sexual comments.

(g) emotional abuse, mistreatment, or any pattern of psychologically destructive

behavior (for example, rejecting, isolating, terrorizing, ignoring or corrupting a resident). This includes the emotional impact on a resident of Operators, Resident Managers and caregivers or other household members or visitors abusing each other while on the premises of the Adult Foster Home.

(h) sexual abuse or exploitation, including but not limited to:

(1) inappropriate language or physical contact between an Operator, Resident Manager, caregiver or other household member and a resident,

(2) inappropriate language or inappropriate physical contact between nonconsenting residents,

(3) the failure of an Operator, Resident Manager or caregiver to discourage sexual advances of residents toward the Operator or caregiver, or

(4) failure of the Operator, Resident Manager or caregiver to discourage inappropriate language or inappropriate sexual contact between nonconsenting residents.

(i) withholding or failure to provide adequate food, shelter, clothing, supervision, socialization, care or services necessary to ensure the health, safety and welfare of residents.

(j) withholding or failing to seek adequate medical attention and care.

(k) improper administration, supervision and safe guarding of medications, including failure to follow medication orders.

(l) failure to provide bedding or adequate changing of bedding or clothes.

(m) failure to help with a resident's daily personal grooming and regular bathing, as needed.

(n) failure to make a reasonable effort to discover what care is necessary for the wellbeing of a resident.

(o) failure to provide and maintain a safe, sanitary, and secure home.

(p) failure to provide the staffing needed to care for the residents; failure to adequately train and supervise Resident Managers and caregivers.

(q) Placing unreasonable restrictions which violate rights guaranteed to the resident by the Bill of Rights.

090-148 Exploitation means any act or absence of action that deprives or threatens to deprive the resident of personal resources or entitlements, and that is inconsistent with resident needs or prescribed resident care. Exploitation includes financial exploitation or mismanagement, including, but not limited to:

(1) taking or disposing of any funds or property belonging to a resident.

(2) buying property from or selling property to a resident.

(3) becoming a resident's legal representative, or attorney in fact.

(4) commingling the resident's funds with the Operator's, Resident Manager's, caregiver's or another person's funds.

(5) borrowing from or loaning money to residents; pledging any resident's funds.

(6) spending a resident's personal funds inappropriately or without authorization from a resident or resident's family member.

(7) entering into inappropriate financial arrangements with a resident.

(8) adding an Operator's, Resident Manager's, caregiver's or a member of the their family's name to a resident's bank account, legal contract or property or credit cards.

(9) making unreasonable rate increases.

(10) requiring more than 30 days advance payment for care.

(11) witnessing a will in which an Operator, Resident Manager, or caregiver or Operator's, Resident Manager's or caregiver's family is a beneficiary.

(12) requesting or requiring the Medicaid-funded residents to pay more than state authorized Medicaid rates.

(13) perfecting or foreclosing a lien in violation of ORS Chapter 87.

(14) theft or misuse of money or gifts intended for the residents.

(15) charging excessive rates for care or services.

090-150 Operators, Resident Managers, caregivers and any person with reasonable cause to believe that abuse, neglect or exploitation has taken place in an Adult Foster Home shall immediately make a report to the ACHP or a local law enforcement agency.

PART IX - INSPECTIONS - CORRECTION OF VIOLATIONS

891-100-100 INSPECTIONS

100-107 The ACHP may conduct unannounced inspections of an Adult Foster Home, in situations including but not limited:

(a) licensing inspections for new and renewal licenses.

(b) to determine if deficiencies noted in a home have been corrected.

(c) to monitor compliance with ACHP rules and standards.

(d) to monitor resident care.

(e) to determine if a home is operating without a license.

(f) whenever the ACHP receives a complaint of violations to the ACHP rules.

100-114 The Operator will be given a copy of the licensing and monitoring Inspection Report at the time of the inspection identifying any areas of non-compliance and specifying a time frame for correction set by the ACHP. The timeframe shall not exceed 60 days from date of inspection. The ACHP may follow up with an additional an Licensing Report citing deficiencies and timeframes for corrections.

100-121 In the course of an investigation, the ACHP may require that an RN conduct an assessment of the nursing care needs of any residents of an Adult Foster Home to evaluate the level of nursing care required by the resident(s), and/or the classification of the Operator/home, and/or the appropriate ability of personnel to be providing nursing care.

100-128 ACHP staff shall have full access and authority to examine and copy facility and resident records. The ACHP shall also have access to inspect the entire physical premises, including Operator/family areas, including the buildings, grounds, equipment and any vehicles.

100-135 The ACHP inspection shall also include the private living area of the Operator, Resident Manager and caregiver and their families only to the extent to determine fire, sanitation and safety hazards or to respond to a specific complaint.

100-142 The ACHP shall have authority to interview, tape record and photograph Operators, Resident Managers, caregivers, residents, and other household members. Interviews shall be conducted in private and kept confidential. Any photos taken or tape recordings made during inspections and interviews may not be subject to public access if they include confidential information but may be used in enforcement hearings.

100-149 Operators must inform and authorize all Resident Managers and caregivers of their duty to permit the ACHP to enter the home at any time to carry out inspections, interviews and monitoring.

100-156 The ACHP shall conduct unannounced inspections without advance notice to the Operator, Resident Manager or caregiver of the home. The ACHP shall not give advance notice of any inspection if the ACHP believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these administrative rules. The ACHP may also conduct announced inspections.

100-163 If Operators, Resident Managers or caregivers deny the ACHP access for inspections or interviews, the ACHP shall inform the Operator, Resident Manager or caregiver of the requirements of the rules and may, if access is still denied, obtain a search warrant and impose administrative sanctions.

100-170 If an Operator denies access to the home during an investigation of a complaint of abuse or neglect, the ACHP may obtain the help of law enforcement agents to gain immediate access to the home and residents.

100-177 ACHP inspectors shall respect the private possessions of Operators, Resident Managers, caregivers, residents and other household members when carrying out inspections.

100-184 Operators, Resident Managers and caregivers shall permit state or local health and safety inspectors, Bureau of Buildings inspectors or other inspectors to enter

and inspect the home.

100-191 The State Long Term Care Ombudsman or designee has access to all resident and facility records. This does not include Certified Ombudsman volunteers who only have access to facility records relevant to caregiving as well as resident records with written permission from the resident, the resident's family or legal representative.

891-100-200 PROCEDURES FOR THE CORRECTION OF VIOLATIONS

100-210 If the ACHP determines that there has been a violation of any ACHP rule, the ACHP shall notify the Operator of:

(a) the violation,

(b) the rule violated,

(c) correction procedures,

(d) timelines for correction of the problem, where applicable,

(e) a written warning or sanction, as needed, to protect the health, safety and welfare of residents,

(f) the right to an administrative conference,

(g) the right to a hearing if a sanction is imposed, and

(h) the right to request an exception as provided in MCAR 891-030-100, if applicable.

100-220 Operators shall correct any violation as soon as possible but in no case beyond the timeline specified by the ACHP.

100-230 For violations that present an immediate threat to the health, safety or welfare of residents, the notice of violation shall order the Operator to correct the violations no later than 24 hours after receipt of the notice of violation. The ACHP shall inspect the home after the 24-hour period to determine if the violations have been corrected as specified in the notice of violation.

100-240 In cases other than those involving the health, safety or welfare of a resident, the ACHP shall prescribe a reasonable time for elimination of a violation which shall not exceed 30 days after notice of the violation (except at provided in MCAR 891-100-250).

100-250 If it is determined by the ACHP that the correction is not possible within 30 days, the ACHP may approve a reasonable time in excess of 30 days.

100-260 If there is an immediate threat to the residents, the ACHP may immediately suspend the license and make arrangements to move the residents.

891-200-100 COMPLAINTS AND COMPLAINT INVESTIGATIONS

200-105 The ACHP shall provide the Adult Foster Home with a complaint poster that the Operator shall post in a conspicuous place. The complaint poster shall list the ACHP telephone numbers and explain how to make a complaint.

200-110 The ACHP shall cause all complaint investigations to begin within two hours if the complaint alleges that a resident has been injured, abused or neglected, and that there is an immediate threat to any resident, or that a resident has died or been put in a hospital because of abuse or neglect.

200-115 The ACHP shall cause investigations of other complaints to begin by the end of the next working day or at a time appropriate to the nature of the complaint.

200-120 The ACHP shall take immediate actions to protect the health, safety and welfare of residents when the ACHP receives a complaint of abuse or neglect, regardless of whether the investigative report is completed, and whenever the ACHP finds that abuse or neglect is placing or could place a resident in danger or cause the resident physical or mental harm before the danger could be eliminated by regular enforcement procedures.

200-125 The ACHP shall cause all complaint investigations to be completed, including a written report, within 60 days unless a concurrent criminal investigation requires more time or unless the complaint investigation cannot be completed due to Operator noncooperation or other circumstances beyond the ACHP's control.

200-130 The ACHP shall initiate appropriate action within 30 days of the completion of the investigative report.

200-135 If the ACHP cannot meet the time requirements in MCAR 891-200-125 and MCAR the 891-200-130, Director of Aging Services or his/her designee may grant an extension to these requirements.

200-140 The ACHP's failure to meet the time frame guidelines in this section shall not affect the ACHP's ability to protect the health, safety and welfare of the residents.

200-145 The ACHP investigations shall include

(a) unannounced visits to the home.

(b) observing, recording, photographing or copying of all relevant evidence.

(c) interviewing all available persons identified by any source as having relevant knowledge of circumstances about the complaint, including the alleged perpetrator(s) and alleged victim(s), if possible. Interviews shall be conducted in private and treated as confidential.

200-150 Complaint investigators shall interview the Operator and shall advise the Operator of the nature of the complaint and give the Operator the opportunity to submit any relevant information.

200-155 The ACHP shall not to release information about the content of the complaint

investigation until the complaint investigation is completed.

200-160 In investigation reports, the identity of the resident(s), the complainant, and any witnesses shall be kept confidential. The Operator's name and name of any other person identified as the perpetrator of a rule violation is not confidential.

200-165 A report shall include: the Operator's name and Adult Foster Home address, the investigator's name, observations, a review of relevant documents and records, a summary of witness statements, and a conclusion.

200-170 The investigative report shall list each allegation and shall state whether each allegation was found to be true. (more likely than not to have occurred or substantiated), found to be false (more likely than not to have not occurred or unsubstantiated), or found unable to be determined true or false (unable to substantiate).

200-175 The ACHP shall mail a copy of the completed investigative report within seven (7) days of completion to the following people:

(a) the person who made the complaint, if known, unless the complainant requests anonymity.

(b) the resident(s) involved and any person designated by the resident to receive the information.

(c) the Operator of the Adult Foster Home involved.

(d) the Long Term Care Ombudsman.

(e) the State Senior and Disabled Services Division.

200-180 The ACHP shall inform the persons receiving the complaint report of the right to give additional information about the report to the ACHP within seven (7) days of receipt.

200-185 The ACHP shall review responses and may reopen the investigation based on the new information.

200-190 The investigative report, and any responses shall become part of the public complaint file.

200-199 Any person shall have the right to inspect files of public complaint investigation reports and to make photocopies at reasonable cost.

891-200-200 PROHIBITING RETALIATION AGAINST PERSONS MAKING COMPLAINTS

200-210 The Adult Foster Home Operator shall not retaliate against any resident after the resident or someone acting on his/her behalf has filed a complaint by increasing charges, decreasing services, rights or privileges, threatening to increase charges or decrease services, rights or privileges, by taking or threatening to take any action to coerce or compel the resident to leave the Adult Foster Home or by abusing or threatening to harass or abuse a resident in any manner.

200-220 An Operator, Resident Manager or other caregiver shall not retaliate against any complainant, witness or employee of an Adult Foster Home for making a report

or being interviewed about a complaint or being a witness. Retaliation can include restriction of access to the home, to a resident, or dismissal or harassment of an employee.

200-230 The complainant shall have immunity from any civil or criminal liability with respect to the making or content of a complaint made in good faith. Immunity under this subsection does not protect self-reporting Operators, Resident Managers or caregivers from liability for the underlying conduct that is alleged in the complaint.

200-240 Operators, Resident Managers and caregivers shall not make or cause to be made a bad faith complaint.

PART XI - SANCTIONS

891-300-100 ADMINISTRATIVE SANCTIONS

300-110 ACHP sanctions may include but are not limited to:

(a) fines.

(b) conditions on a license.

(c) denial, suspension, revocation or non-renewal of a license.

300-120 The ACHP shall deny, revoke, or refuse to renew a license where it finds:

(a) There exists a threat to the health, safety or welfare of any resident.

(b) There is reliable evidence of abuse, neglect or exploitation of any resident.

(c) There has been significant non-compliance with these rules;

(d) There is significant non-compliance with local regulations and ordinances or any other state or federal law or rule applicable to the health and safety of residents and caring for residents in an Adult Foster Home.

(e) The applicant or Operator has been convicted of one or more crimes described in MCAR 891-050-450 or MCAR 891-050-455.

(f) The Operator knowingly employs Resident Managers and caregivers, or allows household members, or any other person (excluding the residents and their visitors) to live in, work in, or be in the Adult Foster Home who have been convicted of one or more crimes as described in MCAR 891-050-450.

(g) The applicant or Operator provides false information regarding their criminal history.

(h) An applicant whose license has been revoked, voluntarily surrendered during a revocation process, or whose application has been denied for reasons of abuse, neglect, threat to the health, safety or welfare of any resident(s), or failure to possess the physical health, mental health, ability or good personal character necessary to be an Operator and the time frame specified in the order revoking or denying the license has not passed.

(i) An Operator or applicant has failed to pass the Operator's Qualifying Test within the last twelve months.

300-130 The ACHP may impose sanctions if an applicant, Operator, Co-Operator, Resident Manager or caregiver:

(1) is not in compliance with the rules of the Adult Care Home Program.

(2) is non-compliant with local codes, ordinances, state or federal law, or rules applicable to the care of residents of Adult Foster Homes.

(3) has given fraudulent or misleading information to the ACHP or other government agency.

(4) has a prior license denial, suspension, revocation or has been refused a license renewal in Multnomah County or any other county or state.

(5) is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse or neglect of the residents, creating a threat to the residents or failure to possess physical health, mental health or good personal character, unless the applicant or Operator can demonstrate to the ACHP by clear and convincing evidence that the person does not pose a threat to the residents. For purposes of this rule, an applicant or Operator is "associated with" a person if the applicant or Operator:

(a) Resides with the person.

(b) Employs the person in the Adult Foster Home.

(c) Receives financial backing from the person for the benefit of the Adult Foster Home.

(d) Receives managerial assistance from the person for the benefit of the Adult Foster Home.

(e) Allows the person to have access to the Adult Foster Home.

(f) Rents or leases the Adult Foster Home from the person.

(6) has obstructed the investigation of a complaint, interview or any action meant to administer or enforce ACHP rules or laws.

(7) has accumulated complaints that threaten the health, safety or welfare of residents.

(8) has a medical, psychiatric or psychological problem or an alcohol or drug use problem which interferes with the ability to provide good care or to operate an Adult Foster Home.

(9) has had a complaint, that upon initial review indicates evidence of immediate threat to the health, safety or welfare of residents.

(10) has knowingly failed to file an application or to report information required by the ACHP rules.

(11) has failed to pay a fine within time limits specified by the ACHP.

(12) has operated or continues to operate an unlicensed Adult Foster Home.

(13) fails to comply with an administrative sanction, including a condition imposed on a license.

(14) has previously surrendered a license while under investigation or administrative sanction.

(15) has denied access to ACHP staff to enter the home.

(16) such other circumstances as may be established by the ACHP.

891-300-200 ACHP FINES

300-210 The ACHP may levy fines against an Operator who violates the Multnomah County Administrative Rules.

300-220 If an Operator does not fully correct a violation which has resulted in a fine within the specified timeframe, the fines may be increased.

300-230 The ACHP shall consider the following factors in setting the fine amounts for specific rule violations:

(a) the degree of harm caused to residents, if any.

(b) whether the violation threatens or threatened the health, safety or welfare of residents.

(c) the seriousness, frequency and duration of the rules violation, and the violator's intent.

(d) past history of violations of rules or laws and corrections taken in response to rule violations.

300-240 The ACHP may levy fines of up to $1000.00 for each separate violation including multiple violations of the same rule. The ACHP may levy additional fines up to $250.00 per day up to $1000.00 per violation for continuing violations until the violation is discontinued.

300-250 The ACHP shall impose a mandatory fine of not less than $250.00 for an Operator's failure to have an approved Resident Manager or caregiver on duty 24 hours a day in the Adult Foster Home.

300-260 The ACHP shall impose a mandatory fine of not less than $250.00 on an Operator who admits a resident to the home knowing the resident's care needs exceed the Operator's license classification.

300-270 The failure to pay a fine within time limits specified by the ACHP, shall result in an automatic penalty of up to $250.00 per day to a maximum of $1,000.00, until the fine and penalties are paid in full.

300-280 If the ACHP levies a fine against an Operator, the ACHP shall give a notice to the Operator that provides the following information:

(a) the violation,

(b) a reference to the particular section of rule or statute involved,

(c) a brief statement of the circumstances of the violation,

(d) the amount of the fine,

(e) the date the fine is due,

(f) penalties if the fine is not paid,

(g) a notice that failure to pay the fine shall subject the violator to further legal action,

(h) a statement of the right to request a hearing, and

(i) that the notice will become a final order if no hearing is requested in twenty days.

300-290 An Operator shall have twenty days from the date of the notice to request a hearing in writing. If a timely written request is not received, the fine shall become a final order.

300-299 Unless the fine is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the Operator.

891-300-300 CONDITIONS PLACED ON A LICENSE

300-310 The ACHP shall have the authority to place conditions on a license that limit the scope of the license or impose additional requirements on the Operator. License conditions are effective immediately and are the final order of the ACHP unless later rescinded through the hearings process.

300-320 The ACHP may place conditions on a license when the ACHP finds:

(a) the Operator is not in full compliance with ACHP rules

and/or

(b) a threat exists to the health, safety or welfare of the residents that may be remedied by placing a condition on the license.

300-330 Conditions on a license must directly relate to a risk of harm or potential harm to residents and may include but are not limited to:

(a) restricting the total number of residents and occupants of the home.

(b) restricting the number of residents or impairment level of residents within a classification level whom the Operator may care for.

(c) restricting the type of care the home may provide.

(d) requiring additional staff or staff qualifications to meet the resident's care

needs.

(e) requiring additional training of Operator/staff to meet specific resident care needs.

(f) restricting admissions due to failure of the Operator or Resident Manager to pass the qualifying test as required by these rules.

(g) restricting admissions when there is a threat to the current residents of the home and admitting new residents would compound that threat.

(h) restricting the opening of additional Adult Foster Homes.

(i) restricting the Operator from allowing persons on the premises who may pose a threat to resident safety or welfare.

(j) requiring an Operator to notify the ACHP when accepting a resident with skilled or continuous nursing care needs, or when a resident develops such needs.

(k) requiring an Operator to contract with a Registered Nurse if one or more residents of an Adult Foster Home have nursing care needs.

(l) requiring that a resident with nursing care needs be relocated from an Adult Foster Home.

300-340 The ACHP may place conditions on a license for a specified period of time. At the end of that period, the ACHP shall determine if the conditions are still appropriate and may continue the conditions. The ACHP shall consider the reasons for the condition at the time of license renewal to determine if the conditions are still appropriate. The condition's effective date and expiration date shall be put on the license.

300-350 Operators may request that the condition be removed if the Operator believes that the reason for the condition has been remedied.

891-300-400 SUSPENSION

300-410 If a license is suspended for reasons other than immediate threat to the health, safety or welfare of the resident(s), the Operator shall be entitled to a hearing preceding the effective date of the suspension if the Operator requests a hearing in writing within 20 days of the date of the notice. If no written request for a timely hearing is received, the ACHP shall issue a final order by default. The ACHP may designate its file as the record for purposes of default.

300-420 If the ACHP finds that there is an immediate threat to the health, safety or welfare of the residents, the ACHP shall issue a written order suspending the license effective immediately. A hearing shall follow the suspension if requested in writing by the Operator within 20 days of the order.

300-430 An Operator may also request an administrative review of an ACHP order to suspend their license based on immediate threat to residents. If the ACHP receives such a request from the Operator in writing within 10 days of the order, the ACHP shall review the decision within five business days. This review shall be limited to the issue of whether the finding of immediate threat is supported by the evidence. The review shall include all materials related to the findings of

immediate threat, including any written documentation submitted by the Operator. If the finding of immediate threat is supported, the suspension shall remain in effect.

300-440 If the ACHP does not sustain the finding of immediate threat, the suspension shall be lifted. A suspension may not be reimposed unless and until a final order has been issued pursuant to the hearing process in MCAR 891-300-800 through MCAR 891-300-891 or until the Operator's right to request a hearing under these provisions has expired.

300-450 In the event the license is suspended or a threat to the resident safety is identified, the ACHP may notify the resident, the resident's family, the resident's legal representative, the case manager and other persons involved in resident care. For protection of the residents, the ACHP may arrange for them to move.

891-300-500 REVOCATION/NON-RENEWAL/DENIAL

300-510 The ACHP shall revoke a license if the conditions listed in MCAR 891-300-120 are found to exist in the Adult Foster Home. The ACHP may revoke a license if the conditions listed in MCAR 891-300-130 are found to exist in the Adult Foster Home.

300-515 Denial, non-renewal or revocation of a license by the ACHP shall be preceded by a hearing if requested by the operator, unless the license is denied, not renewed or revoked for the reason of an immediate threat to the life, health, safety or welfare of a resident. If an immediate threat exists, the denial, revocation or non-renewal shall be effective upon order of the ACHP. In this case, a hearing shall follow the denial, non-renewal or revocation if requested by the operator.

300-520 A license in the revocation or non-renewal process will remain in effect during an administrative hearing process even if the license expires before the hearing and/or a final order is issued unless the license is revoked or not renewed due to immediate threat to the resident(s).

300-530 If a license is revoked, not renewed or denied, the ACHP may arrange for residents to move for their protection.

300-540 An Operator whose license has been revoked or an applicant whose application has been denied shall not be permitted to make a new application for one year from the date the revocation or denial is final or for a longer period specified in the order revoking or denying the license.

891-300-600 NOTIFICATION OF SANCTIONS

300-610 The ACHP shall give Operators written notice of any sanctions imposed. The ACHP shall deliver the notice in person or by certified or registered mail.

300-620 The notice of a sanction shall state:

(a) the sanction imposed, the reasons for the sanction, and a description of the circumstances of the violation.

(b) the rule(s) violated.

(c) the effective date of the sanction and the time frame for correcting the

violation(s), if applicable.

(d) that the ACHP may impose additional sanctions, if applicable, if violations continue or reoccur.

(e) the availability of help relocating residents, if needed, and the Operator's duty to help with any resident relocation.

(f) the right to appeal the ACHP order or sanction, and how to request a hearing.

(g) the authority for the hearing.

(h) that the ACHP files on the subject of the contested case automatically become part of the contested case record upon default for the purposes of proving a prima facie case.

(i) that the notice of the sanction shall become a final order if the Operator does not request a hearing within the specified time.

300-630 A copy of the complaint investigation report or inspection report shall be attached to the sanction notice, if applicable, unless previously provided to the applicant or Operator.

891-300-700 ADMINISTRATIVE CONFERENCES

300-710 The ACHP may require attendance by an Operator at a conference prior to or as part of the imposition of a sanction. The purpose of the conference is to discuss the problems, rule violation(s) and/or sanctions, and review means to achieve satisfactory and timely compliance with the rules.

300-720 An Operator may request an administrative conference at any time after notice of problems, rule violations or sanctions.

300-730 An Operator's request for an administrative conference does not extend the effective date of a sanction or time limit for correction of a problem unless the Operator requests and the ACHP grants a change in the date the sanction shall be effective.

891-300-800 HEARINGS

300-814 An Operator may appeal a sanction given by the ACHP. To appeal, the Operator must file a written request for a hearing with the ACHP within 20 days of the date of the notice except as provided in MCAR 891-300-290. The written request shall include the reason(s) for the hearing and the issues to be heard. If the timely request is not received, the ACHP's order shall become final. The ACHP may designate its file as the record for purposes of default. The ACHP may designate its file as the record for purposes of default.

300-821 For purposes of these rules, a hearing is defined as an administrative proceeding conducted by an independent hearing officer, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence is presented.

300-828 Hearings shall be conducted by an independent hearing officer who shall hear witnesses, take in evidence presented and determine issues of fact and of law based on the evidence presented.

300-835 Hearings shall be conducted in accordance with these rules and with the Oregon Attorney General's Model Rules for contested case proceedings when these rules do not address a procedural issue. Any party may be represented by an attorney.

300-842 The ACHP shall provide copies of relevant correspondence, reports and other information to the hearings officer.

300-849 The entire proceeding shall be recorded by tape recorder or court reporter. The record will be transcribed only if a writ of review is filed pursuant to ORS 34.010 to ORS 34.100.

300-856 A party may receive a copy of the tape recording upon payment of copying costs. Costs of transcription of the court reporter's record shall be paid by the party requesting the transcript.

300-863 Evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in the conduct of serious affairs shall be admissible in a hearing requested by an Operator to appeal an administrative sanction or an order disapproving an eviction, or in a hearing requested by a resident or person acting on a resident's behalf to contest an eviction. There are four types of admissible evidence:

(a) Knowledge of the agency. The Director of Aging Services or any authorized representatives may take "official notice" of conclusions developed in an investigation as a result of intensive experience of the agency in its specialized field of activity. This includes judgments based upon investigation findings, as well as notice of a technical and scientific nature. Such notice shall be so indicated in the proceedings.

(b) Testimony of witnesses, including the parties, about the matter in dispute. Any witness testifying is subject to cross examinations by other parties and the hearings officer.

(c) Written or visual material. This material includes complaints, reports, notices, letters, other records, notes, maps, diagrams and other written or visual material. Such material may include signed written statements and videotaped interviews of parties or witnesses not present at the hearing.

(d) Experiments, demonstrations and similar means used to prove a fact.

300-870 Once a hearing is concluded, there shall be no continuance or reopening of the hearing to offer additional evidence unless any party can show that the additional evidence was not known to the party at the time of the hearing and that reasonable diligence would not have discovered the evidence prior to the conclusion of the hearing.

300-877 In reaching a decision, the hearings officer shall only consider evidence which has been admitted, and shall evaluate the weight of all such evidence in light of the presentations of the parties during the hearing.

300-884 After reviewing the evidence submitted at the hearing, the hearings officer may sustain, modify, or overrule the ACHP's imposition of an administrative sanction or an order disapproving an eviction, or may approve, conditionally approve, or disapprove an eviction. Nothing in this section shall prevent the hearings officer from remanding the matter to the ACHP following the conclusion of the hearing

and prior to issuing an order for the ACHP's review and recommendation in light of evidence presented. The final order shall be issued by the hearings officer not later than 45 days after the termination of the hearing. The final order is effective when issued. The final order shall notify the Operator of the right to appeal to the Circuit Court under ORS 34.010 to ORS 34.100.

300-891 Review of the hearing officer's final order shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 to ORS 34.100.

891-300-900 CRIMINAL PENALTIES

300-910 Operating an Adult Foster Home without a license is punishable as a Class C misdemeanor.

300-920 Refusing to allow access and inspection of a home by ACHP staff or for state or local fire inspections is a Class B misdemeanor.

300-930 The ACHP may ask a court to prohibit a person from:

(a) operating an Adult Foster Home without a license.

(b) operating an Adult Foster Home after notice of license suspension or revocation and after a reasonable amount of time has been given for placement of residents in other homes or facilities but placement has not been accomplished.

PART XII - PUBLIC INFORMATION

891-400-100 PUBLIC INFORMATION ABOUT ADULT FOSTER HOMES

400-110 The ACHP shall maintain current information about all licensed Adult Foster Homes in Multnomah County. The ACHP shall make all information that is not confidential available to prospective residents and members of the public.

400-120 The information in the public file shall include:

(a) the location of the Adult Foster Home and the name and mailing address of the Operator if different.

(b) the Adult Foster Home license and an example of the private pay or Medicaid contract.

(c) the date the Operator was first licensed to operate the home and the home's license classification.

(d) the date of the last licensing inspection and fire inspection, the name and telephone number of who performed the inspection, and a summary of the inspection findings.

(e) copies of all non-confidential portions of complaint investigations filed by home and date, ACHP findings and actions taken by the ACHP, and responses of the Operator or person making the complaint, if any.

(f) any conditions placed on the license, license suspensions, denials, revocations, fines, rule exceptions granted, or other current ACHP actions involving the home.

(g) whether care in the home is given primarily by the licensed Operator, a Resident Manager, or by some other arrangement.

(h) a brief description of the physical characteristics of the home.

400-130 The registry maintained by the Adult Care Home Program shall be regularly updated to indicate homes which have been issued a regular, limited, conditional or provisional license, homes which have been issued a renewal license, and homes which have newly applied for a license. This registry shall be available to the public upon request.

400-140 Any list of Adult Foster Homes maintained or distributed by the ACHP shall include the number of substantiated complaints for each of the Adult Foster Homes for the lesser of the preceding five years or the period beginning January 1, 1992.

400-150 The ACHP shall report on a quarterly basis to SDSD the number of exceptions for residents whose care needs exceed the classification of the home granted during the preceding quarter.

400-160 The ACHP will make every effort to ensure that public file information is as user friendly and easy to read as possible.

The terms used in the ACHP Administrative Rules are defined as follows. All terms are listed alphabetically.

ACHP - Adult Care Home Program

Abuse - Abuse of an Adult Foster Home resident means any verbal or physical action or mistreatment which causes or threatens to cause physical or mental pain, injury or discomfort to a resident. This includes withholding or failure to provide adequate food, shelter, clothing, supervision, socialization, care or services necessary to ensure the health, safety and welfare of residents.

Activities of Daily Living (ADL) - Those personal functional activities required by an individual for continued well-being including eating/nutrition, dressing, personal hygiene, mobility, toileting and behavior management. See Appendix I.

(a) "Independent" means the resident can perform the ADL without help.

(b) "Assistance" means the resident is able to do part of an ADL, but cannot do it entirely alone.

(c) "Dependent" means the resident is unable to do any part of an ADL, it must be done entirely by someone else.

Adult Care Home (ACH) - Any home or facility that provides room and/or board and/or care for compensation to persons who are not related to the Operator by blood, adoption or marriage except as provided in MCAR 891-020-140. For the purpose of this rule, adult care home does not include any house, institution, hotel or other similar living situation that supplies room and board only, or room only, or board only, if no resident thereof requires any element of care. Adult Foster Homes are classified as Class I, II or III. The Adult Care Home Program licenses three types of homes. The categories of adult care homes licensed by the ACHP include Adult Foster Homes, Adult Foster Homes with a Limited License, and Room and Board Facilities.

Adult Care Home Program (ACHP) - The regulatory part of the Aging Services Department of Multnomah County, Oregon, that oversees the enforcement of ACHP rules in adult care homes in Multnomah County.

Adult Foster Home - Any home or facility that provides residential care for compensation to five or fewer persons who are not related to the Operator by blood, adoption or marriage except as provided in MCAR 891-020-140. Residential care is the provision of room and board and services which assist an individual in activities of daily living, such as assistance with eating/nutrition, dressing, personal hygiene, mobility, bowel and bladder control, or behavior management, including medication management and money management. Twenty-four hour supervision is required.

Adult Foster Home with a Limited License - A home or facility that provides residential care for compensation to only a specific individual(s) who is not related to the Operator by blood, adoption or marriage. Twenty-four hour supervision is required. Part XV of these rules sets out the provisions for licensure of an Adult Foster Home with a limited license.

Advance Directive - The legal document signed by the resident giving instructions for health care should he/she no longer be able to give directions regarding his/her wishes. The directive gives the resident the means to continue to control his/her own health care in any circumstances.

Applicant - Any person who submits a completed set of application materials to the ACHP to obtain a

license to operate an Adult Foster Home in Multnomah County and who is owner of the business.

ASD - Aging Services Division, A Multnomah County office responsible for a variety of social services provided to elderly persons and persons with disabilities residing in Multnomah County.

Behavioral Interventions - Those interventions which will modify the resident's behavior or the resident's environment.

Board - The Operator's provision of meals to a resident on a predictable and/or regular basis.

Board of Nursing Rules - The standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR Chapter 851, Division 45 (page 33).

Care - The provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules. Care also means services that encourage maximum resident independence and enhance quality of life.

Care Plan - The written description of a resident's needs, preferences, and capabilities, including by whom, when and how often care, services, and/or supervision will be provided. Care plan includes ISP (Individual Service Plan) and Mental Health Care Plan.

Caregiver - Any person responsible for providing supervision, care and services to residents of an Adult Foster Home under the jurisdiction of the ACHP other than the Operator or certified Resident Manager and who is approved by the ACHP.

Case Manager - A person employed by the Aging Services Division or other social service agency who oversees the care and service provided to a resident from various social and health care services.

Classification - The ACHP's determination during licensure of what level of care an Adult Foster Home may provide. The ACHP classifies Adult Foster Homes as Class I, II or III homes. Note: Room and Board facilities and Adult Foster Homes with a Limited License are not classified as Class I, II or III.

Client - A resident in an Adult Foster Home for whom SDSD or MHDDSD pays for care or for whom case management services are provided.

Clutter - An accumulation of material which impedes or obstructs a person's progress through a room, restricts use of a room and which may present a fire or safety hazard.

Cognitive - Pertaining to the mental state and thought and deliberative processes of the mind.

Compensation - Payments in cash, in-kind, or in labor, by or on behalf of a resident to an Operator or common fund in exchange for room and/or board and/or care and/or services, including any supervision, care and services specified in the care plan. Compensation does not generally include the voluntary sharing of expenses between or among roommates.

Complaint - An allegation that an Operator has violated these rules or an expression of dissatisfaction relating to the condition of the Adult Foster Home or the resident(s).

Compliance - Meeting the requirements of ACHP rules, orders, or any applicable laws, codes, regulations or ordinances.

Conditions - Restrictions or additional requirements placed on a license by the ACHP as a sanction.

Co-Operator - Co-Operator is synonymous with Operator as both are equally responsible for the home. All Co-Operators shall meet all qualifications and standards for an Operator.

Criminal History - Records and related data, including fingerprints, received, compiled, and disseminated by the Oregon State Police and any other local and national law enforcement agencies for purposes of identifying criminal offenders and alleged offenders and pertaining to such persons records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release.

Day Care Resident - A resident who receives care, assistance, and supervision but who does not stay overnight.

Delegation - The process by which a Registered Nurse teaches and supervises a skilled nursing task.

Department - Multnomah County Aging Services Division

Director - The Director of the Department of Aging Services of Multnomah County, Oregon, or his or her designee.

Disabled - A person with physical, cognitive or emotional impairment which limits the person in one or more activities of daily living.

Discrimination - Differential treatment or denial of normal privileges to persons because of their race, age, sex, sexual orientation, nationality or religion.

Elderly Person or Aged - Any person age 65 or older who is in need of care.

Exitway - A continuous and unobstructed path of travel, separated by other spaces of the home by a fire or smoke barrier, through which a person can safely exit to the outside of the home. This includes room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts and yards.

Family Member - For the purposes of these rules, a husband, wife, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

Fire Barrier - A continuous surface, such as a wall, ceiling or floor, designed to limit the spread of fire and restrict smoke movement, including doors which are tight fitting solid core wood, and which are equipped with a closing device such as spring loaded hinges and which meet all applicable laws, codes and rules.

Flame Spread Rating - A measure of how fast flames will move across the surface of a material. (See Appendix II.)

Frequent - One or more times in a seven day period of time.

Hearing - An administrative proceeding conducted by an independent hearing officer with definite issues of fact or of law to be tried, in which witnesses are heard and evidence is presented.

Home - The physical structure in which residents live. Synonymous with Adult Foster Home.

Homelike - A friendly, safe, secure environment where the atmosphere of the Adult Foster Home is

more like a home than a medical facility, where the resident's dignity and rights are respected, interaction between members of the home is encouraged, and the resident's independence and decision-making is protected and encouraged.

House Rules - An Operator's written rules about the home's policies, including but not limited to visiting hours, smoking, telephone use, pets and other matters, all subject to ACHP approval and consistent with ACHP rules.

Immediate Threat (Imminent Danger)- A danger which could reasonably be expected to cause death, or to cause harm to a person's physical or mental well-being as a result of abandonment, abuse, neglect, exploitation, hazardous conditions, or threatening behavior, or to pose a threat to the life, health, safety or welfare of residents, Resident Managers, caregivers or other occupants in the immediate future, or before such danger could be eliminated through the regular enforcement procedures.

Inspection - An on-site evaluation of the physical environment and related records of an Adult Foster Home in order to determine whether the facility is in compliance with applicable laws, codes and rules prior to issuing or renewing a license, or in order to monitor ongoing compliance of the facility, or in order to determine the validity of a complaint.

Interview - An evaluation of the Operator, Resident Managers, caregivers, occupants, social environment, operations, and related records of an Adult Foster Home in order to determine whether the Operator, Resident Manager(s) and other caregivers, and their training, practices, and care, are in compliance with applicable laws, codes and rules prior to issuing or renewing a license, or in order to monitor ongoing compliance of the facility, or in order to determine the validity of a complaint, or in order to determine if a resolution can be achieved without a hearing when a hearing has been requested to contest an eviction.

Investigation - The ACHP's process of finding out whether or not a violation of ACHP rules has occurred through interviews, on-site visits and other methods of inquiry.

Legal Representative - A person who has the legal authority to act for the resident. On matters involving care, this is a legal guardian, a health care representative under an Advance Directive, or Power of Attorney for Health Care. On financial matters, this is a legal conservator, an agent under a power of attorney, or a representative payee.

Long Term Care Assessment Form - The form provided by the ACHP and signed by a resident who privately pays for care that he/she has been advised that he/she may have an assessment at no charge to provide the individual with his/her placement options. The Operator shall maintain a copy of the form in the resident records.

MCAR(s) - For the purpose of this document, MCAR(s) refers to Multnomah County Administrative Rule(s) for Licensure of Adult Care Homes.

Medical Emergency - A change in medical condition that requires immediate care of a level or type that the Operator is unable to provide or behavior that poses an immediate threat to the resident or to other residents or people living in the home.

Neglect - Neglect of an Adult Foster Home resident means any action or inaction which causes or threatens to cause physical or mental harm to a resident. Neglect may be intentional, unintentional, careless, through reckless endangerment, inadequate monitoring of residents by an Operator, or because of ignorance, indifference, incompetence, poor health, inadequate experience, training or skill. In these rules, neglect is addressed under Abuse.

Non-injectable Medications - Pills, ointments, suppositories, narcotics, controlled substances, over the counter medications, and any treatments or therapies. Such medications do not include moisturizing lotions or medicated shampoos.

Nurse - A person licensed to practice nursing by the Oregon State Board of Nursing as a Practical Nurse (LPN), Registered Nurse (RN), and an RN certified as a Nurse Practitioner, under authority of ORS Chapter 678 in accordance with OAR Chapter 851.

Nursing Assistant - A person who assists licensed nursing personnel in the provision of nursing care and who has been certified by an approved training program in accordance with rules adopted by the Oregon State Board of Nursing in OAR Chapter 851. Nursing assistants may be known as, but are not limited to, Certified Nurses Aide (CNA), a nurses aide, home health aide, geriatric aide, or psychiatric aide.

Nursing Care - The practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a Registered Nurse to persons other than licensed nursing personnel, which is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

Occupant - Anyone residing in or using the facilities of the Adult Foster Home including all residents, Operators, Resident Managers, caregivers, friends or family members, day care persons, and boarders.

Ombudsman - The State Long-Term Care Ombudsman or an individual designee appointed by the Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the Adult Foster Home residents.

Operator - The person licensed by the ACHP to operate the Adult Foster Home who has overall responsibility for the provision of residential care, who meets the standards outlined in these rules and who has been approved by the ACHP.

Senior and Disabled Services Division (SDSD) - A division of the Department of Human resources for the State of Oregon.

Physical Restraint - Any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident cannot easily remove and restricts freedom of movement or normal access to his/her body. Physical restraints include, but are not limited to, leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, any chair that prevents rising, and gerichairs. Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. When a resident requests a side rail (e.g. for the purpose of assisting with turning), the side rail is not considered a restraint.

Physician - A person who has been licensed to practice medicine by the Oregon State Board of Medical Examiners, under authority of ORS Chapter 677.

Point of Safety - For the Purpose of these rules, a location which is away from the building and away from the fire area.

P.R.N. (pro re nata) Medications and Treatments - Those medications and treatments which have been ordered by a qualified practitioner to be given as needed.

Provisional License - A 60-day license issued to a qualified person in an unforeseen emergency situation when the licensed Operator is no longer overseeing the operation of the Adult Foster Home. A person must meet the standards of these rules except for completing the training and testing requirements.

Psychoactive Medications - Various medications used to alter mood, anxiety, behavior or cognitive processes. For the purpose of these rules, they include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.

Relative - See Family Member

Relative Foster Homes - Homes licensed by the State of Oregon that provide care to elderly family members or family members with disabilities eligible for State Medicaid assistance. The ACHP does not license relative foster homes in Multnomah County.

Reside - To make the home a person's residence on a frequent or continuous basis.

Resident - Any person who is receiving room, board, care, and services for compensation in an Adult Foster Home on a 24-hour basis.

Resident Rights - Civil, legal or human rights, including but not limited to those rights listed in the Adult Care Home Residents' Bill of Rights.

Resident Manager - A person employed by the Adult Foster Home Operator and approved by the ACHP who lives in the home, is responsible for daily operation of the home and care given to residents, and must comply with ACHP rules.

Residential Care - The provision of room and board and services which assist an individual in activities of daily living, such as assistance with eating/nutrition, dressing, personal hygiene, mobility, bowel and bladder control, or behavior management, including medication management and money management.

Respite Resident - A person who receives residential care for a period of 14 days or less or who only stays overnight.

Restraints - Any physical device or chemical substance which restricts a resident's movement, body access or functioning (for example, vest, glove/mitten, gerichairs or full siderails on beds, or sleeping medications). Chemical restraints are those that limit movement or physical functioning. Restraints may not be used in a Class I home.

Retaliation - Increasing charges, decreasing services, rights or privileges, threatening to increase charges or decrease services, rights or privileges, by taking or threatening to take any action to coerce or compel the resident to leave the facility or by abusing or threatening to harass or abuse a resident in any manner.

Room - The provisions of a place for a person to sleep on a regular basis.

Room and Board - The provision of meals, a place to sleep, laundry and housekeeping for compensation to persons who do not need activities of daily living care services.

Room and Board Facility - A home or facility that provides only room and board for compensation to one or more adults who are elderly persons or persons with disabilities, not related to the Operator by blood, adoption or marriage and which provides no residential care except medication management and money management. Less than 24 hour supervision may be provided. Part XVI of these rules sets out the provisions for licensure of a room and board facility.

Self Administration of Medication - The act of a resident placing a medication in or on his/her own body. This means the resident manages and takes his or her own medications, in that the resident identifies the medication and the times and manners of administration, and places the medication internally or externally on his/her own body without assistance.

Self Preservation - In relation to fire and life safety, the ability of residents to respond to an alarm without additional cues and to reach a point of safety on their own.

Services - Living accommodations and meals provided by the Operator and non-care related tasks such as housekeeping, laundry, transportation or recreation performed by an Operator or employee for the benefit of the residents.

Sexual Exploitation - See MCAR 891-090-140 - Sexual Abuse and Exploitation

Shall - Must.

Shift Caregiver - A caregiver who, only by written exception of the ACHP, is responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours, in homes where there is no Operator or Resident Manager living in the home.

Smoke Barrier - See Fire Barrier.

Substitute Caregiver - Any Person responsible for providing supervision, care and services to residents of an Adult Foster Home under the jurisdiction of the ACHP other than the Operator or certified Resident Manager and who is approved by the ACHP.

PART XIV
APPENDICES

APPENDIX I - ACTIVITIES OF DAILY LIVING

Activities of daily living are those personal functional activities required by an individual for continued well-being, i.e., Eating, Dressing, Personal Hygiene, Mobility, Bowel and Bladder Control, and Behavior Management. Each prospective or current resident must be evaluated as either dependent, assistance or independent for each activity of daily living.

1. EATING/NUTRITION (When used in connection with this ADL.)

   (a) Dependent person means a person needs to be fed virtually all foods and fluids.

   (b) Assistance person means a person can maintain an adequate food and fluid intake according to their dietary needs with only minimal or substantial assistance.

   (c) Independent person means a person eats without assistance and can maintain an adequate food and fluid intake according to their dietary needs with or without mechanical aids.

2. DRESSING (When used in connection with this ADL.)

   (a) Dependent person means the person is substantially unable or unwilling to assist in getting dressed and undressed or in staying dressed.

   (b) Assistance person means the person needs minimal or substantial assistance in selecting appropriate clothing, tying shoes, fastening buttons, etc..

   (c) Independent person means the person is able to dress, select clean and appropriate clothing, tie shoes, fasten buttons, etc..

3. PERSONAL HYGIENE (Daily bathing, shaving, oral care and grooming hair.) (When used in connection with this ADL.)

   (a) Dependent person means the person is unable to do any activity associated with personal hygiene.

   (b) Assistance person means the person needs minimal or substantial assistance with activities associates with personal hygiene and is able to partially bathe self.

   (c) Independent person means the person does personal hygiene activities without assistance, with mechanical aids if needed.

4. MOBILITY (When used in connection with this ADL.)

   (a) Dependent person means the person is unable to move from one place to another without depending on another person to move them.

   (b) Assistance person means the person controls and moves extremities but needs minimal or substantial assistance changing position or sitting in a wheelchair. The person may be able to walk or transfer with the help of another, including going to bathroom or commode.

   (c) Independent person means the person controls movement at will, may need devices to lift, turn, pull, balance and sit up. The person can also rise from bed and can get from one place to another without help from another person.

5. BOWEL AND BLADDER (The ability to get to or from bathroom or commode relates to mobility, rather than toileting.) (When used in connection with this ADL.)

(a) Dependent person means a person does not demonstrate bowel and/or bladder control and cannot manage own cleanliness or external care of a catheter or appliance.

(b) Assistance person means a person has occasional loss of bowel and/or bladder control and cannot manage own clean-up or external care of a catheter or appliance and requires minimal or substantial assistance.

(c) Independent person means a person is continent or, if incontinent, can manage personal clean-up, or can manage external care of catheter or appliances.

6. BEHAVIOR (Behavior includes money management and medication management and the response to the environment and is not included in any of the other activities of daily living.) (When used in connection with this ADL.)

(a) Dependent person means a person cannot interact with persons or the physical environment or take medications appropriately or manage their own money without at least daily behavior monitoring to intervene or prevent extreme behavior.

(b) Assistance person means a person who does not always interact appropriately with other persons, take medications appropriately or manage their own money and may be withdrawn, afraid, or insecure and require minimal or substantial assistance from others.

(c) Independent person means a person interacts with persons and physical environment, take medications appropriately or manage their own money without the need for behavior monitoring by others.

MEETING DATE: AUG 8 1996

AGENDA NO: R-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: PCRB Exemption Request

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: August 8, 1996

Amount of Time Needed: 5 - 10 minutes

DEPARTMENT DES DIVISION FACILITIES & PROPERTY MGMT

CONTACT Gary Hall/Franna Hathaway TELEPHONE # 248-3322/248-5111

BLDG/ROOM# 421/3rd/FM

PERSON (S) MAKING PRESENTATION: Gary Hall

ACTION REQUESTED:

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

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

Request from DES, Facilities & Property Management for an exemption to specify the Notifier brand of fire alarm equipment and components.

8/1/96 NOTICE & APPLICATION to PCRB list, FRANNA HATHAWAY, DAVID BOYER & GARY HALL

8/12/96 NOTICE & ORDER SIGNATURE REQUIRED: to PCRB list, FRANNA HATHAWAY, DAVID BOYER & GARY HALL

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: _____

96 JUL 23 PM 3:14

MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

EB61

BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM BRIEFING
STAFF REPORT SUPPLEMENT

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Franna Hathaway, Purchasing Manager

TODAY'S DATE: July 19, 1996

REQUESTED PLACEMENT DATE: August 8, 1996

SUBJECT: Exemption request to specify Notifier brand fire alarm system equipment and components for County wide placement

I. Recommendation/Action Requested:

Approval is recommended for Facilities Management's request for an exemption to specify the above mentioned brand of equipment in the formal and informal purchase of fire alarm system equipment and components.

II. Background/Analysis:

As Multnomah County programs continue to grow and expand, new facilities are purchased and leased. Additionally old fire alarm systems also need to be upgraded and replaced. Facilities Management, through the informal purchasing process has identified and informally standardized on the Notifier brand of fire alarm systems and components within the last three years. Maintenance of multiple brands of systems has been difficult and costly, resulting in delay of system maintenance and higher prices than could be received with quantity purchases of parts. Standardizing on one brand allows Facilities Management to reduce repair time and therefore increase safety and reduce costs by maintaining a lesser number of items in inventory in a greater number, therefore providing the opportunity for quantity purchases. Competitive bids and or quotations will be sought for furnishing and installing the specified equipment, therefore the exemption would not limit competition nor encourage favoritism. The exemption encourages the efficient use of County resources and is in the best interests of the County and the taxpayers.

III. Financial Impact:

None.

IV. Legal Issues:

None.

V. Controversial Issues:

N/A

VI. Link to Current County Policies:

Current County policies require approval by the Board for the specifying of brand names in the procurement process.

VII. Citizen Participation

N/A

VIII. Other Government Participation:

N/A

MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF FACILITIES AND
PROPERTY MANAGEMENT
2505 S.E. 11TH AVENUE
PORTLAND, OREGON 97202
(503) 248-3322

MEMORANDUM

To: Franna Hathaway, Purchasing Manager

From: F. Wayne George, Director, Facilities & Property Management
Via: Larry Nicholas, Director, DES

Date: May 20, 1996

RE: Sole Source Procurement Authorization; Brand Name Exemption Request for

A. PCRB Rule 20.050

It is requested that documentation be initiated to officially authorize the sole source procurement of fire alarm equipment and components manufactured by NOTIFIER.

In the past ten(10) years Multnomah County has purchased and/or leased a considerable number of buildings to house various County programs. All of these buildings have had fire alarm systems installed, of one type or another. Trying to maintain these various systems has been very difficult and costly. As these systems have been upgraded, the NOTIFIER brand fire alarm system has been used extensively, using the formal and informal quote process for each project. Over the past three years the County has unofficially worked towards establishing a recognized standard to be followed throughout the County, in the area of fire alarm systems. In the near future we have six(6) major facilities that will be in the final stages of new construction and/or completion of major remodeling, all of which will have had their fire alarm systems upgraded. It is currently intended to use NOTIFIER equipment.

This request is to **OFFICIALLY** recognize and sanction the standardization of the NOTIFIER fire alarm system product line for Multnomah County, thereby allowing the future acquisition of NOTIFIER equipment/components to meet this standard.

Thank you for your consideration in this matter.

cc: Craig Calkins, Facilities & Property Management
Jan Thompson, Purchasing Buyer
Gary Hall, Facilities & Property Management

RECEIVED
PURCHASING SECTION
96 JUN -4 PM 12: 44
MULTNOMAH COUNTY

MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

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
CLERK'S OFFICE •	248-3277	• 248-5222

NOTICE OF HEARING

The Multnomah County Board of Commissioners, sitting as the Public Contract Review Board, will consider an application on Thursday, August 8, 1996, at 9:30 a.m. in Room 602 of the Multnomah County Courthouse, 1021 SW Fourth, Portland, Oregon, in the Matter of an Exemption to Specify the Notifier Brand Name for Purchase of Fire Alarm Equipment and Components.

A copy of the application is attached.

For additional information, please contact Franna Hathaway, Multnomah County Purchasing Section, 248-5111.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
PUBLIC CONTRACT REVIEW BOARD

Deborah L. Bogstad

Deborah L. Bogstad
Office of the Board Clerk

enclosure

cc: *Dave Boyer*
Franna Hathaway
Gary Hall

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
ACTING AS THE PUBLIC CONTRACT REVIEW BOARD

In the Matter of an exemption to specify the Notifier brand name for purchase of fire alarm equipment and components)))

APPLICATION

Application to the Public Contract Review Board on behalf of a request from the Department of Environmental Services, Facilities & Property Management Division, is hereby made pursuant to the Board's Administrative Rules AR 10.010 and AR 20.030 and adopted under the provisions of ORS 279.017 for an order of exemption to specify the Notifier brand of fire alarm equipment and components in informal and formal bid documents.

This exemption Request is due to the following facts:

Multnomah County currently owns approximately 100 buildings for County programs. Most, if not all, of these buildings have fire alarm systems. Maintenance of these systems has been costly and difficult due to the variety of systems, parts and equipment required, which in turn potentially can compromise the safety of the buildings. Through previous procurement processes, the County has established a standard for equipment using the Notifier brand alarm system. In the near future the County will be constructing or remodeling six major facilities which will require fire alarm systems. In order to reduce repair times and decrease costs, further purchases of alarm systems and components need to be the Notifier brand. Informal and formal purchasing processes will be maintained for the purchase of these systems and components.

This exemption is not likely to encourage favoritism or substantially diminish competition and will result in cost savings.

The Facilities and Property Management Division has budgeted funds to cover the purchase of fire alarm systems and components in the FY 96/97 budget.

Purchasing recommends approval of this exemption because Notifier is the manufacturer of the fire alarm equipment and components compatible with the majority of the County's current equipment.

Franna Hathaway

Franna Hathaway, CPPO, Manager
Purchasing Section

EB61

MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

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
CLERK'S OFFICE •	248-3277	• 248-5222

NOTICE OF APPROVAL

The Multnomah County Board of Commissioners, sitting as the Public Contract Review Board, considered an application on Thursday, August 8, 1996, at 9:30 a.m. in Room 602 of the Multnomah County Courthouse, 1021 SW Fourth, Portland, Oregon, and approved Order 96-135 in the Matter of an Exemption to Specify the Notifier Brand Name for Purchase of Fire Alarm Equipment and Components.

A copy of the Order is attached.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON
PUBLIC CONTRACT REVIEW BOARD

Deborah L Bogstad

Deborah L. Bogstad
Office of the Board Clerk

enclosure
cc: *Dave Boyer*
Franna Hathaway
Gary Hall

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
ACTiNG AS THE PUBLIC CONTRACT REVIEW BOARD

In the Matter of an exemption to specify the Notifier brand name for purchase of fire alarm equipment and components	)))	ORDER 96-135

The above entitled matter is before the Board of County Commissioners, acting in its capacity as the Multnomah County Public Contract Review Board, to review a request from the Department of Environmental Services, Facilities and Property Management, pursuant to ORS 279.017 and AR 10.010 and AR 20.030 to specify the Notifier brand of fire alarm equipment and components in informal and formal bid documents.

It appearing to the Board that the recommendation for an exemption to specify the Notifier brand for the purchase of fire alarm equipment and components, as it appears in the application, is based upon the fact that Notifier is the sole manufacturer of compatible equipment that will reduce repair time and decrease costs.

It appearing to the Board that this request for an exemption is in accord with the requirements of ORS 279.015(2) and PCRB Rules AR 10.010; now therefore,

IT IS ORDERED that the Notifier brand be specified for fire alarm equipment and components in the procurement process.

Dated this 8th day of August, 1996.

REVIEWED:

LAURENCE KRESSEL, County Counsel
for Multnomah County, Oregon

By _____
Assistant County Counsel
Matthew O. Ryan

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
ACTING AS THE PUBLIC CONTRACT
REVIEW BOARD:

By _____
Beverly Stein, County Chair

MEETING DATE: AUG 8 1996
AGENDA # : R-3
ESTIMATED START TIME: 9:40 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Repeal of Resolutions 90-57 and 93-338 and replacement with a new resolution governing the proceeds of the sale of unrestricted County property.

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: August 8, 1996

AMOUNT OF TIME NEEDED: 20 minutes

DEPARTMENT: Support Services DIVISION: Budget & Quality/Finance

CONTACT: Barry Crook/Dave Boyer TELEPHONE #: 248-3575/248-3903
BLDG/ROOM #: 106/1400 & 1430

PERSON(S) MAKING PRESENTATION: Barry Crook & Dave Boyer

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Repeal of Resolutions 90-57 and 93-338 and approval of a new resolution which directs the proceeds from the sale of unrestricted County property to be divided equally between a Capital Improvement Fund (current recipient fund) and the newly established Capital Acquisition Fund (to be used as a source of revolving loans to County operations, subject to approval by the Board of County Commissioners).

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT MANAGER: _____

BOARD OF COUNTY COMMISSIONERS
96 JUL 29 AM 10:49
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 & QUALITY OFFICE
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: Barry Crook, Budget & Quality Manager bc
Dave Boyer, Finance Manager DB

Today's Date: July 23, 1996

Requested Placement Date: August 8, 1996

Subject: Repeal of Resolutions 90-57 and 93-338

I. Recommendation / Action Requested:

The Board is being asked to repeal two resolutions -- 90-57 and 93-338 -- which currently govern the disposition of the proceeds from the sale of unrestricted County properties by designating 50% for a Capital Improvement Fund and 50% for the Natural Areas Acquisition Fund. The replacement resolution being recommended would change that by designating the proceeds as 50% to the Capital Improvement Fund and 50% to a newly created fund -- the Capital Acquisition Fund.

II. Background / Analysis:

On April 19, 1990, the Board of County Commissioners adopted Resolution 90-57 creating the Capital Improvement Fund and Natural Areas acquisition Fund. These funds were created to restrict the use of proceeds received from the sale of unrestricted County property for future capital requirements and the acquisition, protection and management of natural areas. The funds received were to be split equally between the two funds. On October 7, 1993, the Board adopted Resolution 93-338 amending Resolution 90-57 to clarify that the funds deposited in the Natural Areas Acquisition Fund was to be 50% of the proceeds from the sale of undeveloped unrestricted property only. Resolution 93-338 also directed the Board to review the division of money between the funds in three years or upon the establishment of a regional funding source for natural areas. In May 1995 the voters of the Tri-County Region approved a general obligation measure authorizing Metro to issue $135.6 million in general obligation bonds to acquire open spaces. In addition the ownership and responsibility of operating the parks in Multnomah County have been transferred over to Metro effective July 1, 1996.

This replacement resolution would recognize the change in the role of the County and Metro and end

the diversion of the property sale proceeds for the purpose of acquiring additional natural areas.

As part of it's budget request, the Department of Environmental Services proposed that these resolutions be changed to both recognize that changed role and to use a portion of those proceeds to establish a fund that would be used to make loans to County departments making major capital investments. Such a loan pool would provide a financing vehicle for County operations that would offer a cost of borrowing lower than could be achieved from any other instrument.

During the last three years the County has been presented with several opportunities to improve efficiencies by acquiring equipment and/or by redirecting building rental payments to pay for the acquisition of a facility. The Capital Improvement Fund paid for these investments initially and the annual savings or the redirected expenditure was repaid as a budgeted expenditure back to the Capital Improvement Fund in the following years until the initial capital expenditure plus interest, at the County's Investment Pool rate, was recaptured by the Capital Improvement Fund.

The creation of this new fund would move that financing from the Capital Improvement Fund to the Capital Acquisition Fund. Disbursements made from the Capital Acquisition Fund will be used to enable the County to take advantage of capital acquisition opportunities that may arise. The capital asset acquisition must have a useful life of at least five years. The asset must also demonstrate that the savings generated or the redirection of current expenditures will have a pay back period of five years or less. Departments/Offices requesting funds from the Capital Acquisition Fund to take advantage of such an opportunity must present an issues and opportunities fact sheet to the Budget & Quality and Finance Division detailing the merits and financial impacts of the proposal. If approved by the Budget & Quality and Finance Divisions, the proposal will be presented to the Board for their approval. If approved, the Department/Office will include a service reimbursement in their budget in an amount sufficient to make the Capital Acquisition Fund whole within a five year period. This service reimbursement must include interest charges at the County's investment pool rate at the time of the acquisition.

Disbursements made from the Capital Improvement Fund would continue to be related to the sale or purchase of property and/or improvements included in the County's Five Year Capital Plan.

The Chair recommended this approach to the Board as part of her Proposed Budget, and the Board adopted it and established the new fund both in its budget decisions and as part of the County's Financial Policies.

This action is the final step to reflect those decisions and to make them part of the way we do our business. In that sense, this new resolution is a "housekeeping" item designed to reflect decision the Board has already made in other arenas.

III. Financial Impact:

There is no immediate financial impact. The new funds were established when you adopted the budget in June. Your final agreements with Metro limited your liability to transfer funds from the Natural Areas Acquisition and Protection Fund, this resolution provides that any monies left over after that transfer would be transferred to the Capital Acquisition Fund. Any remaining responsibilities that the County has that have used the Natural Areas Acquisition and Protection Fund as a funding source -- Rural Area Plan development and Johnson Creek watershed work -- will be funded in the future from the General Fund.

Long-range as loans are made and repaid, the County will recognize a savings in its cost of borrowing due to the fact that our internal loan rate will be the earnings rate of the County's Investment Pool at the time of the acquisition -- a lower rate than we could get from any other financing source. In addation all external financing issue costs -- bond counsel, rating agency, financial advisor -- will not be incurred by the County.

IV. Legal Issues:

None.

V. Controversial Issues:

None that we are aware of.

VI. Link to Current County Policies:

This resolution would correspond to the Financial Policy you adopted as part of your budget adoption action.

VII. Citizen Participation:

None to speak of.

VIII. Other Government Participation:

None. The agreements with Metro have already set the direction for the County in terms of parks and natural areas, and our funding commitments to Metro are considered as part of the dissolution of the Natural Areas Acquisition and Protection Fund.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF MULTNOMAH COUNTY

In the Matter of Repealing Resolutions 90-57 and 93-338 and directing the proceeds from the sale of unrestricted County property to the Capital Improvement Fund and the Capital Acquisition Fund.	)))))	RESOLUTION

WHEREAS, the Board of County Commissioners created a Capital Improvement Fund and a Natural Areas Protection Fund upon approval of Resolution 90-57 on April 19, 1990; and

WHEREAS, the Board of County Commissioners amended that resolution to reflect their policy intent governing the disposition of proceeds from the sale of specific properties upon approval of Resolution 93-338 on October 7. 1993; and

WHEREAS, the Board of County Commissioners may authorize the sale of unrestricted property and/or improvements owned by the County; and

WHEREAS, it is financially prudent to segregate the proceeds received from the sale of unrestricted property so that decisions about the use of those one-time only revenues may be made in an orderly manner; and

WHEREAS, it is in the County's interest to improve efficiencies by acquiring equipment and/or by redirecting building rental payments to pay for the acquisition of a facility; and

WHEREAS, the County has many unfunded needs for capital improvements and is still inadequately invested in the maintenance of our physical plant assets; and

WHEREAS, the voters of the Tri-County region authorized the issuance of $135.6 million in general obligation debt by Metro to acquire open spaces, and the County has turned over responsibilities for the acquisition and maintenance of natural areas and parks to Metro effective July 1, 1996 thereby negating the need for the County to maintain a Natural Areas Acquisition and Protection Fund.

THEREFORE BE IT RESOLVED, the Board of County Commissioners directs the establishment of a Capital Acquisition Fund, disbursements from which are to enable the County to take advantage of capital acquisition opportunities that may arise. The

capital asset acquired from this fund must have a useful life of at least five years. The asset must also demonstrate that the savings generated or the redirection of current expenditures will have a pay back period of five years or less. The process of applying for, and Board approval of these funds will be governed by the County's Financial Policy on the Sale of Unrestricted County Property; and

THEREFORE BE IT FURTHER RESOLVED, the Board of County Commissioners directs the abolishment of the Natural Areas Acquisition and Protection Fund, with any assets remaining in the fund after the distribution is made to Metro in accordance with the agreements transferring properties and responsibilities effective July 1, 1996 is complete, to be transferred to the newly created Capital Acquisition Fund; and

THEREFORE BE IT FURTHER RESOLVED, that the Board of County Commissioners directs that any proceeds from the sale of unrestricted property (not including land swaps) and interest earnings on the deposited proceeds are to be credited equally to the Capital Improvement Fund and the Capital Acquisition Fund; and

THEREFORE BE IT FURTHER RESOLVED, that the only disbursements made from the Capital Improvement Fund are to be related to the sale or purchase of property and/or improvement included in the County's Capital Plan; and

THEREFORE BE IT FURTHER RESOLVED, that the Board of County Commissioners will review the use of the funds and the division of the money between the funds in five years.

ADOPTED this _____ day of _____, 1996.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By_____
Beverly Stein, Chair

REVIEWED:

By: Sandra A. Duffy

Laurence Kressel
County Counsel
for Multnomah County, Oregon

SALE OF UNRESTRICTED COUNTY PROPERTY

BACKGROUND:
On April 19, 1990, the Board of County Commissioners adopted Resolution 90-57 creating the Capital Improvement Fund and Natural Areas acquisition Fund. These funds were created to restrict the use of proceeds received from the sale of unrestricted County property for future capital requirements and the acquisition , protection and management of natural areas. The funds received were to be split equally between the two funds. On October 7, 1993, the Board adopted Resolution 93-338 amending Resolution 90-57 to clarify that the funds deposited in the Natural Areas Acquisition Fund was to be 50% of the proceeds from the sale of undeveloped unrestricted property only. Resolution 93-338 also directed the Board to review the division of money between the funds in three years or upon the establishment of a regional funding source for natural areas. In May 1995 the voters of the Tri-County Region approved a general obligation measure authorizing Metro to issue $135.6 million in general obligation bonds to acquire open spaces. In addition the ownership and responsibility of operating the parks in Multnomah County have been transferred over to Metro effective July 1, 1996.

During the last three years the County has been presented with several opportunities to improve efficiencies by acquiring equipment and/or by redirecting building rental payments to pay for the acquisition of a facility. The Capital Improvement Fund paid for these investments initially and the annual savings or the redirected expenditure was repaid as a budgeted expenditure back to the Capital Improvement Fund in the following years until the initial capital expenditure plus interest , at the County's Investment Pool rate, was recaptured by the Capital Improvement Fund.

Policy Statement:
All proceeds from the sale of unrestricted property (not including land swaps) and interest earnings on the deposited proceeds are to be credited equally to the Capital Improvement Fund and Capital Acquisition Fund.

Disbursements made from the Capital Improvement Fund are to be related to the sale or purchase of property and/or improvements included in the County's Five Year Capital Plan.

Disbursements made from the Capital Acquisition Fund will be used to enable the County to take advantage of capital acquisition opportunities that may arise. The capital asset acquisition must have a useful life of at least five years. The asset must also demonstrate that the savings generated or the redirection of current expenditures will have a pay back period of five years or less. Departments/Offices requesting funds from the Capital Acquisition Fund to take advantage of such an opportunity must present an issues and opportunities fact sheet to the Budget & Quality and Finance Division detailing the merits and financial impacts of the proposal. If approved by the Budget & Quality and Finance Divisions, the proposal will be presented to the Board for their approval. If approved, the Department/Office will include a service reimbursement in their budget in an amount sufficient to make the Capital Acquisition Fund whole within a five year period. This service reimbursement must include interest charges at the County's investment pool rate at the time of the acquisition.

DAN SALTZMAN, Multnomah County Commissioner, District One

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

DATE: August 7, 1996

TO: Chair Stein, Commissioners Hansen, Kelley, Collier and Board Clerk Deb Bogstad

FROM: Cameron Vaughan-Tyler

RE: R-3 in the matter of repealing Resolutions 90-57 and 93-338 and directing the proceeds from the sale of unrestricted County property to the Capital Improvement Fund and the Capital Acquisition Fund.

Commissioner Saltzman would like to make the following underlined amendment on August 8, 1996 to Resolution R-3 on page 2, second paragraph stating "THEREFORE BE IT RESOLVED".

THEREFORE BE IT FURTHER RESOLVED, that the Board of County Commissioners directs that before any proceeds from the sale of unrestricted property (not including land swaps) and interest earnings on the deposited proceeds are to be credited equally to the Capital Improvement Fund and the Capital Acquisition Fund, a one-time only $20,000 disbursement be made to join and complete the efforts made by METRO and the City of Portland Parks Department to purchase the Taylor Woods property which includes the headwaters of Ash Creek, a tributary of Fanno Creek in Portland's Crestwood neighborhood and an important parcel recognized in the Fanno Creek Greenway and Tryon Creek Linkage Refinement Plans; and

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF MULTNOMAH COUNTY

In the Matter of Repealing Resolutions 90-57 and 93-338 and directing the proceeds from the sale of unrestricted County property to the Capital Improvement Fund and the Capital Acquisition Fund.	)))))	RESOLUTION

WHEREAS, the Board of County Commissioners created a Capital Improvement Fund and a Natural Areas Protection Fund upon approval of Resolution 90-57 on April 19, 1990; and

WHEREAS, the Board of County Commissioners amended that resolution to reflect their policy intent governing the disposition of proceeds from the sale of specific properties upon approval of Resolution 93-338 on October 7. 1993; and

WHEREAS, the Board of County Commissioners may authorize the sale of unrestricted property and/or improvements owned by the County; and

WHEREAS, it is financially prudent to segregate the proceeds received from the sale of unrestricted property so that decisions about the use of those one-time only revenues may be made in an orderly manner; and

WHEREAS, it is in the County's interest to improve efficiencies by acquiring equipment and/or by redirecting building rental payments to pay for the acquisition of a facility; and

WHEREAS, the County has many unfunded needs for capital improvements and is still inadequately invested in the maintenance of our physical plant assets; and

WHEREAS, the voters of the Tri-County region authorized the issuance of $135.6 million in general obligation debt by Metro to acquire open spaces, and the County has turned over responsibilities for the acquisition and maintenance of natural areas and parks to Metro effective July 1, 1996 thereby negating the need for the County to maintain a Natural Areas Acquisition and Protection Fund.

THEREFORE BE IT RESOLVED, the Board of County Commissioners directs the establishment of a Capital Acquisition Fund, disbursements from which are to enable the County to take advantage of capital acquisition opportunities that may arise. The capital asset acquired from this fund must have a useful life of at least five years. The asset must also demonstrate that the savings generated or the redirection of current

expenditures will have a pay back period of five years or less. The process of applying for, and Board approval of these funds will be governed by the County's Financial Policy on the Sale of Unrestricted County Property; and

THEREFORE BE IT FURTHER RESOLVED, the Board of County Commissioners directs the abolishment of the Natural Areas Acquisition and Protection Fund, with any assets remaining in the fund after the distribution is made to Metro in accordance with the agreements transferring properties and responsibilities effective July 1, 1996 is complete, to be transferred to the newly created Capital Acquisition Fund; and

THEREFORE BE IT FURTHER RESOLVED, that the Board of County Commissioners directs that any proceeds from the sale of unrestricted property (not including land swaps) and interest earnings on the deposited proceeds are to be credited equally to the Capital Improvement Fund and the Capital Acquisition Fund; and

THEREFORE BE IT FURTHER RESOLVED, that the only disbursements made from the Capital Improvement Fund are to be related to the sale or purchase of property and/or improvement included in the County's Capital Plan; and

THEREFORE BE IT FURTHER RESOLVED, that the Board of County Commissioners will review the use of the funds and the division of the money between the funds in five years.

ADOPTED this 8th day of _____August, 1996.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Beverly Stein, Chair

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

_____
Sandra N. Duffy, Chief Assistant

#1

PLEASE PRINT LEGIBLY!

MEETING DATE 8/8/96

NAME MHSN - Tom MARKGRAF

ADDRESS 710 SW 2nd

STREET

Portland 97204

CITY **ZIP**

I WISH TO SPEAK ON AGENDA ITEM NO. R-4

SUPPORT _____ **OPPOSE** ✓

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE 8/8/96

NAME MHSW - PAUL NORR

ADDRESS 1020 SW TAYLOR #530

STREET

PORTLAND, OR 97205

CITY ***ZIP***

I WISH TO SPEAK ON AGENDA ITEM NO. R-4

SUPPORT _____ ***OPPOSE*** ↘

SUBMIT TO BOARD CLERK

#3

PLEASE PRINT LEGIBLY!

MEETING DATE 8/8/96

NAME MHSW- Kristin Angell EXEC DIRECTOR

ADDRESS 710 SW 2nd MHSW

STREET

Portland 97204

CITY **ZIP**

I WISH TO SPEAK ON AGENDA ITEM NO. R-4

SUPPORT _____ **OPPOSE** ✓

SUBMIT TO BOARD CLERK

#4

PLEASE PRINT LEGIBLY!

MEETING DATE 8/8/96

NAME MAGNUS LAKOVICS, M.D.

ADDRESS 4805 N.E. GLISAN ST.
STREET

PORTLAND, OR 97213
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # R4

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

#5

PLEASE PRINT LEGIBLY!

MEETING DATE Aug 8 96

NAME Dolores Morgan

ADDRESS 5139 N Lombard St
STREET

Portland OR 97203
CITY **ZIP**

Delaney

I WISH TO SPEAK ON AGENDA ITEM NO. R 4

SUPPORT _____ **OPPOSE** X

SUBMIT TO BOARD CLERK

#6

PLEASE PRINT LEGIBLY!

MEETING DATE 8/8/96

NAME Ann Uhler - CODA

ADDRESS 306 N.E. 20th

STREET

Portland Or 97232

CITY ***ZIP***

I WISH TO SPEAK ON AGENDA ITEM NO. R-4

SUPPORT _____ ***OPPOSE*** X

SUBMIT TO BOARD CLERK

#7

PLEASE PRINT LEGIBLY!

MEETING DATE 8/8/96

NAME RICHARD HARRIS

ADDRESS 2 NE Second Ave Central City Concern

STREET

Portland Or 97209

CITY ***ZIP***

I WISH TO SPEAK ON AGENDA ITEM NO. R-4

SUPPORT MHSW Appeal ***OPPOSE*** _____

SUBMIT TO BOARD CLERK

MEETING DATE: AUG 8 1996
AGENDA #: R-4
ESTIMATED START TIME: 10:am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: MENTAL HEALTH CRISIS RESPONSE SYSTEM CONTRACT AWARD

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: August ~~1~~ 8, 1996

AMOUNT OF TIME NEEDED: 1 hour

DEPARTMENT: Support Services DIVISION: Finance/Purchasing

CONTACT: Franna Hathaway TELEPHONE #: X2651
BLDG/ROOM #: 421/1st floor

PERSON(S) MAKING PRESENTATION: Franna Hathaway/John Thomas

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

MENTAL HEALTH CRISIS RESPONSE SYSTEM CONTRACT AWARD

8/12/96 Copies to Franna Hathaway & Duane Boyer & John Thomas

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT MANAGER: [signature]

96 JUL 19 PM 2:49
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM BRIEFING
STAFF REPORT SUPPLEMENT

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Franna Hathaway, Purchasing Manager

TODAY'S DATE: July 20, 1996

REQUESTED PLACEMENT DATE: August 1, 1996

RE: MENTAL HEALTH CRISIS RESPONSE SYSTEM CONTRACT AWARD

I. Background/Analysis: In late 1995 Multnomah County issued a Request for Proposal for a Mental Health Crisis Response System. In addition to the services to be provided, the RFP required the proposer to provide a site for a Crisis Triage Center. The Triage Center will have five 23-hour stabilization beds and two licensed secured holding rooms. The Center is required to be open 24 hours a day every day of the year and to be staffed with a person with prescribing privileges. The RFP contemplates that in addition to self-referral, families, friends and the police will bring people in mental health crisis to this center.

Three proposals were submitted in response to the RFP and were scored by a panel of evaluators. The three proposers and their scores (out of total of 170 possible points) were as follows:

Caremark	149
Mental Health Services West	138.57
Providence Health System	134.86

Before the contract was awarded, Caremark withdrew its proposal. The award was then made to Mental Health Services West (MHSW). After the award was made to MHSW it was discovered that the MHSW proposal misstated the zoning for the site it proposed to use for the Triage Center. MHSW's proposal stated that the site was zoned commercial, when in fact it was zoned residential. The City of Portland planning department was consulted by the County to determine whether the Triage Center could be located at the site proposed by MHSW. In a memorandum to the County, the planning department advised that the proposed Triage Center was a prohibited use at the site proposed by MHSW. The memo stated that MHSW could apply for a permit to locate the Triage Center at its proposed site but the City Planning Department staff position was firm that a Triage Center was a prohibited use at that site.

The misstatement was not discovered until after the evaluation team had completed its work and had disbanded. In the scoring of the proposals MHSW received points based on the representations that were made in its proposal concerning its proposed site. It was not possible to determine exactly what effect the error had on the scoring. The County staff had to determine whether to ignore the error and proceed to contract with MHSW, or to reject the MHSW proposal entirely.

Because of the significance of the misstatement, it was determined that the MHSW proposal must be rejected. The contract was then awarded to Providence Health Systems as the next highest scoring proposal.

MHSW appealed to the Chair and the Chair upheld the staff decisions. MHSW then filed a lawsuit. In the lawsuit, MHSW challenged the process by which the award was made to Providence claiming that staff did not have authority to make the decisions it had made. The court ruled that under PUR-1 Rule VI, staff had the authority to reject the MHSW proposal and make the award to Providence after the misstatement was discovered. However, the court was unable to determine from the staff letter dated March 7, 1996, (copy attached) that was sent to MHSW canceling the award of the contract that the letter represented a rejection of the MHSW proposal. It was the intention of staff to inform MHSW that by canceling the award that the County was rejecting the MHSW proposal and would no longer consider it. Staff believes that in the context of the letter this intention is clear. However the court did not agree. Because of the court's decision that the letter was not an effective rejection of the MHSW proposal, the court found that it was necessary under PUR-1 Rule VII B for the staff to come to the Board for approval of the award to Providence by three Commissioners. Rule VII B applies whenever County staff recommends that an award be made to other than the highest scoring proposal. The reason that this matter is before the Board is the court's determination that the letter to MHSW was not clearly worded to reject the proposal.

It is important that the court did not say that the staff decisions to reject the MHSW proposal or award the contract to Providence were wrong, and MHSW did not claim they were wrong. The court merely decided that the recommendation to award the contract to Providence had to be referred to the Board.

II. Recommendation/Action Requested: Staff recommends to the Board that the award be made to Providence Health Systems. PUR-1 procedures require three members of the Board to approve this recommendation.[1]

PUR-1 Rule VII B requires staff to provide information in three areas in support of its recommendation. The following information is provided in support of the staff recommendation to award the contract to Providence.

(1) Provide a detailed explanation of the reasons for the award recommendation.

RESPONSE:

(a) The MHSW misstatement concerning the zoning was contained in a scored item. The integrity of the RFP process would be compromised if MHSW was permitted to receive the award after it had misstated significant facts and received the benefit of the misstatements in the scoring.

The MHSW misstatement occurred in a section that was awarded 80 points (out of a total of 170). Within that section information on seven different areas was requested one of which was a description of the site. There was no allocation of the 80 points between the seven areas. Thus it is impossible to say how many points MHSW received as a result of its misstatement.

However the significance of the misstatement by MHSW can be seen by contrasting the statement that was made, and a statement based on the correct facts. In the RFP, MHSW stated:

> "The building is located within the PSU neighborhood and is zoned light commercial (CXD). This is the appropriate zoning for the intended use and we anticipate no undue difficulty in obtaining the necessary conditional use permits."

A correct statement concerning the zoning of the MSHW site would be:

> "The building is located within the PSU neighborhood and is zoned residential (RXD). The City of Portland zoning staff has determined that a crisis triage center is prohibited in this zone. However the City has agreed that MHSW may apply for this use and attempt to show that the site can qualify as a conditional use in this zone."

---

[1] If three members do not approve, Providence will not receive the contract. The RFP process will then be terminated and all proposals rejected.

County Counsel was consulted regarding how to evaluate the misstatement to determine whether it should be disregarded or whether it required rejection of the proposal. County Counsel provided two standards by which to judge the misstatement to determine if it was material, which would require rejection of the proposal. Under the first standard, a misstatement is material if it gives the proposer a substantial advantage or benefit over other proposers. Under the second standard, the misstatement is deemed material if it is of such a nature, that to waive it would adversely affect the competitive process and undermine the fairness of the RFP procedure. Staff believes that the MHSW misstatement was material under both of these criteria.

Because of its 24-hour operation and the nature of the services provided, it was anticipated that the siting of the Triage Center would likely be controversial. Staff determined that the misstatement which portrayed the MHSW site as being in the "appropriate zone" and which anticipated no "undue difficulty" obtaining permits, gave MHSW a substantial advantage over other proposers because it was evaluated based on these representations when ,in fact, a Triage Center is prohibited at that site. The fact that the City might let MHSW apply for the use at its proposed site was not important in view of the fact that the City planning department determined that the use was prohibited.

MHSW has argued that it truthfully stated that a conditional use permit would be necessary, that the City said that MHSW could apply for a conditional use permit, and that the RFP itself contemplated that it would be necessary to get a conditional use permit. However, it is one thing to apply for a conditional use permit where the City agrees that it can be issued if all criteria are met, and quite another to apply where the City has stated that the use is prohibited and conditional use permits are not allowed. Staff believes that MHSW would have received significantly lower scores if it had correctly described its site and it therefore gained a substantial advantage by reason of its misstatement of the zoning.

Staff also believes that it is important to maintain an RFP process that does not tolerate significant misstatements in proposals regardless of whether innocent or calculated. To ignore the MHSW misstatement would be unfair to Providence and would adversely affect the competitive process and undermine public confidence in the County bid and request for proposal processes.

(b) The Providence site is properly zoned and requires no land use approvals.

The City of Portland has confirmed that Providence has requested and received from the City of Portland an opinion that its proposed site (on its campus) requires no land use approvals. The time for filing an appeal of this decision has passed.

(2) Show findings that award procedure does not violate any applicable law or regulation.

RESPONSE

County Counsel has advised that award to Providence would not violate any applicable law or procedure.

(3) State why this award would be in the best interest of the public and the County.

RESPONSE:

(a) It would preserve the fairness and integrity of the Request for Proposals process. An award to MHSW would be unfair to Providence.
(b) It would not result in the County or the Public receiving an inferior crisis response service.
(c) It would allow the crisis response system to become operational at the earliest possible time.

CONCLUSION

The award should be made to Providence.

III. Financial Impact: N/A

IV. Legal Issues: See above

V. Controversial Issues: See above

VI. Link to Current County Policies: See above

VII. Citizen Participation: N/A

VIII. Other Government Participation: N/A

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

March 6, 1996

MEMORANDUM

To: John Thomas
Office of Multnomah County Counsel

From: Susan Feldman, Principal Planner
Development Review Section

Re: Determination of Use for the Proposed Crisis Triage Center

As explained in the RFP, Multnomah County is currently in the process of funding a Crisis Triage Center to be located in the City of Portland. You have asked what use category this proposal fits into as regulated by the Portland Zoning Code. Our understanding is that the intent of the Crisis Triage Center is to provide medical treatment to adults and children who are experiencing situational or severe psychiatric crisis and are not linked to the mental health system. Twenty-four hour treatment will be provided on site and, if necessary, patients will be linked to another site in the mental health or medical system.

It is our determination that the proposed use performs as an urgent medical care facility which the Zoning Code lists as falling into the Retail Sales and Service category of Chapter 33.920. If this use is to be located in a residential zone, you or your provider also has the option of applying for the use to be classified in the Community Service category of Chapter 33.920. Community Service uses are conditional uses in residential zones and require a Type III procedure, i.e., a mandatory hearing before a land use hearings officer. During this process, the additional information as to the use and how it functions will allow the City to determine exactly into which use category your proposal falls.

MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES (503) 248-5015
FINANCE (503) 248-3312
LABOR RELATIONS (503) 248-5135
PLANNING & BUDGET (503) 248-3883
RISK MANAGEMENT (503) 248-3797

PURCHASING, CONTRACTS & CENTRAL STORES (503) 248-5111

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

March 7, 1996

Susan J. Beattie, Ph.D
Mental Health Services West
710 SW Second Ave.
Portland, OR 97204

RE: RFP No. P952-43-0114
Mental Health Crisis Response System

Dear Dr. Beattie:

By letter dated January 30, 1996 you were advised that your proposal was ranked number one among proposals considered in response to the above referenced Request for Proposal. As you are aware, the RFP required all proposers to propose and describe a specific site to be used to perform the services described in the RFP. Subsequent to January 30, 1996 it was learned that your proposal contained a statement concerning the zoning of your proposed site that has been determined to be incorrect. Your proposal provided:

> "The building is located within the PSU neighborhood and is zoned light commercial (CXD). This is the appropriate zoning for the intended use and we anticipate no undue difficulty in obtaining the necessary conditional use permits."

Information from the City of Portland has established that the building is, in fact, in an RX (residential) zone. A use determination memorandum has been obtained from the City, a copy of which is attached to this letter. In that memorandum the City advises:

> "It is our determination that the proposed use performs as an urgent medical care facility which the Zoning Code lists as falling into the Retail Sales and Service category of Chapter 33.920."

This use is prohibited in the RX zone. While the City has set forth an option to apply for the use as a Community Service use, which is a conditional use in an RX zone, the initial determination by the City raises a serious question whether the required land use approvals can be secured for the proposed site.

While the error in your proposal does not establish at this time that you cannot perform in accordance with the proposal, it does raise the issue whether the evaluation of your proposal was affected by the fact that the zoning was incorrectly stated. The description of the site was a scored item. After careful review the County has determined that the incorrect statement of the

zoning was material and cannot be waived without adversely affecting the request for proposal process. Accordingly, the County is withdrawing the January 30, 1996 letter advising you that your proposal was ranked number one and canceling the award to negotiate a contract with the County.

If you wish to appeal this decision you must submit your appeal no later than 4:00 PM on the fifth (5th) working day from the postmarked date on this letter. Address appeal to me at the above address. The appeal must describe the specific citation of law, rule, regulation, or practice upon which protest is based. The judgment used in scoring by individual evaluators is not grounds for appeal.

Sincerely,

Franna Hathaway

Franna Hathaway, Manager
Purchasing Section

Enclosure

c: John Thomas, Asst. County Counsel
Norman Miller, Community & Family Services
Paul Norr, Attorney at Law

~~Bob~~

EYF

Deb

MULTNOMAH COUNTY, OREGON

Office of County Counsel
1120 SW Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138
FAX: 248-3377

fax

to: Steve Moskowitz

fax #: 227-3015

from: John Thomas

date: July 12, 1996

pages: 1

NOTES: The date for the Board hearing concerning the Mental Health Crisis Response System Contract has been changed to August 8, 1996. I will be sending you the staff recommendation next week. The Chair's office has advised that written material you wish to present to the Board should be received on or before August 1, 1996. Please send any written material to me. I will distribute it the day it is received. Call with any questions.

BOARD OF COUNTY COMMISSIONERS
96 JUL 15 PM 2:32
MULTNOMAH COUNTY OREGON

Confidentiality and Transmission Problems:

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MOSKOWITZ & THOMAS
ATTORNEYS AT LAW
111 S.W. COLUMBIA
SUITE 1080
PORTLAND,OREGON 97201

TELEPHONE (503) 227-1116
FAX(503)227-3015

Christopher P. Thomas **Steven A. Moskowitz**

July 25, 1996

Board Clerk
Multnomah County Board of Commissioners
Room 1510
1120 SW 5th Avenue
Portland, OR 97204

Re: Hearing on Mental Health Crisis Response System RFP

To the Clerk of the Board:

Enclosed are letters for each member of the Board of County Commissioners regarding the above-noted hearing, to be scheduled for sometime in August. It is my understanding from County staff that material on this matter will be distributed to the Board upon its receipt. I would appreciate very much your assistance in that regard.

Thank you very much for your courtesies.

Very truly yours,

Steven A. Moskowitz

cc John Thomas
Kris Angell

BOARD OF
COUNTY COMMISSIONERS
96 JUL 26 AM 9:40
MULTNOMAH COUNTY
OREGON

MOSKOWITZ & THOMAS
ATTORNEYS AT LAW
111 S.W. COLUMBIA
SUITE 1080
PORTLAND,OREGON 97201

TELEPHONE (503) 227-1116
FAX(503)227-3015

Christopher P. Thomas **Steven A. Moskowitz**

July 24, 1996

BOARD OF
COUNTY COMMISSIONERS
96 JUL 26 AM 9:41
MULTNOMAH COUNTY
OREGON

County Chair Beverly Stein
Commissioner Tanya Collier
Commissioner Gary Hansen
Commissioner Sharron Kelley
Commissioner Dan Saltzman
Multnomah Board of County Commissioners
1120 S.W. 5th Avenue
Portland, OR 97204

Re: Hearing on Mental Health Crisis Response System RFP
Scope of Board Authority

Dear Chair Stein and Commissioners Collier, Hansen, Kelley, and Saltzman:

I understand that County Counsel has advised you that your scope of authority in the upcoming hearing on the Mental Health Crisis Response System RFP is very limited. He has informed you that the only decision you may make is whether to approve or deny staff's recommendation that the Mental Health Crisis Response System contract be awarded to lower scoring Providence Health Systems. He has further advised you that should you deny the recommendation, the necessary consequence would be the termination of the current RFP process, which would have to be started all over again. In view of how important this new system is and how much time has already been lost due to procedural errors, I certainly understand why you would feel some pressure to approve staff's recommendation. However, *staff is absolutely wrong in its position. You have full authority to review the program proposals which were submitted and to make your own determination as to which one would best implement the community-based model you have endorsed.*

THE BOARD HAS THE AUTHORITY TO REJECT THE STAFF RECOMMENDATION AND SELECT MENTAL HEALTH SERVICES WEST

As will be demonstrated in subsequent materials, there are two valid proposals to provide the services described in the RFP. Staff has recommended that the contract be awarded to the lower scoring proposal. Based upon the appropriate findings you may choose to select either the proposal favored by staff or the one recommended by the Evaluation Committee. Your power to do so is based upon any of the following:

1. The administrative rules are silent as to the effect of the Board's rejection of a staff recommendation. The Board retains its charter and statutory authority and responsibility to act as the local contract review board.

This matter is before you because staff awarded contract rights to a lower scoring proposal. Judge Johnson found that under the County Rules staff did not have such delegated authority. The Rules state that such an award may be made only if the Board approves it. The Rules are silent as to the consequence of the Board rejecting staff's recommendation. They do not state that the Board may not elect to make the award to one of the other proposals. They do not state that the current RFP process is terminated if the Board disagrees with staff. Just as the initial problem was created by staff exceeding its delegated authority, so would the problem be compounded by further attempts to eviscerate the Board's contracting authority.

In fact, the Board retains its statutory authority and responsibility to act as the local contract review board. Further, as the County Charter provides, the Board retains any power it has not delegated:

> "...the legislative power of the county shall be vested in and exercisable only by the board of county commissioners. *Any other power of the county not vested by the charter elsewhere shall be vested in the board but may be delegated by it.*" County Charter, Section 2.20.

As noted above, the basis of Judge Johnson's ruling was that the Board had not delegated to staff the authority to make an award to a lower scoring proposal. The Board had retained that power for itself. The same is true with the authority to reject staff's recommendation and make the award to another proposal. **The Board has retained that authority.** As the Charter states, silence is just as effective as written words in demonstrating the extent of Board authority.

2. The Board has legislative power to clarify rules that appear ambiguous.

Assuming that the Board is unsure if it has retained the authority to make an award to a proposal other than the one recommended by staff, it has full power as a legislative body to clarify those rules. As indicated previously, the Rules do not expressly prohibit the Board from rejecting staff's recommendation and making the award to another. They are silent on this issue. To fill this void, the Board, acting in its legislative capacity, may adopt a rule which expressly addresses the situation.

3. The Department of Community and Family Services may submit a new recommendation to Purchasing.

Staff has informed the Board that should it reject staff's recommendation, the only possible result would be to start the RFP process all over again. This is clearly wrong. At the very least, should the Board reject staff's recommendation, the Department can immediately forward to Purchasing a recommendation that the award be made to Mental Health Services West.

Summary: The Board has retained the authority to select a proposal other than the one recommended by staff. Alternatively, the Board can act in its legislative capacity to adopt a rule to address this situation. Finally, should the Board reject staff's recommendation, the Department can submit a new recommendation to Purchasing. Thus, the choices are not between approving staff's recommendation or starting the RFP process all over again. You can reject staff's recommendation, select Mental Health Services West and avoid any further undue delay in implementing this important program.

Thank you very much for allowing me to clarify these issues for you. I hope it has been of some help.

Very truly yours,

Steven A. Moskowitz

cc John Thomas

CODA

TREATMENT RECOVERY PREVENTION

July 31, 1996

Ms. Amy Graham, Clerk
Board of County Commissioners
Multnomah County
1120 S.W. Fifth Avenue, 15th Floor
Portland, OR. 97204

Dear Ms. Graham:

On behalf of the patients, staff, administration and Board of Directors of CODA Treatment Recovery Prevention, I ask that the Multnomah County Board of Commissioners give full attention and diverse consideration to their decision regarding the awarding of the Crisis Triage contract.

It is our understanding that the County Commissioners have had their options regarding this decision limited to an approval or disapproval of the awarding of this contract to Providence Hospital. If Commissioners vote no on this issue, we understand that the RFP will be pulled.

We urge Commissioners to have Providence Hospital and Mental Health Services West (MHSW) sit down and develop a partnership to maintain existing services and develop linkages to facilitate the addition of new services.

MHSW has a strong history of working in partnership with community mental health providers, police agencies and the public sector. This agency has extensive experience in crisis care and has provided services to diverse populations, including the indigent, homeless adults and chronically mentally ill patients. Many of the services required by this RFP are currently being provided by MHSW, which would require few new services.

We agree that this issue needs to be resolved in an open forum where testimony can be heard from all partners. This can insure that a fair decision, serving the long-term interests of our community can be reached. Please contact me if I can provide further information.

Sincerely,

Ann S. Uhler
Executive Director

'96 AUG 1 AM 7:41
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

cc: Commission Chair Stein; Commissioners Collier, Kelley, Hanson and Saltzman

CODA Central Services	306 N.E. Twentieth Avenue • Portland, OR 97232	503-239-8400
Administration	210 N.E. Twentieth Avenue • Portland, OR 97232	503-236-2290
Alpha Family Treatment Center	1427 182nd Avenue • Portland, OR 97233	503-761-6006
New Directions Family Treatment Center	8623 S.E. Woodstock • Portland, OR 97266	503-774-4146
Tigard Recovery Center	10362 S.W. McDonald • Tigard, OR 97224	503-624-0312

FEDERATION
for
CHILDREN AND YOUTH

July 31, 1996

Clerk of the Board of County Commissioners
Multnomah County
1120 SW 5th Avenue, 15th Floor
Portland, Oregon 97204

Board of Directors

Dennis Morrow, *Chair*
Janus Youth Programs
(503) 233-6090

David Fuks, *Secretary*
Edgefield Children's Center
(503) 492-4020

Jay Bloom, *Treasurer*
Morrison Center
Child & Family Services
(503) 233-4356

Dear Commissioners,

I am writing on behalf of the Federation for Children and Youth to urge you to please consider all the issues involved in the award of the crisis response center contract. Clearly it is unfortunate that the process has been delayed, but this does represent an opportunity to fully review and discuss all the implications of this project.

We realize it also sets up a natural tension between County staff and the ultimate authority of the County Commissioners. Clearly there is a temptation to review this matter as only a procedural one. However, we believe there are larger issues at stake.

Setting aside for a moment all the complications of the zoning issues, we believe the County staff judged correctly when they first awarded this contract to Mental Health Services West. I'm sure this award was based on Mental Health Services West's long standing linkages to the mental health provider network, extensive experience with crisis care and the clients who use these services, including homeless adults and chronically mentally ill individuals. Therefore, we believe in long term interests of the community, that the crisis response center project should be awarded to Mental Health Services West.

Thank you in advance for your consideration.

Sincerely yours,

Jay C. Bloom
Treasurer

cc: David Fuks
Dennis Morrow

BOARD OF COUNTY COMMISSIONERS
96 AUG -2 PM 3:19
MULTNOMAH COUNTY
OREGON

830 NE Holladay Street, Suite 125, Portland, OR 97232 • (503) 233-4356 • (503) 233-4359 FAX

Mental Health Services West
710 S.W. Second Avenue
Portland, Oregon 97204-3199
503 / 228-0373 • Information, Crisis & Intake
503 / 228-7134 • Community Support Services
503 / 273-8433 • Administration
503 / 228-1804 • Children's Program

Executive Director: Kristin Angell
Director of Medical Services
David Pollack, M.D.

August 1, 1996

Board Clerk
Multnomah County
1120 SW Fifth Avenue, 15th Floor
Portland, OR 97204

RE: CRISIS RESPONSE SYSTEM CONTRACT AWARD

Dear Madame Clerk:

Enclosed please find written comments by Mental Health Services West concerning the above-referenced Board agenda item scheduled for the August 8, 1996, Board of County Commissioners' meeting.

Please include this materials in the Board's briefing packet and in the official record for the hearing. Please also distribute copies to the County Chair, County Commissioners, County Counsel and County Purchasing as indicated below.

Thank you for your consideration.

Sincerely,

Kristin Angell

Kristin Angell, Executive Director

cc: County Chair Beverly Stein
County Commissioner Tanya Collier
County Commissioner Gary Hansen
County Commissioner Sharron Kelley
County Commissioner Dan Saltzman
Deputy County Counsel John Thomas
Franna Hathaway, Purchasing Manager

BOARD OF COUNTY COMMISSIONERS
'96 AUG -2 AM 8:36
MULTNOMAH COUNTY
OREGON

Partially funded as an independent contractor by Multnomah County Social Services Division

CENTRAL CITY CONCERN

Solutions To Homelessness & Chemical Dependency

BOARD OF DIRECTORS

Dean Gisvold
Chairperson

George "Bing" Sheldon
Vice Chair

Larry Naito
Secretary

Linda Girard
Daniel J. Haftorson
Judith Mandt
Michael H. Marcus
Steven D. Wasson
Divan Williams, Jr.

Central Office
Housing Services
SRO Maintenance
2 N.W. Second
Portland, Oregon 97209
(503) 294-1681
FAX (503) 294-4321

Portland Addictions
Acupuncture Center
1201 S.W. Morrison
Portland, Oregon 97205
(503) 228-4533
Fax (503) 228-4618

Hooper Center/CHIERS
20 N.E. Martin Luther King
Portland, Oregon 97232
(503) 238-2067
FAX (503) 238-2004

Central City Concern
Jobs Program
116 N.W. 3rd.
Portland, Oregon 97209
(503) 226-7387
FAX (503) 226-7921

BOARD OF
COUNTY COMMISSIONERS
96 AUG -5 AM 8:14
MULTNOMAH COUNTY
OREGON

August 1, 1996

The Most Honorable Beverly Stein
Chair of the Board
Multnomah County Commissioners Office
1120 SW Fifth Avenue, Room 1515
Portland, OR 97204

RE: CRISIS RESPONSE CENTER CONTRACT

Dear Commissioner Stein:

I am writing you to express my concern regarding the Family and Community Services Division's decision not to contract with Mental Health Services West for the Crisis Response Center. I would urge you to give careful consideration to the appeal of this decision by Mental Health Services West.

Central City Concern has been in partnership with Multnomah County since it was incorporated in 1978 and has been a major contracting partner since 1981 beginning with the Hooper Center. This partnership is highly valued by Central City Concern. Mental Health Services West has likewise enjoyed a very productive relationship with Multnomah County. This partnership between the public sector and the private non-profit sector has been invaluable at providing effective and responsive services to the citizens of Multnomah County.

MHSW and CCC have developed an effective, cooperative partnership that benefits the low-income and homeless of Multnomah County. During the past 12 years the two agencies have developed very successful cooperative service models. The Golden West housing operated by Central City Concern and the Homeless Mentally Ill program operated by Mental Health Services West is a good example of two community agencies working in cooperation with Multnomah County to provide effective community based services.

The cooperative relationship between Hooper's CHIERS program and Mental Health Services West's Project Respond has been highly beneficial to the community and the clients we serve. Project Respond is an example of the benefits to the community from a service contractor that far exceed their contractual imperatives. Project Respond, like CHIERS, was initiated and developed by a community agency in partnership with Multnomah County. The synergy that occurs as a result of the partnership of Multnomah County with agencies like Mental Health Services West should not be ignored.

Mental Health Services West has extensive experience working with homeless and disaffiliated people in need of crisis services. The valuable services and collaborative relationships have taken years to develop and maintain and will be very difficult and

disruptive if they have to be recreated by another provider, who has little or no experience with homeless, mentally ill.

Although I am not privy to all the detail of the decision to take the original award away from Mental Health Services West, I understand that the sitting issues that were thought to present a problem are no longer a reality. As an agency that has considerable experience with neighborhood sitting problems, I know how daunting the issues may appear. I also know that a partnership with a community based provider can benefit the County, the agency and the clientelle, and is not something that should be forfeited without serious consideration.

In closing I just wish to reiterate that Mental Health Services West has been a good partner with Central City Concern and I am sure a good partner with Multnomah County. The agency possesses all of the necessary capabilities to meet the requirements of the contract. It is critical that their appeal before the Board be reviewed fairly and openly, bearing in mind all of the facts. I thank you for your consideration of this matter.

Sincerely,

Richard L. Harris
Executive Director

DELAUNAY
FAMILY OF SERVICES

5139 N. Lombard St.
Portland, Oregon 97203
(503) 285-9871
Fax: (503) 286-8389

July 31, 1996

Beverly Stein
Multnomah County Commissioner
1120 SW 5th Avenue, 15th Floor
Portland, OR 97204

BOARD OF
COUNTY COMMISSIONERS
96 AUG -5 AM 8:14
MULTNOMAH COUNTY
OREGON

Dear Commissioner Stein,

The award of the Crises Response Center has been referred to the Board of County Commissioners as a result of legal action on the part of Mental Health Services West. As a community based colleague of Mental Health Services West, I urge your careful review of both the process and the award.

The use of the RFP process in a well-established system of multiply contracted agencies which was not a collaborative effort is questionable.

Collaborative efforts were disallowed both in the RFP and in subsequent negotiations. Considering the efforts Multnomah County Community and Family Services Department have made in the direction of collaborative and partnership building that collaboration was disallowed is questionable.

The withdrawal of negotiations with Mental Health Services West apparently were due to a land use decision that since has proven inaccurate. This further raises questions about the fairness of the process.

My hope is enough questions about this issue have been raised, so the Board representing the interests of the County and, each Commissioner as a concerned individual, will judge the matter of sufficient import to direct a fair and impartial hearing be held.

In the interests of our mutual constituencies, thank you for your attention to the important process of establishing the best possible Crises Response Center for Multnomah County.

Sincerely,

Dolores Morgan
Executive Director

Mental Health Services West
710 S.W. Second Avenue
Portland, Oregon 97204-3199
503 / 228-0373 • Information, Crisis & Intake
503 / 228-7134 • Community Support Services
503 / 273-8433 • Administration
503 / 228-1804 • Children's Program

Executive Director: Kristin Angell
Director of Medical Services
David Pollack, M.D.

August 1, 1996

County Chair Beverly Stein
County Commissioner Tanya Collier
County Commissioner Gary Hansen
County Commissioner Sharron Kelley
County Commissioner Dan Saltzman

RE: MENTAL HEALTH CRISIS RESPONSE SYSTEM RFP AND CONTRACT

Dear Chair Stein and Commissioners:

Attached to this letter are Mental Health Services West's written comments concerning the Mental Health Crisis Response System Request for Proposals and contract award. These materials outline the reasons we believe Multnomah County erred in withdrawing the contract rights from our agency and awarding them instead to a lower ranked proposer.

As an agency that recognizes the importance of a positive relationship with Multnomah County and considers the County a valued client, we regret that we have had to challenge staff's actions and cause this matter to be brought before you. We recognize that staff's actions are undoubtedly the result of their interest in pushing ahead to establish the CRC as quickly as possible to carry out the Board's policy directions. However, we believe that vital public services and important public policy considerations are at stake. We also believe the inherent fairness of the County's procurement process is at issue.

We ask you to carefully consider our position that our award never should have been withdrawn and to reinstate the contract award to Mental Health Services West. We believe our proposal is more strongly aligned with the community-based model for mental health care delivery that Multnomah County has adopted.

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MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

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It is not easy for us to be in this position. We have never challenged a contract award before and never previously taken the County to court. We considered every option short of these actions. Even now, we continue to be open to creative alternatives to the present situation that would provide the best result for the public.

We hope that the Board, as the final arbiter of what is in the public interest, will consider our position and be open to any solution that best meets public policy objectives.

Sincerely,

Thomas B. Markgraf, President
MHSW Board of Directors

Attachments

Comments From Mental Health Services West

re:

Award Of Contract For The Mental Health Crisis Response System

Before The Multnomah County Board of Commissioners
On August 8, 1996

August 1, 1996

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I. Summary

Mental Health Services West offers its long-standing experience as a community-based mental health care provider, with specialized skills in serving disenfranchised individuals including the homeless, and those experiencing mental health crises, and brings to bear an extensive set of services and already established community linkages that will further enhance the CRC project. MHSW's proposal represents a clear programmatic and policy choice before the Board of County Commissioners in reconsidering the contract award.

As the higher-ranked proposer, MHSW actively seeks reinstatement of the contract award. It is not our intention to attempt to be a spoiler or to delay the award of a contract for delay's sake. We take no issue with Providence Medical Center, and have the greatest respect for its professional competencies. We simply want to see the community receive the best possible CRC program. We sincerely believe MHSW offers the best crisis response services available and the best linkages with the existing mental health care delivery system. By awarding the contract to MHSW, Multnomah County and its citizens will benefit from some of the most highly trained and experienced personnel available and multi-faceted crisis services that are already up and running.

Because the contract award was withdrawn from MHSW, we are not able to simply make a case for MHSW. We must also make a case against why the contract was withdrawn. Accordingly, we make the following summary points in support of our argument that the County erred in withdrawing the award from MHSW:

1. **There is no material error in the MHSW proposal. County staff erred in making such a determination and withdrawing the MHSW award.**

2. **County staff erred in withdrawing the contract rights for the Crisis Response Center from Mental Health Services West (MHSW).**

3. **The Board of County Commissioners has the authority to reject the staff recommendation and reinstate the award to MHSW.**

4. **As the highest-ranked proposer, MHSW remains prepared to meet all requirements of the contract backed by a strong network of community-based mental health services and programs.**

Our comments on each point are summarized below:

1. **There is no material error in the MHSW proposal. County staff erred in making such a determination and withdrawing the MHSW award.**

   County staff's entire basis for canceling MHSW's contract award is that a material error was made in the MHSW proposal because the Crisis Response Center is "prohibited" in the RX zone. Staff is wrong. The CRC use is not a "prohibited" use, as County staff erroneously contend, at the proposed MHSW site in downtown Portland.

(1) **The Planning Director has determined that the CRC use falls within the "Medical Center" use category. Therefore, the CRC is allowed in an RX zone as a conditional use.** A Letter of Use Determination issued on May 23, 1996 by city Planning Director David Knowles (see Exhibit 1) concluded that the CRC falls within the "Medical Center" use category of the zoning code. A "Medical Center" use is allowed in an RX zone as a conditional use. The Director's use determination for the CRC was not appealed and therefore stands. MHSW's proposed site is in an RX zone.

(2) **Since the CRC can be located just as easily in an RX zone as in a CX zone, MHSW's misstatement of the zoning as CX is immaterial.** The statement in MHSW's proposal remains valid: the zoning at the site proposed by MHSW is the "appropriate zoning for the intended use."

(3) **The Evaluation Committee's scoring would have been the same had MHSW referenced the correct zoning (RX) in the proposal.** The use is allowed in either an RX or a CX zone; hence the misstatement that the zone was CX could have had no material bearing on the Evaluation Committee's scoring. Moreover, the need for a conditional use permit was clearly stipulated in the MHSW proposal and considered by the Evaluation Committee in its ranking of the proposers. The Committee ranked MHSW higher than Providence with that knowledge. County staff erred in overturning the Evaluation Committee's scoring.

The misstatement of zoning in the MHSW proposal was not material. The proposed use can be located in either a CX or RX zone. MHSW was correct in asserting that there should be "no undue difficulty in obtaining the necessary conditional use permits."

2. County staff erred in withdrawing the contract rights for the Crisis Response Center from Mental Health Services West (MHSW).

County staff acted too hastily and with incomplete information, and thus denied MHSW its right, as the higher-ranked proposer, to satisfy the requirements of the RFP and be awarded the contract.

(1) **County staff did not allow MHSW to go through the c ditional use process clearly contemplated in its proposal and in the original County RFP**. Instead, County staff relied on an initial opinion it solicited from a member of the city Planning Bureau staff that the CRC use is not allowed in an RX zone (see Exhibit 1). That opinion was subsequently superseded by the formal Letter of Use Determination from the city Planning Director that the CRC falls within the "Medical Center" use category, which is allowed in an RX zone. This favorable determination would have been reached on MHSW's behalf in the conditional use proceeding had County staff not acted precipitously and had County staff taken the recommendation of city planners that MHSW go through the

conditional use process. (See Exhibits 1 and 2 for additional comment.)

(2) **County staff solicited and received the planning staff opinion prior to the Preapplication Conference with the Planning Bureau that initiates the conditional use process and before MHSW could submit its formal conditional use application and zoning analysis.** By doing so, County staff circumvented the public process through which land use permit decisions are reached, thus denying MHSW its opportunity to demonstrate that the CRC use could be sited at the proposed location.

(3) **Although MHSW disagreed with the initial Planning Bureau opinion, it had no opportunity to formally challenge the opinion before the County acted to withdraw the contract award.** The memorandum that formed the basis for County staff's decision to withdraw the MHSW award was issued by the Planning Bureau on March 6, 1996. The County notified MHSW that it was withdrawing the award on March 7, 1996.

Staff should have allowed MHSW to proceed with its conditional use process so that the correct use could have been determined and the appropriate permits granted. Had that occurred, MHSW would have been able to obtain its conditional use permit by the June 1996 deadline stated in the RFP.

3. **The Board of County Commissioners has the authority to reject the staff recommendation and reinstate the award to MHSW.**

The Board of County Commissioners is not limited to the choice of awarding the contract to Providence or terminating the RFP. The Board retains its full statutory authority and responsibility to act as the local contract review board and take actions that are in the public interest. The Circuit Court did not order a narrow review of this matter and County administrative rules do not require it.

(1) **County staff violated County administrative rules by failing to take the matter to the Board of County Commissioners for review.** The Circuit Court agreed. The issue is now properly in the hands of County Commissioners to determine whether it is in the best interests of the public to reinstate MHSW's contract rights, withdraw the rights to the contract from MHSW and award them instead to Providence Medical Center, or to take some other action in the public interest.

(2) **This is not simply a procedural matter.** County administrative rules specify that Board review must occur whenever the highest-scoring proposal in a competitive solicitation is not selected. This is not a perfunctory step. The rules exist so that the Board can ensure that the public interest is served by staff decisions. The rules require that the Board consider why awarding the contract to lower-ranked bidder is in the best interest of the public and the County.

(3) **The basis for the Circuit Court's ruling was that the Board had not delegated to staff the authority to make an award to a lower scoring proposal.** The Board retains that power for itself. The same is true with the authority of the Board to reject staff's recommendation and make the award to another proposal. It would be absurd to assert that the Board does not have the authority to award the contract to the highest-ranked proposer, particularly when it has been determined that there was no material error in the proposal. (See Exhibit 3 for more discussion on the Board's authority and scope of review.)

(4) **County staff is asking the Board to overrule the Evaluation Committee.** Staff is asking the Board to overrule the Evaluation Committee by passing over the higher ranked proposer and instead giving the award to the lowest ranking proposal. County staff has failed to identify a legitimate public purpose for making the award to the lowest ranking proposer.

(5) **Awarding the contract to Providence would compromise the integrity of the RFP process.** The only legitimate grounds now before the Board upon which the Board may overrule the Evaluation Committee are that Providence arguably would now be operational more quickly. However, to the extent that advantage exists, it is only because of errors by County staff. The MHSW proposal, even with the zoning misstatement, meets all minimum requirements. The only "material" issue cited by County staff was the erroneous conclusion that the use was "prohibited" at the MHSW site.

(6) **There is no need to rush.** A system is currently in place that is working. Hasty decisions are what have brought us to the present circumstances. It is important for careful consideration to occur now so that the best program, not the fastest, will prevail. Moreover, MHSW should not be penalized for delays that were brought about by the procedural errors of others.

4. **As the highest-ranked proposer, MHSW remains prepared to meet all requirements of the contract backed by a strong network of community-based mental health services and programs.**

<u>The County is not purchasing a site. It is acquiring a set of sophisticated services for some of our community's most vulnerable populations.</u>

(1) **MHSW is a community-based mental health care provider of national reputation with well-established services and linkages with the local mental health and acute care provider network.** MHSW already has much of the trained staff and many crisis services, including a nationally recognized mobile crisis team (Project Respond), already in place. Project Respond operates 16 hours a day, seven days a week, responding to crisis calls from the community and the police. Supported by $1.3 million of private money, it is just one element of the network of services MHSW has developed in its crisis care program and is a logical building block for the

services needed in the Crisis Response System. In addition to Project Respond and other crisis care services, MHSW has a network of community relationships and provider agreements in place that have taken years to develop.

(2) **Given these powerful strengths, MHSW is much further along in the development and implementation of crisis response programs and services than Providence**. Providence, which has excellent medical and psychiatric services, nevertheless is faced with building most of its CRC program from the ground up. It must build experience with the target client population, particularly poor, uninsured and homeless clients. Providence must build a credible relationship with the police after years of refusing to accept police office holds within their facility.

Providence also must hire and train an entire professional staff; develop new internal programs, services and care protocols; negotiate and implement new service agreements and contracts with suppliers; and, importantly, establish and maintain strong relationships with the community mental health provider network. This is work that MHSW and other community-based providers have accomplished over a period of many years.

(3) **MHSW is prepared to resume the conditional use process it began in February and to successfully site the project at its proposed downtown location in a timely manner.** MHSW has completed the required Preapplication Conference and is prepared to submit a formal Conditional Use application upon Board action relative to the contract award. MHSW has reinitiated its dialog with the neighborhood, Portland State University and other interested parties. MHSW continues to expect "no undue difficulty" in obtaining the site permits.

The Board of Commissioners should recognize the value of MHSW's extensive experience as a community-based mental health provider in implementing the community-based model of mental health care delivery the County has embraced. There is a clear policy and programmatic choice between what MHSW and Providence have to offer. The Board should further recognize that the services and linkages MHSW already have established give it a clear head start over Providence in implementation of the CRC program.

II. The Case for Mental Health Services West

Mental Health Services West affirms its interest in partnering with Multnomah County and other mental health care providers to provide the community with high-quality, effective and efficient Crisis Response Services. We encourage the Board of County Commissioners to carefully review our proposal of January 10, 1996, and to consider its strengths and the Evaluation Committee's scoring.

This purpose of this section of our comments is to (1) review the key elements of our proposal and capabilities, and (2) respond to some issues that have been raised with respect to this matter.

Proposal Strengths

1. Our downtown location is an optimal site for Crisis Response Center services.

The site is located 1/2-block south of SW College Street between SW 5th and 6th Avenues in a commercial building that presently houses a small clinic, another business and about 17,000 square feet of vacant space. Much of the now-vacant space was formerly used for a vision care clinic. The site is ideal in that it is centrally located, has very easy access to and from the freeway system and is 2-5 minutes away from the OHSU medical school hospital and campus. MHSW already has service agreements in place with OHSU's emergency room and in-patient psychiatric program.

The site also has a fully enclosed vehicle parking area with metal roll-down door, allowing private and more secure loading and unloading of clients. Clients being transported to the facility need not exit the vehicle in the public right-of-way. In addition, the site is somewhat "insulated" from neighboring uses due to the high volumes of traffic and street widths on SW 5th and 6th where they intercept with the freeway on and off ramps. Access to the building is available from both the 5th and 6th avenue sides.

An additional advantage of the site is its proximity to Portland State University, and the opportunity for partnership with the University's School of Social Work and psychology students for learning and placement opportunities. These are consistent with PSU's "Urban Partnerships" vision, and we are presently discussing these potential relationships with the University.

2. MHSW is an expert at finding community-based alternatives to hospitalization.

We are dedicated to providing the least restrictive, intrusive and expensive form of service to meet the needs of the individual. Our agency is dedicated to keeping clients safe and supported in the community rather than in an inpatient setting. We maintain close affiliation and have protocols for rapid access to hospital care,

but we do not propose to run the CRC as an extension of a hospital. A free standing, community based system will reinforce the value of treating individuals in the community and will be free from any pressure to hospitalize before exhausting all other possible diversion options. We believe this approach closely conforms with County policy direction.

3. We have a demonstrated history of community involvement and commitment to this population.

Our mission has been to concentrate on the disenfranchised and underserved mentally ill populations. We have a long history of developing innovative, creative and community-based programs for difficult-to-serve consumers. MHSW is widely recognized for its commitment to meeting the acute care needs of clients. The Portland Police Bureau, for example, has expressed broad and enthusiastic support for crisis programs implemented by MHSW.

Our work includes specific experience with County "hold" clients. The County has data which indicates that community-based mental health professionals are more likely to consider all possible diversions to hospitalization prior to initiating a "hold". When a mental health professional places a "hold," that person is more likely to meet the statuatory requirements for commitment than are "holds" placed by police or hospital emergency room staff. In another study conducted by County Staff, MHSW respite had the shortest length of stay while serving the client with the most acute symptoms as compared to all other respite programs in the county.

4. Our proposal recognizes that consumers will have diverse needs.

Our CRC proposal carefully integrates the special needs of children and families into the service continuum - an approach endorsed by the State Office of Services for Children and Families and various family advocates. It also recognizes the needs of the dually diagnosed and includes dual diagnosis specialists among the CRC staff. We have a broad range of experience working with multi-problem families and individuals, and have considerable experience coordinating care among diverse agencies. These relationships and care sensitivities take considerable time and experience to achieve.

5. MHSW has vital crisis services already in place.

Site readiness is not the only important issue. Our proposal builds upon an extensive program base and existing community network.

Project Respond, our privately-funded crisis outreach project that has received national acclaim, has a proven track record in providing a viable mobile crisis response to the community. As a matter of fact, the national mental health expert, Dr. David Dangerfield, retained as a consultant by County staff over a year ago to study its mental health crisis system and make recommendations is sending three of his staff to study our Project Respond so he can replicate it in Salt Lake City.

Our proposal incorporates the services presently provided by Project Respond and adds capacity beyond that envisioned by the County's RFP. Project Respond also demonstrates our commitment to leveraging and integrating services:

> "What is most impressive about Project Respond is its integration of a street-based, responsive and mobile outreach/crisis model with a sophisticated and comprehensive outpatient and residential service system. . . By operating within the framework of an integrated care delivery system, Project Respond capitalizes on existing services, expertise and experience. It is clear that the individuals responsible for this service understand the complex interaction between psychiatric disorders, housing acquisition and retention, physical needs, and crisis situations. It has already served as a model for service design and delivery nationally."
>
> - Susan Goldfinger, M.D.
> Harvard Medical School
> Principal Investigator, Boston McKinney Research Demonstration Project

- Our respite program is widely recognized for its ability to successfully divert hospitalization and stabilize even very symptomatic individuals in the community.

- MHSW currently provides telephone triage to more than 2,300 individuals per year. During that same period, we conduced more than 1,000 face-to-face evaluations.

- We have vast and recognized experience in providing stabilization and follow-up services, including an impressive record in facilitating linkages throughout the community.

6. MHSW has demonstrable experience and great success in developing innovative new programs.

- Ryles Center, which provides 24-hour care for persons in mental health crisis and contains secure beds, was initially developed as a joint project by MHSW and the Garlington Center.

- MHSW's Bridgeview has received national recognition for its success in housing a most difficult and disenfranchised homeless mentally ill population.

- Project Respond was developed based upon an extensive needs assessment. It provides additional demonstration of MHSW's commitment to providing responsive crisis services and our ability to raise funds privately in order to create needed services for the community.

Key Issues

A number of issues and questions have emerged concerning the CRC, the RFP process and MHSW's proposal. This section attempts to respond to some of the most common.

1. **Didn't MHSW make a significant error in its proposal by saying the zoning of its site was commercial rather than residential? Shouldn't the agency be penalized for making such a mistake?**

   Yes, we made an error. The zone had recently been changed from CX to RX through the PSU campus master plan process. Even the city Permit Center maps we consulted did now show the correct zoning. However, the zoning misstatement has been shown to be immaterial and could have had no bearing on the Evaluation Committee's scoring. The CRC can be located in an RX zone just as easily as a CX zone. Thus, the statement in our proposal that our site had the appropriate zoning and that we anticipated no undue difficulty in obtaining a conditional use permit was correct then as it is now.

   It would be unfair to penalize MHSW over an immaterial mistake. Providence also made technical errors in its proposal concerning its zoning. In one instance, for example, Providence states: "The facility is zoned as a residential treatment facility." There is no zone "residential treatment facility." The zoning is actually R1, Medium Density Residential, with an approved Master Plan for a Medical Center. It is not zoned "residential treatment facility." Is this error material? Undoubtedly not. But, if any error is the standard, the Providence proposal also would have to be thrown out, which, of course, it wasn't.

2. **Wasn't staff's response to the error reasonable, given the Planning Bureau's initial opinion that the use was of a type typically not allowed in an RX zone?**

   We can understand the staff's anxiousness to move forward with the CRC use and their desire to opt for the "sure thing." But that is not consistent with the RFP, which required all proposers to meet certain minimum requirements. One of the requirements was not that the proposer's site already have its permits or require no land use review. To the contrary, the RFP clearly contemplated that proposers might need to go through a conditional use process, and gave such proposers until June 1, 1996 to obtain required land use permits. As has been noted earlier, MHSW was not given that opportunity. Staff made its judgment prematurely and based on an initial opinion that preceded initiation of the conditional use process. Subsequent events have demonstrated that that opinion was incorrect. The CRC use can be sited in an RX zone because it has been determined to be a "Medical Center" use. (See Exhibit 1). The important thing now is that the staff error be remedied, not to establish blame. The error can only be rectified by the restoration of the award to MHSW and by the rebuilding of the partnership between the County and MHSW so essential to the success of the CRC.

3. Doesn't it make more sense to locate the CRC in a hospital setting anyway? Aren't they better equipped to handle violent patients and medical emergencies?

No. Hospitals are designed to respond to medical emergencies and a mental health crisis is NOT a medical emergency. In addition, the capacity to respond to medical emergencies requires large overhead expenditure and generally means that care provided in such an environment will be more expensive. The CRC is not intended to provide emergency medical treatment and does not need to be located on a hospital campus. Proximity to in-patient care and emergency rooms is sufficient. MHSW's site is within 5 minutes of the Oregon Health Sciences University emergency room or, in effect, just "across the campus." Moreover, there may be a greater temptation to use expensive hospital beds if the CRC is located on and operated by a full-service hospital. One of the objectives of the CRC triage system is to minimize the use of acute care hospital services.

4. But Providence is "ready to go." Why isn't it in the public interest to implement these services as quickly as possible?

Providence is not "ready to go." It needs to perform site improvements and establish an entire service delivery capability. Moreover, had MHSW's contract rights not been withdrawn, MHSW would have had its site permits and programs in readiness at this time. The right question is not "who is ready to go first," but "who is best prepared to provide the services?" MHSW not only has the most experience, most of the services required under the CRC contract are already established. Providence may have some advantage in terms of site readiness, but MHSW has substantial advantages in terms of program readiness. In any event, MHSW will be able to implement CRC services by the January 1997 timeframe now anticipated by County staff. Any delays to this point, however, should not be blamed on MHSW. They are the result of errors and actions committed by others.

5. Even if the zoning error is not material, you still have to go through a conditional use process and there is no guarantee that you will receive your permits.

Naturally, there are no guarantees in any land use proceeding. However, the RFP didn't require any guarantees - only that the permits be obtained by June 1, 1996. We would have met this deadline had our land use process been able to continue. We are prepared to reactivate the conditional use process, having completed the preapplication step. There are no issues that we are aware of that would prevent us from obtaining a conditional use permit. During the Preapplication Conference, there were no significant issues raised by city agencies. In addition, we have had discussions with the neighborhood. They naturally are concerned that the site be operated in a way that is unobtrusive and has no negative impacts on the quality of life in the area. We have no difficulty in assuring the neighborhood that we can meet those objectives. As is the case with our other sites in residential neighborhoods, we have had excellent success in maintaining very positive

relationships with our neighbors and their neighborhood associations. We would expect to work with the Downtown Community Association and other interested parties to develop a "good neighborhood agreement" so that there can be specific agreed-upon understandings about facility operations and activities.

6. Less than four points separated MHSW from Providence. How can you say that MHSW has a superior proposal?

While the total scores were relatively close, MHSW nonetheless was the higher ranking proposal. County staff is obligated to award the contract to the higher ranking proposer unless it is determined that the proposer failed to meet minimum qualifications. The County has never stated that MHSW failed to meet minimum qualifications. Moreover, the scoring is not as close as it appears. As the chart below demonstrates, MHSW was ranked "first" by three scorers, "second" by two and "third" by two. Providence received no first-place scores and only two second-places scores. Five of the scorers ranked Providence last.

Proposer	1st	2nd	3rd
MHSW	***	**	**
Providence		**	*****

7. Your lawsuit was based on a technicality. Aren't you really just playing the role of a spoiler?

There has never been any intention on our part to delay this process or simply try to block Providence from receiving the contract. We are not trying to be "spoilers." We are just making sure that our rights to the contract are not compromised and that the best result for the public is achieved. We have sincerely felt from the beginning that staff has made a number errors, including the procedural errors we called to the attention of the court, that have denied us the opportunity to successfully contract for and provide this important services. Review by the Board of County Commissioners of such an important decision should not be viewed as "merely a technicality."

The CRC contract is central to our mission as an agency. We are the most experienced provider in the community with respect to crisis services for mentally ill individuals, particularly those who are homeless or indigent. A large percentage of the clientele that will be served by the CRC is likely going to be from the downtown and central city areas. These are the clientele with which we have unmatched experience and expertise. We believe in our mission as a agency, in our service capabilities and in our value to the community. We want this contract and believe our proposal and expertise warrants receiving it.

8. But aren't you just going to be providing the same services as any other provider responding to the RFP?

Minimum levels of service are specified in the RFP. We will meet and exceed

those levels of service by building upon our existing services and accessing the resources and capabilities of the entire community-based mental health system. But we will bring more than minimum specifications to the program. We will bring our expertise, our commitment to specialized populations, our outstanding track record in client care and diversion to appropriate care settings, and outstanding programs like Project Respond that have no equal in the entire Pacific Northwest. Project Respond, for instance, enables us to reach out to and serve an even broader clientele than envisioned within the RFP. The County, and the public, will receive significantly greater value by contracting with us than virtually any other provider because we will be better able to leverage our existing services and those of others for the greater public good. Why create new programs when you can leverage existing programs. It's more efficient and more effective.

9. Wouldn't the public be better served by getting this program up and running as soon as possible?

Everyone is anxious to see a centralized CRC established. But there are capable providers right now providing these services. There is no reason to rush. There is reason to take the time to make sure the best provider is chosen. At most, it is only a matter of a few weeks difference between when the programs proposed by MHSW and Providence can be operational. That is not a material difference when weighed against the importance of this five-year contract. Keep in mind that this is the first time we have tried to established a centralized triage system in Multnomah County. Quality and results should be the standard, not speed of implementation.

10. Doesn't the Planning Director's use determination only apply to the Providence site?

No. Use determinations are not site-specific. If a use is defined by <u>where</u> it is rather than <u>what</u> it is, the entire foundation for planning and zoning would crumble. Zoning defines <u>where</u> and under what conditions a use can occur. The Planning Director's determination was based on descriptions of the CRC use. Both Providence and MHSW are proposing the same use as specified in the County's RFP. Thus, the Planning Director's use determination applies to MHSW's use just as well as Providence's, regardless of whether Providence's use would be located on a medical campus. The Portland zoning code does <u>not</u> say a medical center use has to be located on a medical campus.

III. Response to Staff Report

County staff's July 20 "Staff Report Supplement" provides the basis for Multnomah County's cancellation of the contract award granted on January 30, 1996 to Mental Health Services West, Inc. The staff report contains numerous factual and supposition errors that undermine its conclusions and recommendations:

#1: The proposed use is not prohibited in an RX zone.

#2: The Planning Bureau's initial use determination was not "firm," as demonstrated by The Planning Director's subsequent determination.

#3: County staff overstated the significance of the zoning misstatement.

#4: Staff erred in concluding that the MHSW proposal must be rejected.

#5: The court did not review staff's basis for withdrawing the award.

#6: MHSW received no benefits from misstating the zoning in its proposal.

#7: Waiving the MHSW error would not undermine the fairness of the RFP procedure.

Each is responded to below:

#1: THE PROPOSED USE IS NOT PROHIBITED IN AN RX ZONE

The July 20 staff memorandum states:

> "In a memorandum to the County, the planning department advised that the proposed Triage Center was a prohibited [emphasis original] use at the site proposed by MHSW."

This statement is untrue.

At no time has the Planning Bureau characterized the use as "prohibited." Even "retail sales and service" uses are not strictly "prohibited" in an RX zone. In fact, retail sales and service uses are allowed in an RX zone under certain circumstances. The important point overlooked in the March 6 Susan Feldman memorandum (see Exhibit 1) is that the Bureau specifically points to the conditional use process. It was clearly noted that the conditional use process is where a formal use determination is made.

County staff's entire argument hinges on characterizing the zoning misstatement in MHSW's proposal as material to because the use is "prohibited" at the MHSW site. County staff is wrong in claiming that the CRC is "prohibited" from being located in an RX zone.

#2: THE PLANNING BUREAU'S INITIAL USE DETERMINATION WAS NOT "FIRM," AS DEMONSTRATED BY THE PLANNING DIRECTOR'S SUBSEQUENT DETERMINATION.

Staff assert that:

> "The memo stated that MHSW could apply for a permit to locate the Triage Center at its proposed site but the City Planning Department staff position was firm [emphasis added] that a Triage Center was a prohibited use at that site."

This statement is untrue.

Here again, County staff make the presumptive and inaccurate assertion that the use is "prohibited" at the MHSW site. Ms. Feldman's memorandum concludes with the following statement:

> "During this [conditional use] process, the additional information [to be submitted] as to the use and how it functions will allow the City to determine exactly which use category your proposal falls."

There is no basis upon which this statement can be construed as "firm" that the Triage Center use is a "retail sales and service" use or that it is prohibited at MHSW's site. The Feldman memo clearly asserts that the additional information to be supplied as part of the conditional use application will enable the city to make a "firm" determination.

It is important, further, to recognize that Ms. Feldman's memo establishes that MHSW could apply for the conditional use permit under a different classification. This point was underscored during MHSW's March 27 Preapplication Conference with the Planning Bureau during which planning staff indicated that the use might also be construed as fitting either Community Service or Medical Center use categories. The Bureau's meeting record states: "As part of your application, you will need to make the argument that the proposed use fits the Community Service use category, or possibly the Medical Center use category."

Subsequently, on May 23, 1996, acting on behalf of Providence, Planning Director David C. Knowles made the Planning Bureau's final determination: the CRC use is a "Medical Center" use (see Exhibit 1). This use determination applies to all instances and locations where this same use is contemplated. Since MHSW and Providence are proposing the same use in response to the same RFP and specifications, the "Medical Center" use determination applies to the MHSW site as well.

#3: COUNTY STAFF OVERSTATE THE SIGNIFICANCE OF THE ZONING MISSTATEMENT.

Staff assert that:

> "In the scoring of the proposals, MHSW received points based on the representations that were made in its proposal concerning its proposed site. It was not possible to determine exactly what effect the error had on the scoring. The County staff had to determine whether to ignore the error and proceed to contract with MHSW, or to reject the MHSW proposal entirely."

Those were not the only two options available.

Staff had the option to allow the conditional use process, clearly made available in the RFP to any proposer, to reach a formal conclusion. Had they done so, County staff would have recognized that the zoning misstatement had no material effect on the scoring because it was immaterial. Staff should not have summarily pulled the contract award from MHSW.

County staff may not appreciate the purpose or significance of the conditional use process. A conditional use process is a quasi-judicial land use process that officially begins with a Preapplication Conference, followed by the submission by the applicant of a formal conditional use application in which applicants assert the basis of their land use case. This process allows the applicant the opportunity to assemble and articulate the land use theory and applicable laws and codes under which the case is to be judged. Only through the orderly process set forth under City Code can a fair review and determination be made. MHSW was not allowed to enter this process or make its formal land use case before the contract rights were summarily withdrawn

Since a conditional use process was clearly contemplated in the RFP, it is unfair to MHSW for County staff to base their conclusions on an initial Planning Bureau opinion and deny MHSW the opportunity granted in the RFP to site the project through the city's conditional use process.

#4: STAFF ERRED IN CONCLUDING THAT THE MHSW PROPOSAL MUST BE REJECTED

Staff assert that:

> "Because of the significance of the misstatement, it was determined that the MHSW proposal must be rejected. The contract was then awarded to Providence Health Systems as the next highest scoring proposal."

Staff had no firm basis upon which to "reject" the MHSW proposal.

As noted above, County staff did not allow the conditional use process to reach a formal

conclusion as to the nature of the use. Staff relies on the March 6 memorandum from planner Susan Feldman which was issued before MHSW could establish its zoning and use case. Ms. Feldman's letter does not mention, for instance, that the center will have 15 respite beds and 5 23-hour beds. Thus, a significant aspect of facility use - and activities which argue against a retail sales and service classification - apparently were not considered. Subsequent decisions by the Planning Bureau demonstrate that the use is allowed and there was no material error in the MHSW proposal. County staff appeared to have rushed to premature judgment in their haste to establish the CRC even though the County's RFP contemplated that proposers may need to go though a conditional use process.

Two other points are important to note: (1) the Circuit Court determined that the County did not "reject" the MHSW proposal, but in effect rescored it, and (2) the contract was awarded not just to the "next highest scoring proposal," but to the lowest ranking proposer. This is significant in light of the County's administrative rules, which the court determined County staff did not properly follow.

The Staff's report to the Board states further:

> "The court ruled under PUR-1 Rule VI, staff had the authority to reject the MHSW proposal and make the award to Providence after the misstatement was discovered." The report goes on to say that this is what the March 7 staff letter to MHSW had intended to say but had failed to use the right language.

Judge Johnson said County staff had the authority to reject proposals under certain circumstances. But staff is wrong when it says that such a circumstance existed here.

The Board of County Commissioners has delegated to staff limited authority - essentially to award the contract to the highest scoring applicant or recommend to the Board that the award be given to a lower scoring applicant. In the latter case, the Board retains fully authority and responsibility to review the merits of the higher ranking proposal and make its own judgment as to how the public and County will best be served.

The only additional authority granted staff is that contained in Rule VI: to "review and approve/deny all contract proposals for compliance with RFP minimum requirements [emphasis added]. Proposals not in compliance with RFP minimum requirements shall be rejected and applicants shall be notified by Purchasing." Judge Johnson said that if staff were rejecting the proposal for failure to meet minimum requirements, it could do that at any time. However, the judge concluded that County staff had not done that, but had "withdrawn the offer," which staff had no authority to do under the rules.

Further, County staff never stated that MHSW's proposal failed to meet minimum requirements. Staff only said that the Evaluation Committee probably would have scored the proposal differently if it had known that the site was in an RX zone rather than a CX zone. Staff could never have determined that MHSW's proposal failed to meet minimum

requirements since the RFP only required that "the facility must have the appropriate zoning for the usage." An RX zone meets the minimum requirement.

#5: THE COURT DID NOT REVIEW STAFF'S BASIS FOR WITHDRAWING THE AWARD

Staff assert in their report that:

> "It is important that the court did not say that the staff decisions to reject the MHSW proposal or award the contract to Providence were wrong, and MHSW did not claim they were wrong. The court merely decided that the recommendation to award the contract to Providence had to be referred to the Board."

The court did not review staff's basis for withdrawing the award because the court was not asked to review it.

It would be wrong to construe the court's silence on an issue that was not technically before it as evidence that the County was right in its actions. In its motion for summary judgment, MHSW did not ask the court to decide who should get the award or make any substantive evaluation of the proposals. The court was only asked to determine whether County staff had violated County rules. MHSW's argument rested on the position that substantive evaluations had to be made by the Board of County Commissioners.

Staff's statement that "the court merely decided [emphasis added] that the recommendation to award the contract to Providence had to be referred to the Board" suggests that staff believe this step is merely perfunctory. To the contrary, this is an important issue of significant public concern that the Board retains full authority and responsibility to review . The purpose of the administrative rule requiring Board review surely cannot be construed as meaning anything less.

#6: MHSW RECEIVED NO BENEFITS FROM MISSTATING THE ZONING IN ITS PROPOSAL.

Staff contends that the misstated zoning resulted in an unfair benefit to MHSW which would not have existed had the zoning been correctly indicated. In its report to the Board, staff assert:

> "The integrity of the RFP process would be compromised if MHSW was permitted to receive the award after it had misstated significant facts and received the benefit of the misstatements in the scoring."

MHSW could only have benefited from the error had it been material; it was not material.

In its report, staff attempt to illustrate its point by contrasting MHSW's statement regarding the zoning what staff asserts is the "correct statement:

"In the RFP, MHSW stated:

'The building is located within the PSU neighborhood and is zoned light commercial (CXD). This is the appropriate zoning for the intended use and we anticipate no undue difficulty in obtaining the necessary conditional use permits.'

A correct statement concerning the zoning of the MHSW site would be:

'The building is located within the PSU neighborhood and is zoned residential (RXD). The City of Portland zoning staff has determined that a crisis triage center is prohibited in this zone. However, the City has agreed that MHSW may apply for this use and attempt to show that the site can qualify as a conditional use in this zone."

Once again, staff is completely incorrect and misleading in its statement.

In reality, the truly correct statement would be:

"The building is located in the PSU neighborhood and is zoned residential (RXD). This is the appropriate zoning for the intended use and we anticipate no undue difficulty in obtaining the necessary conditional use permits."

All that would need to be changed from the original proposal is the reference to the correct zone. All other statements in the proposal concerning the zoning remain true.

#7: WAIVING THE MHSW ERROR WOULD NOT UNDERMINE THE FAIRNESS OF THE RFP PROCEDURE.

Staff make the following assertion:

"Staff also believes that it is important to maintain an RFP process that does not tolerate significant misstatements in proposals regardless of whether innocent or calculated. To ignore the MHSW misstatement would be unfair to Providence and would adversely affect the competitive process and undermine public confidence in the County bid and request for proposal processes."

MHSW concurs that it is important for the RFP and County procurement processes to be fair and worthy of public confidence.

However, the only material errors that have occurred within this RFP process have been those committed by County staff in (1) making a a premature judgment and arriving at an incorrect conclusion regarding the CRC use and its allowance within an RX zone, (2) withdrawing the MHSW contract award and awarding it to Providence without allowing

MHSW to engage in the conditional use process contemplated in the County's own RFP, (3) "rejecting" the MHSW proposal without making any findings that the proposal failed to meet minimum requirements, and (4) failing to adhere to its own administrative rules in taking these actions.

While MHSW fully appreciates the County's eagerness to establish CRC as quickly as possible, undue haste appears to have led to a series of errors and actions that threaten in themselves to undermine the County's procurement and RFP processes. It is vitalto public confidence in the RFP process that a significant error in the award process not be allowed to stand simply because it is based on actions that seemed reasonable at the time.

It is important that the Board carefully examine the flaws that have occurred in this RFP process, and to correct them so that public confidence is sustained. Moreover, it is important for the Board to recognize that it has full authority to consider the strengths of the MHSW proposal for themselves, to accept the Evaluation Committee's scoring as valid, and to reinstate the contract rights to the higher scoring proposer.

IV. Conclusions

In light of the information provided herein, MHSW believes the Board of County Commissioners has sufficient information to allow it to reinstate the Crisis Response System contract award to MHSW as the highest-ranked proposer. We believe this action to be in the broad public interest and in the best interests of County government.

We offer the following conclusions:

1. The MHSW zoning misstatement was immaterial and MHSW received no benefit from the misstatement in the Evaluation Committee's scoring.

2. The MHSW site is properly zoned for the Crisis Response Center use.

3. MHSW should have the right to follow through with the conditional use and project siting process contemplated in the County's RFP and considered in the Evaluation Committee's scoring.

4. MHSW is ready to proceed with project siting and program start-up.

5. MHSW's proposal is built upon the foundation of established programs and provider agreements that do not require the development of whole new programs and staffing.

6. MHSW should not be penalized as a result of the procedural errors and other actions that have resulted in delay in awarding the CRC contract. Had these not occurred, MHSW would presently be in the position to launch the CRC and begin delivering services at its downtown site.

7. There is no reason to make a decision now based upon a sense of urgency. It is in the public interest to award the contract on the basis of program strength, quality of service to the community and the integrity of the procurement process, not on who can now arguably get the program up and running faster.

8. It is in the public interest to award the contract to the highest-ranking proposer.

9. Reinstating the award to MHSW would not violate any applicable law or regulation.

10. Reinstating the award would:

    (a) Preserve the fairness and integrity of the Request for Proposal process. An award to Providence would be unfair to MHSW.

    (b) Result in the County and the public receiving a superior crisis response service.

(c) Allow the crisis response system to become operational in a timely manner with well-established service delivery capabilities.

We are confident that the Board will carefully review our proposal, the information we have provided and the Evaluation Committee's scoring and make a decision on the contract award that is in the best public interest.

Despite the problems associated with this RFP and the unfortunate need for us to challenge staff's actions, we are actually quite confident and optimistic about our future relationships with the County and our ability to perform high-quality services at its request. We are eager to continue to be a partner of the County and to facilitate a healthy environment in which the provider community and the County work more closely together to achieve overall improvements in mental health care.

Last January, MHSW stood before the Board of County Commissioners offering our support for the County's managed care initiative -- CAP Care -- for children's services. That is the posture we'd like to be taking today -- one of collaboration and partnership in making the CRC the strongest possible service component, thoroughly integrated into the mental health care delivery network.

V. Recommendation

Mental Health Services West, Inc., respectfully asks the Board of County Commissioners to reject the staff recommendation and, instead, to reinstate the rights to the Mental Health Crisis Response System contract to MHSW.

We make this request on the following grounds:

(1) Board staff made a material error in withdrawing the award from MHSW on the basis of its incorrect interpretation of the materiality of the zoning misstatement and before MHSW could engage in the conditional use process contemplated in the RFP;

(2) This material error denied MHSW its legitimate right to retain contract rights and the opportunity to satisfy all requirements of the RFP and eventual contract for services.

(3) MHSW can site the CRC at its proposed site;

(4) MHSW is the highest-ranked proposer and should receive the award unless the MHSW proposal does not meet minimum requirements. MHSW's proposal meets all minimum requirements.

(5) Reinstating the award to MHSW does not violate any applicable law or procedure.

(6) It is in the best interest of the public and the County to return the award to MHSW.

- (a) MHSW is the high ranking proposer;
- (b) MHSW proposal is tightly aligned with County mental health policy;
- (c) An award to MHSW would result in the County and the public receiving a superior service;
- (d) An award to Providence would be unfair to MHSW; and
- (e) MHSW is prepared to implement the required services in a timely and expeditious manner.

Exhibit #1

PAUL NORR
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OF COUNSEL
DENISE FRISBEE

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July 25, 1996

County Chair, Beverly Stein
Commissioner, Dan Saltzman
Commissioner, Gary Hansen
Commissioner, Tanya Collier
Commissioner, Sharron Kelley
1120 SW 5th, Room 1510
Portland, Oregon 97204

RE: Mental Health Crisis Response System RFP
(County Staff Is Wrong About City Zoning)

Dear Board of County Commissioners,

I am one of the lawyers representing Mental Health Services West (MHSW) with regard to the contract previously awarded to MHSW for the Mental Health Crisis Response System (CTC). County staff, following our recent court case, is now coming to you to request that you award the contract to the lower ranked proposer (Providence) rather than to the higher ranked proposer (MHSW).

The purpose of this letter is to address County staff's continual insistence that the CTC is "prohibited" at the MHSW site by City zoning. County staff is wrong. The City Planning Director says it is an allowed conditional use, just as MHSW said in its proposal.

This letter addresses the following points:

I. COUNTY STAFF IS WRONG IN CLAIMING THAT THE CTC IS "PROHIBITED" FROM BEING LOCATED AT THE MHSW SITE.

II. COUNTY STAFF WAS INFORMED ON MARCH 4,1996, BY COUNTY COUNSEL JOHN THOMAS, THAT THE CONDITIONAL USE PROCESS IS AVAILABLE.

III. THE MARCH 6, 1996, MEMO FROM THE CITY BUREAU OF PLANNING STAFF DOES NOT SAY THE USE IS "PROHIBITED", BUT RATHER IDENTIFIES THE CONDITIONAL USE PROCESS TO BE FOLLOWED BY MHSW.

IV. THE MHSW PRE-APPLICATION CONFERENCE FOR ITS CONDITIONAL USE APPLICATION CONFIRMS THAT THE CTC CAN BE SITED IN THE RX ZONE AS A CONDITIONAL USE.

V. THE CITY'S PLANNING DIRECTOR, DAVID KNOWLES, IN A FORMAL LAND USE DETERMINATION LETTER DATED MAY 23, 1996, DETERMINED THAT THE COUNTY'S CRISIS TRIAGE CENTER IS PROPERLY A MEDICAL CENTER USE IN THE RESIDENTIAL ZONE.

VI. SUMMARY

A. County staff is wrong about the City zoning.

B. County staff is asking the Board to overrule the Evaluation Committee.

C. The Award should stay with MHSW.

Given County staff's persistent reliance on what County staff believes to be problems with City zoning, I respectfully request that the Board consider the following points with an open mind. Since County staff is wrong about City zoning, it is inappropriate to use County staff's impressions of City zoning as the basis for giving the CTC award to the lowest ranking proposer.

I. COUNTY STAFF IS WRONG IN CLAIMING THAT THE CTC IS "PROHIBITED" FROM BEING LOCATED AT THE MHSW SITE.

It is distressing that the County Mental Health Staff and the County Purchasing Staff continue to mischaracterize City zoning law. County staff are not experts in City zoning. The staff report to the Board for this agenda item states with repeated emphasis that the proposed triage center is "prohibited" in the RX Zone in which the MHSW site is located.

<u>It is simply not true</u> that the CTC is prohibited in the RX zone. To the contrary, every written communication from the City of Portland on this matter references the applicable conditional use process.

II. COUNTY STAFF WAS INFORMED ON MARCH 4,1996, BY COUNTY COUNSEL JOHN THOMAS, THAT THE CONDITIONAL USE PROCESS IS AVAILABLE.

As shown on the attached Minutes of Behavioral Health Program Meeting on Crisis Response System RFP 3/4/96:

> "John reported that he had spoken to Susan Feldman in the City Permits Office. She reported that her office's position on the zoning and permits issues pertaining to the site identified in the MHSW RFP response was that they were going to allow MHSW to submit a request for permits necessary to site a crisis triage center at the site they identified in the RFP under the description of a Community Service Center. Susan said that this in no way says that her office endorses this use description but that they were not going to make a determination at this time as to what would be the proper use category."

III. THE MARCH 6, 1996, MEMO FROM THE CITY BUREAU OF PLANNING STAFF DOES NOT SAY THE USE IS "PROHIBITED", BUT RATHER IDENTIFIES THE CONDITIONAL USE PROCESS TO BE FOLLOWED BY MHSW.

County staff rely heavily on this March 6, 1996, memo as saying that MHSW is "prohibited" from siting the crisis triage center in the RX zone. A copy of the memo is attached. *Please read the memo yourself so that you can see for yourself that the memo does not say that the use is "prohibited".*

The March 6, 1996, memo, written by the Principal Planner of the Development Review Section, does say that it is the staff's determination that the proposed use performs as an urgent medical care facility. However, the staff memo goes on to say in the very next sentence:

> "If this use is to be located in a residential zone, you or your provider also has the option of applying for the use to be classified in the Community Service category of Chapter 33.920. Community Service uses are conditional uses in residential zones and require a type III procedure, i.e., a mandatory hearing before a Land Use Hearings Officer. During this process, the additional information as to the use and how it functions will allow the City to determine exactly into which use category your proposal falls."

Contrary to saying that the use is "prohibited" as characterized by County staff, the March 6, 1996, memo specifically outlines the anticipated conditional use process by which MHSW can secure approval for the triage center at its site.

IV. THE MHSW PRE-APPLICATION CONFERENCE FOR ITS CONDITIONAL USE APPLICATION CONFIRMS THAT THE CTC CAN BE SITED IN THE RX ZONE AS A CONDITIONAL USE.

After the preliminary staff opinion expressed in the March 6, 1996, memo, MHSW on March 27, 1996, had the required Conditional Use pre-application conference with the City's Bureau of Planning. The pre-application conference summary notes, a copy of which is attached, reaffirms the appropriate conditional use application for siting the triage center in the RX zone. In particular, the pre-application notes state:

> "Based upon information which was provided in writing at the pre-application conference, the following land use reviews are required:
>
> A. A Type III Conditional Use Review is required because Community Service uses are allowed only as a conditional use in the RX zone...The Hearings Officer will consider this application through a public review."

The pre-application summary notes also specifically state under 9.B.:

> "You were advised during the conference, and at previous meetings and in previous correspondence, that the Bureau of Planning has determined that the proposed use performs as an urgent medical care facility. The zoning code lists this type of facility as falling into the retail sales and service category. As part of your application, you will need to make the argument that proposed use fits the community service use category, or possibly the medical center use category."

It is important to note that the City staff acknowledges their preliminary view as being just that, an initial impression that is not determinative of the outcome of the allowed conditional use application.

City staff, in fact, suggests the medical center use category as an alternative to the community service use category, both of which are allowed as conditional uses in the RX zone.

V. THE CITY'S PLANNING DIRECTOR, DAVID KNOWLES, IN A FORMAL LAND USE DETERMINATION LETTER DATED MAY 23, 1996, DETERMINED THAT THE CTC IS PROPERLY A MEDICAL CENTER USE IN THE RESIDENTIAL ZONE.

As part of Providence's attempt to verify the proper zoning of their site for location of the triage center, Providence requested a formal Use Determination Letter from the City of Portland. The Providence site is zoned R1 (Medium Density Residential) and has conditional use approval as a Medical Center.

(Please note that the Providence Proposal incorrectly states the zoning of Providence's proposed site on p. 9 of the Providence proposal by stating "The facility is zoned as a residential treatment facility". As the Planning Director's letter confirms, the zoning is actually R1, Medium Density Residential, with an approved Master Plan for a Medical Center. It is not zoned "residential treatment facility".)

The City Planning Director's Use Determination Letter, in specifically addressing the County's CTC and the Providence Medical Center, states:

> "This use is allowed as conditional uses on sites which are partially or entirely zoned for residential development.

The Director goes on to say:

> "The proposal falls within the Medical Center use category because the use meets the definition found in Section 33.920.450 of the Portland Zoning Code..."

The Planning Director's Determination Letter confirms once again that the triage center is properly located in a residential zone through the conditional use process. A medical center is a conditional use in all residential zones, including the RX zone in which the MHSW site is located.

There can be no reasonable dispute at this point that the City has officially determined that the CTC is allowable as a conditional use in all of the City's residential zones.

VI. SUMMARY

A. County staff is wrong about the City zoning.

It is unfortunate that the County Mental Health and Purchasing staff continue to dig their heels in with the mistaken impression that the CTC is prohibited in the RX zone. The County staff's characterization of the triage center as "prohibited" in the RX zone is simply wrong. The most recent and most authoritative statement on this question is the City Planning Director's formal Use Determination Letter which specifically states that the County's crisis triage center is allowable as a conditional use in the residential zone.

B. County staff is asking the Board to overrule the Evaluation Committee.

County staff is asking the Board to overrule the Evaluation Committee by passing over the higher ranked proposal and to instead give the award to the lowest ranking proposal. County staff still has failed to identify a legitimate public purpose for making the award to the lowest ranking proposer.

C. The Award should stay with MHSW.

The contract award should stay with MHSW, and MHSW should be permitted to follow the conditional use process contemplated by the County's RFP and identified as part of the higher ranked MHSW proposal.

Respectfully,

Paul Norr

PN:rlr
cc: Clerk of the Board
John Thomas, County Council
Mental Health Services West
Steven Moskowitz

MINUTES OF BEHAVIORAL HEALTH PROGRAM MEETING ON CRISIS RESPONSE SYSTEM RFP 3/4/96

PRESENT: John Thomas, Floyd Martinez, Howard Klink, Norma Jaeger, Lynn Stott, Cathy Horey, Gloria Wang and Norman Miller

Meeting Summary: John reported that he had spoken to Susan Feldman in the City Permits office. She reported that her office's position on the zoning and permits issues pertaining to the site identified in the MHSW RFP response was that they were going to allow MHSW to submit a request for permits necessary to site a Crisis Triage Center at the site they have identified in the RFP under the description of a Community Service Center. Susan said that this in no way says that her office endorses this use description but they were not going to make any determination at this time as to what would be the proper use category. John asked Susan to put their position in writing. He hopes she will do that by 3/5/96.

A discussion was had on what this non-decision by the permits office had on the decisions we had to make. It was suggested that our decision at this point is whether or not the incorrect information about zoning and permits given by MHSW constituted a significant enough misrepresentation in the RFP to disallow their bid. The decision was made that , if the permits office writes the letter they said they were going to write or refuses to put anything in writing, the mis-representation made by MHSW around the zoning and permits will be viewed by the County as significant enough to invalidate the MHSW RFP response.

The group then looked at the options left to the County after the invalidation of the MHSW RFP response. We looked at moving on to the Providence response. Invalidating all responses and going back to issuing another RFP, invalidating all responses and the County doing the project and various variations on these scenarios. The group decided that we would go forward with negotiating with Providence.

Action Plan: John Thomas will draft a letter to MHSW that he will fax to the program office for review and a quick turn around. He will draft the final letter and a letter to Providence saying they are now able to negotiate with the County.

Gloria Wang will draft a memo to County staff explaining that if they are asked about the Crisis Response System bidding process they should refer all inquires to purchasing.

Norman Miller will contact Providence as soon as the letter is received by them to set up a first meeting with them. Norman will also draft a set of questions for Providence that he will send to them prior to our first meeting.

CITY OF
PORTLAND, OREGON
BUREAU OF PLANNING

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David C. Knowles, Director
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Telephone: (503) 823-7700
FAX (503) 823-7800

March 6, 1996

MEMORANDUM

To: John Thomas
Office of Multnomah County Counsel

From: Susan Feldman, Principal Planner
Development Review Section

Re: Determination of Use for the Proposed Crisis Triage Center

As explained in the RFP, Multnomah County is currently in the process of funding a Crisis Triage Center to be located in the City of Portland. You have asked what use category this proposal fits into as regulated by the Portland Zoning Code. Our understanding is that the intent of the Crisis Triage Center is to provide medical treatment to adults and children who are experiencing situational or severe psychiatric crisis and are not linked to the mental health system. Twenty-four hour treatment will be provided on site and, if necessary, patients will be linked to another site in the mental health or medical system.

It is our determination that the proposed use performs as an urgent medical care facility which the Zoning Code lists as falling into the Retail Sales and Service category of Chapter 33.920. If this use is to be located in a residential zone, you or your provider also has the option of applying for the use to be classified in the Community Service category of Chapter 33.920. Community Service uses are conditional uses in residential zones and require a Type III procedure, i.e., a mandatory hearing before a land use hearings officer. During this process, the additional information as to the use and how it functions will allow the City to determine exactly into which use category your proposal falls.

CITY OF
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Pre-Application Conference Summary
Pre-Application No.: PC 96-056
Date of Conference: March 27, 1996.

Applicant:	Mental Health Services West (contact: Denise Frisbee, 228-3862)
Request:	Conditional Use Review to establish a social service agency. The facility will provide evaluation, special counseling and treatment for people in health crisis. It will not serve people in need of hospital emergency room services or the services of an urgency medical care clinic. Short-term housing additionally will be provided (22 beds). The center will primarily serve individuals with limited resources and will be open 24 hours a day. Most individuals will arrive at the site with the help of friends or family and most of the services will be provided by non-medical mental health professionals. These professionals will evaluate, counsel, educate and refer individuals in mental health or alcohol or drug crises. Mental health nurses and nurse practitioners will evaluate and oversee any medication needs and treatment. The program will be under the supervision of a psychiatrist, though a psychiatrist will not be on site at all times. There are 20 existing parking spaces.
Location:	1975 SW 5th and 1976 SW 6th Avenues Zoning: RXd
Legal:	Lots 3 and 6, Block 158, Portland Map: 3228
Neighborhood:	Downtown, Association for Portland Progress, Corbett Terwilliger Lair Hill
School District:	Portland
BOP staff present:	Susan Feldman and Susan McKinney
Others present:	See attached.

1. **Caveat.** This memorandum summarizes the issues which were discussed at your pre-application conference. Its contents reflect what was discussed at the conference, provides answers to questions which were asked, and identifies the substantive and procedural requirements that must be followed to develop your project. The substantive and procedural requirements identified are specific to the project as you defined it for the pre-application conference. These notes are specific to the application which was discussed. If you change your application significantly, another pre-application conference is required.

   A pre-application conference is only valid for one year. You must provide a copy of these notes with your application. These notes have been prepared by the planner that presided at the conference. All questions should be directed to that individual, or the case planner, if present at the conference.

   The positions stated in these notes are based upon the project and proposal as described by you, the applicant, in your pre-application conference request and during the conference. Your proposal is described above. The site plan which you submitted is attached to these notes.

   These notes provide information on issues raised by city agencies, neighborhood associations and other agencies that respond. In certain situations, you may be required to obtain approval from agencies outside of the City of Portland, including special

districts (such as drainage districts and water districts), state and federal agencies. Whenever possible, the City of Portland will notify you of other approvals which may be required.

2. Application(s) required. Based upon the information which was provided in writing and at the pre-application conference, the following land use reviews are required:

A. A Type III Conditional Use Review is required because Community Service uses are allowed only as a conditional use in the RX zone. In order to be approved, it must be found that the criteria of 33.815.105, Institutional and Other Uses in R Zones, the Central City Plan, the Portland Downtown Plan, the Transportation Element of the Comprehensive Plan and the Transportation Planning Rule are met. The Hearings Officer will consider this application through a public review.

B. Type II Adjustments will be required if this project does not meet any of the applicable site development standards. The need for adjustments was not established during the conference. If any adjustments are necessary, in order to be approved, they must be found to meet the criteria of 33.805.040 and the Transportation Planning Rule. Adjustments may be processed concurrently with the conditional use application.

C. If the valuation of the project exceeds $10,000, the entire site must be brought up to code for certain site development standards (see 33.258.070) up to a cap of 10% of the valuation of the project. If you are unable to meet this requirement, adjustments will be required.

3. Fees. The land use reviews identified above have the following fees.

Land Use Review	Fee
Conditional Use Review	$2,516
Adjustments	$514.50 each.

4. Ownership. Because quasi-judicial land use reviews are specific to certain parcels, accurate ownership information is important. It is the responsibility of the applicant to correctly identify all parcels in question and all owners. You must identify all parcels which are included in the proposal as well as any adjacent parcels in the same ownership. Staff will rely upon the accuracy of the information that you provide.

5. Posting. Because this proposal will require a Type III review, you must post the property with signs. One sign is required for every 600 lineal feet and one for every separate frontage and these signs must be erected at least 30 days before the public hearing. The signs can be purchased at the Permit Center at the time that you submit your application for $5.00. The assigned staff will write you a letter notifying you when your application is complete and at that time, will provide you with the notice which must be attached to the sign.

6. Site Plan. You have been provided with a sample site plan which also identifies the information that the site plan must include. Your site plan must be understandable and at least one plan which is 8-1/2"X11" in size must be submitted. In addition to this required information, please provide the following information which has been determined to be important in understanding your proposal:

A. Elevations of all proposed structures.
B. A complete landscape plan.

7. Written Statement. You were provided an application form. Please submit all information which is necessary for staff, the Hearings Officer and those that will be notified to understand this request. It is the burden of the applicant to clearly explain the nature and purpose of the application and to demonstrate that the application complies with the criteria identified above. Accurate information will assist us in understanding your request better and because your file will be public information, accurate information will result in more pertinent and informed testimony from those who wish to participate.

Based upon the information provided in writing and discussed at the conference, you must provide the following materials in order for your application to be considered complete. Your application will not be considered complete and will not be accepted if any of these elements are not provided.

Conditional Use Review.

___ Discussion on how the proposal complies with the applicable criteria (33.815.105).
___ Discussion on how the proposal complies with the applicable site development standards.
___ Discussion on how the proposal upgrades nonconforming site development standards (33.258.070).
___ If necessary a discussion on how the Adjustment criteria are met (33.805.040).
___ Discussion on how the proposal is supportive of the Transportation Element of the Comprehensive Plan.
___ Discussion on how the proposal complies with the Transportation Planning Rule.
___ Discussion on how the proposal is consistent with any adopted area plan. (Central City Plan and the Portland Downtown Plan)
___ All materials required by the Bureau of Planning and other agencies, as described below.

8. Responses from other agencies. Written responses from other agencies are attached for your convenience. If you have further questions or comments regarding these issues, please contact the staff member from that agency whose name and telephone number can be found on the written response or attendance sheet. Written responses have been received from the following agencies and should be attached to these notes:

- City Forester. Vince Salomone (823-4489) has not provided a written response. If a written response is received, it will be mailed to you.
- Bureau of Transportation Engineering and Development has not provided a written response. If a written response is received, it will be mailed to you.
- Bureau of Traffic Management. Kevin Hottmann (823-6981) responds that you need to provide a detailed site plan showing driveway width and location, parking lot layout, proposed operation of parking lot and facility and any other related information. Also, please include the expected number of patients, length of stays, the number of anticipated visitors, the number of employees, the hours of operation and shifts. The garage is presently gated. It must remain open during business hours.
- Transportation Planning Division of the Office of Transportation. Graham Clark (823-7553) identifies the applicable policies and responds that the proposal appears to create few transportation planning issues. The applicant will be required to provide secure bicycle parking and may need to address employee parking

through transportation demand management efforts such as bus passes or ridesharing.

- Bureau of Water Works. Tom Chambers (823-7477) responds that the site has an existing 1-1/2" water service. The static water pressure at the meter is 60 psi. Additional water is available to this site from the existing 12" water main in SW 6th Avenue and the existing 6" water main in SW 5th Avenue.
- Bureau of Environmental Services. Lee Alverson (823-7372) responds that the proposal appears to have no impact on existing BES facilities at this time.
- Bureau of Buildings and Fire Marshal has not provided a written response. If a written response is received, it will be mailed to you.

9. **Title 33 and other regulatory issues.** The following are zoning and other regulatory issues which are of particular importance to this project and are being highlighted for your information.

a. Specific approval. You must submit a specific proposal for approval. The proposal must include specific uses and levels of activity and a specific site plan. Future projects which cannot be specifically described may be considered but cannot be approved. Additional discretionary review will be required for such projects at a future date.

b. You were advised during the conference, and at previous meetings and in previous correspondence, that the Bureau of Planning has determined that the proposed use performs as an urgent medical care facility. The Zoning Code lists this type of facility as falling into the Retail Sales and Service category. As part of your application, you will need to make the argument that the proposed use fits the Community Service use category, or possibly, the Medical Center use category.

c. Balance between uses in residential areas. The most significant criterion which must be addressed is that which requires that this proposal not create an imbalance between residential and nonresidential uses in R-zoned areas. In order to demonstrate compliance, you must determine the area of impact and identify nonresidential uses in this area.

d. Parking. There is no required parking in this zone.

e. Neighborhood associations. It is very important to begin a dialogue with nearby neighborhood associations.

f. Nonconforming development. 33.258.070 requires an upgrade of certain nonconforming development up to a cap of 10 percent of the value of the project. You must address this requirement as part of the master plan.

10. **Neighborhood Association.** This site is located in the Downtown Neighborhood. Please contact Ed Pischedda at 223-5977. Also, due to its proximity to the CTLH Neighborhood, you may wish to contact Kerry Chipman at 227-5238. It is very important that you present your proposal to the neighborhood association and obtain feedback. All property owners within 400 feet and all neighborhood associations and recognized organizations within 1,000 feet of your site will receive notification of your proposal.

11. **Items provided to the applicant.** The following items are either enclosed or have been provided to you at the pre-application conference:

A. Application form.
B. Pre-Application Conference Packet.
C. Transportation Planning Rule.
D. Transportation Element of the Comprehensive Plan.
E. 120-day waiver and information.
F. 33.120, Multi-Dwelling Residential Zones.

G. 33.248, Landscaping and Screening.
H. 33.258, Nonconforming Situations.
I. 33.266, Parking and Loading.
J. 33.510, Central City Plan District.
K. 33.805, Adjustments.
L. 33.815, Conditional Uses.
M. Central City Plan.
N. Downtown Plan.
O. Description of the Use Categories.
P. 33.420, Design Zones.
Q. Copies of policies 3.3, 6.3 and 8.2 of the Central City Transportation Management Plan

12. **120-day waiver.** In order to assure that the decision on your application is rendered within 120 days, any appeal of your proposal to the City Council will be held based on the evidence submitted as part of your first hearing (to the Hearings Officer, Design Commission or Landmarks Commission). If you prefer a process that allows for a full evidentiary hearing if there is an appeal to the City Council, you must waive the 120-day deadline within 14 days of the date of the submittal of your application. A letter describing this issue is contained in your packet.

Notes were prepared on April 1, 1996.

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

May 23, 1996

Glenn Maynard
Providence Portland Medical Center
Mental Health and Chemical Dependency Services
5228 NE Hoyt Street
Portland, OR 97213-2967

RE: LETTER OF USE DETERMINATION

Dear Mr. Maynard.

Multnomah County Department of Community and Family Services has contracted with Providence Portland Medical Center for the establishment and operation of a crisis triage center (CTC) at the Providence Medical Center. This use will be located in Building B, as shown on Exhibit A. Medical Centers, as defined in Section 33.920.450 of the Portland Zoning Code. This use is allowed as conditional uses on sites which are partially or entirely zoned for residential development. An approved Master Plan is in effect for Providence Portland Medical Center.

Building B is currently used for behavior medicine programs, including a combination of out-patient and residential detoxification and stabilization services. The services include evaluating and treating persons with both mental health and chemical dependency disorders. Overall, the services provided in Building B and elsewhere at the Providence campus presently include chemical dependency, mental health and psychiatric evaluation triage capability, other types of mental health acute care, and psychiatric day treatment. Building B already is used for similar purposes, so that no significant changes to the building will be required.

The CTC will provide similar services. The 27 existing beds will be converted to 15 "respite" beds, to be used for extended stay chemical dependency/mental health patients who require additional assessment, short-term treatment and stabilization. The triage center will also include five "23-hour beds" which will be used for stabilization of patients on a one-day discharge basis. Other uses will include two holding rooms for patients who will be transferred, office space and diagnostic facilities. Staff will include mental health professionals, including psychiatrists, psychiatric nurses and other qualified professionals. A significant percentage of the patients will be transported to this facility by either public service agencies or transport provided by Providence Portland Medical Center.

The proposed use falls within the Medical Center use category because the use meets the definition found in Section 33.920.450 of the Portland Zoning Code and includes activities which are customarily provided as part of a full-service medical center. In addition, the use is consistent with that which was anticipated through the master plan review for Building B as a location for behavior medicine services. It will not have any impacts which were not anticipated during the master plan review. This conclusion is based upon the information provided by the representatives of the Providence Master Plan in a letter to the Bureau of Planning dated April 30, 1996 and the Master Plan approved for the City Hearings Officer on May 9, 1996.

Yours very truly,

David C. Knowles, Director

Post-it® Fax Note 7671	Date 5/24	# of pages ▸ 1
To Glenn Mayn	From Hayes Hunter	
Co./Dept.	Co. BHP	
Phone #	Phone # 823-7816	
Fax # 224-1123	Fax # 823-7821	

Exhibit #2

Peter Finley Fry, AICP

Willamette Block, 722 SW 2nd Avenue, #330, Portland, Oregon 97204, (503) 274-2744, Fax (503) 274-1415

July 31, 1996

Kristin Angell, Executive Director
Mental Health Services West
710 S.W. Second Avenue
Portland, Oregon 97204-3199

RE: Use Determination for crisis triage center as proposed by Mental Health Services West.

Dear Ms. Angell:

In response to several critical land use issues, I offer the following opinion based on over 15 years of land use education and planning experience.

Can a use be categorized differently based on different locations or situations?

No. Once a use is categorized, it remains the same category regardless of situation. If a restaurant were categorized as Retail Sales and Service in one zone or location, but something different in another zone or location, it would be impossible to carry out the purpose of the Zoning Code.

What is the appropriate category of the crisis triage center?

An independent assessment of the various possibilities leads me to believe that the crisis triage center is clearly categorized as a Medical Center use. The crisis triage center provides medical care to patients and offers overnight care.

The proposed use is not Retail Sales and Service (urgency medical care) because it provides overnight care and cannot refuse service to those who will not buy, lease, or rent service. In other words, there is an inherent obligation to serve not found in a retail use.

This independent opinion is validated by the Planning Director's Letter of Use Determination dated May 23, 1996 where the Planning Director determined that the crisis triage center as proposed by Providence Portland Medical Center is a Medical Center use.

A careful review of the Providence Portland Medical Center's submission reveals no substantive differences between this proposal and that of Mental Health Services West.

It is true that the Providence Portland Medical Center's proposal will be located on a medical campus setting and Mental Health Services West is to be located in a building in the Portland State University's University District. The city's Zoning Code does state that Medical Centers **tend** to be located on multi-block sites or campuses. This is not a requirement. A Medical Center can stand on a single block or parcel and be consistent with the Zoning Code.

Sincerely,

Peter Finley Fry AICP

Exhibit #3

MOSKOWITZ & THOMAS
ATTORNEYS AT LAW
111 S.W. COLUMBIA
SUITE 1080
PORTLAND,OREGON 97201

TELEPHONE (503) 227-1116
FAX(503)227-3015

Christopher P. Thomas

Steven A. Moskowitz

July 24, 1996

County Chair Beverly Stein
Commissioner Tanya Collier
Commissioner Gary Hansen
Commissioner Sharron Kelley
Commissioner Dan Saltzman
Multnomah Board of County Commissioners
1120 S.W. 5th Avenue
Portland, OR 97204

Re: Hearing on Mental Health Crisis Response System RFP
Scope of Board Authority

Dear Chair Stein and Commissioners Collier, Hansen, Kelley, and Saltzman:

I understand that County Counsel has advised you that your scope of authority in the upcoming hearing on the Mental Health Crisis Response System RFP is very limited. He has informed you that the only decision you may make is whether to approve or deny staff's recommendation that the Mental Health Crisis Response System contract be awarded to lower scoring Providence Health Systems. He has further advised you that should you deny the recommendation, the necessary consequence would be the termination of the current RFP process, which would have to be started all over again. In view of how important this new system is and how much time has already been lost due to procedural errors, I certainly understand why you would feel some pressure to approve staff's recommendation. However, *staff is absolutely wrong in its position. You have full authority to review the program proposals which were submitted and to make your own determination as to which one would best implement the community-based model you have endorsed.*

THE BOARD HAS THE AUTHORITY TO REJECT THE STAFF RECOMMENDATION AND SELECT MENTAL HEALTH SERVICES WEST

As will be demonstrated in subsequent materials, there are two valid proposals to provide the services described in the RFP. Staff has recommended that the contract be awarded to the lower scoring proposal. Based upon the appropriate findings you may choose to select either the proposal favored by staff or the one recommended by the Evaluation Committee. Your power to do so is based upon any of the following:

1. The administrative rules are silent as to the effect of the Board's rejection of a staff recommendation. The Board retains its charter and statutory authority and responsibility to act as the local contract review board.

This matter is before you because staff awarded contract rights to a lower scoring proposal. Judge Johnson found that under the County Rules staff did not have such delegated authority. The Rules state that such an award may be made only if the Board approves it. The Rules are silent as to the consequence of the Board rejecting staff's recommendation. They do not state that the Board may not elect to make the award to one of the other proposals. They do not state that the current RFP process is terminated if the Board disagrees with staff. Just as the initial problem was created by staff exceeding its delegated authority, so would the problem be compounded by further attempts to eviscerate the Board's contracting authority.

In fact, the Board retains its statutory authority and responsibility to act as the local contract review board. Further, as the County Charter provides, the Board retains any power it has not delegated:

> "...the legislative power of the county shall be vested in and exercisable only by the board of county commissioners. *Any other power of the county not vested by the charter elsewhere shall be vested in the board but may be delegated by it.*" County Charter, Section 2.20.

As noted above, the basis of Judge Johnson's ruling was that the Board had not delegated to staff the authority to make an award to a lower scoring proposal. The Board had retained that power for itself. The same is true with the authority to reject staff's recommendation and make the award to another proposal. **The Board has retained that authority.** As the Charter states, silence is just as effective as written words in demonstrating the extent of Board authority.

2. The Board has legislative power to clarify rules that appear ambiguous.

Assuming that the Board is unsure if it has retained the authority to make an award to a proposal other than the one recommended by staff, it has full power as a legislative body to clarify those rules. As indicated previously, the Rules do not expressly prohibit the Board from rejecting staff's recommendation and making the award to another. They are silent on this issue. To fill this void, the Board, acting in its legislative capacity, may adopt a rule which expressly addresses the situation.

3. **The Department of Community and Family Services may submit a new recommendation to Purchasing.**

Staff has informed the Board that should it reject staff's recommendation, the only possible result would be to start the RFP process all over again. This is clearly wrong. At the very least, should the Board reject staff's recommendation, the Department can immediately forward to Purchasing a recommendation that the award be made to Mental Health Services West.

Summary: The Board has retained the authority to select a proposal other than the one recommended by staff. Alternatively, the Board can act in its legislative capacity to adopt a rule to address this situation. Finally, should the Board reject staff's recommendation, the Department can submit a new recommendation to Purchasing. Thus, the choices are not between approving staff's recommendation or starting the RFP process all over again. You can reject staff's recommendation, select Mental Health Services West and avoid any further undue delay in implementing this important program.

Thank you very much for allowing me to clarify these issues for you. I hope it has been of some help.

Very truly yours,

Steven A. Moskowitz

cc John Thomas

DELAUNAY
FAMILY OF SERVICES

5139 N. Lombard St.
Portland, Oregon 97203
(503) 285-9871
Fax: (503) 286-8389

Clerk of the Board of County Commissioners
Multnomah County
1120 SW 5th Avenue, 15th Floor
Portland, OR 97204

July 31, 1996

Dear Board Clerk,

The award of the Crises Response Center has been referred to the Board of County Commissioners as a result of legal action on the part of Mental Health Services West. As a community based colleague of Mental Health Services West, I urge your careful review of both the process and the award.

The use of the RFP process in a well-established system of multiply contracted agencies which was not a collaborative effort is questionable.

Collaborative efforts were disallowed both in the RFP and in subsequent negotiations. Considering the efforts Multnomah County Community and Family Services Department have made in the direction of collaborative and partnership building that collaboration was disallowed is questionable.

The withdrawal of negotiations with Mental Health Services West apparently were due to a land use decision that since has proven inaccurate. This further raises questions about the fairness of the process.

My hope is enough questions about this issue have been raised, so the Board representing the interests of the County and, each Commissioner as a concerned individual, will judge the matter of sufficient import to direct a fair and impartial hearing be held.

In the interests of our mutual constituencies, thank you for your attention to the important process of establishing the best possible Crises Response Center for Multnomah County.

Sincerely,

Dolores Morgan
Executive Director

Mental Health Partners, Inc.

MHP

Providing Community
Mental Health Care

3339 SE Division St. Portland, OR 97202

TEL: 503.231.4753
FAX: 503.239.7609

July 31, 1996

Clerk of the Board of County Commissioners
Multnomah County
1120 SW 5th Avenue, 15th Floor
Portland, OR 97204

I would like to express my support for the Mental Health Services West proposal to develop and operate the Crisis Response Center. Mental Health Services West has a proven track record in providing responsive crisis intervention and mental health services in this community. They have extensive experience in developing innovative and creative programs for persons with severe and chronic mental illness. The Ryles Center for Evaluation and Treatment is the result of MHSW's efforts and planning.

As the Director of secure residential programs in the community, I am very aware of the need for ready access to medical ancillary and emergency services. As a free-standing, community-based program, we know the importance of establishing these contractual relationships and know that they are possible. Mental Health Services West has assured that these critical medical services will be readily and quickly available when necessary through contractual arrangements with the Oregon Health Sciences University Hospital.

I urge you to seriously reconsider the proposal from Mental Health Services West and allow this agency to continue providing and expanding upon the quality services they already deliver in this community.

Sincerely,

Maxine Stone

Maxine Stone, MSW
Executive Director

CENTER FOR COMMUNITY MENTAL HEALTH

OCIE TROTTER BUILDING
6329 NE Martin Luther King Jr. Blvd.
Portland, Oregon 97211-3097
503/289-1167 FAX 503/286-6494

Carol R. Chism, M.S.W., L.C.S.W.,
Executive Director

August 1, 1996

Clerk of the Board of County Commissioners
Multnomah County
1120 S.W. 5th Avenue, 15th Floor
Portland, OR 97204

Dear Commissioners,

The Center for Community Mental Health is a community mental health provider and member of Advanced Behavioral Health (ABH). We are requesting that you reconsider awarding the crisis response center contract to Mental Health Services West (MHSW), also a member of ABH, on the basis of its documented ability to provide crisis services to the community.

When Multnomah County originally awarded the crisis contract to MHSW, it was a tremendous opportunity for consumers to receive a wide range of services from a provider network with extensive experience in providing crisis care. MHSW has done an excellent job of serving chronically mentally ill individuals and other high risk consumers.

We sincerely hope you review all the facts and reconsider awarding the contract to MHSW.

Respectfully,

Carol Chism (mb)

Carol R. Chism, LCSW
Executive Director

CRC:mb

MHSWCris.Sup

Garlington Center
Behavioral HealthCare

Executive Offices
Child & Family Services
911 N. Skidmore
Portland, Oregon 97217
(503) 249-7990
FAX (503) 249-8740

Community Support Services
Crisis/Adult Outpatient
4950 N.E. Martin Luther King
Portland, Oregon 97211
(503) 249-0066
FAX (503) 249-8235

Professional Counseling Services
Davis Business Center
4370 N.E. Halsey
Portland, Oregon 97213
(503) 281-3464
FAX (503) 281-2946

Alberta Street Cafe
501 N.E. Alberta Street
Portland, Oregon 97217
(503) 249-1976

July 30, 1996

Clerk of Board of Commissioners
Multnomah County
1120 S.W. Fifth Avenue, 15th Floor
Portland, Oregon 97204

Dear Clerk of Board of County Commissioners:

This letter expresses the concerns of Garlington Center Behavioral Healthcare regarding the Crisis Response Center which is proposed for Multnomah County. This issue comes before the Commissioners at the August 8 board meeting. I would appreciate the inclusion of the letter in the board materials which will be provided to the Commissioners prior to the meeting.

I prefer not to emphasize the procedural points that have been assiduously pursued in the steps leading to the August 8 hearing. I do believe that Mental Health Services West (MHSW) has spoken clearly to these points and to the decision making process. Consequently, I strongly believe that MHSW should not be disqualified as a proposer and/or provider of the Crisis Response Center Program. It would be sad, indeed, if full consideration of this issue were impeded by procedural questions.

The very substance of this issue, it seems, lies with the competence of the community system, derived over years of experience and interagency cooperation, to provide necessary and expert psychiatric crisis services to citizens of Multnomah County. A key component of that system's infrastructure is found with MHSW. This flexible community approach to crisis services builds on the strengths and uniquenesses of Multnomah County's communities. In that tradition and knowledge, MHSW developed and acquired funding for Project Respond, which provides crisis services to homeless persons, and is the only service of its kind anywhere in the County. It is this same tradition and knowledge that would ensure, through MHSW, that ***the community***, which knows its neighborhoods, their people, and their special needs, would continue to be best served.

Our mental health system faces its greatest challenges ever. We are now providing community care to persons whose level of psychiatric impairment is so great that they previously were only served in long-term state hospitals. As you know, this has not been very long ago. How we meet the psychiatric crises that will certainly continue with persons with intensive mental health needs is a question that we, as a community, must answer together and honestly. Where, in fact, does the expertise exist in providing community based crisis services to persons with major mental illness, or, persons in situational crises, for that matter? The community, ***as the locus of care***, is a critical consideration in this regard. Community care skills and commitment are essential both for good treatment and public safety. These characteristics are found in the community provider system. Further, the proficiency in providing efficient and effective community care has been acquired by the community provider system. Surely MHSW is most competent to provide that leadership.

The seriousness of meeting the unique crisis mental health needs of neighborhoods and communities can not be over stated. We, at Garlington Center Behavioral Healthcare, appeal with a real sense of urgency to

the Commissioners to carefully consider the implications of what the loss of a community-based crisis system would mean in our particular community. We serve the largest number of African American clients who are recipients of mental health services in the County, or, the State, for that matter. The ease and confidence with services, which in many ways is synonymous with **access** to care, are extremely important for this special client population. There are other ethnic and racial groups for which the same holds true; therefore, it is critical that crisis care is provided by community providers, who are closest to home and other natural supports.

The Garlington Center has well developed linkages, both in terms of philosophy and approach, to MHSW in terms of service delivery. It is important that we utilize outreach in special ways to intervene early in crisis situations and minimize costly and restrictive hospital interventions. This approach is both therapeutic and cost effective. It is also most responsive to serving an African American population which tends to resist large, institutional systems and providers who are not familiar with them and their special needs. We make tremendous efforts to develop staff with skills that reflect cultural competence, and to the greatest extent possible, employ clinicians who reflect our community. We believe that a crisis system that is community-driven, which links communities, services and supports will employ these strengths and best serve our community.

We understand that services of a centralized crisis center, such as the County seeks, are often necessary for our clients. However, a large institutional system is likely to be least comfortable and voluntarily utilized by many clients in our community. Early crisis intervention saves both human and financial costs. Certainly a community-focused model would be most user-friendly and often most therapeutic. In our current system of care, we, with MHSW and two other mental health providers, do, and have for many years, provided the crisis care system for this County. We have built a strong, effective and responsive system . It would be a tremendous loss to this County and its citizens if we fail to maintain these important gains.

This is a sincere appeal to the Commissioners to insist upon a full review of this issue, which, truly, is a critical concern to both the health and safety of the County's many publics.

Your kind consideration s appreciated.

Sincerely,

Phyllis S. Paulson

Phyllis S. Paulson
Chief Executive Officer

CC: Board of County Commissioners

CENTRAL CITY CONCERN

Solutions To Homelessness & Chemical Dependency

BOARD OF DIRECTORS

Dean Gisvold
Chairperson

George "Bing" Sheldon
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Central Office
Housing Services
SRO Maintenance
2 N.W. Second
Portland, Oregon 97209
(503) 294-1681
FAX (503) 294-4321

Portland Addictions
Acupuncture Center
1201 S.W. Morrison
Portland, Oregon 97205
(503) 228-4533
Fax (503) 228-4618

Hooper Center/CHIERS
20 N.E. Martin Luther King
Portland, Oregon 97232
(503) 238-2067
FAX (503) 238-2004

Central City Concern
Jobs Program
116 N.W. 3rd.
Portland, Oregon 97209
(503) 226-7387
FAX (503) 226-7921

August 1, 1996

Clerk of the Board of County Commissioners
Multnomah County
1120 SW Fifth Avenue, 15th Floor
Portland, OR 97204

RE: CRISIS RESPONSE CENTER CONTRACT

Dear Clerk:

I am writing you to express my concern regarding the Family and Community Services Division's decision not to contract with Mental Health Services West for the Crisis Response Center. I would urge you to give careful consideration to the appeal of this decision by Mental Health Services West.

Central City Concern has been in partnership with Multnomah County since it was incorporated in 1978 and has been a major contracting partner since 1981 beginning with the Hooper Center. This partnership is highly valued by Central City Concern. Mental Health Services West has likewise enjoyed a very productive relationship with Multnomah County. This partnership between the public sector and the private non-profit sector has been invaluable at providing effective and responsive services to the citizens of Multnomah County.

MHSW and CCC have developed an effective, cooperative partnership that benefits the low-income and homeless of Multnomah County. During the past 12 years the two agencies have developed very successful cooperative service models. The Golden West housing operated by Central City Concern and the Homeless Mentally Ill program operated by Mental Health Services West is a good example of two community agencies working in cooperation with Multnomah County to provide effective community based services.

The cooperative relationship between Hooper's CHIERS program and Mental Health Services West's Project Respond has been highly beneficial to the community and the clients we serve. Project Respond is an example of the benefits to the community from a service contractor that far exceed their contractual imperatives. Project Respond, like CHIERS, was initiated and developed by a community agency in partnership with Multnomah County. The synergy that occurs as a result of the partnership of Multnomah County with agencies like Mental Health Services West should not be ignored.

Mental Health Services West has extensive experience working with homeless and disaffiliated people in need of crisis services. The valuable services and collaborative relationships have taken years to develop and maintain and will be very difficult and disruptive if they have to be recreated by another provider, who has little or no experience

with homeless, mentally ill.

Although I am not privy to all the detail of the decision to take the original award away from Mental Health Services West, I understand that the sitting issues that were thought to present a problem are no longer a reality. As an agency that has considerable experience with neighborhood sitting problems, I know how daunting the issues may appear. I also know that a partnership with a community based provider can benefit the County, the agency and the clientelle, and is not something that should be forfeited without serious consideration.

In closing I just wish to reiterate that Mental Health Services West has been a good partner with Central City Concern and I am sure a good partner with Multnomah County. The agency possesses all of the necessary capabilities to meet the requirements of the contract. It is critical that their appeal before the Board be reviewed fairly and openly, bearing in mind all of the facts. I thank you for your consideration of this matter.

Sincerely,

Richard L. Harris
Executive Director

OREGON HEALTH
SCIENCES UNIVERSITY
3181 S.W. Sam Jackson Park Road, UHN80
Portland, Oregon 97201-3098 (503) 494-8144
School of Medicine, Department of Psychiatry

August 1, 1996

Clerk of the Board of County Commissioners
Multnomah County
1120 SW Fifth Avenue, 15th Floor
Portland, Oregon 97204

Dear County Commissioners:

This letter is in response to the proposal by Mental Health Services West, (MHSW), to develop The Crises Response Center Project for Multnomah County. I strongly support MHSW's application for this project.

I have been working at Oregon Health Sciences University for 20 years and have been intimately involved with providing psychiatric services to the patients in Multnomah County for the last 15 years. During this time, we have had an excellent working record at MHSW. They have been clearly the most responsive to the needs of the chronic mentally ill of any system in Multnomah County. In addition, they have a long history of innovative work with programs which include crisis care, homelessness and outreach. The linkage with us has been very important for both of us and in particularly for the patients. We at OHSU have been able to provide emergency and inpatient psychiatric services, and when needed medical services to the patients, many of whom were referred by Mental Health Services West.

The proposal by MHSW has a crisis center six minutes away from our medical school, which insures good medical and psychiatric care. Also, the medical director of MHSW is a member of the Department of Psychiatry at OHSU, and this provides good service and training for psychiatric residents. Many of the services that are needed for the crisis response project are in existence at MHSW, and therefore it would not need to start from scratch, as would another center with no history of dealing the poor and uninsured. Again, I strongly encourage you to consider Mental Health Services West as recipient for this proposal.

Sincerely,

J. David Kinzie, MD
Professor of Psychiatry
Director of Clinical Services

JDK/tld
h:\kinzie\corresp\ccommiss.l

c: Kris Angell

PAUL NORR
ATTORNEY AND COUNSELOR AT LAW
1020 S.W. TAYLOR STREET, SUITE 530
PORTLAND, OREGON 97205-2550

OF COUNSEL
DENISE FRISBEE

TELEPHONE (503) 228-3862
FAX (503) 224-1123

August 8, 1996

Board of County Commissioners
Multnomah County
1120 SW 5th, Room 1510
Portland, Oregon 97204

Re: Mental Health Crises Response System RFP

Dear Board of County Commissioners,

Given the severe time limits placed on MHSW's presentation to the Board, and the County's refusal to allow MHSW to meet with Commissioners individually as County staff did prior to this hearing, I request that the Board carefully read and consider all of the materials submitted on behalf of MHSW prior to the Board making a decision on this critical matter.

We hope that the Board will focus on providing the public (including in particular those most in need of the CTC services MHSW is accustomed to providing) with the best long term program possible. We believe MHSW has that program.

Following are the key points I request that the Board consider prior to making any decision:

1. **COUNTY STAFF IS ASKING THE BOARD TO APPROVE BOTH (1) WITHDRAWAL OF THE AWARD FROM THE HIGHER RANKING MHSW AND (2) GIVING THE AWARD TO THE LOWER RANKING PROVIDENCE. UNDER COUNTY PURCHASING RULE PUR-1, SUBSECTION VII.B., THE BOARD HAS THE AUTHORITY TO LEAVE THE AWARD WITH MHSW WHERE THE EVALUATION COMMITTEE PUT IT.**

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In more detail, please consider the following:

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      "State why this award is in the best interest of the public and the County."

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   A. The Planning Director's letter of May 23, 1996, confirms what MHSW said in its proposal: the CTC is a conditional use in MHSW's zone. The Director said:

      "This use is allowed as conditional uses on sites which are partially or entirely zoned for residential development."

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The City staff memo specifically says:

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> "The facility is zoned as a residential treatment facility...."

D. Providence's representation about its zoning is not a true statement for these reasons:

1. The City does not have a zone called "residential treatment facility". The proposed Providence site is in fact zoned R1, Medium Density Multi-Dwelling Residential Zone.

2. Providence did receive conditional use approval for a residential treatment facility at its proposed site in 1989, however that approval was superseded by the 1990 and 1996 approvals Providence received in its Medical Center Master Plan cases.

3. Providence's proposed site does not even have current conditional use approval as a residential treatment facility.

4. If the standard the Board applies to MHSW is that any incorrect zoning statement must result in disqualification because of the inability to determine how the incorrect statement might have affected the Evaluation Committee's scoring, then the Providence proposal must also be disqualified.

Thank you for your patience in giving MHSW a fair opportunity to present MHSW's materials for your review in this important matter.

MHSW has been a service provider partner with the County for many years. It is regrettable that this matter has put MHSW at odds with County staff. We are confident that the Board, County staff and MHSW can all move forward together to provide the public with the best crises response program possible by building on MHSW's existing service delivery system.

We request that the Board let the Evaluation Committee's rankings stand, and allow MHSW to go forward as they should have been allowed to do with implementing the best overall program. County staff has not demonstrated that it would be in the public's best interest to throw out the Evaluation Committee's ranking of MHSW as the best program.

Respectfully,

Paul Norr

PN/2
c: MHSW
County Counsel

MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES
ADULT MENTAL HEALTH PROGRAM
421 SW SIXTH, SUITE 600
PORTLAND, OREGON 97204
(503) 248-5464 FAX (503) 248-3926
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

F A X T R A N S M I S S I O N

DATE: 1/26/96
TIME: 5:30p

TOTAL NUMBER OF PAGES ~~FOLLOWING~~: 11
(INCLUDING COVER)

TO: Robin McIntyre (NAME)
Permits, Bur. of Planning (DEPARTMENT)
823-7765 (FAX NUMBER)

FROM: Gloria Wang (NAME)
Adult Mental Health Program/ICP Unit (DEPARTMENT)
1-503-248-3926 (FAX NUMBER)

COMMENTS:

We spoke Friday about possible sites for our psychiatric crisis triage center. It will be very helpful to us to know if either of the two sites discussed can procede without applying for a Conditional Use permit. I'm sending you the part of our RFP describing the center's service components, as well as facility criteria. ~~I've also enclosed~~ I can't share the proposers' descriptions of their sites until the proposals become public documents (when the award is announced), probably Tuesday. Anything further about Providence's site you can find out for me before a 1pm meeting Monday would be wonderful,

Thank You!

AN EQUAL OPPORTUNITY EMPLOYER

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

May 23, 1996

Glenn Maynard
Providence Portland Medical Center
Mental Health and Chemical Dependency Services
5228 NE Hoyt Street
Portland, OR 97213-2967

RE: LETTER OF USE DETERMINATION

Dear Mr. Maynard,

Multnomah County Department of Community and Family Services has contracted with Providence Portland Medical Center for the establishment and operation of a crisis triage center (CTC) at the Providence Medical Center. This use will be located in Building B, as shown on Exhibit A. Medical Centers, as defined in Section 33.920.450 of the Portland Zoning Code. This use is allowed as conditional uses on sites which are partially or entirely zoned for residential development. An approved Master Plan is in effect for Providence Portland Medical Center.

Building B is currently used for behavior medicine programs, including a combination of out-patient and residential detoxification and stabilization services. The services include evaluating and treating persons with both mental health and chemical dependency disorders. Overall, the services provided in Building B and elsewhere at the Providence campus presently include chemical dependency, mental health and psychiatric evaluation triage capability, other types of mental health acute care, and psychiatric day treatment. Building B already is used for similar purposes, so that no significant changes to the building will be required.

The CTC will provide similar services. The 27 existing beds will be converted to 15 "respite" beds, to be used for extended stay chemical dependency/mental health patients who require additional assessment, short-term treatment and stabilization. The triage center will also include five "23-hour beds" which will be used for stabilization of patients on a one-day discharge basis. Other uses will include two holding rooms for patients who will be transferred, office space and diagnostic facilities. Staff will include mental health professionals, including psychiatrists, psychiatric nurses and other qualified professionals. A significant percentage of the patients will be transported to this facility by either public service agencies or transport provided by Providence Portland Medical Center.

The proposed use falls within the Medical Center use category because the use meets the definition found in Section 33.920450 of the Portland Zoning Code and includes activities which are customarily provided as part of a full-service medical center. In addition, the use is consistent with that which was anticipated through the master plan review for Building B as a location for behavior medicine services. It will not have any impacts which were not anticipated during the master plan review. This conclusion is based upon the information provided by the representatives of the Providence Master Plan in a letter to the Bureau of Planning dated April 30, 1996 and the Master Plan approved for the City Hearings Officer on May 9, 1996.

Yours very truly,

David C. Knowles

David C. Knowles, Director

CITY OF
PORTLAND, OREGON
BUREAU OF PLANNING

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David C. Knowles, Director
1120 S.W. 5th, Room 1002
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Telephone: (503) 823-7700
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March 6, 1996

MEMORANDUM

To: John Thomas
Office of Multnomah County Counsel

From: Susan Feldman, Principal Planner
Development Review Section

Re: Determination of Use for the Proposed Crisis Triage Center

As explained in the RFP, Multnomah County is currently in the process of funding a Crisis Triage Center to be located in the City of Portland. You have asked what use category this proposal fits into as regulated by the Portland Zoning Code. Our understanding is that the intent of the Crisis Triage Center is to provide medical treatment to adults and children who are experiencing situational or severe psychiatric crisis and are not linked to the mental health system. Twenty-four hour treatment will be provided on site and, if necessary, patients will be linked to another site in the mental health or medical system.

It is our determination that the proposed use performs as an urgent medical care facility which the Zoning Code lists as falling into the Retail Sales and Service category of Chapter 33.920. If this use is to be located in a residential zone, you or your provider also has the option of applying for the use to be classified in the Community Service category of Chapter 33.920. Community Service uses are conditional uses in residential zones and require a Type III procedure, i.e., a mandatory hearing before a land use hearings officer. During this process, the additional information as to the use and how it functions will allow the City to determine exactly into which use category your proposal falls.

program evaluation and training (see complete list in Table A) will be chosen on the basis of a proven record of quality and affordability. Policies and procedures will be agreed upon in writing and include methods to regularly measure outcomes and ensure accountability. These subcontracts will include language which requires the subcontractor to meet any statutory or contractual requirements contained in the original contract. For prototype agreement, see Appendix 7.

Subcontractors will be selected through an open selection process designed to identify the best qualified and cost effective contractor, based on objective criteria. The process will be designed to avoid any possible conflicts of interest, and none are anticipated.

C. Description of Facility and Site Control

MHSW has exclusive site control with a long-term lease (see Appendix 21) on a building located at 1975 SW 5th Avenue. This building is just off the 5th Avenue exit of I-405 and easily accessible to anyone who is arriving by automobile. It is located within "fareless square" near Portland State University (PSU) and is in the block between 5th and 6th avenues which is the main bus-mall. This location is extraordinarily accessible to anyone who uses public transportation. The building is located within the PSU neighborhood and is zoned light commercial (CXD). This is appropriate zoning for the intended use and we anticipate no undue difficulty in obtaining the necessary conditional use permits. Immediately upon award of the contract, we intend to form a neighborhood advisory group to open communication channels and provide a consistent mechanism for discussion and feedback with our neighbors. We currently enjoy a good relationship with PSU which is further enhanced by very cooperative and mutually beneficial working relationship between Project Respond and PSU Security (see letter of support, Appendix 8). PSU has traditionally used MHSW as a site for many internship placements, and that is likely to be enhanced with this location of the Triage Center.

The site has ample off street parking (3 hour meters) and sole control of two parking lots. One parking lot has 17 parking places, is covered and is immediately adjacent to the building entrance. Several spaces in this parking garage will be converted to a secure receiving area. This feature will minimize neighborhood disruption and provide a sheltered, safe entrance for emergency vehicles and the mobile units. The second lot has 12 parking places and is located directly across the street. The facility itself will be designed to ensure security for its occupants. All external doors will be monitored and equipped with alarms that will alert staff to any unexpected departures. The building will also be easily used by wheelchair-bound consumers and will comply with all relevant government accessibility regulations.

The building has 17,300 square feet of usable space, which is more than sufficient to house the program staff, out-stationed staff, five 23-hour beds, 2 secure holding rooms, and 15 enhanced respite beds. The planned configuration provides a single, large team room for all core Center staff, including those staff who answer the Mental Health Crisis Line, see walk-ins, address needs of individuals admitted to Center beds, respond to community situations and provide after care. This would total a maximum of 14 QMHP, RN and NP staff in the team room on a single shift. The team room approach will maximize the opportunity for formal and informal communication which will ensure consistency and coordination of clinical response. Staff space will include an adjoining nurses' station, formulary and medical exam room, as well as sufficient office and interview space to accommodate the outstationed staff and provide for the clinical needs of the Center. Communication among facility staff will be further enhanced through the strategic use of an overhead PA system, a system of personal pagers and the use of 2-way radios.

consumer in implementing the goals identified in the treatment/disposition plan. It is expected that case managers may have telephone or face-to-face contact, or both, with consumers. Face-to-face contact will include appointments at the CTC and home visits. Implementation of the treatment/ disposition plan will involve linkages with the family and ongoing mental health care providers; accessing housing, financial resources, medical care, and employment resources; and developing and stabilizing support systems.

Case managers will be QMHP level staff. Case managers will be on duty 7 days per week. Staff will be scheduled on day and evening shifts. Those consumers seen at night will be followed up the next day by a case manager.

C. QUESTION: A description of the facility and type of site control.

ANSWER: The Crisis Triage Center and the Crisis Response System will be located in Building B at 5228 N.E. Hoyt, on the campus of Providence Portland Medical Center (PPMC). The building is a 21,000 square foot, 3-story brick structure, which is owned by Providence Health System and will be remodeled to meet the specifications of this project.

As the accompanying map indicates, (on page 10), the CTC is conveniently located in the center of Multnomah County and is easily accessed by all freeways, Tri-Met, and MAX. The 1994 population census reports that 60% of Multnomah County residents live within a five mile radius of PPMC.

The facility is zoned as a residential treatment facility that currently houses Providence Chemical Dependency Services. The building is part of the PPMC campus and has available all the services of the hospital including emergency room, pharmacy, laboratory, and acute medical and psychiatric services. The building is also serviced by the PPMC support departments including engineering, food service, information services (IS), medical records, and security. Since the building currently houses a residential CD program, there are existing patient rooms, nursing stations with facilities for medication management and dispensing, and an exam room. There are also designated areas for a patient lounge, dining room, and kitchen. Sufficient offices exist to accommodate Multnomah County and the CTC staff.

There is a parking lot behind the building that provides immediate and easy access for emergency vehicles, secure transportation, and the mobile crisis vehicles. The front entrance of the building can be used by the general public and walk-ins.

PAGE 9 OF PROVIDENCE PROPOSAL

TESTIMONY TO MULTNOMAH COUNTY BOARD OF COMMISSIONERS

By:

Mental Health Services West, Inc.
August 8, 1996

TESTIMONY TO THE BOARD OF COUNTY COMMISSIONERS

Tom Markgraf

- Tom Markgraf, President of the Board of Directors of Mental Health Services West.

- MHSW is a non-profit agency serving mentally ill persons in Multnomah County for the past 15 years.

- I'd like to explain why our Board took the actions it did in authorizing a lawsuit against Multnomah County and what is at stake for us in this matter.

- First, filing a lawsuit is not an action we took lightly.

  - We value our relationship with the County and believe we share a common mission that benefits most from a sense of partnership, not conflict.

  - However, after much deliberation and soul-searching, and after exhausting our administrative remedies, our Board felt we were left with no other option.

  - We strongly believe that with the problems associated with how this contract award has been handled . . . and given the significance of the public services at stake . . . we simply had to stand up for our rights and make sure this matter came before the Board of County Commissioners, where it properly belongs.

  - We constructed our lawsuit very narrowly on just procedural. We chose this legal path because we believe the substantive choices and decisions about what's in the public interest should be made by the Board. We felt strongly that this should properly be decided as a matter of public policy. This should not be viewed as a mere technicality.

  - We also felt that a contract of this magnitude -- a five-year contract for a service that is one of the cornerstones of the community mental health system -- should not be awarded by default. Without our legal intervention, the County would have been left with only one choice -- and we don't believe that is in the public interest.

- Second, the Crisis Response System and Crisis Triage Center are central to our mission.

  - Serving this clientele -- people in crisis and especially those without means -- is what our agency was founded to do. It is so fundamental to who we are . . . and what we are . . . and the value we offer to the community . . . that we could not overlook the problems in this contract process.

  - These services are core -- part of our history. We just completed a visioning process that included more than 35 interviews with community leaders, including members of Multnomah County staff. These interviews confirmed the view that one of our most imporant roles within the mental health system is our ability and track record dealing with very difficult clients who are frequently in crisis.

- Finally, our position is that there is a distinct difference between what we and Providence have to offer . . . and that we sincerely believe we were wrongly denied, as the higher ranking proposer, our legitimate opportunity to carry out this contract. We ask that you reverse the staff's decision.

  - Over the years, we have developed many high-quality crisis services and a network of relationships with providers that is unparalleled in the community. We believe our proposal builds from these strengths and does not require the development of new or redundant capabilities.

  - I'll leave it to Kris Angell, our Executive Director, and Paul Norr, our counsel, to discuss the specific issues. I'd like only to say that we want to work with the County to achieve the best results possible for the community.

  - We seek reinstatement of this contract -- which we think is the right decision for the Board to make -- but we also want to make it clear that we want, overall, to achieve the best results for the community. To that end, we're also willing to partner or collaborate with others to achieve these results.

Thank you for your time and consideration.

PAUL NORR
ATTORNEY AND COUNSELOR AT LAW
1020 S.W. TAYLOR STREET, SUITE 530
PORTLAND, OREGON 97205-2550

OF COUNSEL
DENISE FRISBEE

TELEPHONE (503) 228-3862
FAX (503) 224-1123

August 8, 1996

Board of County Commissioners
Multnomah County
1120 SW 5th, Room 1510
Portland, Oregon 97204

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2. Providence did receive conditional use approval for a residential treatment facility at its proposed site in 1989, however that approval was superseded by the 1990 and 1996 approvals Providence received in its Medical Center Master Plan cases.

3. Providence's proposed site does not even have current conditional use approval as a residential treatment facility.

4. If the standard the Board applies to MHSW is that any incorrect zoning statement must result in disqualification because of the inability to determine how the incorrect statement might have affected the Evaluation Committee's scoring, then the Providence proposal must also be disqualified.

Thank you for your patience in giving MHSW a fair opportunity to present MHSW's materials for your review in this important matter.

MHSW has been a service provider partner with the County for many years. It is regrettable that this matter has put MHSW at odds with County staff. We are confident that the Board, County staff and MHSW can all move forward together to provide the public with the best crises response program possible by building on MHSW's existing service delivery system.

We request that the Board let the Evaluation Committee's rankings stand, and allow MHSW to go forward as they should have been allowed to do with implementing the best overall program. County staff has not demonstrated that it would be in the public's best interest to throw out the Evaluation Committee's ranking of MHSW as the best program.

Respectfully,

Paul Norr

PN/2
c: MHSW
County Counsel

TESTIMONY TO THE BOARD OF COUNTY COMMISSIONERS

Kris Angell

- As Tom Markgraf described earlier, this is a very difficult situation for us to be in.
  - Unfortunately, the fact that we had to take legal action to bring about this level of review and decision-making may give the appearance that we are entrenched in a position of spoiler, or that we are trying to obstruct the process.
  - That is far from our intention. In fact, we see ourselves as your partners in providing a vital community service, not as antagonists.
    - When I started as Director one year ago, one of my top goals was to work actively on this partnership. I began a campaign of meeting with County staff in order to learn more about how we could do this.
    - Last January I stood before you to offer our support for the County's move into children's capitation. I affirmed with County staff that it would require an active partnership to be successful. Little did I expect that, a few months later, we would find ourselves in a lawsuit.
- But let me emphasize what this is not about.
  - It is not just about a contract.
    - Although I believe we have a compelling case for the right to this contract, we have competed for many contracts before. Some we've one; some we've lost -- but we have never before sued anyone or challenged a contract award.
  - It's also not about trying to "spoil" the process in order to preserve the system as it is.
    - We recognize the need for changes and reorganization in the mental health system.
    - We agree with the goals of providing cost effective, consistent, accessible crisis services that are user friendly.
  - And we also aren't here to criticize Providence.
    - Providence has fine psychiatric services and does an excellent job at what they do.

- It's just that we are different. We have 14 years' experience treating as our core mission the people for whom these services are directed.

- We are here today because we're concerned about a fair process . . . and because we believe the decision you're about to make is absolutely critical to the future of our community-based mental health system.

  - We're here today because we believe we should build on what is successful rather than starting all over again.

    - We believe we should be leveraging the investment that the community, both public and private, already have in the mental health system.

- And I'd like to tell you about some of those successes:

  - Our Project Respond is a mobile crisis team which operates 7 days a week, 16 hours a day supported by $1.3 million in private funds. It's nationally recognized as a model for mobile response that is integrated into a full continuum of mental health services. In its last year of operation, Project Respond responded to almost 900 community crisis calls; 43% of them were from the police.

  - We have a Community Crisis Team . . . specialized stabilization and treatment services for persons in crisis . . . and a successful 24-hour crisis respite program.

- These services, taken together, constitute the crucial building blocks for a well-integrated crisis response system. These represent a tremendous pool of talent and experience that our proposal builds upon.

  - To overlook the opportunity to capitalize upon these existing resources and system capabilities would be short-sighted. Preserving what is effective and changing what isn't is at the very heart of our proposal.

- This is also about upholding and reinforcing the community-based model.

  - This is where the strength of our system lies. Centralized intake is effective only when it is connected properly to the care delivery system and the entire continuum of mental health services.

  - This also is the inherent strength of our proposal.

- We meet all of the requirements of the RFP, but most

importantly we bring some other values and resources into play that make our proposal even stronger and more valuable to the community.

- Our proposal and programs recognize the diverse needs of special communities and population groups. For example, we propose special approaches to children in crisis to avoid bringing them into an intimidating setting; we participate fully with our partners in with the minority community to ensure sensitivity to cultural diversity.

- We have built up our specialized programs for dealing with disenfranchised and underserved populations.

- Our proposal leverages and expands the availability of services <u>beyond that which the RFP requires</u> because we capitalize on services already in place, such as Project Respond.

- Our proposal makes full use of the expertise, experience and knowledge of community resources necessary to keep consumers out of expensive hospital placements by providing community-based alternatives.

- We pay attention to the back door as well as the front door. Our proposal captures and takes benefits from existing services and agreements that provide the continuum of care needed.

- We bring a broad base of diverse community support -- from law enforcement and corrections to the business community, social service agencies, colleagues in the mental health service network, state agencies and family advocates. This kind of support can't be translated easily into money and service statistics, but is vital to the ongoing success of the program and future advocacy for it.

<u>Let us make no mistake: there is a clear choice represented here between a community-based program and one that is hospital-based. We deal every day with the clients that hospitals routinely turn away.</u>

- Our proposal offers our substantial experience as a community-based provider with extensive alliances and networks to the existing mental health system. It is certainly noteworthy that the two top scoring proposals (before Legacy withdrew) were community-based.

- It may appear that a hospital-based service offers advantages because of its site. We would like to note that our site is exceptional and offers certain key advantages.

- It is centrally located in a downtown setting where the majority of crisis incidents occur. We have met with the neighborhood association and there appear to be no major issues in our path.

- It has a secure and enclosed vehicular entrance, allowing clients to come and go in privacy and minimizing impact on the surrounding neighborhood.

- It has immediate access to and from a major freeway, and has entrances from two major streets. It is convenient for police, the agencies we work with and the clientele we are most likely to serve.

- Our facility also is located within minutes of OHSU, where we have working agreements with the emergency room and in-patient psychiatric unit. We are, in effect, "right across the campus" from very high quality medical care should it be needed.

- <u>Therefore, what we seek today is the chance to go forward with you . . . in partnership . . . to achieve a common vision of a Crisis Response System that is fully integrated with the community mental health service delivery network.</u>

  - We ask that you recognize the mistakes made in handling this contract award -- however unwitting or caused by staff's eagerness to implement these services -- and to give us the chance that we were denied.

  - We also want to state our willingness to move forward in any creative fashion of interest to the County and of value to the public. We bring tremendous experience and expertise to this project. We're anxious that the community be able to take advantage of this experience.

- In the final analysis, the Board must decide what is best for the public.

  - My hope would be that you recognize that you are committing to a five-year or longer program that is central to the success of our overall system.

  - It is not a contract in which speed and the physical readiness of a building are the crucial issues. What <u>is</u> crucial is that the public receives the best service and that our past investments are leveraged for future benefit.

  - We come to you in the hope that we can play a part in

achieving that result. Our business for the past 14 years has been collaborating, partnering and working with the County and the provider community to knit together a strong set of services for the mentally ill. That's what we do best; that's what we want to do.

- We share your vision for improving the system through your RFP for a crisis response system; we want to be your partner in doing so, and believe we offer the strongest proposal.

- And we hope that the Board's decision today will ultimately reflect the County's basic commitment to a community-based system of care for our mentally ill.

- <u>In closing, I'd like to say that we've done our best . . . in just 20 minutes or so . . . to help the Board understand what's at stake.</u>

  - Regrettably, we did not have the opportunity to meet with Board members or Board staff to allow you to interact with us about these issues . . . and to allow us to respond to your questions or concerns.

  - We know you've heard from staff and understand their perspectives. We are left with just this opportunity. We hope that you will ask your questions now so that we can address them.

    - With me are several members of our staff, including representatives of Project Respond and our crisis services unit, and also Peter Fry, a land use siting expert who is helping us with our conditional use process.

    - Tom, Paul and I, along with these other experts, are eager to engage in this further discussion.

    - We also would ask for the opportunity to respond to new testimony or new issues that may arise.

- Thank you.

CHRONOLOGY

November 1995: Multnomah County issues RFP for the Crisis Response System

January 10, 1996: Three bidders submit proposals.

January 24: Caremark (Legacy Emanuel) withdraws its proposal.

January 26: Letter to city Planning Bureau from Gloria Wang, County Adult Mental Health Program, inquiring whether either MHSW or Providence sites can proceed without a conditional use permit.

January 30: MHSW is awarded contract rights as the higher ranking of the two remaining proposals

Early February: County staff and MHSW hold initial negotiation meetings during which County notifies MHSW that it has misstated the underlying zoning at its proposed project site (CX instead of RX).

March 6: County staff receives Planning Bureau memorandum suggesting that the CRC use is "Retail Sales and Service," but noting that the conditional use process will "allow the city to determine exactly in which use category (the) proposal falls."

March 7: County staff notify MHSW that they are canceling the award to MHSW on the basis that the CRC use is "prohibited" in the RX zone. County staff simultaneously notify Providence Medical Center that it has been awarded the right to the contract.

March 14: MHSW appeals both March 7 actions.

March 19: MHSW holds Preapplication Conference with city planning staff during which city staff indicate that it would be appropriate for MHSW to propose the CRC as a "community service" or "medical center" type of use in the conditional use application.

April 9: Both MHSW appeals are denied by County Board Chair.

April 23: MHSW notifies County of its intent to file for injunctive relief.

April 30: Providence submits to the city Planning bureau its case for the use and that a Type III land use process is not required.

May 9: MHSW files lawsuit with Multnomah County Circuit Court.

May 23: Planning Director David Knowles issues Letter of Use Determination that determines that the CRC use is falls within the "Medical Center" use category. The use determination was not appealed.

June 28: Circuit Court rules that County staff did not properly follow administrative rules, remanding the action back to the Board of County Commissioners.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of the Recommendation of Award of Contract for Mental Health Crisis Response System to Providence Health System	ORDER 96-136

WHEREAS, PUR-1 Rule VII B. provides that whenever a recommended award under a request for proposal is not made to the highest scoring proposal the matter must be submitted to the Board and approval obtained by at least three board members; and

WHEREAS, the Purchasing Division has prepared a Report to the Board in which it is recommended that the Board award the Contract for the Mental Health Crisis Response System to Providence Health System; and

WHEREAS, the Board, based upon the Report of the Purchasing Division, makes the following finding:

1. That the award of the Contract for the Mental Health Crisis Response System to Providence Health System is in the best interests of the public and the County.

THEREFORE, BE IT ORDERED, that the Board approves the recommendation of the Purchasing Division to award the Contract for the Mental Health Crisis Response System to Providence Health System.

ADOPTED this 8th day of August, 1996.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By _____
Beverly Stein, Chair

REVIEWED:
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By _____
John S. Thomas
Assistant County Counsel

07/16/96:1

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